Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

IN THE MATTER OF:
ORGANICO AGRIBUSINESS VENTURES CORP.

SEC EB Case No. 08-19-462

x---x

D E C I S I O N

This resolves the **APPEAL MEMORANDUM** (Appeal) dated 13 August 2019 filed by Organico Agribusiness Ventures Corp. (Organico) to the Commission En Banc (En Banc) thru the Office of the General Counsel (OGC) on 16 August 2019. The Appeal prays that the En Banc reverses and sets aside the denial of Organico's Motion for Reconsideration (MR) to the Enforcement and Investor Protection Department's (EIPD) Order of Revocation (Order of Revocation) dated 31 May 2019. The Order of Revocation revoked Organico's certificate of registration.

ANTECENDENT FACTS

Organico, through its counsel, alleges that on 5 July 2019 it has filed the MR on the Order of Revocation of the EIPD, which is well within the 15-day period provided by the 2016 Rules of Procedure of the Securities and Exchange Commission (2016 Rules). Organico's counsel alleges, that it was on honest belief and as intimidated to them by a representative of Organico, that the Order of Revocation was received on 20 June 2019.

The MR was denied on the ground that the same was filed out of time because Organico's former counsel, who did not make a formal withdrawal from the case, received the Order of Revocation dated 31 May 2019 on 11 June 2019.

The crux of Organico's argument is that technical rules should not be used to frustrate the ends of justice. Organico prays for the relaxation of the rules because a stringent application of such may result to manifest injustice.

Organico argues, "what is at stake is the substantial right of the Appellant and its intention to return the sales proceeds of its buyers and clients"[1] thus it "humbly submit (sic) that the Honorable Office resolves to set aside (sic) procedural mistake and give due course to the APPEAL filed."[2]

Organico, citing several jurisprudence allowing the relaxation of the rules, prays that the same be applied to it to prevent manifest injustice.

The EIPD, on its **COMMENT (To the Appeal Memorandum by Organico Agribusiness Ventures Corp.)**, alleges that the Order of Revocation was properly served on 11 June 2019; hence, any MR on it must be filed within fifteen (15) days or until 26 June 2019.

Accordingly, upon the lapse of the period to file an MR, "the Order revoking the primary registration of Organico became **FINAL** and **EXECUTORY** and the **ORDER OF REVOCATION was entered in the Book of Entries of Final Judgements of the EIPD on 5 July 2019.**"[3]

The EIPD argues that the MR was filed out of time on 5 July 2019 considering that "all the process for the revocation of the primary registration of Organico was already executed and completed."[4] Further, the EIPD argues that while technical rules can be set aside in the interest of substantial justice, such relaxation finds no application in Organico's case.

The revocation of Organico's corporate registration is just and proper because it was made in the furtherance of the Commission's mandate to protect the interest of investors. The EIPD, after notice and hearing, revoked Organico's corporate registration so that Organico can no longer use it to the prejudice of the investing public.

The EIPD also contends that setting aside the Order of Revocation for purposes of Organico's intention to return the sales proceeds of its buyers and clients can be done without reinstating Organico's corporate registration. For the EIPD, Organico has three (3) years "to settle and close its business affairs, dispose of and convey its property, and distribute its assets, but not to continue the business for which it was established."[5]

The EIPD further contends that in fact a Cease and Desist Order was already issued against Organico based on the finding that "Organico's acts, if

---

[1] Paragraph 8, page 4 of the Appeal Memorandum.
[2] *Ibid.*
[3] Paragraph 2, page 1 of the Comment.
[4] Paragraph 3, page 1 of the Comment.
[5] Paragraph 9, page 2 of the Comment.

not restrained will likely cause grave or irreparable injury to the investing public."[6]

The EIPD prays that the present appeal be dismissed.

ISSUE

Whether or not the Appeal of Organico is meritorious?

DISCUSSION

The En Banc finds the Appeal unmeritorious and hereby denies the same.

Part IV, Rule II, Section 2-4 of the 2016 Rules provides that:

> "(a) If no appeal or motion for reconsideration is filed within the period fixed in these Rules or the Rules of Court, the decision. final order or resolution of the Commission En Banc, Special Hearing Panel or the Director of the Operating Department, as the case may be, ***shall become final and executory***. (emphasis and underscoring supplied)"

In the case of Mindanao Terminal and Brokerage Service, Inc. *versus* Court of Appeals,[7] the Supreme Court emphasized the legal effect of a judgement, order, or resolution that has become final and executory, thus:

> "It is basic that once a judgment becomes final, the prevailing party is entitled as a matter of right to a Writ of Execution, and the issuance thereof is the Court's ministerial duty, compellable by Mandamus. In fact, it has been fittingly said that "an execution is the fruit and end of the suit, and is very aptly called the life of the law.""

In the proceedings before the EIPD, Organico's counsel on record was Neumeran, Jayma and Associates, as evidenced by the fact that it moved for the lifting of the Advisory against Organico. Necessarily, EIPD served upon Neumeran, Jayma and Associates the Order of Revocation which the latter duly received on 11 June 2019 in its capacity as the counsel of record of Organico.[8]

It bears stressing that records of the instant case reveal that the ***Order of Revocation was served on 11 June 2019 to Organico's counsel on record***

---

[6] Paragraph 10, page 2 of the Comment.
[7] G.R. No. 163286, 22 August 2012.
[8] Paragraph 6, of the Compliance of the EIPD filed on 17 June 2019.

and this fact was not disputed by Organico. Organico hinges its argument on several cases laid down by the Supreme Court which sanctioned the relaxation of the technical rules of procedure in the interest of substantial justice.

