



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**NSC HOLDINGS (PHILIPPINES),  
INC.,**

Petitioner,

**G. R. No. 193069**

Present:

- versus -

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
DEL CASTILLO,  
REYES,\* and  
CAGUIOA, *JJ*.

**TRUST INTERNATIONAL PAPER  
CORPORATION (TIPCO) and  
ATTY. MONICO JACOB,**

Respondents.

Promulgated:

**MAR 15 2017**

X ----- X

**DECISION**

**SERENO, *CJ*:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision<sup>1</sup> and the Resolution<sup>2</sup> of the Court of Appeals (CA). The CA upheld the validity of the assailed Omnibus Order<sup>3</sup> issued by the Regional Trial Court (RTC), Branch 42, City of San Fernando, Pampanga. The RTC denied the motion of NSC Holdings (Phils.) Inc. (NSC) to revise the approved rehabilitation plan.

**THE ANTECEDENT FACTS**

Trust International Paper Corporation (TIPCO) is a pulp and paper manufacturing company organized and existing under the laws of the Republic of the Philippines.<sup>4</sup> On 29 July 2005, TIPCO filed a "Petition for

\* Designated Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Raffle dated 18 January 2017.

<sup>1</sup> *Rollo*, pp. 33-50; dated 19 January 2010; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Rebecca de Guia-Salvador and Estela M. Perlas-Bernabe (now a member of this Court) concurring; docketed as CA-G.R. SP No. 93873.

<sup>2</sup> *Id.* at 30-31; dated 21 July 2010.

<sup>3</sup> *Id.* at 71-74; penned by acting Presiding Judge Benjamin D. Tugano.

<sup>4</sup> *Id.* at 99.

Corporate Rehabilitation with Prayer for Suspension of Payments”<sup>5</sup> before the RTC.

The trial court subsequently issued a Stay Order directing, among others, the appointment of respondent Atty. Monico Jacob as the rehabilitation receiver (Receiver).<sup>6</sup>

NSC filed its “Comment with Motion,”<sup>7</sup> alleging that certain receivables, as well as the authority to collect payments for these receivables, were being held by TIPCO for and on behalf of NSC as its agent. This was pursuant to a Trade Receivables Purchase and Sale Agreement (TRPSA)<sup>8</sup> entered into by both parties.<sup>9</sup>

NSC claimed that under the TRPSA, it entered into a Certificate of Assignment with TIPCO. In that agreement, the latter sold and assigned receivables to NSC in the total amount of ₱155,380,590.<sup>10</sup> There was supposedly a stipulation therein designating TIPCO as servicing agent with the obligation to enforce the rights and interests of NSC over the purchased receivables, as well as to hold the collections in trust for the latter.<sup>11</sup>

In light of the TRPSA, NSC claimed that it was a trustor, not a creditor, of TIPCO. As such, it moved that TIPCO be directed to segregate the receivables held by the latter on behalf of NSC. These receivables would thereby be excluded from TIPCO’s list of assets and payables that would be subject to the rehabilitation plan. NSC likewise prayed that TIPCO be ordered to directly remit any collection or payment to the former as soon as practicable.<sup>12</sup>

During the initial hearing, the Court summarily heard NSC’s contentions<sup>13</sup> as well as TIPCO’s counter-argument that the true agreement was really one of a loan.<sup>14</sup> Afterwards, the RTC issued an Order<sup>15</sup> holding that both parties had “agreed to submit the issue that receivables transferred to NSC should not be included as TIPCO’s assets for the resolution of the Court-appointed Rehabilitation Receiver, subject to the Court’s approval.”<sup>16</sup>

On 20 January 2006, the Receiver submitted to the RTC his “Evaluation and Recommendation Report” (Report) which addressed NSC’s contentions.<sup>17</sup> He stated therein that after a review of the documents, he

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<sup>5</sup> Id. at 99-118.

<sup>6</sup> Id. at 34.

<sup>7</sup> Id. at 119-122.

<sup>8</sup> Id. at 75-97.

<sup>9</sup> Id. at 119.

<sup>10</sup> Id. at 35.

<sup>11</sup> Id. at 120.

<sup>12</sup> Id. at 121-122.

<sup>13</sup> Id. at 140.

<sup>14</sup> Id. at 286.

<sup>15</sup> Id. at 139-143; penned by acting Judge Divina Luz P. Aquino-Simbulan.

<sup>16</sup> Id. at 140.

<sup>17</sup> Id. at 145-183.

found that NSC was an unsecured creditor,<sup>18</sup> and that the receivables were covered by the rehabilitation plan.<sup>19</sup>

### ***First Order***

Through an Order<sup>20</sup> dated 31 January 2006 (First Order), the RTC approved TIPCO's proposed rehabilitation plan as amended and modified by the "Evaluation and Recommendation Report."<sup>21</sup> NSC received a copy of the Order on 9 February 2006.

