

Corporate Rehabilitation: Bayanihan Perspective

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The continued existence or sustainability of a business establishment organized as a corporation is of great concern to its shareholders as well as to society. A business provides income to society in the form of taxes, employment opportunities and support for community projects. It helps sustain a community. Thus, when it is threatened by liquidity-related problems, the threat extends to the community.

Philippine laws governing distressed corporations mirror an attempt to balance the interests of the shareholders/investors of a corporation with the interests of the community to which it belongs. It is therefore the submission of the authors that, to sustain a corporation's continued operations and existence, the community must assume a more active role in the resolution of the corporation's liquidity problems. It is in this spirit that we take a closer look at the legal remedy known as "corporate rehabilitation."

Corporation: Definition and Purpose

What is a corporation? How long can it exist? What drives it to continue its artificial life?

Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines," defines a corporation and its corporate existence in this manner:

Section 2. A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.

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As an artificial being, a corporation can have a corporate life of not more than fifty (50) years and its existence may be extended for another fifty (50) years each time, if the shareholders or members so desire, provided the regulatory requirements are complied with.³

The Corporation Code distinguishes between stock and non-stock corporations. A stock corporation is owned by shareholders, each of whom holds a specific number of shares that determines the extent of his/her/its ownership and voting rights. It is organized primarily for profit and a shareholder receives a share in the profit when the corporation declares dividends.⁴ On the other hand, a non-stock corporation is composed of members sharing a common purpose other than profit. A member's right of participation is limited to one vote.⁵

A corporation, whether stock or non-stock, lives for a purpose, and when it is attacked it relies on this *raison d'être* to defend itself. If the corporate purpose is clearly stated and defined, it can only be attacked directly. In *Gala v Ellice Agro-Industrial Corporation* (2003)⁶ the Supreme Court explains that the "best proof of the purpose of a corporation is its articles of incorporation and by-laws. The articles of incorporation must state the primary and secondary purposes of the corporation, while the by-laws outline the administrative organization of the corporation, which, in turn, is supposed to insure or facilitate the accomplishment of said purpose."

In particular, the purpose of a stock corporation vis-à-vis its juridical personality and its artificially-created renewable existence brings to mind a polemical dispute involving two diametrically opposed universal corporate positions: (1) the shareholder's primacy view; and (2) the social entity view. What the corporation stands for defines its vision, mission, and goals. Either view will chart its path.

The shareholder's primacy view characterizes the corporation as a tangible entity the existence of which depends on the will of its shareholders. It treats the corporation as a "private property, owned by its shareholders." The corporation's purpose then is "to maximize the wealth of the owners and the role of the directors is to facilitate the owners' financial interests."⁷

This view espouses the agreement that binds the shareholders with the corporation, its chosen leaders and form of corporate governance: the shareholders look at the corporation as their property which they must utilize for their economic betterment. The corporation must profit; its continued existence rests greatly on its profitability and its continued marketability: its

³ Corporation Code, Sec. 11

⁴ *Id.*, Sec. 43 and Sec. 24.

⁵ *Id.*, Sec. 24.

⁶ G.R. No. 156819, December 11, 2003.

⁷ Ohir, A., (2006) Realigning the Corporate Building Blocks: Shareholder Proposals as a Vehicle for Achieving Corporate Social and Human Rights Accountability. *American Business Law Journal* (<http://proquest.umi.com>).

corporate books must show an increasing trend towards financial growth. The corporate governing body knows this and owes --

. . . fiduciary duties to manage the corporation in the interests of the shareholder-beneficiaries... All powers granted to a corporation or to the management of a corporation ... are ... exercisable only for the ratable benefit of all shareholders as their interest appears.... [The] Managers' obligations to shareholders stem from their role as trustees or agents for these owners.⁸

The social entity view, on the other hand, advocates the other end of the pole. Focus rests on the dealings of the corporation vis-à-vis the community and the society. It sees the corporation as --

