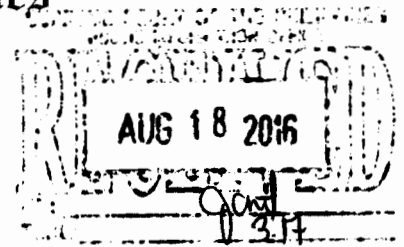




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

PHILIPPINE ASSET GROWTH TWO, INC. (Successor-In-Interest of Planters Development Bank) and PLANTERS DEVELOPMENT BANK,

Petitioners,

- versus -

G.R. No. 206528

Present:

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, JJ.

FASTECH PHILIPPINES, INC. (Formerly First Asia System Technology, Inc.), MICROASSEMBLY & TEST, INC., ELECTRONIQUE, INC., and FASTECH PROPERTIES, INC.,
SYNERGY FASTECH FASTECH
Respondents.

Promulgated:

JUN 28 2016

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DECISION

PERLAS-BERNABE, J.:

For the Court's resolution is a petition for review on *certiorari*¹ assailing the Decision² dated September 28, 2012 and the Resolution³ dated March 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122836 which: (a) approved the Rehabilitation Plan⁴ of respondents Fastech Synergy Philippines, Inc. (formerly First Asia System Technology, Inc.) (Fastech Synergy), Fastech Microassembly & Test, Inc. (Fastech Microassembly), Fastech Electronique, Inc. (Fastech Electronique), and Fastech Properties, Inc. (Fastech Properties; collectively, respondents); (b) enjoined petitioner

¹ Rollo, Vol. I, pp. 3-29.

² Id. at 33-56. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda concurring.

³ Id. at 147-149.

⁴ Id. at 329-340. See also Amended Rehabilitation Plan; rollo, Vol. II, pp. 697-720.

Planters Development Bank (PDB) from effecting the foreclosure of respondents' properties during the implementation thereof; and (c) remanded the case to the Regional Trial Court (RTC) of Makati City, Branch 149 (RTC-Makati) to supervise its implementation.

The Facts

On April 8, 2011, respondents filed a verified Joint Petition⁵ for corporate rehabilitation (rehabilitation petition) before the RTC-Makati, with prayer for the issuance of a Stay or Suspension Order,⁶ docketed as SP Case No. M-7130. They claimed that: (a) their business operations and daily affairs are being managed by the same individuals;⁷ (b) they share a majority of their common assets;⁸ and (c) they have common creditors and common liabilities.⁹

Among the common creditors listed in the rehabilitation petition was PDB,¹⁰ which had earlier filed a petition¹¹ for extrajudicial foreclosure of mortgage over the two (2) parcels of land, covered by Transfer Certificate of Title (TCT) Nos. T-458102¹² and T-458103¹³ and registered in the name of Fastech Properties (subject properties),¹⁴ listed as common assets of respondents in the rehabilitation petition.¹⁵ The foreclosure sale was held on April 13, 2011, with PDB emerging as the highest bidder.¹⁶ Respondents claimed that this situation has impacted on their chance to recover from the losses they have suffered over the years, since the said properties are being used by Fastech Microassembly and Fastech Electronique¹⁷ in their business operations, and a source of significant revenue for their owner-lessor, Fastech Properties.¹⁸ Hence, respondents submitted for the court's approval their proposed Rehabilitation Plan,¹⁹ which sought: (a) a waiver of all accrued interests and penalties; (b) a grace period of two (2) years to pay the principal amount of respondents' outstanding loans, with the interests accruing during the said period capitalized as part of the principal, to be paid over a twelve (12)-year period after the grace period; and (c) an interest rate of four percent (4%) and two percent (2%) per annum (p.a.) for creditors

⁵ Dated April 8, 2011. *Rollo*, Vol. I, pp. 208-231.

⁶ *Id.* at 229.

⁷ See *id.* at 210-215 and 220.

⁸ See *id.* at 219-220.

⁹ See *id.* at 215-220. See also *id.* at 34-35.

¹⁰ *Id.* at 215.

¹¹ Not attached to the records of this case.

¹² *Rollo*, Vol. I, pp. 175-177.

¹³ *Id.* at 178-180.

¹⁴ See *id.* at 225.

¹⁵ *Id.* at 219.

¹⁶ See *rollo*, Vol. II, p. 785.

¹⁷ See *rollo*, Vol. I, pp. 221-222 and 225. Notably, Fastech Synergy owns a majority of the shares of Fastech Microassembly and Fastech Electronique, and relies on dividends from such shareholdings; *id.* at 221.

¹⁸ *Id.* at 225.