Relaxation of the rules however requires that it be invoked in "***proper cases and under justifiable causes and circumstances***".[9] "The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impurity."[10]

After a careful review, the En Banc finds that the present appeal is devoid of any justifiable reason which calls for the relaxation of the rules. Certainly the reason provided by Organico for its failure to timely file a motion for reconsideration i.e. that the same was served to Organico's previous counsel who did not make any withdrawal of appearance is ***not a justifiable cause***.

It has already been settled that "**when a party is represented by counsel of record, service of orders and notices must be made upon said attorney**; and **notice to the client and to any other lawyer, not the counsel of record, is <u>not notice in law</u>**".[11] Since the Order of Revocation was served upon Organico's counsel of record, the 15-day reglementary period within which to file an MR or appeal should be counted from 11 June 2019 and not on 20 June 2019, as claimed by Organico's representative.

Significantly, the Order of Revocation was served together with the Cease and Desist Order not only to Organico's counsel of record but also posted on Organico's principal place of business and was served to the residence of Anthony Butaslac by the EIPD.[12] SEC finds it strange that herein counsel, Beronque Law Office, was able to file the necessary pleading (Motion to Lift) on time using 11 June 2019 as the reckoning period to file the same. Now, Organico, through the same counsel is invoking that the Order of Revocation was received on 20 June 2019, to justify the belated filing of its MR. The En Banc cannot sustain such argument. ***Considering that at the time the MR was received by the EIPD, the period to file the same has already elapsed the Order of Revocation has already become FINAL and EXECUTORY by operation of law.***

---

[9] Landbank of the Philippines v. The Court of Appeals, G.R. No. 221636, 11 July 2016 citing the case of Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg, G.R. No. 198357, December 10, 2012, 687 SCRA 643
[10] Building Care Corp. *versus* Myrna Macaraeg, G.R. No. 198357, December 10, 2012.
[11] Francis Cervantes v. City Service Corporation and Valentin Prieto, Jr., G.R. No. 191616, April 18, 2016 citing *Soriano v. Soriano*, 558 Phil. 627
[12] Compliance of the EIPD filed on 17 June 2019

The Supreme Court has also emphasized that a bare allegation that the interest of substantial justice will be served and promoted without evidence to support the same will not suffice to justify the relaxation of established rules of procedure, thus:

> **"The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel us to suspend procedural rules**. ***Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights***. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction." (emphasis and underscoring supplied)[13]

It is significant to note that as correctly pointed out by the EIPD, ***Section 139 of the Revised Corporation Code (RCC)[14] provides for the mechanism where Organico can return the proceeds of the sale to its buyers and clients*** without the necessity of reversing EIPD's Order of Revocation. ***Organico, as per the provisions of the RCC, is given a period of three years to wind-up its affairs. Included in this period is the returning of the proceeds of the sale to its buyers and clients.***

Furthermore, the En Banc does not see any reason to disturb the findings of fact of the EIPD in the absence of proof that serious errors on its part were made.[15] The EIPD was able to establish by substantial evidence that Organico's corporate registration should be revoked for serious misrepresentation on what it can do and is doing to the damage and prejudice of the public. This is also substantiated by the fact that the CDO issued against Organico for engaging in the unauthorized offering for sale and selling of securities in the form of investment contracts was already made permanent by the En Banc.

Suffice it to say that even if the technical rules of procedure be relaxed, Organico's contention will necessarily fail. ***Substantial evidence proves that it has engaged in ultra vires acts to the damage and prejudice of the investing public which warrants the revocation of its corporate registration so that it can no longer use it to the damage of the general public***.

---

[13] Landbank of the Philippines v. The Court of Appeals, G.R. No. 221636, 11 July 2016 citing the case of Tan v. Antazo, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 346

[14] SEC. 139. *Corporate Liquidation.* – Except for banks, which shall be covered by the applicable provisions of Republic Act No. 7653, otherwise known as the "New Central Bank Act", as amended, and Republic Act No. 3591, otherwise known as the Philippine Deposit Insurance Corporation Charter, as amended, every corporation whose charter expires pursuant to its articles of incorporation, is annulled by forfeiture, or whose *corporate existence is terminated in any other manner*, shall nevertheless *remain as a body corporate for three (3) years after the effective date of dissolution*, for the purpose of prosecuting and defending suits by or against it and *enabling it to settle and close its affairs*, *dispose of and convey its property*, and *distribute its assets*, but <u>not for the purpose of continuing the business for which it was established</u>. (emphasis and underscoring supplied). xxx

[15] Part V, Rule III, Section 3-11 of the 2016 Rules.

WHEREFORE, premises considered, the **APPEAL MEMORANDUM** filed by Organico is hereby **DENIED**. The **ORDER OF REVOCATION** of the EIPD is hereby **AFFIRMED** for having attained finality and the **CERTIFICATE OF CORPORATE REGISTRATION OF ORGANICO AGRIBUSINESS** is hereby **REVOKED**.

Let a copy of this **DECISION** be posted in the Commission's website and a copy be furnished to the Company Registration and Monitoring Department for their information and appropriate action.

SO ORDERED.
Pasay City, Philippines; 5 November 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

***KARLO S. BELLO**
Commissioner

*On Official Business