. . . a social entity, not as the private property of the shareholders... [the] corporation carries with it a public purpose. [It] is born and operates as a legal construct only with governmental approval. Government's granting of the corporation's juridical personality is seen as warranted by the state's desire to promote social welfare (in other words, corporations are beneficial to society). Thus, as an extension, the proper purpose of the corporation can include advancing the general welfare, for example, providing opportunities for meaningful employment, satisfying customer desires, and contributing to community life.⁹

From this end of the spectrum, a corporation does not exist solely for the benefit and/or for the service of its shareholders; rather the corporation exists for the benefit of society as well. It situates itself within the communal life of the locale where it conducts its business. It accepts its functional role in the society as a provider of employment, on-the-job trainings, small- or large-scale credit or financial source, donations, grants, and scholarships. It supports local and national coffers through its tax remittances. It embraces not only the needs of the greater body politic but also those of the various sectors of society, such as private and quasi-public local and international business/financial enterprises, local and foreign investors, local government units (LGUs), non-governmental organizations (NGOs), and government owned and controlled corporations (GOCCs). Hence, the corporation is both a benefactor and a recipient of the community's good will.

⁸ Fisch, J., (2006). Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy. *Journal of Corporation Law*. (<http://proquest.umi.com>).

⁹ Ohir, A., (2006).

The Bayanihan Perspective

A symbiotic relationship exists between the corporation and the community within which it operates. The corporation's board of directors moves towards seeing the greater picture as it strives towards discovering and reinforcing its existential meaning to transcend corporate logo and public corporate image. The corporation's marketability crosses class boundaries because it finds its rest in the fulfillment of its mission and vision to be of service to the people and to the common good. When it profits, the community shares in the bountiful harvest; when it encounters problems with its liquidity, the community offers its assistance and generous bayanihan hand to make it live again.

Bayanihan¹⁰ is a unique Filipino cultural practice that is proactive in its stance to sustain an ailing member of the community so that member finds strength in this unified front. When a corporation becomes distressed it remains a member of the community; it is part of the woven societal tapestry from which it derives its identity.

Philippine society nevertheless knows that the corporation cannot live solely on the community's beneficence. A corporation must earn amply to sustain its operations and satisfy its shareholders' interests. A balance may be struck and the fulcrum may be realized when the two polemic views are integrated. This notion is not peculiar since the Philippine corporate experience is often an amalgamation of two or more extreme views which gives birth to a gentler and more effective Filipino perspective. Corporations and judicial tribunals may not often agree on the manner and/or procedure of the interpretation of the law, but they do agree that in any corporate dispute, or in the fight for survival of a distressed corporation, this integrated approach may aid in extracting the truth from the varying versions presented by the corporation, a creditor, a debtor or the public. This process of carefully extracting the essence of the differing versions gives rise to the possibility of a people-friendly court decision that ultimately allows the corporation to take on the qualities of a human person in meeting its responsibility towards the community and society. It is within this light that the authors present what they submit is the most-preferred remedy for distressed corporations: corporate rehabilitation under P.D. 902-A, as amended.

¹⁰ Editor's Note: "Bayanihan" is a Filipino term taken from the word "bayan", referring to a nation, town or community. The whole term "bayanihan" refers to a spirit of communal unity or effort to achieve a particular objective. Its origin is "a common tradition in Philippine towns where community members volunteer to help a family move to a new place. The process involves literally carrying the house to its new location. This is done by putting bamboo poles forming a strong frame to lift the stilts from the ground and carrying the whole house with the men positioned at the ends of each pole." "Bayanihan" is also used to refer to a local civil effort to resolve national issues. (<http://en.wikipedia.org/wiki/Bayanihan>).

Remedies for Distressed Corporations

In the Philippine setting, distressed corporations are faced with three options: (a) suspension of payments, (b) declaration of insolvency and consequent liquidation, and (c) rehabilitation.

