Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BANCO DE ORO UNIBANK, INC., Petitioner, -versus- **INTERNATIONAL COPRA EXPORT CORPORATION, INTERCO MANUFACTURING CORPORATION, ICEC LAND CORPORATION, and KIMEE REALTY CORPORATION,** Respondent.	**G.R. Nos. 218485-86 and 218493-97**
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DEVELOPMENT BANK OF THE PHILIPPINES, Petitioner, -versus- **INTERNATIONAL COPRA EXPORT CORPORATION, INTERCO MANUFACTURING CORPORATION ICEC LAND CORPORATION, and KIMEE REALTY CORPORATION,** Respondents.	**G.R. Nos. 218487 and 218498-503**
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INTERNATIONAL COPRA EXPORT CORPORATION, INTERCO MANUFACTURING CORPORATION, ICEC LAND CORPORATION, and KIMEE REALTY CORPORATION,
Petitioners,

-versus-

BANCO DE ORO UNIBANK, INC. and DEVELOPMENT BANK OF THE PHILIPPINES,
Respondents.

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G.R. Nos. 218488-90 and 218504-07

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INTERNATIONAL COPRA EXPORT CORPORATION, INTERCO MANUFACTURING CORPORATION, ICEC LAND CORPORATION, and KIMEE REALTY CORPORATION,
Petitioners,

-versus-

ALLIED BANKING CORPORATION and PHILIPPINE NATIONAL BANK,
Respondents.

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G.R. Nos. 218491 and 218508-13

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INTERNATIONAL COPRA EXPORT CORPORATION, INTERCO MANUFACTURING CORPORATION, ICEC LAND CORPORATION, and KIMEE REALTY CORPORATION,
Petitioners,

-versus-

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G.R. Nos. 218523-29

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Present:

RIZAL COMMERCIAL BANKING CORPORATION, ALLIED BANKING CORPORATION, PHILIPPINE NATIONAL BANK, DEVELOPMENT BANK OF THE PHILIPPINES, BANCO DE ORO UNIBANK, INC., and BANK OF THE PHILIPPINE ISLANDS,
Respondents.

LEONEN, *J., Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

Promulgated:
April 28, 2021

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DECISION

LEONEN, *J.*:

Once enacted into law, a bill is not rendered inoperative by the absence of its own implementing rules. Every law carries in its favor a presumption of validity. So long as the law is susceptible of reasonable construction as to what it is and how it is applied, the law, for all intents and purposes, is binding and enforceable.[1]

This Court resolves the consolidated Petitions for Review on Certiorari assailing the Decision[2] and Resolution[3] of the Court of Appeals, which remanded the case to a rehabilitation court and ordered it to direct the rehabilitation receiver to convene the creditors to vote on the rehabilitation plan.

On September 9, 2010, International Copra Export Corporation (Interco), Interco Manufacturing Corporation (Interco Manufacturing), ICEC Land Corporation (ICEC Land), and Kimee Realty Corporation (Kimee), filed a Petition for Suspension of Payments and Rehabilitation[4] before the Regional Trial Court of Zamboanga City. The Petition, filed pursuant to the

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1 *Securities and Exchange Commission v. Interport Resources Corp.*, 588 Phil. 651, 673–675 (2008) [Per J. Chico-Nazario, En Banc].

2 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), pp. 9–44-A. The November 18, 2014 Decision was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Oscar V. Badelles and Maria Filomena D. Singh of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

3 Id. at 45–50. The May 13, 2015 Resolution was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Oscar V. Badelles and Maria Filomena D. Singh of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

4 Id. at 136–154.

provisions of the Financial Rehabilitation and Insolvency Act (FRIA),[5] was the result of Interco, et al.'s anticipated impossibility of meeting their debts as they become due.[6]

Interco, et al. cited as reasons for their liquidity problem the "unforeseen regional and global recession and worldwide economic meltdown, high financial costs for short term loans, increases in fuel costs and costs of production."[7] They said their creditors' decision to stop the renewal and restructuring of their maturing loans, and the granting of loans for operating capital, aggravated the problem.[8]

After finding the Petition sufficient in form and substance, the Regional Trial Court issued a Stay Order[9] on September 13, 2010. It likewise set the initial hearing on November 12, 2010 and appointed Atty. Julio Elamparo (Atty. Elamparo) as the rehabilitation receiver.[10]

On September 27, 2010, Interco, et al. submitted a Supplement to their Petition.[11]

On the day of the initial hearing, the Regional Trial Court declared that the proceedings shall be governed by the 2008 Rules on Corporate Rehabilitation,[12] and then directed the oppositors and claimants to file their respective rejoinders and comments.[13] Development Bank of the Philippines (Development Bank), Banco De Oro Unibank, Inc. (BDO), Rizal Commercial Banking Corporation (Rizal Commercial Banking), Allied Banking Corporation (Allied Banking), and Philippine National Bank, Bank of the Philippine Islands (BPI), some of creditors-claimants, complied with the trial court's order.[14]

In its February 11, 2011 Order,[15] the Regional Trial Court gave due course to the Petition and directed Atty. Elamparo to submit his recommendation within 90 days from receipt of the Order.[16]

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5 Republic Act No. 10142 (2010).
6 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), p. 136.
7 Id. at 140.
8 Id.
9 Id. at 167–172. The Order was penned by Presiding Judge Gregorio V. Dela Peña III of Branch 12. Regional Trial Court, Zamboanga City.
10 Id. at 168.
11 Id. at 173–178.
12 Id. at 16.
13 *Rollo* (G.R. Nos. 218485-86 and 218493-97, vol. III), pp. 1284–1285.
14 *Rollo* (G.R. Nos. 218488-90, vol. I), p. 426.
15 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), pp. 272–295. The Order was penned by Presiding Judge Gregorio V. Dela Peña III of Branch 12, Regional Trial Court, Zamboanga City.
16 Id. at 291.

In compliance with the Regional Trial Court's directive, Atty. Elamparo sent a Letter[17] dated March 3, 2011 to the creditors-claimants, requiring them to submit documents evidencing their claims and their proposed commercial terms on the rehabilitation plan. He likewise informed the creditors of a general creditors' meeting to be held on April 6, 2011.[18]

After the April 6, 2011 meeting,[19] Atty. Elamparo submitted to the rehabilitation court his Compliance with Recommendation and a modified version of the proposed rehabilitation plan.[20] He said that Interco, et al.'s rehabilitation was "very viable."[21]

Meanwhile, Allied Banking and Philippine National Bank commented on the Petition and moved to amend the Stay Order.[22] They likewise moved for clarification.[23]

In its May 30, 2011 Order,[24] the Regional Trial Court stated that as early as November 12, 2010, it had decreed that it would apply the 2008 Rules on Corporate Rehabilitation provided that they are not contrary to FRIA.[25]

On June 17, 2011, Development Bank filed its Comment/Opposition to Atty. Elamparo's Compliance with Recommendation and modified rehabilitation plan.[26]

In its July 8, 2011 Resolution,[27] the Regional Trial Court granted Interco, et al.'s Petition and approved the modified rehabilitation plan.[28] It decreed that the continuance of Interco, et al.'s corporate life would be more beneficial not only to its creditors, but also to its employees, stockholders, and the general public.[29]

BDO moved for reconsideration,[30] but it was denied by the Regional Trial Court on April 29, 2011.[31]

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17 Id. at 296–305.
18 Id. at 297.
19 Id. at 405.
20 Id. at 351–403.
21 Id. at 352.
22 *Rollo*, (G.R. Nos. 218491 and 218508-13, vol. I), pp. 183–223.
23 *Rollo* (G.R. Nos. 218523-29), p. 70.
24 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), pp. 249–252.
25 Id. at 250–251.
26 Id. at 404–424.
27 Id. at 425–445. The Resolution was penned by Presiding Judge Gregorio V. Dela Peña, III of Branch 12. Regional Trial Court, Zamboanga City.
28 Id. at 439.
29 Id. at 439–440.
30 *Rollo* (G.R. Nos. 218485-86 and 218493-97, vol. III), pp. 1412–1449.