¹⁹ *Id.* at 329-340.

whose credits are secured by real estate and chattel mortgages, respectively.²⁰

On April 19, 2011, the RTC-Makati issued a Commencement Order with Stay Order,²¹ and appointed Atty. Rosario S. Bernaldo as Rehabilitation Receiver, which the latter subsequently accepted.²²

After the initial hearing on May 18, 2011, and the filing of the comments/oppositions on the rehabilitation petition,²³ the RTC-Makati gave due course to the said petition, and, thereafter, referred the same to the court-appointed Rehabilitation Receiver, who submitted in due time her preliminary report,²⁴ opining that respondents may be rehabilitated, considering that their assets appear to be sufficient to cover their liabilities, but reserved her comment to the Rehabilitation Plan's underlying assumptions, financial goals, and procedures to accomplish said goals after the submission of a revised rehabilitation plan as directed by the RTC-Makati,²⁵ which respondents subsequently complied.²⁶

After the creditors had filed their respective comments and/or oppositions to the revised Rehabilitation Plan, and respondents had submitted their consolidated reply²⁷ thereto, the court-appointed Rehabilitation Receiver submitted her comments,²⁸ opining that respondents may be successfully rehabilitated, considering the sufficiency of their assets to cover their liabilities and the underlying assumptions, financial projections and procedures to accomplish said goals in their Rehabilitation Plan.²⁹

The RTC-Makati Ruling

In a Resolution³⁰ dated December 9, 2011, the RTC-Makati dismissed the rehabilitation petition despite the favorable recommendation of its appointed Rehabilitation Receiver. It found the facts and figures submitted by respondents to be unreliable in view of the disclaimer of opinion of the

²⁰ Id. at 223-224.

²¹ *Rollo*, Vol. II, pp. 646-650. Issued by Presiding Judge Cesar O. Untalan.

²² See Manifestation (Acceptance of Appointment as Rehabilitation Receiver) dated April 26, 2011; id. at 651-653.

²³ See *rollo*, Vol. I, p. 36; and *rollo*, Vol. II, p. 721.

²⁴ See Rehabilitation Receiver's Preliminary Report (*rollo*, Vol. II, pp. 724-735) attached as Annex "A" in the Manifestation and Compliance dated July 20, 2011 (*rollo*, Vol. II, pp. 721-723).

²⁵ Id. at 734-735.

²⁶ See Amended Rehabilitation Plan attached as Annex "A" in the compliance dated July 27, 2011; id. at 690-720.

²⁷ See Compliance and Consolidated Reply (to the Comments on the Revised Rehabilitation Plan) dated September 29, 2011 with attached as Annex "A" the Project Plan; id. at 741-767.

²⁸ See Compliance and Comments (to the Compliance and Consolidated Reply of the Petitioners [herein respondents]) dated October 11, 2011 with attached as Annex "A" the Rehabilitation Receiver's Comments; id. at 768-777.

²⁹ Id. at 777.

³⁰ Id. at 778-784. Penned by Presiding Judge Cesar O. Untalan.

independent auditors who reviewed respondents' 2009 financial statements,³¹ which it considered as amounting to a "straightforward unqualified adverse opinion."³² In the same vein, it did not give credence to the unaudited 2010 financial statements as the same were mere photocopied documents and unsigned by any of respondents' responsible officers.³³ It also observed that respondents added new accounts and/or deleted/omitted certain accounts.³⁴ Furthermore, it rejected the revised financial projections as the bases for which were not submitted for its evaluation on the ground of confidentiality.³⁵

Aggrieved, respondents appealed³⁶ to the CA, with prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction (WPI), docketed as CA-G.R. SP No. 122836.

The Proceedings Before the CA

In a Resolution dated January 24, 2012, the CA issued a TRO³⁷ so as not to render moot and academic the case before it in view of PDB's pending *Ex-Parte* Petition for Issuance of a Writ of Possession over the subject properties before the RTC of Biñan, Laguna, docketed as LRC Case No. B-5141.³⁸ Thereafter, the CA issued a WPI³⁹ on March 22, 2012.

On April 30, 2012, the court-appointed Rehabilitation Receiver submitted a manifestation⁴⁰ before the CA, maintaining that the rehabilitation of respondents is viable since the financial projections and procedures set forth to accomplish the goals in their Rehabilitation Plan are attainable.⁴¹

After the creditors and respondents had filed their respective comments and reply to the manifestation, the CA rendered a Decision⁴² dated September 28, 2012 (September 28, 2012 Decision), reversing and setting aside the RTC-Makati ruling.⁴³ It ruled that the RTC-Makati grievously erred in disregarding the report/opinion of the Rehabilitation Receiver that respondents may be successfully rehabilitated, despite being

³¹ See Reports of Independent Auditors both dated April 27, 2010 for Fastech Synergy and Fastech Electronique, respectively; *rollo*, Vol. I, p. 485; and *rollo*, Vol. II, p. 542.

