
Re: Cease and Desist Order (CDO) issued by NCIP MIMAROPA

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17 August 2023

MINES AND GEOSCIENCES BUREAU**CENTRAL OFFICE**MGB Compound, North Avenue
Diliman, Quezon City**To: Atty. Danilo U. Uykieng**

OIC Director

central@mgb.com.ph**Re: Cease and Desist Order (CDO) issued by NCIP MIMAROPA**

Dear Atty. Uykieng:

We refer to the undated Cease and Desist Order (CDO) issued by Regional Director Dr. Marie Grace T. Pascua, CESO III in relation to the captioned matter, a copy of which is hereto attached as Annex A for easy reference.

I. Background

The CDO, received on August 16, 2023, directed Celestial Nickel Mining Exploration Corporation (CNMEC) and Ipilan Nickel Corporation (Ipilan), "to immediately cease and desist from further operating its nickel ore mining operations," giving them five (5) days "to wind up operation and install safety protocols."

The immediate issuance of the CDO by the Regional Director, citing an alleged deficiency in Ipilan's Certificate Precondition (CP), came as a surprise. Ipilan has a fruitful partnership at present with the indigenous community, and exerted sincere efforts to address royalty concerns in consultations with NCIP.

To recall, while not explicitly bound by the IPRA, in 2006, CNMEC engaged with and secured the free and prior informed consent of the Palaw'an Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs). The process resulted in the execution of a Memorandum of Agreement (MOA) signed on 18 December 2008. Building on this precedent, Ipilan and the Palaw'an IPs/ICCs solidified their commitment through a second MOA on 1 September 2022. These agreements were meticulously administered by the NCIP, ensuring the free and prior informed consent of the indigenous peoples (IPs) to the company's existing operations and its future MPSA renewal in 2025.

II. Ipilan intends to exhaust all available legal remedies

While the CDO mentions that the Provincial Office of the NCIP may secure the help of the Mines and Geosciences Bureau, among others, to enforce the same, please be informed that Ipilan intends to assail the issuance of the CDO by way of a Motion for Reconsideration (MR) to the Regional Hearing Office under Section 33, or a Memorandum of Appeal to the Regional Hearing Office under Section 37 of NCIP Administrative Order No. 1, Series of 2018 (NCIP Rules of Procedure). Ipilan commits to furnish MGB and other relevant offices of its filed Motion or Appeal.

III. The NCIP has no jurisdiction to issue a CDO to a non-IP member

In its MR/Appeal, Ipilan will raise, among others, that NCIP does not have jurisdiction to issue a Cease and Desist Order against a private company that does not belong to the ICC/IP, to halt its legitimate mining operations pursuant to the landmark decisions of the Supreme Court in *Unduran v. Aberasturi*¹ and *Santos v. Gabaen*,² where it was clarified that Section 66 of the IPRA should not be read to grant the NCIP blanket authority to address all disputes related to ICC/IP rights. The Court explained that the NCIP's jurisdiction under the IPRA should be limited to cases between parties from

the same Indigenous Peoples (IPs) group and should not extend to cases when one of the parties does not belong to any IP group, as in the case of Ipilan. Thus, the Court emphasized that disputes arising between IPs and non-IPs fall within the jurisdiction of proper courts of justice, and are outside of the limited jurisdiction granted to NCIP.

IV. The CDO is not yet final and executory

Ipilan also respectfully submits that, the timely filing of the MR/Appeal will stay the execution of the CDO and prevent the same from attaining finality.

First, pursuant to Chapter IX, Section 68 of Republic Act No. 8371, it is only "upon expiration of the period provided, and no appeal is perfected" that a writ of execution may be issued, requiring the sheriff or officer "to execute final decisions, orders, or awards of the Regional Hearing Officer of the NCIP."

The NCIP Rules of Procedure, too, is clear, and provides in Rule VIII, Sections 34 and 35 that: (1) a judgment rendered by the RHO becomes final and executory "upon lapse of fifteen (15) days from receipt of all parties and/or their counsel/s of the decision, award, or order denying the motion for reconsideration, and there is no appeal;" and (2) "only judgments, decisions, or final orders that finally dispose of the case shall be the subject of execution as a matter of right."

Stated otherwise, before an order, such as the subject CDO, becomes executory, the party concerned should be given the opportunity to file a motion for reconsideration, as well as an appeal.

Similarly, Rule IX, Section 4 of Administrative Order No. 1, Series of 1998 categorically provides:

Section 4. Execution of Decisions, Awards, and Orders. Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative, or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Officer of the NCIP.

Book VII, Chapter 3, Section 15 of the Administrative Code also states that the decision of agencies shall only "become final and executory fifteen days after the receipt of the copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review if proper, has been perfected."

Chapter 4, Section 20 of Book VII complements this rule by providing that administrative appeals may be perfected within 15 days from receipt of the decision complained of or within 15 days from the denial of a timely filed Motion for Reconsideration. Corollary, the filing of an "appeal shall stay the decision appealed from unless otherwise provided by law, or the appellate agency directs execution pending appeal, as it may deem just, considering the nature and circumstances of the case."

As can be gathered from the provisions above, the party concerned, Ipilan, should be given the opportunity to file its motion for reconsideration and its appeal, as well, before the CDO can be executed. As stated above, Ipilan intends to pursue and exhaust all available remedies under the law and rules, and, in the meantime, respectfully requests from your good office that Ipilan be given full opportunity to do so, without any threat of hasty, premature and unlawful execution of the CDO.

Very truly yours,

**SIGUION-REYNA MONTECILLO
& ONGSLAKO**

By:

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