In a Petition for Review[32] before the Court of Appeals, Development Bank argued that the rehabilitation court erred in not dismissing the Petition and in approving the modified rehabilitation plan.[33] It contended that Interco, et al.'s Petition was filed merely to "delay" the enforcement of its creditors' claims,[34] and that it made a "misrepresentation" that warranted its outright dismissal.[35]

Similarly, Allied Banking and Philippine National Bank, Rizal Commercial Banking, BDO, and BPI filed their respective Petitions for Review before the Court of Appeals.[36]

In the meantime, Atty. Elamparo, the rehabilitation receiver, requested for the approval of the disposition of non-core assets and bidding rules.[37] On October 20, 2011, the Regional Trial Court granted[38] the request and authorized him to dispose of Interco, et al.'s non-core assets.[39]

At this, BDO and Rizal Commercial Banking filed before the Court of Appeals separate Petitions for Certiorari, contending that the rehabilitation court committed grave abuse of discretion in allowing the sale of the non-core assets.[40] These Petitions were consolidated.[41]

In its November 18, 2014 Decision,[42] the Court of Appeals partially granted the Petitions of BDO and Rizal Commercial Banking, and remanded the case to the rehabilitation court, disposing thus:

> WHEREFORE, the Petitions are partially GRANTED. The case is hereby remanded to the Rehabilitation Court which is hereby ORDERED to DIRECT the Rehabilitation Receiver to CONVENE the creditors within twenty (20) days from the finality of this Decision, for the purpose of voting on the Rehabilitation Plan and to REPORT with dispatch the outcome of the vote to the said court. The Rehabilitation Court is then ORDERED to confirm or reject the Plan in accordance with Sections 64 and 65 of the FRIA. The Rehabilitation Court is DIRECTED to proceed

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31 Id. at 1454–1455.
32 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), pp. 446–490.
33 Id. at 459–460.
34 Id. at 460.
35 Id. at 460–461.
36 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I) pp. 11–12.
37 Id. at 491–500.
38 Id. at 504.
39 Id. at 515.
40 Id. at 24.
41 Id. at 12.
42 Id. at 9–44-A.

thereafter in accordance with the provisions of FRIA and the FR Rules with utmost dispatch.[43]

In ruling this, the Court of Appeals first settled whether the Regional Trial Court properly acquired jurisdiction over the case. It held that petitions for financial rehabilitation are like proceedings for suspension of payments, and were properly lodged with the Regional Trial Court, which FRIA did not take away or modify.[44]

The Court of Appeals likewise declared that the absence of rules implementing FRIA did not affect the Regional Trial Court's jurisdiction over petitions for financial rehabilitation, as every law is presumed to be complete and self-executing.[45]

The Court of Appeals then said that FRIA applies to Interco, et al.'s Petition for Suspension of Payments and Rehabilitation, it being filed after the law had taken effect. It clarified that the discretion to not apply FRIA only applies to cases already pending prior to FRIA's effectivity. It added that while the rehabilitation court erred in declaring that the proceedings would be governed by the 2008 Rules on Corporate Rehabilitation, only acts performed contrary to FRIA should be nullified, while those consistent with FRIA should be sustained.[46]

Finally, the Court of Appeals found the Petition for Suspension of Payments and Rehabilitation to be sufficient in form and substance.[47] Nonetheless, it remanded the case to the rehabilitation court after it found that Section 64 of FRIA had not been complied with.[48]

Interco, et al.,[49] BDO,[50] and Development Bank[51] each moved for reconsideration, but all of them were denied by the Court of Appeals in its May 13, 2015 Resolution.[52]

In its February 24, 2015 Order, the rehabilitation court suspended the implementation of the rehabilitation plan pending the finality of the November 18, 2014 Court of Appeals Decision.[53]

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43 Id. at 44.
44 Id. at 28–30.
45 Id. at 30.
46 Id. at 33.
47 Id. at 37–38.
48 Id. at 41–44.
49 *Rollo* (G.R. Nos. 218487 and 218498-503, vol. II), pp. 681–695.
50 *Rollo* (G.R. Nos. 218485-86 and 218493-97, vol. I), pp. 170–193.
51 *Rollo* (G.R. Nos. 218487 and 218498-503, vol. II), pp. 644–678.
52 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), pp. 45–50.
53 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. II), pp. 1011–1012.

In another Order dated February 17, 2016, the rehabilitation court reiterated its previous directive holding in abeyance all actions relating to the rehabilitation plan pending the finality of the Court of Appeals Decision.[54]

Meanwhile, the parties elevated the case to this Court through their separate Petitions for Review on Certiorari.

Interco, et al. argue that the Court of Appeals erred in ruling that FRIA is applicable since the rehabilitation court's decision to apply the 2008 Rules on Corporate Rehabilitation has become the law of the case.[55] They insist that FRIA gives the rehabilitation court a wide latitude to decide whether to apply its provisions.[56]

They likewise maintain that while their Petition for Suspension of Payments and Rehabilitation was filed after FRIA had taken effect, the law is inapplicable since its provisions are not self-executory.[57] They contend that the law's mandate directing this Court to promulgate rules of procedure governing rehabilitation proceedings confirms that it is not immediately enforceable.[58] They claim that the Court of Appeals' application of FRIA despite the absence of the implementing rules constitutes judicial legislation violative of their right to due process.[59]

Interco, et al. add that, assuming that FRIA is self-executory, the voting requirement under Section 64 could not be properly implemented due to the absence of governing rules of procedure.[60]

They further assert that supposing that the voting requirement has not been complied with, the creditors were accorded due process when they filed their comments or oppositions to the Petition for Suspension of Payments and Rehabilitation in the April 6, 2011 creditors' meeting,[61] which inputs were considered in the modified rehabilitation plan.[62]

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54 Id. at 1014.
55 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I) pp. 71–72.
56 Id. at 74.
57 *Rollo* (G.R. Nos. 218523-29), p. 78.
58 Id. at 81.
59 *Rollo* (G.R. Nos. 218491 and 218508-13, vol. I), p. 69.
60 *Rollo* (G.R. Nos. 218523-29), pp. 84–85.
61 Id. at 88.
62 Id. at 89.