³² *Rollo*, Vol. II, p. 782.

³³ *Id.* at 783.

³⁴ *Id.* at 782.

³⁵ *Id.* at 783.

³⁶ See *rollo*, Vol. I, pp. 57-140.

³⁷ See *rollo*, Vol. II, pp. 817-819. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Rebecca De Guia-Salvador and Rodil V. Zalameda concurring.

³⁸ *Id.* at 818. See also *id.* at 785-790.

³⁹ See *id.* at 898-900. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Hakim S. Abdulwahid and Rodil V. Zalameda concurring.

⁴⁰ Not attached in the records of this case.

⁴¹ See *rollo*, Vol. I, pp. 39-40.

⁴² *Id.* at 33-56.

⁴³ *Id.* at 55.

highly qualified to make an opinion on accounting in relation to rehabilitation matters.⁴⁴ It likewise observed that the RTC-Makati failed to distinguish the difference between an adverse or negative opinion and a disclaimer or when an auditor cannot formulate an opinion with exactitude for lack of sufficient data.⁴⁵ Finally, the CA declared that the Rehabilitation Plan is feasible and should be approved, finding that respondents would be able to meet their obligations to their creditors within their operating cash profits and other assets without disrupting their business operations, which will be beneficial to their creditors, employees, stockholders, and the economy.⁴⁶

Accordingly, the CA reinstated the rehabilitation petition, approved respondents' Rehabilitation Plan, and remanded the case to the RTC-Makati to supervise its implementation. Considering that respondents' creditors are placed in equal footing as a necessary consequence, it permanently enjoined PDB from "effecting the foreclosure" of the subject properties during the implementation of the Rehabilitation Plan.⁴⁷

Dissatisfied, PDB filed a motion for reconsideration⁴⁸ which was, however, denied in a Resolution⁴⁹ dated March 5, 2013 (March 5, 2013 Resolution).

In the interim, DivinaLaw entered⁵⁰ its appearance as the new lead counsel of PDB, in collaboration⁵¹ and with the conformity of its counsel of record, Janda Asia & Associates.⁵² On April 3, 2013, DivinaLaw, on behalf of petitioner Philippine Asset Growth Two, Inc. (PAGTI), filed a Motion for Substitution of Parties (motion for substitution),⁵³ averring that PAGTI had acquired PDB's claims and interests in the instant case, hence, should be substituted as a party therein.

The Proceedings Before the Court

On April 18, 2013, PAGTI and PDB (petitioners), represented by DivinaLaw, filed the instant petition, claiming that PDB received a copy of the March 5, 2013 Resolution on April 3, 2013.⁵⁴

⁴⁴ Id. at 50-51.

⁴⁵ Id. at 52.

⁴⁶ Id. at 53-55.

⁴⁷ Id. at 55-56.

⁴⁸ Dated October 24, 2012. Id. at 150-164.

⁴⁹ Id. at 147-149.

⁵⁰ See Entry of Appearance dated February 13, 2013; *rollo*, Vol. III, pp. 1011-1013.

⁵¹ Id. at 1011.

⁵² Id. at 1020.

⁵³ Dated April 1, 2013. *Rollo*, Vol. II, pp. 901-904.

⁵⁴ See *rollo*, Vol. I, p. 14.

On July 10, 2013, respondents filed their Urgent Motion to Dismiss Petition for Review on *Certiorari* for Being Filed Out of Time⁵⁵ (urgent motion), positing that contrary to petitioners' claim that PDB received notice of the March 5, 2013 Resolution on April 3, 2013, its counsel, Janda Asia & Associates, already received a copy of the said resolution on March 12, 2013. Thus, petitioners only had until March 27, 2013 to file a petition for review on *certiorari* before the Court, and the petition filed on April 18, 2013 was filed out of time.⁵⁶

Meanwhile, the Court required respondents to file their comment⁵⁷ to the petition, and subsequently directed petitioners to submit their comment on respondents' urgent motion, and reply to the latter's comment.⁵⁸

In their Comment,⁵⁹ respondents prayed for the dismissal of the petition and reiterated their stand that the same was filed out of time, arguing that the receipt of the March 5, 2013 Resolution on March 12, 2013 by Janda Asia & Associates, which remained as collaborating counsel of PDB, binds petitioners and started the running of the fifteen (15)-day period within which to file a petition for review on *certiorari* before the Court. Thus, the petition filed on April 18, 2013 was filed beyond the reglementary period.⁶⁰ Respondents likewise maintained the viability of the rehabilitation plan, which will benefit not only their employees, but their stockholders, creditors, and the general public.⁶¹