On 2 February 2006, unaware that the RTC had already approved the proposed rehabilitation plan in the First Order, NSC filed a Motion<sup>22</sup> praying for the suspension of the approval of the plan. In this Motion, it claimed that it had called the Receiver's attention to the fact that the Report lacked legal and factual basis insofar as its claim was concerned. NSC alleged that, as a result, the Receiver manifested at the hearing on 23 January 2006 that he was amenable to a further discussion of its claim and subsequently submitting his report thereon to the trial court.<sup>23</sup>

### ***Second Order***

The RTC then issued an Omnibus Order<sup>24</sup> dated 21 February 2006 (Second Order), which treated NSC's prior Motion as a motion for reconsideration. Consequently, it denied the Motion for being a prohibited pleading. Nevertheless, it directed the Receiver to comment on the nature of NSC's claim.<sup>25</sup>

Meanwhile, prior to its receipt of the Second Order but after it had finally received a copy of the First Order, NSC filed another Motion.<sup>26</sup> It stated therein that it had received the First Order and held a meeting with the Receiver. It then reiterated its contentions and asked that the Receiver be directed to submit its report. By that submission, NSC sought the resolution of its claims and the revision of the approved rehabilitation plan.

The Receiver filed a "Manifestation"<sup>27</sup> stating that he had a meeting with the parties' respective counsels on 7 February 2006. In that meeting, the parties insisted on their respective positions with respect to the nature of TIPCO's obligation to NSC. Both counsels exhibited pieces of documentary evidence to support their respective allegations.

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<sup>18</sup> Id. at 182.

<sup>19</sup> Id. at 166.

<sup>20</sup> Id. at 184-192; penned by acting Presiding Judge Benjamin D. Turgano.

<sup>21</sup> Id. at 189.

<sup>22</sup> Id. at 193-196.

<sup>23</sup> Id. at 194.

<sup>24</sup> Id. at 198-199.

<sup>25</sup> Id. at 199.

<sup>26</sup> Id. at 200-203.

<sup>27</sup> Id. at 211-212.

The Receiver rendered the opinion that the issue raised in that meeting needed to be litigated separately, as to make a recommendation thereon was not within his competence. He also said that the approval of the rehabilitation plan need not be affected, particularly since the plan also called for the payment of TIPCO's obligation to NSC.<sup>28</sup>

### ***Third Order***

The RTC agreed with the Receiver's recommendations in its assailed Omnibus Order<sup>29</sup> dated 9 March 2006 (Third Order), in which it held as follows:

The court finds the Receiver's position, namely, that the issues involved would require a full blown litigation, justified. Considering the seriousness of the issues and the legal implications of a resolution thereon, the Court rules that it is not within the competence of a Rehabilitation Receiver to adjudicate and resolve the said issues.

x x x x

Considering that the rehabilitation plan calls for the payment of the obligations of petitioner to NSC, the implementation of the rehabilitation plan shall not be suspended because of the pendency of this issue. xxx While the parties may decide to elevate the matter for determination in an appropriate court, the rehabilitation plan shall continue to be implemented without prejudice to a final and executory decision on such issue.<sup>30</sup>

Aggrieved, petitioner NSC appealed the Third Order before the CA. The former argued that there was no legal or jurisprudential basis for the RTC's ruling that the Receiver was not competent to determine whether the receivables should be excluded from TIPCO's assets. Petitioner further alleged that it was not a creditor of TIPCO, since the latter merely held the purchased receivables in trust as evidence by the TRPSA.<sup>31</sup>

The CA dismissed NSC's appeal and affirmed the Third Order *in toto*. According to the appellate court, petitioner essentially moved to amend the approved rehabilitation plan in the latter's petition. Hence, petitioner should have appealed the First, and not the Third Order of the RTC, as it was the First Order that had approved the rehabilitation plan.<sup>32</sup> The failure to appeal the First Order supposedly rendered it final and executory and effectively prevented NSC from challenging the recommendations made by the Receiver.<sup>33</sup>

For the CA, NSC could no longer insist that the receivables be excluded from TIPCO's assets. The appellate court held that this matter had

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<sup>28</sup> Id. at 212.

<sup>29</sup> Id. at 71-74.

<sup>30</sup> Id. at 71-72.

<sup>31</sup> Id. at 40.

<sup>32</sup> Id. at 47.

<sup>33</sup> Id. at 42.

already been addressed and resolved by the RTC when the latter approved the rehabilitation plan in its First Order.<sup>34</sup>

Upon the denial of its Motion for Reconsideration,<sup>35</sup> NSC is now assailing the CA's ruling before this Court by raising the following arguments: (a) the CA erred in holding that the NSC should have appealed the First Order; (b) the CA erred in affirming the RTC's finding that the matters presented by NSC were beyond the scope of the rehabilitation receiver's authority, and; (c) the CA erred in affirming the inclusion of NSC as a creditor of TIPCO in the approved rehabilitation plan.