Finally, Interco, et al. aver that the Court of Appeals erred in ruling that Section 146 of FRIA applies only to petitions filed before the law took effect.[63]

For its part, BDO maintains that the Court of Appeals correctly applied FRIA,[64] as that the absence of rules and regulations does not render its provisions inoperative.[65] Nonetheless, it claims that the Court of Appeals should have nullified the order granting Interco, et al.'s Petition for Suspension of Payments and Rehabilitation for being replete with inaccuracies.[66] It argues that FRIA requires petitions to be complete and accurate before there can be any further proceedings.[67]

BDO likewise contends that the Court of Appeals erred in remanding the case to the rehabilitation court, and insists that it should have denied the modified rehabilitation plan outright.[68] It maintains that a perusal of the documents submitted by Interco, et al. shows that its proposed rehabilitation plan is not feasible and viable.[69]

Lastly, BDO claims that the venue with respect to Kimmee was improperly laid.[70]

Philippine National Bank and Allied Banking similarly assert that the provisions of FRIA can stand despite the absence of implementing rules.[71] They add that implementing rules serve only as guide and do not affect FRIA's validity.[72]

They further contend that since the Financial Rehabilitation Rules of Procedure, the implementing rules and regulations of FRIA, states that it retroactively applies, the 2008 Rules on Corporate Rehabilitation is rendered inapplicable to Interco, et al.'s Petition for Suspension of Payments and Rehabilitation.[73]

They likewise stress that Interco, et al. committed forum shopping when it filed several petitions before this Court involving the same issues,

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63 Id. at 86.
64 *Rollo* (G.R. Nos. 218491 and 218508-13, vol. II), p. 647.
65 Id. at 653–654.
66 *Rollo* (G.R. Nos. 218485-86 and 218493-97, vol. I), p. 29.
67 Id. at 30.
68 *Rollo* (G.R. Nos. 218491 and 218508-13, vol. II), pp. 644–646.
69 Id. at 646.
70 *Rollo* (G.R. Nos. 218485-86 and 218493-97, vol. I), p. 48.
71 *Rollo* (G.R. Nos. 218491 and 218508-13, vol. II), pp. 694.
72 Id. at 700.
73 Id. at 703.

assailing the same Court of Appeals Decision, and impleading them in both as respondents.[74]

For its part, Development Bank maintains that the Court of Appeals erred in remanding the case and not dismissing Interco, et al.'s Petition for Suspension of Payments and Rehabilitation outright.[75] It stresses that the Court of Appeals overlooked that no commencement order was issued by the rehabilitation court, in disregard of the mandatory language of Section 16 of FRIA.[76] It maintains that because of the non-issuance of the commencement order, the rehabilitation proceeding never began.[77]

In addition, Development Bank claims that there was no compliance with the conditions under Section 64 of FRIA. It insists that the April 6, 2011 creditors' meeting does not equate to the voting requirement.[78]

Finally, it contends that the rehabilitation court's failure to comply with FRIA, particularly Sections 21, 25, 44, 45, and 46, which require among others the establishment of a preliminary registry of claims and then making it available for public inspection, violates its right to be heard on it claims[79] and renders the rehabilitation proceedings void.[80]

On March 22, 2017, this Court resolved to dispense with Rizal Commercial Banking's filing of comment in G.R. Nos. 218523-29 and to deem BPI to have waived its right to file a comment.[81]

This Court resolves the following issues:

First, whether or not International Copra Export Corporation, Interco Manufacturing Corporation, ICEC Land Corporation, and Kimee Realty Corporation committed forum shopping;

Second, whether or not the Court of Appeals erred in ruling that the Financial Rehabilitation and Insolvency Act (FRIA) is applicable; and

Finally, whether or not the Court of Appeals erred in remanding the case to the rehabilitation court.

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74 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. II) pp. 695–696.
75 *Rollo* (G.R. Nos. 218491 and 218508-13, vol. II), p. 772.
76 Id. at 774.
77 Id.
78 Id. at 764.
79 *Rollo* (G.R. Nos. 218487 and 218498-503, vol. I) pp. 79, 81–82, and 85.
80 Id. at 68.
81 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. II) pp. 991–993.

I

A party commits forum shopping by instituting "two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition."[82] It may also be committed "when as a result of an adverse decision in one (1) forum, or in anticipation thereof, a party seeks favorable opinion in another forum through means other than appeal or certiorari."[83]

In *City of Taguig v. City of Makati*,[84] this Court comprehensively discussed the concept, origin, and purpose of the rule on forum shopping:

> *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* explained that:
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> > Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.
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> *First Philippine International Bank v. Court of Appeals* recounted that forum shopping originated as a concept in private international law:
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> > To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
> >
> > In this light, *Black's Law Dictionary* says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to Words and Phrases, "a

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82 *Santos v. Commission on Elections*, 515 Phil. 458, 465 (2006) [Per J. Carpio, En Banc].
83 *Saludaga v. Commission on Elections*, 631 Phil. 653, 664 (2010) [Per J. Villarama, Jr., En Banc].
84 787 Phil. 367 (2016) [Per J. Leonen, Second Division].

> litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

Further, *Prubankers Association v. Prudential Bank and Trust Co.* recounted that:

> The rule on forum-shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.[85] (Emphasis in the original, citations omitted)

Under the Rules of Civil Procedure, the rule governing forum shopping is expressed in Rule 7, Section 5, which states:

> SECTION 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

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[85] Id. at 383–385.

Though written in the same provision, the proscription against forum shopping is distinct from the requirement of including a certification against forum shopping.[86] This Court has explained:

> The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. The former constitutes sufficient cause for the dismissal without prejudice of the complaint or initiatory pleading upon motion and after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt. The rule expressly requires that a certification against forum shopping should be attached to or filed simultaneously with the complaint or other initiatory pleading regardless of whether forum shopping had in fact been committed.[87] (Citations omitted)

In *Ao-as v. Court of Appeals*,[88] this Court recognized that there are three ways of committing forum shopping:

> As the present jurisprudence now stands, forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet *(litis pendentia)*; (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved *(res judicata)*; and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[89] (Citation omitted)

The first mode of forum shopping pertains to *litis pendentia*, a "situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious."[90] In *Yap v. Chua*,[91] this Court said:

> *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once

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86 *City of Taguig v. City of Makati*, 787 Phil. 367, 386 (2016) [Per J. Leonen, Second Division].
87 *Spouses Ong v. Court of Appeals*, 433 Phil. 490, 501–502 (2002) [Per J. Bellosillo, Second Division].
88 524 Phil. 645 (2006) [Per J. Chico-Nazario, First Division].
89 Id. at 660.
90 *Yap v. Chua*, 687 Phil. 392, 400 (2012) [Per J. Reyes, Second Division].
91 687 Phil. 392 (2012) [Per J. Reyes, Second Division].

> regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.
>
> The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[92] (Citation omitted)

In this case, Interco, et al. filed three separate Petitions, all praying that the Court of Appeals' rulings be reversed. All three are founded on the same arguments that the provisions of FRIA are not self-executory and that the Court of Appeals erred in remanding the case to the rehabilitation court. Their similarity results in a situation where the resolution of one, regardless of which party is successful, would amount to *res judicata* in the other. In doing so, Interco, et al. committed forum shopping, warranting the outright dismissal of their Petitions.

Forum shopping is an act of malpractice, which trifles with court processes and degrades the administration of justice. Not only does it congest court dockets, but it also creates the possibility of different tribunals rendering conflicting decisions on the same issue.[93]

Litigants must be reminded that "[p]rocedural rules are essential in the administration of justice."[94] They "should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice."[95] As held in *Malixi v. Baltzar*:[96]

> Technical rules serve a purpose. They are not made to discourage litigants from pursuing their case nor are they fabricated out of thin air. Every section in the Rules of Court and every issuance of this Court with respect to procedural rules are promulgated with the objective of a more efficient judicial system.[97]

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92 Id. at 400.

93 *Top Rate Construction and General Services v. Paxton Development Corp.*, 457 Phil. 740, 748 (2003) [Per J. Bellosillo, Second Division].

94 *Malixi v. Baltazar*, 821 Phil. 423, 435 (2017) [Per J. Leonen, Third Division].

95 *Osmeña v. Commission on Audit*, 665 Phil. 116, 124 (2011) [Per J. Brion, En Banc].

96 821 Phil. 423 (2017) [Per J. Leonen, Third Division].