For their part, petitioners contended⁶² that: (a) the date of receipt of petitioners' lead counsel, *i.e.*, DivinaLaw's receipt of the March 5, 2013 Resolution, should be the reckoning point of the fifteen (15)-day period within which to file the instant petition, since only the lead counsel is entitled to service of court processes,⁶³ citing the case of *Home Guaranty Corporation v. R-II Builders, Inc.*;⁶⁴ and (b) the CA erred in not upholding the dismissal of the rehabilitation petition despite the insufficiency of the Rehabilitation Plan which was based on financial statements that contained misleading statements, and financial projections that are mere unfounded assumptions/speculations.⁶⁵

⁵⁵ Dated July 9, 2013. *Rollo*, Vol. III, pp. 999-1008.

⁵⁶ *Id.* at 1004. See also Certification dated June 27, 2013 issued by the Philippine Postal Corporation, National Capital Region; *id.* at 1010.

⁵⁷ See Resolution dated June 3, 2013; *rollo*, Vol. II, pp. 997-998.

⁵⁸ See Resolution dated September 25, 2013; *rollo*, Vol. III, pp. 1202-1202-A.

⁵⁹ *Id.* at 1063-1103. Dated August 15, 2013.

⁶⁰ *Id.* at 1065-1066.

⁶¹ See *id.* at 1078-1080.

⁶² See petitioners' Consolidated Comment on the Motion to Dismiss and Reply to Respondents' Comment dated 15 August 2013; *id.* at 1203-1210.

⁶³ *Id.* at 1204.

⁶⁴ 667 Phil. 781, 792 (2011).

⁶⁵ See *rollo*, Vol. III, pp. 1205-1208.

Thereafter, respondents filed a Manifestation and Update (Re: Compliance to [the CA] Decision dated September 28, 2012)⁶⁶ before the Court, stating that it had achieved the EBITDA⁶⁷ requirement of the Rehabilitation Plan and made quarterly payments in favor of the bank and non-bank creditors from December 28, 2014 to September 28, 2015, totalling ₱27,119,481.79.⁶⁸ However, the amount of ₱8,364,836.53 in favor of PDB was not accepted, and is being held by respondents.⁶⁹

The Issues Before the Court

The essential issues for the Court's resolution are: (a) whether or not the petition for review on *certiorari* was timely filed; and (b) the Rehabilitation Plan is feasible.

The Court's Ruling

I.

The Court first resolves the procedural issue anent the timeliness of the petition's filing.

It is a long-standing doctrine that where a party is represented by several counsels, notice to one is sufficient, and binds the said party.⁷⁰ Notice to any one of the several counsels on record is equivalent to notice to all, and such notice starts the running of the period to appeal notwithstanding that the other counsel on record has not received a copy of the decision or resolution.⁷¹

In the present case, PDB was represented by both Janda Asia & Associates and DivinaLaw. It was not disputed that Janda Asia & Associates, which remained a counsel of record, albeit, as collaborating counsel, received notice of the CA's March 5, 2013 Resolution on March 12, 2013. As such, it is from this date, and not from DivinaLaw's receipt of the notice of said resolution on April 3, 2013 that the fifteen (15)-day period⁷² to file the petition for review on *certiorari* before the Court started to run.

⁶⁶ Dated December 1, 2015. Id. at 1270-1274.

⁶⁷ *I.e.*, earnings before interest, taxes, depreciation, and amortization.

⁶⁸ See *rollo*, Vol. III, p. 1277.

Total payments due under the Rehabilitation Plan	₱35,484,318.32
Less: Payments not accepted by PDB	(8,364,836.53)
Total payments made	<u>₱27,119,481.79</u>

⁶⁹ See *id.* at 1271.

⁷⁰ See *National Power Corporation v. Sps. Laohoo*, 611 Phil. 194, 212-213 (2009).

⁷¹ *Philippine Ports Authority v. Sargasso Construction & Development Corp.*, 479 Phil. 428, 438 (2004), citing *Albano v. CA*, 415 Phil. 76, 85 (2001).

⁷² See Section 2, Rule 45 of the Rules of Court.

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Hence, petitioners only had until March 27, 2013 to file a petition for review on *certiorari* before the Court, and the petition filed on April 18, 2013 was filed out of time. Notably, there is no showing that the CA had already resolved PAGTI's motion for substitution;⁷³ hence, it remained bound by the proceedings and the judgment rendered against its transferor, PDB.

Generally, the failure to perfect an appeal in the manner and within the period provided for by law renders the decision appealed from final and executory,⁷⁴ and beyond the competence of the Court to review. However, the Court has repeatedly relaxed this procedural rule in the higher interest of substantial justice. In *Barnes v. Padilla*,⁷⁵ it was held that:

[A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.