### ISSUE

Given the recital of facts, it is apparent that petitioner's Motion subsequent to the First Order was actually a move to modify the approved rehabilitation plan. Notably, the Motion of NSC is based on the same assertions it presented to the RTC and the Receiver at the start of the rehabilitation proceedings.

Therefore, the threshold issue to be resolved is whether or not petitioner could still raise the issue before the CA of its inclusion as a creditor in the approved rehabilitation plan, considering that the RTC had already resolved this issue in the First Order.

### THE COURT'S RULING

*We deny the petition.*

The issues raised by petitioner center on its inclusion as a creditor in the approved rehabilitation plan. We agree with the CA ruling that it was the First, not the Third Order, that should have been appealed by NSC; and that the latter's failure to appeal the First Order barred it from insisting that it be excluded from the rehabilitation plan as a creditor.

For reasons as follows, the First Order is valid, final, and executory.

***NSC is barred from raising before the CA the issue of its inclusion as a creditor in the approved rehabilitation plan.***

Certain fundamental principles must be considered. First, a court order is final in character if it puts an end to the particular matter resolved or definitely settles the matter disposed therein, such that no further questions can come before the court except the execution of that order.<sup>36</sup>

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<sup>34</sup> Id. at 43.

<sup>35</sup> Id. at 30-31.

<sup>36</sup> *Spouses Curata v. Philippine Ports Authority*, 608 Phil. 9 (2009).

Second, it is an established rule that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional. Non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory.<sup>37</sup> As explained by this Court in *Pascual v. Robles*:<sup>38</sup>

The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal.<sup>39</sup>

In the present case, the RTC in its First Order determined that NSC was a creditor whose claims must be paid in accordance with the approved rehabilitation plan. It must be emphasized that this determination was made after addressing NSC's contentions and TIPCO's counter-allegations with respect to the receivables in the initial hearing as well as in the Receiver's Report which we find to be credible.

It must also be noted that after the initial hearing, the RTC issued an Order<sup>40</sup> stating that both parties had "agreed to submit the issue that receivables transferred to NSC should not be included as TIPCO's assets for the resolution of the Court-appointed Rehabilitation Receiver, subject to the Court's approval."<sup>41</sup> Accordingly, the trial court adopted the findings of the Receiver in his Report. It approved the inclusion of NSC in the plan as a creditor and the payment of the latter's claims over the receivables in accordance with the approved rehabilitation plan. Definitely, the RTC was able to resolve the issue of the inclusion of NSC as a creditor in the plan. Thus, the latter was wrong in its contention that the First Order did not resolve its contentions. On the contrary, it is an order that definitely settled the issue.

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<sup>37</sup> *K & G Mining Corp. v. Acoje Mining Co., Inc.*, G.R. No. 188364, 11 February 2015, 750 SCRA 361.

<sup>38</sup> *Pascual v. Robles*, 622 Phil. 804 (2009).

<sup>39</sup> *Pascual v. Robles*, *id.* at 811-812.

<sup>40</sup> *Rollo*, pp. 139-143; penned by acting Judge Divina Luz P. Aquino-Simbulan.

<sup>41</sup> *Id.* at 140.



This makes it a final order with respect to that issue. Therefore, pursuant to the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules),<sup>42</sup> petitioner should have ventilated its discontent with the First Order via a Rule 43 petition for review before the CA, and not through a mere motion before the RTC.<sup>43</sup> However, the records show that NSC failed to file such a petition before the CA within 15 days from the former's receipt of the First Order. Instead, it filed a motion before the RTC. That motion, however, did not stop the First Order from lapsing into finality.

Clearly, NSC availed of the wrong remedy and the issue on its inclusion as a creditor in the approved rehabilitation plan has already lapsed into finality. Therefore, the CA was correct in denying its appeal. We cannot allow petitioner to benefit from its negligence in failing to find out what its remedies were and to promptly avail itself of any of them. As ruled by the CA, there is no compelling reason for this Court to relax the rules on appeal only to accommodate petitioner's contentions.<sup>44</sup>

NSC argues that the First Order was not final insofar as its claims were concerned. This contention is based on its allegation that prior to the issuance of the First Order, specifically during the hearing held on 23 January 2006, the Receiver manifested a willingness to study petitioner's contentions further and to submit a report thereafter.<sup>45</sup> To NSC, this manifestation prior to the issuance of the First Order had the effect of explicitly setting aside the issue for study, evaluation, and recommendation.<sup>46</sup>

Unfortunately, petitioner failed to support this allegation with any proof. The records are bereft of any clear indication that the Receiver indeed made the alleged manifestation. What is clear from the records is that the RTC issued an Order dated 23 January 2006.<sup>47</sup> The trial court stated that after holding a hearing on even date and listening to the parties' remarks on the Receiver's Report, it considered the proposed rehabilitation plan and the Report "submitted for approval." Notably, NSC never questioned the latter Order.

