Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

COMMISSION *EN BANC*

IN THE MATTER OF:

THE REVOCATION OF THE CERTIFCATE OF APPROVAL OF INCREASE OF CAPITAL STOCK OF VICTORIAS MILLING COMPANY, INC.

SEC En Banc Case No. 12-12-275

For:

Lifting of Revocation Order, dated 26 March 2009

VICTORIAS MILLING COMPANY, INC.,

Petitioner.

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DECISION

This is an original action seeking to lift the Revocation Order, dated 26 March 2009, issued by the Company Registration and Monitoring Department (CRMD) of the SEC. Petitioner invokes the jurisdiction of the Commission *En Banc* by alleging that it has no available appeal, or any plain, speedy and adequate remedy in the ordinary course of law other than this petition. Hence, pursuant to Section 12-1 of the 2006 Rules of Procedure of the SEC, the Commission *En Banc* hereby takes cognizance of this case as a Petition for Review on Certiorari.

BACKGROUND OF THE CASE

Petitioner Victorias Milling Company, Inc. ("VMC") is a stock corporation registered with the Commission on 7 May 1919, under SEC Registration No. PW-364, with principal office located at Victorias City, Negros Occidental.

On 2 October 2002, the Commission approved the increase of authorized capital stock of VMC, via conversion of liabilities, from P495,957,670.00, divided into 495,957,670 shares with the par value of P1.00 each to P2,563,035,708.00, divided into 2,563,035,708 shares with the par value of PhP1.00 each. The increase of capital stock was implemented in accordance with the Original Rehabilitation Plan, the First Addendum to the Rehabilitation Plan, dated 5 February 1999, the Second Amendment to the Rehabilitation Plan, dated 22 July 1999, and the Alternative Rehabilitation Plan of the company, approved by the SEC per Orders dated 2 June

1999, 17 and 19 August 1999, 29 November 2000, Omnibus Order dated 23 August 2001, and affirmed by the Court of Appeals in its Decision dated 11 February 2002.

In this particular increase of capital stock, and in consonance with the Debt Restructuring Agreement, the unsecured creditors were required to proportionately convert into equity all unpaid interest and part of their outstanding principal loan to VMC in order that the PhP1.1B worth of debt is converted into equity. When the aforesaid increase of capital stock was approved on 2 October 2002, the required deeds of assignment which should convert the liabilities into equity had not yet been submitted to the Company Registration and Monitoring Department (CRMD).

Hence, the Financial Analysis and Audit Division (FAAD) of the CRMD recommended approval of the increase, provided that the 1,100,000,000 shares to be issued as a result of the conversion of the loans into equity shall be held in escrow until the deeds of assignment to be executed by the assignors-creditors of VMC are submitted within sixty (60) days from the date of approval of the application.

Pursuant thereto, the CRMD, in a letter dated October 2, 2002, directed VMC to submit the duly executed Deeds of Assignment by the company creditors evidencing their assignment of a portion of their unpaid loans as payment for subscription to the increase in VMC shares of stock be submitted within sixty (60) days from the issuance of the certificate of approval. The letter also reminded the corporation that the non-submission of the documents, within the prescribed period, after due notice and hearing, shall be a sufficient ground for the revocation of the related application approved by the Commission, or for the institution of appropriate action deem fit under the circumstances. This directive is pursuant to the Guidelines Covering the Use of Properties that Require Ownership Registration as Paid Up Capital of Corporations adopted by the Commission on 15 November 1994 ("15 November 1994 SEC Guidelines").

VMC requested several extensions of time through numerous letter- requests to comply with its undertaking to submit the said deeds of assignments. Each time, the CRMD granted a 60-day period to comply with the condition. Records on file show the series of the said letters filed by VMC asking for extension of time and the corresponding action of CRMD, to wit:

	VMC Request	CRMD Reply
1.	30 January 2006	3 February 2006
2.	4 April 2006	10 April 2006
3.	2 May 2006	15 May 2006
4.	14 July 2006	2 August 2006
5.	18 October 2006	8 November 2006
6.	5 December 2006	14 December 2006
7.	21 May 2007	1 June 2007
8.	18 July 2007	24 August 2007
9.	11 September 2007	6 November 2007
10.	5 November 2007	20 December 2007
11.	8 January 2008	25 January 2008

12.	3 March 2008	13 March 2008
13.	19 May 2008	3 June 2008
14.	14 July 2008	30 July 2008
15.	9 September 2008	**<u>17 September 2008</u>**
16.	6 November 2008	
17.	7 January 2009	
18.	6 March 2009	

It must be noted that the CRMD, in its reply dated 17 September 2008, granted VMC a <u>final sixty-day</u> period to comply with the requirement. Records do not show that the subsequent requests for extension, dated 6 November 2008, 7 January 2009 and 6 March 2009, were answered by CRMD.