However, this Court has relaxed this rule in order to serve substantial justice[,] considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.⁷⁶

After a meticulous scrutiny of this case, the Court finds that the unjustified rehabilitation of respondents, by virtue of the CA ruling if so allowed to prevail, warrants the relaxation of the procedural rule violated by petitioners in the higher interest of substantial justice. The reasons therefor are hereunder explained.

II.

Rehabilitation is statutorily defined under Republic Act No. 10142,⁷⁷ otherwise known as the "Financial Rehabilitation and Insolvency Act of 2010" (FRIA), as follows:

Section 4. *Definition of Terms.* – As used in this Act, the term:

x x x x

(gg) *Rehabilitation* shall refer to the **restoration of the debtor to a condition of successful operation and solvency**, if it is

⁷³ The motion for substitution was only filed on April 3, 2013; see *rollo*, Vol. II, p. 901.

⁷⁴ See *Go v. BPI Finance Corporation*, 712 Phil. 579, 586 (2013).

⁷⁵ 482 Phil. 903 (2004).

⁷⁶ *Id.* at 915.

⁷⁷ Entitled "AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS," lapsed into law on July 18, 2010 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

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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. (Emphasis supplied)

Case law explains that corporate 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**, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.⁷⁸ Thus, the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the distressed corporation,⁷⁹ all with a view of effectively restoring it to a state of solvency or to its former healthy financial condition through the adoption of a rehabilitation plan.

III.

In the present case, however, the Rehabilitation Plan failed to comply with the minimum requirements, *i.e.*: (a) material financial commitments to support the rehabilitation plan; and (b) a proper liquidation analysis, under Section 18, Rule 3 of the 2008 Rules of Procedure on Corporate Rehabilitation⁸⁰ (Rules), which Rules were in force at the time respondents' rehabilitation petition was filed on April 8, 2011:

Section 18. *Rehabilitation Plan.* - The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors such as, but not limited, to the non-impairment of their security liens or interests; (c) **the material financial commitments to support the rehabilitation plan**; (d) the means for the execution of the rehabilitation plan, which may include debt to equity conversion, restructuring of the debts, *dacion en pago* or sale or exchange or any disposition of assets or of the interest of shareholders, partners or members; (e) **a liquidation analysis setting out for each creditor that the present value of payments it would receive under the plan is more than that which it would receive if the assets of the debtor were sold by a liquidator within a six-month period from the estimated date of filing of the petition**; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan. (Emphases supplied)

⁷⁸ See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, G.R. No. 205469, March 25, 2015, 754 SCRA 493, 504-505; emphasis and underscoring in the original.

⁷⁹ See Section 31 of the FRIA.

⁸⁰ See A.M. No. 00-8-10-SC (January 16, 2009).

The Court expounds.

**A. Lack of Material Financial Commitment
to Support the Rehabilitation Plan.**

A material financial commitment becomes significant in gauging the resolve, determination, earnestness, and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the **voluntary undertakings** of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness, and ability to contribute funds or property **to guarantee the continued successful operation of the debtor-corporation during the period of rehabilitation.**⁸¹

In this case, respondents' Chief Operating Officer, Primo D. Mateo, Jr., in his executed Affidavit of General Financial Condition⁸² dated April 8, 2011, averred that respondents will not require the infusion of additional capital as he, instead, proposed to have all accrued penalties, charges, and interests waived, and a reduced interest rate prospectively applied to all respondents' obligations, in addition to the implementation of a two (2)-year grace period.⁸³ Thus, there appears to be no concrete plan to build on respondents' beleaguered financial position through substantial investments as the plan for rehabilitation appears to be pegged merely on financial reprieves. Anathema to the true purpose of rehabilitation, a distressed corporation cannot be restored to its former position of successful operation and regain solvency by the sole strategy of delaying payments/waiving accrued interests and penalties at the expense of the creditors.

The Court also notes that while respondents have substantial total assets, a large portion of the assets of Fastech Synergy⁸⁴ and Fastech

⁸¹ See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, supra note 78, at 509; emphases and underscoring in the original.

⁸² *Rollo*, Vol. II, pp. 603-616.

⁸³ *Id.* at 613.

⁸⁴ Fastech Synergy's Separate Statements of Financial Position (Expressed in U.S. Dollars) for the Years Ending December 31, 2008 and December 31, 2009 provide the following data:

	Note	December 31 2009	2008
ASSETS			
Current Assets			
Cash		\$2,402	\$3,292
Receivables-net	4	40,155	40,565
Prepaid expenses and other current assets		2,520	3,027
Total Current Assets		45,077	46,884
Noncurrent Assets			
Advances to affiliates	5	3,069,825	3,146,195
Investment in a subsidiary	6	26,553,277	26,553,277
Total Noncurrent Assets		26,623,102	26,699,472
		\$26,668,179	\$26,746,356

(see *rollo*, Vol. I, p. 486).