97 Id. at 436.

Nonetheless, if the strict application of procedural rules will tend to frustrate rather than serve the broader interest of substantial justice,[98] this Court may exercise its "power to relax or suspend the rules or to except a case from their operation when compelling reasons so warrant[.]"[99] This principle was highlighted in *Malixi*, where this Court opted to resolve the merits of the case despite petitioner's procedural lapses.

The same prevails in this case. The interest of substantial justice would be better served if the issue as to the applicability of FRIA to the Petitions filed by Interco, et al. would be finally resolved.

II

Republic Act No. 10142, or the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, defines rehabilitation as follows:

> (gg) Rehabilitation shall refer to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.[100]

Rehabilitation is a procedure of conserving and administering the assets and resources of an insolvent debtor in the hopes of restoring it "to its former position of successful operation and liquidity."[101] Its purpose is to give the debtor a chance to "gain a new lease on life and thereby allow creditors to be paid their claims from its earnings."[102]

The concept of rehabilitation has evolved through the years. Act No. 1956, or the Insolvency Law of 1909, was the earliest law enacted in the Philippines to "extend assistance to financially-distressed companies."[103] It allowed an insolvent debtor to file a petition for suspension of payments, provided that it has sufficient property to cover all its debts.[104] Jurisdiction

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98 *Curammeng v. People*, 799 Phil. 575, 581 (2016) [Per J. Perlas-Bernabe, First Division].

99 *Heirs of Villagracia v. Equitable Banking Corp.*, 573 Phil. 212, 220 (2008) [Per J. Nachura, Third Division].

100 Republic Act No. 10142 (2010), sec. 4(gg).

101 *Express Investments III Private, Ltd. v. Bayantel, Inc.*, 700 Phil. 225, 257 (2012) [Per J. Villarama, Jr., First Division].

102 Id.

103 *See* Laurence Hector B. Arroyo, *Rehabilitating the Law on Corporate Rehabilitation*, 53 ATENEO L.J. I, 3 (2008).

104 Id. citing Republic Act No. 1956 (2010), sec. 2, which states:

SECTION 2. The debtor who, possessing sufficient property to cover all his debts, be it an individual person, be it a sociedad or corporation, foresees the impossibility of meeting them when they respectively fall due, may petition that he be declared in the state of suspension of payments by the court, or the judge thereof in vacation, of the province or of the city in which he has resided for six months next preceding the filing of his petition.

over petitions filed under this law was lodged with the courts of first instance, now the regional trial courts.[105]

In 1981, Presidential Decree No. 1758 was issued amending Presidential Decree No. 902-A or the SEC Reorganization Act. It transferred to the Securities and Exchange Commission jurisdiction over petitions for suspension of payments filed by corporations. In addition, it introduced the remedy of rehabilitation, which allowed corporate debtors with insufficient assets to apply for the appointment of a rehabilitation receiver or management committee.[106]

Rehabilitation goes beyond deferment of payments.[107] It involves the development of a rehabilitation plan to revive a financially distressed corporation to a state of liquidity.[108]

Upon the enactment of Republic Act No. 8799, or the Securities Regulation Code, jurisdiction over rehabilitation cases was reverted to the courts of general jurisdiction or the appropriate regional trial court.[109]

In 2000, this Court *En Banc* issued A.M. No. 00-8-10-SC, or the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). The Interim Rules covered petitions for rehabilitation filed pursuant to Presidential Decree No. 902-A and Republic Act No. 8799.[110]

He shall necessarily annex to his petition a schedule and inventory in the form provided in sections fifteen, sixteen, and seventeen of this Act, in addition to the statement of his assets and liabilities and the proposed agreement he requests of his creditors[.]

105 *Metropolitan Bank and Trust Company v. S.F. Naguiat Enterprises, Inc.*, 756 Phil. 229, 244 (2015) [Per J. Leonen, Second Division].

106 Id. at 249–250.

107 *See* Laurence Hector B. Arroyo, *Rehabilitating the Law on Corporate Rehabilitation*, 53 ATENEO L.J. I, 6 (2008).

108 *Metropolitan Bank and Trust Company v. S.F. Naguiat Enterprises, Inc.*, 756 Phil. 229, 250–251 (2015) [Per J. Leonen, Second Division]. *See* Laurence Hector B. Arroyo, *Rehabilitating the Law on Corporate Rehabilitation*, 53 ATENEO L.J. I, 7 (2008).

109 Id. at 251 citing Republic Act. No. 8799 (2000), sec. 5, which states:

SECTION 5. *Powers and Functions of the Commission.* — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

. . . .

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

110 *See* Laurence Hector B. Arroyo, *Rehabilitating the Law on Corporate Rehabilitation*, 53 ATENEO L.J. I, 3 (2008) citing Republic Act No. 1956 (1957), sec. 2.

Later, the 2008 Rules of Procedure on Corporate Rehabilitation was issued, amending the 2000 Interim Rules. Under its terms, a "group of companies"[111] may file a joint petition for rehabilitation before the regional trial court having jurisdiction over the principal office of the parent company.[112]

On July 18, 2010, Republic Act No. 10142, or FRIA, lapsed into law. It took effect on August 31, 2010,[113] but its implementing rule, the Financial Rehabilitation Rules of Procedure (FR Rules), was only promulgated on August 27, 2013.

FRIA expressly repealed the Insolvency Law of 1909 and impliedly repealed laws, orders, and rules that were inconsistent with its provisions.[114] Its declared objective is to encourage debtors and creditors to collectively resolve their competing claims.[115]

Here, the Petition for Suspension of Payments and Rehabilitation was filed before the rehabilitation court on September 9, 2010, after FRIA had taken effect. Nonetheless, Interco, et al. insist that FRIA cannot apply absent its implementing rules.

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[111] Rules of Procedure on Corporate Rehabilitation, Administrative Order No. 00-8-10-SC (2008), Rule 2, sec. 1 states:
"Group of companies" refers to, and can cover only, corporations that are financially related to one another as parent corporations, subsidiaries and affiliates.

[112] Rules of Procedure on Corporate Rehabilitation, Administrative Order No. 00-8-10-SC (2008), Rule 3, sec. 2 states:
SECTION 2. *Venue.* — Petitions for rehabilitation pursuant to these Rules shall be filed in the regional trial court which has jurisdiction over the principal office of the debtor as specified in its articles of incorporation or partnership. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the regional trial court of the city or municipality where the head office is located.
A joint petition by a group of companies shall be filed in the Regional Trial Court which has jurisdiction over the principal office of the parent company, as specified in its Articles of Incorporation.

[113] *Bank of the Philippine Islands v. Sarabia Manor Hotel Corp.*, 715 Phil. 420, 436 (2013) [Per J. Perlas-Bernabe, Second Division]. *See* fn. 56, which states:
. . . Republic Act No. 10142, otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" (FRIA), which is the current law on the matter, took effect only on August 31, 2010. Its rules of procedure have yet to be promulgated as of date.

[114] Republic Act. No. 10142 (2010), sec. 148 states:
SECTION 148. *Repealing Clause.* — The Insolvency Law (Act No. 1956), as amended, is hereby repealed. All other laws, orders, rules and regulations or parts thereof inconsistent with any provision of this Act are hereby repealed or modified accordingly.

[115] Republic Act. No. 10142 (2010), sec. 2 states:
SECTION 2. *Declaration of Policy.* — It is the policy of the State to encourage debtors, both juridical and natural persons, and their creditors to collectively and realistically resolve and adjust competing claims and property rights. In furtherance thereof, the State shall ensure a timely, fair, transparent, effective and efficient rehabilitation or liquidation of debtors. The rehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. When rehabilitation is not feasible, it is in the interest of the State to facilitate a speedy and orderly liquidation of these debtors' assets and the settlement of their obligations.