The Insolvency Law (Act No. 1956), as amended, affords a distressed corporation the first two remedies. A distressed corporation is thus faced with an either/or dilemma: either a respite from its creditors or an annihilation of its corporate existence. A distressed but solvent corporation may avail of a suspension of payments because although it is still solvent, it cannot honor all its obligations within the periods stipulated in the agreements it entered into or those imposed by law. A suspension of payments allows the distressed solvent corporation to hold all payments during the pendency of its petition and until it raises sufficient cash from its operations to service payment, provided that it shall have reached an agreement with its creditors as to the time when its payment shall commence. However, the failure or continued inability of the distressed solvent corporation to honor this agreement shall force it to seek recourse to the other option, insolvency proceedings.¹¹

In the case of an insolvent corporation, *i.e.*, one which has acknowledged and declared its inability to pay its debts fully and has yielded all its remaining properties to its creditors, the Insolvency Law authorizes. The court to appoint a receiver or an assignee and direct that all the corporation's properties be delivered to the assignee for liquidation and settlement of the insolvent corporation's obligations.¹² Here, the corporation accepts and helps structure its demise.

Notably, the remedies available to a distressed corporation under the Insolvency Law leave the corporation with little room for maneuvering a 360 degree turn. At most, these remedies provide the corporation with just enough space to slightly increase its peripheral scan, but deletes the possibility of going out of its enclosed space.

P.D. 902-A, as amended, reorganized the Securities and Exchange Commission (SEC) and accorded it with additional powers, among others, to provide a distressed corporation the additional remedy of rehabilitation. Thus, a distressed corporation which "possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or management committee created pursuant to this Decree."¹³

¹¹ R.A. 1956, as amended, secs. 2, 3 and 13.

¹² *Id.*, secs. 14 and 18.

¹³ PD 1758, sec. 3.

During the pendency of a suspension of payments of the distressed corporation, a rehabilitation receiver or a management committee, board, or body is authorized to act as follows:

The management committee or rehabilitation receiver, board, or body shall have the power to take custody of and control over all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission . . .¹⁴

We see the remedy of corporate rehabilitation as a better alternative since its primordial objective appears to be to rebuild instead of destroy; it offers hope of corporate rebirth instead of dissolution; and, it seeks to strengthen society's faith in the stability of the nation's economy. Foremost among the fears of a distressed corporation is the creditors' nipping at its heels. In *New Frontier Sugar Corporation vs. RTC Branch 13, Iloilo City and Equitable PCI Bank*,¹⁵ the Supreme Court elucidates that "rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency." To preserve this intimation of normalcy, the court issued the following Stay Order to keep the creditors in line:

Under the Interim Rules, the RTC, within five (5) days from the filing of the petition for rehabilitation and after finding that the petition is sufficient in form and substance, shall issue a Stay Order appointing a Rehabilitation Receiver, suspending enforcement of all claims, prohibiting transfers or encumbrances of the debtor's properties, prohibiting payment of outstanding liabilities, and prohibiting the withholding of supply of goods and services from the debtor. Any transfer of property or any other conveyance, sale, payment, or agreement made in violation of the Stay Order or in violation of the Rules may be declared void by the court upon motion or motu proprio.¹⁶

The Supreme Court affirms this humane principle of "equality is equity" in *Alemar's Sibal & Sons, Inc., vs. Elbinias*,¹⁷ *New Frontier Sugar Corporation vs. RTC Branch 39 and Equitable PCI Bank*¹⁸ and *Sobrejuanite vs. ASB Development Corporation*.¹⁹ In all these cases, the High Court ruled:

As between creditors, the key phrase is "equality is equity." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC.²⁰

A distressed corporation may therefore find a remedy that is both affirming and business energizing in corporate rehabilitation. It is one where the courts and society look at the distressed corporation as a social entity and not simply as a property. Thus, the creditors are forced to fall in line and offer the distressed corporation a little breathing space to anchor itself on solid ground. In *Sobrejuanite vs. ASB Development Corporation*²¹ the Supreme Court explains this succinctly:

. . . the purpose for the suspension of the proceedings is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora. The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his power free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort, and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.²²

¹⁷ G.R. No. 75414, June 4, 1990.