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Properties⁸⁵ is comprised of noncurrent assets,⁸⁶ such as advances to affiliates which include Fastech Microassembly,⁸⁷ and investment properties which form part of the common assets of Fastech Properties, Fastech Electronique, and Fastech Microassembly.⁸⁸ Moreover, while there is a claim that *unnamed* customers have made investments by way of consigning production equipment, and advancing money to fund procurement of various equipment intended to increase production capacity,⁸⁹ this can hardly be construed as a material financial commitment which would inspire confidence that the rehabilitation would turn out to be successful. Case law holds that nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment.⁹⁰ Here, no such binding investment was presented.

B. Lack of Liquidation Analysis.

Respondents likewise failed to include any liquidation analysis in their Rehabilitation Plan. The total liquidation assets and the estimated liquidation return to the creditors, as well as the fair market value vis-à-vis the forced liquidation value of the fixed assets were not shown. As such, the Court could not ascertain if the petitioning debtor's 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. This is a crucial factor in a corporate rehabilitation case, which the CA, unfortunately, failed to address.

⁸⁵ Fastech Properties's Statements of Financial Position (Expressed in U.S. Dollars) for the Years Ending December 31, 2008 and December 31, 2009 provides the following data:

		December 31	
	Note	2009	2008
ASSETS			
Current Assets			
Cash		\$7,413	\$8,203
Receivables	5	30,245	33,292
Advances to related parties – net	11	27,441	-
Other current assets		11,296	13,785
Total Current Assets		76,395	55,280
Noncurrent Assets			
Investment properties – net	6	6,819,369	7,332,479
Office furniture, fixture and equipment – net	7	72,023	87,222
Other noncurrent assets	8	267,313	259,888
Total Noncurrent Assets		7,158,705	7,679,589
		\$7,235,100	\$7,734,869

(see *rollo*, Vol. II, p. 577).

⁸⁶ Pertinent to this case, it has been opined by one accountant that “[i]f a company has a high proportion of noncurrent to current assets, this can be an indicator of poor liquidity, since a large amount of cash may be needed to support ongoing investments in noncash assets.” See <<http://www.accountingtools.com/noncurrent-asset>> (visited May 20, 2016).

⁸⁷ *Rollo*, Vol. I, pp. 486 and 500.

⁸⁸ See *rollo*, Vol. I, p. 219; and *rollo*, Vol. II, pp. 577 and 593.

⁸⁹ See *rollo*, Vol. II, p. 614.

⁹⁰ See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, supra note 78, at 510.

C. Effect of Non-Compliance.

The failure of the Rehabilitation Plan to state any material financial commitment to support rehabilitation, as well as to include a liquidation analysis, renders the CA's considerations for approving the same, *i.e.*, that: (a) respondents would be able to meet their obligations to their creditors within their operating cash profits and other assets without disrupting their business operations; (b) the Rehabilitation Receiver's opinion carries great weight; and (c) rehabilitation will be beneficial for respondents' creditors, employees, stockholders, and the economy,⁹¹ as actually **unsubstantiated**, and hence, insufficient to decree the feasibility of respondents' rehabilitation. It is well to emphasize that the remedy of rehabilitation should be denied to corporations that do not qualify under the Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.

Even if the Court were to set aside the failure of the Rehabilitation Plan to comply with the fundamental requisites of material financial commitment to support the rehabilitation and an accompanying liquidation analysis, a review of the financial documents presented by respondents fails to convince the Court of the feasibility of the proposed plan.

IV.

The test in evaluating the economic feasibility of the plan was laid down in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*⁹² (*Bank of the Philippine Islands*), to wit:

In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into one for liquidation.⁹³

⁹¹ *Rollo*, Vol. 1, pp. 53-55.

⁹² G.R. No. 175844, July 29, 2013, 702 SCRA 432.

⁹³ *Id.* at 447-448.

In the recent case of *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.*,⁹⁴ the Court took note of the characteristics of an economically feasible rehabilitation plan as opposed to an infeasible rehabilitation plan:

Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:

- a. The debtor has assets that can generate more cash if used in its daily operations than if sold.
- b. Liquidity issues can be addressed by *a practicable business plan* that will generate enough cash to sustain daily operations.
- c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.

These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated.

