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BIR's violation of the Rehabilitation Court's Commencement Order

There are instances where a corporation, during its lifetime, experiences financial difficulties. In the occasion that it is unable to meet its obligations when they become due, specifically, when its liabilities are more than its assets, it has the option of undergoing corporate rehabilitation instead of completely shutting down its operations.

Rehabilitation, as defined in Republic Act (RA) 10142, pertains to the restoration of the debtor corporation to a condition of successful operation and solvency. The law requires, however, that its continuance of operation is economically feasible, and its creditors can recover by way of the present value of the payments projected in the rehabilitation plan. During the rehabilitation, the corporation will be allowed to recuperate by putting "on hold" all collections of its liabilities and, as an incident thereof, the Rehabilitation Court may issue a Commencement Order, which includes a Stay or Suspension Order. A Stay or Suspension Order suspends all actions or proceedings, in court or otherwise, for the enforcement of claims against the distressed company. The question now arises as to whether or not the Commencement Order includes the collections by the government for taxes.

RA 10142 provides that a claim against the distressed company, which shall be suspended by the issuance of a Commencement Order, includes all claims of the government, whether national or local, including taxes, tariffs and Customs duties. However, the Bureau of Internal Revenue (BIR) is not without remedy for any taxes due, as it may still submit its claims to the Rehabilitation Court for proper consideration so that they may participate in the proceedings.

But what if the Bureau, instead of submitting its claims to the Rehabilitation Court, issues a Notice of Informal Conference and, subsequently, a Formal Letter of Demand? How should the distressed corporation treat the assessment? The case of *Bureau of Internal Revenue, et. al. v. Lepanto Ceramics Inc.* (GR 224764) provides illumination.

In the above mentioned case, the Supreme Court held that RA 10142 is very clear in stating that “attempts to seek legal or other resource against the distressed corporation shall be sufficient to support a finding of indirect contempt of court”. Thus, when the Bureau issued the Notice of Informal Conference and the Formal Letter of Demand despite the written reminder coming from the Corporation’s Receiver of the pendency of rehabilitation proceedings and the issuance of the Commencement Order, its acts were held to be in clear defiance of the Commencement Order and constitute indirect contempt of court.

Therefore, while it is said that the power of taxation is plenary in nature, as it is regarded as the lifeblood of the government, the Supreme Court, on several occasions, opined that, despite its inevitability and indispensability, it is a requirement in all democratic regimes that it should be exercised reasonably and in accordance with the prescribed procedure.

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