This contention is untenable.

At the outset, Interco, et al. themselves filed the Petition pursuant to the provisions of FRIA. By invoking FRIA, they should be deemed estopped from contending that its provisions are inapplicable to their case.

Furthermore, the absence of an implementing rule alone cannot render a law inoperative. Every law is presumed valid, until and unless judicially declared invalid. In *Securities and Exchange Commission v. Interport Resources Corporation*:[116]

> In the absence of any constitutional or statutory infirmity, which may concern Sections 30 and 36 of the Revised Securities Act, this Court upholds these provisions as legal and binding. It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. *The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given.* In *People v. Rosenthal*, this Court ruled that:
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> > In this connection we cannot pretermit reference to the rule that "legislation should not be held invalid on the ground of uncertainty if susceptible of any reasonable construction that will support and give it effect. *An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith.*"
>
> In *Garcia v. Executive Secretary*, the Court underlined the importance of the presumption of validity of laws and the careful consideration with which the judiciary strikes down as invalid acts of the legislature:
>
> > The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.

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[116] 588 Phil. 651 (2008) [Per J. Chico-Nazario, En Banc].

> The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management. To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know. It is well established that administrative authorities have the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute. Moreover, where the statute contains sufficient standards and an unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation.[117] (Emphasis supplied, citations omitted)

Interco, et al. misread Section 146 of FRIA in insisting that the law's provisions do not apply to their case. Section 146 provides:

> SECTION 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases*. — This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

As the Court of Appeals correctly found,[118] the discretion given to rehabilitation courts in applying the 2008 Rules on Corporate Rehabilitation instead of FRIA pertains only to petitions for rehabilitation filed before and are pending at the time FRIA took effect. In cases involving petitions for rehabilitation filed after FRIA's effectivity, the rehabilitation court has no option and is mandated to apply the provisions of FRIA.

In addition, if this Court considers the promulgation of the rules of procedure as a precondition for the effectivity of FRIA, it would confer on the judiciary the power to suspend the effectivity of a legislative act by simply refusing to promulgate guidelines for its implementation.[119]

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[117] Id. at 673–675.
[118] *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I) p. 33.
[119] *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I) p. 30.

Besides, even if some of FRIA's provisions require an implementing rule for its proper execution, this Court has already applied the 2008 Rules on Corporate Rehabilitation to support and supply the wordings of FRIA. In *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*,[120] this Court used the 2008 Rules on Corporate Rehabilitation despite the petition for rehabilitation having been filed on April 8, 2011.

The 2008 Rules on Corporate Rehabilitation's suppletory application is reinforced by Rule 1, Section 2 of the 2013 FR Rules, which states:

> SECTION 2. *Scope.* — These Rules shall apply to petitions for rehabilitation of corporations, partnerships, and sole proprietorships, filed pursuant to Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.
>
> These Rules shall similarly govern all further proceedings in suspension of payments and rehabilitation cases already pending, *except to the extent that, in the opinion of the court, its application would not be feasible or would work injustice, in which event the procedures originally applicable shall continue to govern.* (Emphasis supplied)

Rule 1, Section 2 reveals that the discretion given to courts in deciding not to apply the FR Rules pertains to cases for suspension of payments and rehabilitation already pending before FRIA took effect. The first paragraph mandates that the FR Rules shall apply to petitions for rehabilitation filed pursuant to FRIA. The second paragraph provides that rehabilitation courts may still apply the FR Rules to cases filed before FRIA took effect, except when its application would work injustice to the parties.

Accordingly, the rehabilitation court correctly applied FRIA and, suppletorily, the 2008 Rules on Corporate Rehabilitation in Interco, et al.'s Petition for Suspension of Payments and Rehabilitation. The 2008 Rules shall apply to the Petition, provided that it is not inconsistent with FRIA. Indeed, as will be discussed later, the rehabilitation was correct in applying the 2008 Rules. However, it should have gone further and applied the additional requirements introduced by FRIA.

III

FRIA declares it the State policy to encourage debtors and creditors to collectively resolve their competing claims.[121] In this regard, it permits a group of debtors to jointly file a petition for rehabilitation, thus:

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[120] 788 Phil. 355 (2016) [Per J. Perlas-Bernabe, First Division].

[121] Republic Act. No. 10142 (2010), sec. 2 states:

SECTION 12. *Petition to Initiate Voluntary Proceedings by Debtor.* — When approved by the owner in case of a sole proprietorship, or by a majority of the partners in case of a partnership, or, in case of a corporation, by a majority vote of the board of directors or trustees and authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of nonstock corporation, by the vote of at least two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose, an insolvent debtor may initiate voluntary proceedings under this Act by filing a petition for rehabilitation with the court and on the grounds hereinafter specifically provided. The petition shall be verified to establish the insolvency of the debtor and the viability of its rehabilitation, and include, whether as an attachment or as part of the body of the petition, as a minimum, the following:

(a) Identification of the debtor, its principal activities and its addresses;

(b) Statement of the fact of and the cause of the debtor's insolvency or inability to pay its obligations as they become due;

(c) The specific relief sought pursuant to this Act;

(d) The grounds upon which the petition is based;

(e) Other information that may be required under this Act depending on the form of relief requested;

(f) Schedule of the debtor's debts and liabilities including a list of creditors with their addresses, amounts of claims and collaterals, or securities, if any;

(g) An inventory of all its assets including receivables and claims against third parties;

(h) A Rehabilitation Plan;

(i) The names of at least three (3) nominees to the position of rehabilitation receiver; and

(j) Other documents required to be filed with the petition pursuant to this Act and the rules of procedure as may be promulgated by the Supreme Court.

SECTION 2. *Declaration of Policy.* — It is the policy of the State to encourage debtors, both juridical and natural persons, and their creditors to collectively and realistically resolve and adjust competing claims and property rights. In furtherance thereof, the State shall ensure a timely, fair, transparent, effective and efficient rehabilitation or liquidation of debtors. The rehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. When rehabilitation is not feasible, it is in the interest of the State to facilitate a speedy and orderly liquidation of these debtors' assets and the settlement of their obligations.

> A group of debtors may jointly file a petition for rehabilitation under this Act when one or more of its members foresee the impossibility of meeting debts when they respectively fall due, and the financial distress would likely adversely affect the financial condition and/or operations of the other members of the group and/or the participation of the other members of the group is essential under the terms and conditions of the proposed Rehabilitation Plan.

According to Section 4(n) of FRIA, a "group of debtors" refers to:

> (1) corporations that are financially related to one another as parent corporations, subsidiaries or affiliates; (2) partnerships that are owned more than fifty percent (50%) by the same person; and (3) single proprietorships that are owned by the same person[.]

In their Petition for Suspension of Payments and Rehabilitation, Interco, Interco Manufacturing, ICEC Land, and Kimmee allege that they are financially related to one another as parent corporation, subsidiaries, or affiliates.[122] However, BDO insists that the Court of Appeals erred in ruling that Kimmee is financially related to the other petitioning debtors.[123]

To begin with, the sufficiency of a petition for rehabilitation and the reasonability of a rehabilitation plan are questions of fact beyond the ambit of this Court's power of review.[124] In resolving these issues, we are bound to examine the various financial documents submitted by the parties before the rehabilitation court.