On 26 March 2009, the CRMD issued an Order revoking the Certificate of Approval of Increase of Capital Stock of VMC for its failure to comply with the conditions set forth in the 15 November 1994 SEC Guidelines. Petitioner came to know of the revocation order only on 23 July 2012, when it had a meeting with then Director Benito A. Cataran, on another matter.

<u>ISSUES</u>

In essence, the sole issue before the Commission is whether Petitioner's right to due process was violated and, as a consequence thereof, the Revocation Order, dated 26 March 2009, should be set aside.

<u>DECISION</u>

Records show that VMC repeatedly requested for extension of time to comply with the submission of the Deeds of Assignments pursuant to the directive of 2 October 2002 to submit the same as a condition subsequent after the approval of the increase of its authorized capital stock. It appears that the deeds of assignments were submitted on various dates. As stated in VMC's letter-request for extension, only two (2) remaining creditors have yet to execute the Deeds of Assignment as of 30 January 2006.

VMC was very consistent in its letter-requests for extension, that its inability to submit the deeds of assignment was due to the pending legal issues peculiar to the affected creditors, which were beyond its control. Specifically, it was consistent in its representation that it was Multinational Investment Bancorporation ("Multinational") that was apparently causing the delay. As of 14 July 2006, only "Multinational" remained as an unsecured creditor of VMC which had yet to execute the said deed of assignment. Further, it was also pointed out that another matter causing the delay was the planned substitution of "Multinational" by Philippine Islands Corporation for Tourism Development, Inc. ("PICTD").

CRMD had been lenient in granting VMC the extension of time; however, by issuing the final extension letter of 17 September 2008, it also failed to consider that VMC's delay in complying with the directive was due to the involvement of third parties in the execution of the deeds of assignment. Moreover, VMC had not been remiss in its obligation in that it regularly updated the Commission of its submission and requested formally for more time to comply with the directive.

The aforementioned letter of 17 September 2008 granting a final extension of time to VMC was forwarded to the former address of the corporation at 9126 Sultana Street corner Honradez Street, Barangay Olympia, Makati City. As early as 14 January 2008, it had already notified the SEC of the transfer of its business office to its current address, 348 J. Nepomuceno Street, San Miguel District, Manila. Despite thereof, the CRMD sent the 17 September 2008 letter to VMC's old address.

More importantly, VMC did not receive a copy of the Revocation Order, dated 26 March 2009, for the same reason that it was sent to its old business address. In fact, CRMD was able to obtain the said Revocation Order supposedly sent to VMC from the SEC archives.

Under Section 9, Rule 13 of the 1997 Rules of Civil Procedure, judgments, final orders or resolutions shall be served either personally or by registered mail. Section 10 of the same rule consider service by registered mail as complete upon actual receipt of the addressee or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier. VMC never received a copy of the Revocation Order. Thus, service of said Order unto VMC is not complete and, consequently, said Order cannot bind VMC.

Aside from the fact that it did not receive the Order of Revocation, VMC was also deprived of notice and hearing prior to the cancellation of the increase. The 15 August 1979 Guidelines adopted by the Commission provides that, "the non-submission of the documents above, within the prescribed period, <u>after due notice and hearing</u>, shall be sufficient ground for the revocation of the related application…".

Is absence of notice and hearing tantamount to deprivation of due process? The very essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. What is offensive to due process is the denial of the opportunity to be heard.

As already pointed out earlier, in fairness to CRMD, the company was not totally deprived of due process for it was given at least fourteen (14) extension of time to comply with condition subsequent or the submission of the required deeds of assignments. The CRMD found the reasons laid down by VMC justifiable to merit the granting of series of requests for extension of time. We must take into account that VMC was given an initial period of sixty (60) days to comply, which were extended for the same length of time every time the request was granted.

All this notwithstanding, unfortunately, the CRMD could have seen to it that proper notice and hearing should have been afforded VMC before commencing the revocation proceedings against the controversial increase of capital stock. VMC was not informed of the fact that the revocation of its increase was already being contemplated when the last grant of extension was given to it.

More importantly, the Revocation Order was prematurely issued on 26 March 2009. In its letter dated 6 March 2009, VMC requested for an additional sixty (60) days from 15 March 2009, or until 14 May 2009, within which to submit the deeds of assignment. In the Revocation Order itself, the CRMD admitted that it has granted all of VMC's requests for extension, including the one dated 6 March 2009. The Revocation Order, having been issued prematurely, must be nullified.

WHEREFORE, premises considered, the Revocation Order of 26 March 2009 is hereby **LIFTED** and the case is remanded to the CRMD to determine whether VMC has complied with the directive in the CRMD letter, dated 2 October 2002, pursuant to the Guidelines Covering the Use of Properties that Require Ownership Registration as Paid Up Capital of Corporations adopted by the Commission on 15 November 1994.

SO ORDERED.

Mandaluyong City, 20 December 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA F. IBE
Commissioner