On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible:

- (a) the absence of a sound and workable business plan;
- (b) baseless and unexplained assumptions, targets and goals;
- (c) speculative capital infusion or complete lack thereof for the execution of the business plan;
- (d) cash flow cannot sustain daily operations; and
- (e) negative net worth and the assets are near full depreciation or fully depreciated.

In addition to the tests of *economic feasibility*, Professor Stephanie V. Gomez also suggests that the Financial and Rehabilitation and Insolvency Act of 2010 emphasizes on rehabilitation that provides for better *present value recovery* for its creditors.

Present value recovery acknowledges that, in order to pave way for rehabilitation, the creditor will not be paid by the debtor when the credit falls due. The court may order a suspension of payments to set a rehabilitation plan in motion; in the meantime, the creditor remains unpaid. By the time the creditor is paid, the financial and economic conditions will have been changed. Money paid in the past has a different value in the future. It is unfair if the creditor merely receives the face value of the debt. Present value of the credit takes into account the interest that the amount of money would have earned if the creditor were paid on time.

⁹⁴ See G.R. No. 177382, February 17, 2016.

Trial courts must ensure that the projected cash flow from a business' rehabilitation plan allows for the closest present value recovery for its creditors. If the projected cash flow is realistic and allows the corporation to meet all its obligations, then courts should favor rehabilitation over liquidation. However, if the projected cash flow is unrealistic, then courts should consider converting the proceedings into that for liquidation to protect the creditors.⁹⁵

A perusal of the 2009 audited financial statements shows that respondents' cash operating position⁹⁶ was not even enough to meet their maturing obligations. Notably, their current assets were materially lower than their current liabilities,⁹⁷ and consisted mostly of advances to related parties in the case of Fastech Microassembly, Fastech Electronique, and Fastech Properties.⁹⁸ Moreover, the independent auditors recognized the absence of available historical or reliable market information to support the assumptions made by the management to determine the recoverable amount (value in use) of respondents' properties and equipment.⁹⁹

On the other hand, respondents' unaudited financial statements for the year 2010, and the months of February and March 2011 were unaccompanied by any notes or explanation on how the figures were arrived at. Besides, respondents' cash operating position remained insufficient to meet their maturing obligations as their current assets are still substantially lower than their current liabilities.¹⁰⁰ The Court also notes the RTC-Makati's

⁹⁵ Id.

⁹⁶ "A company's cash position refers specifically to its level of cash compared to its pending expenses and liabilities. x x x. In general, a stable cash position means the company can easily meet its current liabilities with the cash or liquid assets it has on hand. Current liabilities are debts with payments due within the next [twelve (12)] months." (See footnote 54 in *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, supra note 78, at 511.)

⁹⁷ Respondents' current assets and current liabilities for the Years Ending December 31, 2008 and December 31, 2009 are as follows:

	Fastech Synergy		Fastech Microassembly	
	2009	2008	2009	2008
Total Current Assets	\$ 45,077	46,884	\$ 2,632,581	1,378,610
Total Current Liabilities	15,836,794	15,449,590	13,283,244	10,907,065
	(See <i>rollo</i> , Vol. I, p. 486)		(See <i>rollo</i> , Vol. II, p. 507)	
	Fastech Electronique		Fastech Properties	
	2009	2008	2009	2008
Total Current Assets	\$ 7,862,531	7,249,329	\$ 76,395	55,280
Total Current Liabilities	18,472,201	17,265,841	760,671	1,749,468
	(See <i>rollo</i> , Vol. II, p. 544)		(See <i>rollo</i> , Vol. II, p. 577)	

⁹⁸ See *rollo*, Vol. II, pp. 507, 544, and 577.

⁹⁹ See Reports of Independent Auditors both dated April 27, 2010 for Fastech Synergy and Fastech Electronique, respectively; *rollo*, Vol. I, p. 485; and *rollo*, Vol. II, p. 542.

¹⁰⁰ Respondents' current assets and current liabilities for the Years 2009 and 2010, the months of January and February 2011 are as follows:

1. Fastech Synergy

	2009	2010	January 2011	February 2011
Total Current Assets	\$ 45,077	28,079	30,576	27,433
Total Current Liabilities	12,731,183	13,314,174	13,212,364	13,405,650
	(see <i>rollo</i> , Volume I, p. 469)			

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observation that respondents added new accounts and/or deleted/omitted certain accounts,¹⁰¹ but failed to explain or justify the same.

Verily, respondents' Rehabilitation Plan should have shown that they have enough serviceable assets to be able to continue its business operation. In fact, as opposed to this objective, the revised Rehabilitation Plan still requires "front load Capex spending" to replace common equipment and facility equipment to ensure sustainability of capacity and capacity robustness,¹⁰² thus, further sacrificing respondents' cash flow. In addition, the Court is hard-pressed to see the effects of the outcome of the streamlining of respondents' manufacturing operations on the carrying value of their existing properties and equipment.