In *Pascual v. Burgos*,[125] this Court decreed that only errors of law may be raised in a Rule 45 petition. This Court is not a trier of facts.[126] Absent any showing that material facts and circumstances were overlooked or misinterpreted, factual findings of commercial courts shall be deemed conclusive and binding on this Court,[127] thus:

> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding, or conclusive on the parties and upon this court" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

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122 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), p. 137.
123 *Rollo* (G.R. Nos. 218485-86 and 218493-97, vol. I) p. 48.
124 *Metropolitan Bank and Trust Co. v. Liberty Corrugated Boxes Manufacturing Corp.*, 804 Phil. 195, 216 (2017) [Per J. Leonen, Second Division].
125 776 Phil. 167 (2016) [Per J. Leonen, Second Division].
126 Id. at 182.
127 *Stronghold Insurance Co., Inc. v. Interpacific Container Services* 762 Phil. 483, 490 (2015) [Per J. Perez, First Division].

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[128] (Citations omitted, emphasis in the original)

Nonetheless, based on the Reports of Independent Auditors,[129] Kimmee is an affiliate of the parent company Interco,[130] thus:

13. Related Party Transactions Significant balances of amounts owed by (to) related parties follow:	
	Nature of Relationship
ICEC Land	Subsidiary
IMC	Associate
Kimmee Realty Corp.	Affiliate

13. Related Party Transactions In the normal course of business, the following transactions have been entered into with related parties under common management control:	
Related Party*	Relationship
PBCom	Affiliate
ICEC Land	Subsidiary

[128] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].
[129] *Rollo* (G.R. Nos. 218487 and 218498-503, vol. II), pp. 971–1009; *rollo* (G.R. Nos. 218485-86 and 218493-97, vol. IV), pp. 2318–2366.
[130] *Rollo* (G.R. Nos. 218487 and 218498-503, vol. II), 985 and 1006; *rollo* (G.R. Nos. 218485-86 and 218493-97, vol. IV), p. 2354.

IMC	Subsidiary
Kimmee Realty Corp.	Affiliate

13. Related Party Transactions

Enterprises and individuals that directly, or indirectly through one or more intermediaries, control, or are controlled by, or under common control with the Company are related parties of the Company, Individuals owning directly or indirectly, an interest in the voting management personnel, including directors and officers of the Company and close members of the family of these individuals and companies associated with these individuals also constitute related parties.

In considering each possible related party relationship, attention is directed to the substance of the relationship, and not merely the legal form.

In the normal course of business, the following are the transactions with and balances of related parties under common management control:

	Relationship
PBCOM	Associate
ICEC Land	Subsidiary
IMC	Subsidiary
Kimmee Realty Corp.	Affiliate[131]

IV

Development Bank insists that the Court of Appeals erred in not dismissing the Petition for Suspension of Payments and Rehabilitation outright considering that the rehabilitation court failed to issue a commencement order, disregarded its claims, and whimsically adopted Interco, et al.'s statement of claims. It likewise maintains that Interco, et al. filed the Petition in fraud and as a means to delay the enforcement of their rights as creditors.

These contentions are unmeritorious.

FRIA provides that after a petition is found to be sufficient in form and substance, the rehabilitation court shall issue a commencement order to signify the beginning of the rehabilitation proceedings.[132] The

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[131] Id.

[132] Republic Act No. 10142 (2010), secs. 15 and 16 state:
SECTION 15. *Action on the Petition.* — If the court finds the petition for rehabilitation to be sufficient in form and substance, it shall, within five (5) working days from the filing of the petition, issue a Commencement Order. If, within the same period, the court finds the petition deficient in form or substance, the court may, in its discretion, give the petitioner/s a reasonable period of time within which to amend or supplement the petition, or to submit such documents as may be necessary or proper to put the petition in proper order. In such case, the five (5) working days provided above for the issuance of the Commencement Order shall be reckoned from the date of the filing of the amended or supplemental petition or the submission of such documents.

commencement order shall include "a declaration that the debtor is under rehabilitation, the appointment of a rehabilitation receiver, a directive for all creditors to file their verified notices of claim, and an order staying claims against the [petitioning] debtor."[133]

Here, after the rehabilitation court had found the Petition to be sufficient in form and substance, it issued a Stay Order which provided for, among others, the appointment of Atty. Elamparo as rehabilitation receiver, the suspension of all claims against Interco, et al., and the date of the initial

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SECTION 16. *Commencement of Proceedings and Issuance of a Commencement Order.* — The rehabilitation proceedings shall commence upon the issuance of the Commencement Order, which shall:
(a) identify the debtor, its principal business or activity/ies and its principal place of business;
(b) summarize the ground/s for initiating the proceedings;
(c) state the relief sought under this Act and any requirement or procedure particular to the relief sought;
(d) state the legal effects of the Commencement Order, including those mentioned in Section 17 hereof;
(e) declare that the debtor is under rehabilitation;
(f) direct the publication of the Commencement Order in a newspaper of general circulation in the Philippines once a week for at least two (2) consecutive weeks, with the first publication to be made within seven (7) days from the time of its issuance;
(g) If the petitioner is the debtor, direct the service by personal delivery of a copy of the petition on each creditor holding at least ten percent (10%) of the total liabilities of the debtor as determined from the schedule attached to the petition within five (5) days; if the petitioner/s is/are creditor/s, direct the service by personal delivery of a copy of the petition on the debtor within five (5) days;
(h) appoint a rehabilitation receiver who may or may not be from among the nominees of the petitioner/s, and who shall exercise such powers and duties defined in this Act as well as the procedural rules that the Supreme Court will promulgate;
(i) summarize the requirements and deadlines for creditors to establish their claims against the debtor and direct all creditors to file their claims with the court at least five (5) days before the initial hearing;
(j) direct the Bureau of internal Revenue (BIR) to file and serve on the debtor its comment on or opposition to the petition or its claim/s against the debtor under such procedures as the Supreme Court may hereafter provide;
(k) prohibit the debtor's suppliers of goods or services from withholding the supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services or goods supplied after the issuance of the Commencement Order;
(l) authorize the payment of administrative expenses as they become due;
(m) set the case for initial hearing, which shall not be more than forty (40) days from the date of filing of the petition for the purpose of determining whether there is substantial likelihood for the debtor to be rehabilitated;
(n) make available copies of the petition and rehabilitation plan for examination and copying by any interested party;
(o) indicate the location or locations at which documents regarding the debtor and the proceedings under this Act may be reviewed and copied;
(p) state that any creditor or debtor, who is not the petitioner, may submit the name or nominate any other qualified person to the position of rehabilitation receiver at least five (5) days before the initial hearing;
(q) include a Stay or Suspension Order which shall:
(1) suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
(2) suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
(3) prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
(4) prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.

[133] *Allied Banking Corp. v. Equitable PCI Bank, Inc.*, 828 Phil. 64, 75 (2018) [Per J. Martires, Third Division].

hearing.[134] Its denomination as "Stay Order" is immaterial, since it provided the basic requirements of a commencement order required by FRIA.

To clarify, the liberality in the nomenclature of the commencement order should apply only in cases where such order was issued before the FR Rules' promulgation. This is an aspect of equity; otherwise, strict adherence to procedural niceties would prevent substantive relief. However, for cases where the commencement order is issued after the effectivity of the FR Rules, the order must be properly designated as a "commencement order."