¹⁸ *supra*, at note 15.

¹⁹ G.R. No. 165675, September 30, 2005.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

¹⁴ *Id.*, Sec. 4.

¹⁵ G.R. No. 165001, January 31, 2007.

¹⁶ *Id.*

The remedy of rehabilitation is sympathetic not only to the debtor "who foresees the impossibility of meeting its debts when they respectively fall due" but also to "any creditor or creditors holding at least twenty five percent (25%) of the debtor's total liabilities."²³ The rehabilitation plan covers an in-depth analysis of the financial problem confronting the distressed corporation and the most viable method of responding to it. The plan includes the most concrete, viable, and balanced method of effecting rehabilitation, which may include conversion to equity, restructuring, *dacion en pago* (delivery of property as payment), and sale of assets or controlling interests. It likewise contains a proposal for liquidation to be implemented should rehabilitation fail.²⁴ Significantly, a rehabilitation plan found to be practical and sufficient may be approved by the court despite the opposition of the creditors.²⁵ This latitude extends even further because the court may, on motion of a party, allow the rehabilitation plan "to be altered or modified if, in the judgment of the court, such alteration or modification is necessary to achieve the desired targets or goals set forth therein."²⁶

The point here is this: a petition to rehabilitate a distressed corporation bears the imprint of the Filipino's cultural practice of "bayanihan." The actual involvement and participation of the debtor, creditors, investors, and the court, displays a positive move towards confronting the issue pro-actively. Thus, instead of simply deleting the distressed debtor from the business topography through dissolution and liquidation, the parties concerned take time to be part of the solution to the problem. Corollary to this proactive stance is the possibility of luring local corporate investors to invest in the Philippines and creating a proactive corporate local investment package from which the community and society may benefit.

Conclusion

A healthy financial society attracts local investors and expands the pool of future investors. Corporations, local or international, benefit from the interpretation and implementation of laws that look forward, towards a direction filled with the promise of continuing economic stability.

Corporate rehabilitation provides a venue for corporate sustainability. It demonstrates a softer stance towards local investors and provides them with the full support of the law to transcend their temporary distress; for distress is indeed momentary if the community commiserates with the sufferer. True, not all distressed corporations may be reborn, but the law freely throws them the chance to recover. To some this offer is enough; to many, it is the lifeline to swim to shore.

²³ A.M. No. 00-8-10 SC, rule 4, Sec. 1.

²⁴ *Id.*, sec. 5.

²⁵ *Id.*, sec. 23.

²⁶ *Id.*, sec. 26.

Corporate rehabilitation shows that corporate rebirth need not be a journey of aloneness and despair; rather it is a communal journey towards reaching a familiar goal aided by the Filipino's inherent spirit of compassionate generosity, his bayanihan spirit, which understands the pivotal role each corporation plays in the life of the community. The principle of "equality is equity" in the context of the Filipino's bayanihan spirit would mean having all the stakeholders toss their coins in the well of fortune; the secured and unsecured creditors, while waiting for their piece of the pie should proactively support the rehabilitation plan; and, the receiver, through the direct and encouraging eye of the court, analytically and painstakingly continue to sustain his/her belief in the feasibility of would the approved rehabilitation plan. Thus, it is in this context that every Filipino dares to make a difference.

Society does not simply stand by the wayside and watch with a jaundiced eye a distressed corporation go through its dissolution as if this corporate death is an ordinary, isolated, and commonly incidental episode that impacts no one and creates no dent in the relational experience of the community and the society. Here, the bell does toll for all. A corporation's death marks everyone. Hence, all should willingly lend a hand to prop it along until this distressed corporation finds its strength to return to the mainstream again. This is the Filipino way.