In fine, the Rehabilitation Plan and the financial documents submitted in support thereof fail to show the feasibility of rehabilitating respondents' business.

V.

The CA's reliance on the expertise of the court-appointed Rehabilitation Receiver, who opined that respondents' rehabilitation is viable, in order to justify its finding that the financial statements submitted were reliable, overlooks the fact that the determination of the validity and the approval of the rehabilitation plan is not the responsibility of the rehabilitation receiver, but remains the function of the court. The rehabilitation receiver's duty *prior* to the court's approval of the plan is to study the best way to rehabilitate the debtor, and to ensure that the value of the debtor's properties is reasonably maintained; and *after* approval, to implement the rehabilitation plan.¹⁰³ Notwithstanding the credentials of the court-appointed rehabilitation receiver, the duty to determine the feasibility of the rehabilitation of the debtor rests with the court. While the court may consider the receiver's report favorably recommending the debtor's

2. Fastech Microassembly

	2009	2010	January 2011	February 2011
Total Current Assets	\$ 429,541	658,500	620,424	707,569
Total Current Liabilities	11,200,082	12,006,197	11,823,613	12,016,421

(see id. at 472)

3. Fastech Electronique

	2009	2010	January 2011	February 2011
Total Current Assets	\$ 800,834	1,038,679	1,063,228	1,315,983
Total Current Liabilities	11,455,938	11,419,679	11,588,710	11,881,270

(see id. at 476)

4. Fastech Properties

	2009	2010	January 2011	February 2011
Total Current Assets	\$ 48,954	102,621	108,702	89,275
Total Current Liabilities	504,457	571,224	471,104	373,247

(see id. at 479).

¹⁰¹ See *rollo*, Vol. II, pp. 782-783.

¹⁰² See *rollo*, Vol. III, p. 1198.

¹⁰³ See Section 12, Rule 3 of the 2008 Rules.

rehabilitation, it is not bound thereby if, in its judgment, the debtor's rehabilitation is not feasible.

The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life, but also to allow creditors to be paid their claims from its earnings when so rehabilitated. Hence, the remedy must be accorded only after a judicious regard of all stakeholders' interests; it is not a one-sided tool that may be graciously invoked to escape every position of distress.¹⁰⁴ Thus, the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets, and goals; and (c) speculative capital infusion or complete lack thereof for the execution of the business plan,¹⁰⁵ as in this case.

VI.

In view of all the foregoing, the Court is therefore constrained to grant the instant petition, notwithstanding the preliminary technical error as above-discussed. A distressed corporation should not be rehabilitated when the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that it may be revived, to the detriment of its numerous stakeholders which include not only the corporation's creditors but also the public at large. In *Bank of the Philippine Islands*:¹⁰⁶

Recognizing the volatile nature of every business, the rules on corporate rehabilitation have been crafted in order to give companies sufficient leeway to deal with debilitating financial predicaments in the hope of restoring or reaching a sustainable operating form if only to best accommodate the various interests of all its stakeholders, may it be the corporation's stockholders, its creditors, and even the general public.¹⁰⁷

Thus, the higher interest of substantial justice will be better subserved by the reversal of the CA Decision. Since the rehabilitation petition should not have been granted in the first place, it is of no moment that the Rehabilitation Plan is currently under implementation. While payments in accordance with the Rehabilitation Plan were already made, the same were only possible because of the financial reprieves and protracted payment schedule accorded to respondents, which, as above-intimated, only works at the expense of the creditors and ultimately, do not meet the true purpose of rehabilitation.

¹⁰⁴ See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, supra note 78, at 513.


¹⁰⁵ *Wonder Book Corporation v. Philippine Bank of Communications*, 691 Phil. 83, 95 (2012).

¹⁰⁶ Supra note 92.


¹⁰⁷ Id. at 446.


WHEREFORE, the petition is **GRANTED**. The Decision dated September 28, 2012 and the Resolution dated March 5, 2013 of the Court of Appeals in CA-G.R. SP No. 122836 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Joint Petition for corporate rehabilitation filed by respondents Fastech Synergy Philippines, Inc. (formerly First Asia System Technology, Inc.), Fastech Microassembly & Test, Inc., Fastech Electronique, Inc., and Fastech Properties, Inc., before the Regional Trial Court of Makati City, Branch 149 in SP Case No. M-7130 is **DISMISSED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
 Chief Justice
 Chairperson



TERESITA J. LEONARDO-DE CASTRO
 Associate Justice


LUCAS P. BERSAMIN
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
 Chief Justice