Development Bank's other claims are questions of fact improper in a Rule 45 petition. Particularly, determining whether the rehabilitation receiver and the rehabilitation court considered Development Bank's interest is a factual issue that would require this Court to review the financial statements submitted by the parties. As held in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*:[135]

> To elucidate, the determination of whether or not due regard was given to the interests of BPI as a secured creditor in the approved rehabilitation plan partakes of a question of fact since it will require a review of the sufficiency and weight of evidence presented by the parties — among others, the various financial documents and data showing Sarabia's capacity to pay and BPI's perceived cost of money — and not merely an application of law. Therefore, given the complexion of the issues which BPI presents, and finding none of the above-mentioned exceptions to exist, the Court is constrained to dismiss its petition, and prudently uphold the factual findings of the courts a quo which are entitled to great weight and respect, and even accorded with finality. This especially obtains in corporate rehabilitation proceedings wherein certain commercial courts have been designated on account of their expertise and specialized knowledge on the subject matter, as in this case.[136]

Neither is Development Bank's claim of noncompliance with Sections 44, 45, and 46 of FRIA sufficient to reverse the Court of Appeals' ruling. This matter was raised for the first time before this Court. A perusal of its Petition for Review[137] before the Court of Appeals shows that this issue was not assigned as an error of the rehabilitation court. In *Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation*:[138]

> Settled is the rule that no questions will be entertained on appeal unless they have been raised below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need

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134 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I) pp. 167–172.
135 715 Phil. 420 (2013) [Per J. Perlas-Bernabe, Second Division].
136 Id. at 434–435.
137 *Rollo* (G.R. Nos. 218487-218498-503, vol. II), pp. 482–521.
138 524 Phil. 318 (2006) [Per J. Callejo, Sr., First Division].

> not be considered by the reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.[139] (Citation omitted)

V

The creditors, particularly BDO[140] and Development Bank,[141] next assert that the terms and conditions of the proposed rehabilitation plan are burdensome and prejudicial, depriving them of their contractual rights and claims against Interco, et al. They maintain that the rehabilitation court has no power to modify the contractual stipulations agreed upon by the parties.

This contention lacks merit.

Article III, Section 9 of the Constitution provides that "[n]o law impairing the obligation of contracts shall be passed." This refers to the non-impairment clause, which ensures that the integrity of contracts is protected from any unwarranted State inference. It ensures that the terms of a contract mutually agreed upon by the parties are not tampered with or modified by a subsequent law.[142] As held in *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[143] "[t]his is to 'encourage trade and credit by promoting confidence in the stability of contractual relations."[144]

This constitutional limitation guarantees non-interference of the State in purely private transactions. However, the non-impairment clause yields to the State's police power.[145] In *Pryce Corporation v. China Banking Corporation*:[146]

> The non-impairment clause first appeared in the United States Constitution as a safeguard against the issuance of worthless paper money that disturbed economic stability after the American Revolution. This constitutional provision was designed to promote commercial stability. At its core is "a prohibition of state interference with debtor-creditor relationships."
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139 Id. at 335.
140 *Rollo* (G.R. Nos. 218485-86, vol. I), p. 39.
141 *Rollo* (G.R. Nos. 218487 and 218498-503, vol. I), p. 91.
142 *Goldenway Merchandising Corp. v. Equitable PCI Bank*, 706 Phil. 427, 437–438 (2013) [Per J. Villarama, Jr., First Division].
143 G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, *En Banc*].
144 Id. at 126–127.
145 Id. at 127.
146 *Pryce Corp. v. China Banking Corp.*, 727 Phil. 1 (2014) [Per J. Leonen, En Banc].

Nevertheless, this court has brushed aside invocations of the non-impairment clause to give way to a valid exercise of police power and afford protection to labor.

In *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.* which similarly involved corporate rehabilitation, this court found no merit in Pacific Wide's invocation of the non-impairment clause, explaining as follows:

> We also find no merit in PWRDC's contention that there is a violation of the impairment clause. Section 10, Article III of the Constitution mandates that no law impairing the obligations of contract shall be passed. This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked. Furthermore, as held in Oposa v. Factoran, Jr. even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public.
>
> Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or have opposed the plan or whether or not their claims have been scheduled.[147] (Citations omitted.)

Contracts partake of the nature of property rights. Thus, apart from the applicability of the requirements of reasonability embedded in the due process clause, there is also Article XII, Section 6,[148] which mandates that the use of property is a social function.

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[147] Id. at 23–24.

[148] CONST., art. XII, sec. 6 states:

SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

This principle, which shows that the non-impairment clause is not absolute, was reiterated in *Victorio-Aquino v. Pacific Plans, Inc.*[149] There, this Court brushed aside the petitioner's invocation of the non-impairment clause in questioning the rehabilitation court's approval of the modified rehabilitation plan. This Court decreed that "[t]he non-impairment clause under the Constitution applies only to the exercise of legislative power. It does not apply to the Rehabilitation Court which exercises judicial power over the rehabilitation proceedings."[150]

Accordingly, the creditors' invocation cannot stand.

VI

The creditors next assail the rehabilitation court's confirmation of the rehabilitation plan despite noncompliance with the voting requirement under Section 64 of FRIA.

One of the salient changes introduced by FRIA is the rehabilitation receiver's duty to notify the creditors of the petitioning debtor that the rehabilitation plan is ready for examination. Section 64 of FRIA requires that within 20 days from such notification, the rehabilitation receiver shall convene the creditors to vote on the rehabilitation plan. If the creditors approve the plan, Section 65 states that the rehabilitation plan shall be submitted by the rehabilitation receiver to the rehabilitation court for confirmation. The provisions state:

> SECTION 64. *Creditor Approval of Rehabilitation Plan.* — The rehabilitation receiver shall notify the creditors and stakeholders that the Plan is ready for their examination. Within twenty (20) days from the said notification, the rehabilitation receiver shall convene the creditors, either as a whole or per class, for purposes of voting on the approval of the Plan. The Plan shall be deemed rejected unless approved by all classes of creditors whose rights are adversely modified or affected by the Plan. For purposes of this section, the Plan is deemed to have been approved by a class of creditors if members of the said class holding more than fifty percent (50%) of the total claims of the said class vote in favor of the Plan. The votes of the creditors shall be based solely on the amount of their respective claims based on the registry of claims submitted by the rehabilitation receiver pursuant to Section 44 hereof.
>
> Notwithstanding the rejection of the Rehabilitation Plan, the court may confirm the Rehabilitation Plan if all of the following circumstances are present:

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149 749 Phil. 790, 809–812 (2014) [Per J. Peralta, Third Division].
150 Id.

> (a) The Rehabilitation Plan complies with the requirements specified in this Act;
>
> (b) The rehabilitation receiver recommends the confirmation of the Rehabilitation Plan;
>
> (c) The shareholders, owners or partners of the juridical debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and
>
> (d) The Rehabilitation Plan would likely provide the objecting class of creditors with compensation which has a net present value greater than that which they would have received if the debtor were under liquidation.
>
> SECTION 65. *Submission of Rehabilitation Plan to the Court.* — If the Rehabilitation Plan is approved, the rehabilitation receiver shall submit the same to the court for confirmation. Within five (5) days from receipt of the Rehabilitation Plan, the court shall notify the creditors that the Rehabilitation Plan has been submitted for confirmation, that any creditor may obtain copies of the Rehabilitation Plan and that any creditor may file an objection thereto.

If the plan is rejected by the creditors, the rehabilitation court may still confirm the rehabilitation plan, subject to certain conditions provided under Section 64. This power to override the creditor's disapproval of the rehabilitation plan refers to the rehabilitation court's "cram-down" power, which was first discussed in *Pryce* and then in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*,[151] where this Court said:

> Among other rules that foster the foregoing policies, Section 23, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules) states that a rehabilitation plan may be approved even over the opposition of the creditors holding a majority of the corporation's total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable. Also known as the "cram-down" clause, this provision, which is currently incorporated in the FRIA, is necessary to curb the majority creditors' natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery.[152] (Citations omitted)

However, as the Court of Appeals pointed out, the exercise of the cram-down power is not absolute. The rehabilitation court must ensure that all circumstances provided under the second paragraph of Section 64 are

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[151] 715 Phil. 420 (2013) [Per J. Perlas-Bernabe, Second Division].
[152] Id. at 436.

present. Failure to comply with these conditions violates the creditors' right to due process.[153]

Notably, one of the requirements provided under Section 64 is the rehabilitation receiver's act of convening the creditors for purposes of voting on the proposed rehabilitation plan. Yet, here, the rehabilitation court confirmed the rehabilitation plan despite the creditors' failure to vote. Thus, the Court of Appeals decreed that the confirmation was premature and ordered the remand of the case to the rehabilitation court to convene the creditors and comply with the voting requirement.[154] In ruling so, the Court of Appeals applied the *Pryce*[155] ruling, which states:

> Corporate rehabilitation is one of many statutorily provided remedies for businesses that experience a downturn. Rather than leave the various creditors unprotected, legislation now provides for an orderly procedure of equitably and fairly addressing their concerns. Corporate rehabilitation allows a court-supervised process to rejuvenate a corporation. Its twin, insolvency, provides for a system of liquidation and a procedure of equitably settling various debts owed by an individual or a business. It provides a corporation's owners a sound chance to re-engage the market, hopefully with more vigor and enlightened services, having learned from a painful experience.
>
> Necessarily, a business in the red and about to incur tremendous losses may not be able to pay all its creditors. Rather than leave it to the strongest or most resourceful amongst all of them, the state steps in to equitably distribute the corporation's limited resources.
>
> The cram-down principle adopted by the Interim Rules does, in effect, dilute contracts. When it permits the approval of a rehabilitation plan even over the opposition of creditors, or when it imposes a binding effect of the approved plan on all parties including those who did not participate in the proceedings, the burden of loss is shifted to the creditors to allow the corporation to rehabilitate itself from insolvency.
>
> Rather than let struggling corporations slip and vanish, the better option is to allow commercial courts to come in and apply the process for corporate rehabilitation.
>
> This option is preferred so as to avoid what Garrett Hardin called the Tragedy of Commons. Here, Hardin submits that "coercive government regulation is necessary to prevent the degradation of common-pool resources [since] individual resource appropriators receive the full benefit of their use and bear only a share of their cost." By analogy to the game theory, this is the prisoner's dilemma: "Since no individual has the right to control or exclude others, each appropriator has a very high discount rate [with] little incentive to efficiently manage the resource in order to guarantee future use." Thus, the cure is an exogenous policy to

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153 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), pp. 40–42.
154 Id. at 44.
155 727 Phil. 1 (2014) [Per J. Leonen, En Banc].

> equitably distribute scarce resources. This will incentivize future creditors to continue lending, resulting in something productive rather than resulting in nothing.
>
> In fact, these corporations exist within a market. The General Theory of Second Best holds that "correction for one market imperfection will not necessarily be efficiency-enhancing unless there is also simultaneous correction for all other market imperfections." The correction of one market imperfection may adversely affect market efficiency elsewhere, for instance, "a contract rule that corrects for an imperfection in the market for consensual agreements may at the same time induce welfare losses elsewhere." This theory is one justification for the passing of corporate rehabilitation laws allowing the suspension of payments so that corporations can get back on their feet.
>
> As in all markets, the environment is never guaranteed. There are always risks. Contracts are indeed sacred as the law between the parties. However, these contracts exist within a society where nothing is risk-free, and the government is constantly being called to attend to the realities of the times.
>
> Corporate rehabilitation is preferred for addressing social costs. Allowing the corporation room to get back on its feet will retain if not increase employment opportunities for the market as a whole. Indirectly, the services offered by the corporation will also benefit the market as "the fundamental impulse that sets and keeps the capitalist engine in motion comes from the constant entry of new consumers' goods, the new methods of production or transportation, the new markets, and the new forms of industrial organization that capitalist enterprise creates."[156] (Citations omitted)

Here, the Court of Appeals did not definitively conclude whether the rehabilitation plan was viable. It did not decide the matter on the merits. On the contrary, and as expressly provided in the dispositive portion of its Decision, the Court of Appeals remanded the matter to the rehabilitation court, for the rehabilitation receiver to convene the creditors for the purpose of complying with the voting requirement under FRIA.

In line with the declared policy of FRIA to encourage debtors and creditors to collectively resolve their competing claims, and considering the potential exigencies that lurk and possibly tide over financially distressed corporations in the market, the prudent option is for this Court to affirm the Court of Appeals Decision and direct the rehabilitation court to convene the creditors for purposes of complying with the voting requirement.

However, this Court notes that Interco, et al. filed the Petition for Suspension of Payments and Rehabilitation in 2010. The case has been pending ever since. In the interest of judicial economy and efficiency, and

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[156] Id. at 24–26.

given that the creditors were given ample opportunities to raise their objections to the Petition and the viability of the proposed rehabilitation plan, this Court finds a remand of the case unnecessary.

To recall, during the rehabilitation proceedings, Interco, et al.'s creditors filed their notice of claims[157] and Comments or Oppositions to the Petition.[158] Some of them likewise submitted their letter-compliance in response to the March 3, 2011 letter of the rehabilitation receiver.[159]

Further, the creditors admitted that a general creditors' meeting was held on April 6, 2011.[160] The creditors do not deny that during this meeting, they conveyed their comments and suggestions on the proposed rehabilitation plan.[161]

Finally, the creditors filed before the rehabilitation court their comment or opposition to the revised rehabilitation plan submitted by the rehabilitation receiver. Notwithstanding the creditors' oppositions, the rehabilitation court found "the petition to be well grounded, proper and in order" and the rehabilitation of Interco, et al. feasible.[162]

This Court stresses that the rehabilitation court can best decide on the rehabilitation plan's feasibility and viability. Owing to its technical expertise and in-depth knowledge on rehabilitation proceedings, the rehabilitation court is in the most advantageous position to receive and scrutinize the evidence submitted by the parties. Having witnessed firsthand the manner and decorum of the parties involved, the rehabilitation court has insight on nonverbal cues exhibited during the proceedings.

WHEREFORE, the Petitions are **PARTIALLY GRANTED.** The assailed November 18, 2014 Decision and May 13, 2015 Resolution of the Court of Appeals in CA-G.R. SP Nos. 04357, 04390, 04404, 04409, 04419, 04676, and 04695 are **REVERSED and SET ASIDE.**

The July 8, 2011 Resolution of the Regional Trial Court of Zamboanga City, Branch 12, which approved the revised or modified rehabilitation plan, is **REINSTATED.** The Regional Trial Court, sitting as rehabilitation court, is directed to proceed with the rehabilitation proceedings in accordance with the provisions of the Financial

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157 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), pp. 426–427.
158 Id. at 16 and 277–289.
159 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. II), p. 760.
160 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), p. 18.
161 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. II), pp. 726 and 780–781.
162 *Rollo* (G.R. Nos. 218488-90 and 218504-07, vol. I), p. 439.

Rehabilitation and Insolvency Act of 2010 and the 2013 Financial Rehabilitation Rules of Procedure.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest 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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

ALEXANDER G. GESMUNDO
Chief Justice