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<sup>42</sup> A.M. No. 00-8-10-SC; The applicable rule of procedure in the instant petition is the Interim Rules of Procedure on Corporate Rehabilitation which was adopted by the Court on 15 December 2000 since the petition for rehabilitation was filed on 29 July 2005.

<sup>43</sup> To clarify the proper mode of appeal from decisions and final orders of rehabilitation courts, this Court issued A.M. No. 04-9-07-SC on 14 September 2004 (*Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission*), which provides as follows:

1. All decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.
2. The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Trial Court. xxx

<sup>44</sup> Id. at 48.

<sup>45</sup> Id. at 11-12.

<sup>46</sup> Id. at 11.

<sup>47</sup> Id. at 410.

If the Receiver indeed made the purported manifestation, NSC should have immediately appealed the Order dated 23 January 2006. It should have done so upon realizing that the Order did not reflect what it alleged to have really happened during that hearing. The allegation, therefore, appears to be a mere afterthought.

***The Second and the Third Orders did not modify or reverse the First Order.***

It cannot be said that it is the Second or Third Orders that should be appealed by petitioner.

The Second and the Third Orders were acts of the RTC that were distinct and separate from the First Order. They did not reverse or modify it. Nowhere did the foregoing orders modify the validity, content, or immediate enforceability of the First Order or the approved rehabilitation plan.

In view of the foregoing and the finding that petitioner's Motion subsequent to the First Order was in reality a motion to revise the approved plan, the Third Order had the effect of simply denying NSC's Motion and clarifying the First Order. We take note of the fact that the RTC did not order the parties to initiate the suggested separate action, but left it to their discretion. As the trial court pronounced in its Third Order, "[w]hile the parties **may decide** to elevate the matter for determination in an appropriate court, the rehabilitation plan shall continue to be implemented without prejudice to a final and executory decision on such issue." (emphasis supplied)<sup>48</sup>

The terms of the approved rehabilitation plan were therefore not conditioned on the results of the separate litigation. The plan stands on its own, whether or not a separate action was initiated by the parties. Should they opt to initiate such action and a decision be issued on the issue, only then will the RTC resolve the effect of the decision on the approved rehabilitation plan. Until then, the matter remains beyond the appellate jurisdiction of this Court.

NSC would have us believe that what the RTC granted with one hand, it denied with the other. The fact remains, however, that the approved rehabilitation plan, uncontested, is the final will of the trial court.

***The motion to revise the rehabilitation plan was properly denied by the RTC.***

In view of our conclusion that the Third Order was essentially a denial of NSC's motion to revise the approved rehabilitation plan, we find this

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<sup>48</sup> Id. at 72.



course of action to be in line with the law. The motion to revise the plan had no basis in law.

Section 26 of the Interim Rules allows the modification and alteration of the approved rehabilitation plan, if these steps are necessary to achieve the desired targets or goals set forth therein. As explained by this Court in *Victorio-Aquino v. Pacific Plans*,<sup>49</sup> the Interim Rules allow the modification of the plan, precisely because of conditions that may supervene or affect its implementation subsequent to its approval.<sup>50</sup>

In this case, NSC based its motion to revise the approved plan on its persistent contention that it was a trustor, not a creditor, of TIPCO. However, this contention is not a supervening event that warrants the modification of the rehabilitation plan under Section 26 of the Interim Rules. The facts clearly show that this issue was raised at the start of the rehabilitation proceedings, considered by the Receiver in his Report, and accordingly resolved by the RTC in its First Order as extensively discussed above. Therefore, petitioner's contention could not have been a supervening matter that arose only after the approval of the rehabilitation plan and would thereby affect its implementation. As discussed above, it was a matter that should have been timely raised before the CA via a Rule 43 Petition for Review. Hence, the denial of the motion to revise was proper.

In view of the foregoing conclusion, we find no need to resolve the other issues raised.

**WHEREFORE**, the Petition for Review on *Certiorari* under Rule 45 is **DENIED** for lack of merit. The Court of Appeals Decision<sup>51</sup> and Resolution<sup>52</sup> in **CA-G.R. SP No. 93873** are hereby **AFFIRMED**.

**SO ORDERED.**



**MARIA LOURDES P. A. SERENO**  
Chief Justice, Chairperson

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<sup>49</sup> *Victorio-Aquino v. Pacific Plans, Inc.*, G.R. No. 193108, 10 December 2014, 744 SCRA 480.

<sup>50</sup> *Id.*

<sup>51</sup> Dated 19 January 2010.


<sup>52</sup> Dated 21 July 2010.

WE CONCUR:

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice


  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice