PHILIPPINE CARPET MANUFACTURING CORPORATION,
Appellant,

-versus- **SEC En Banc Case No. 03-18-440**

COMPANY REGISTRATION AND MONITORING DEPARMENT,
Appellee.

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DECISION

Before this Commission is the *Memorandum of Appeal* dated and filed on 09 March 2018 by Appellant Philippine Carpet Manufacturing Corporation ("PCMC") assailing the Letter-Decision dated 05 January 2018 (the "Assailed Decision") issued by the Company Registration and Monitoring Department ("CRMD") denying PCMC's Application for amendment of its Articles of Incorporation (AoI) to extend its corporate term.

RELEVANT FACTS

On 25 May 1965, Appellant PCMC was registered with the Commission under Company Registration No. 27254 for a term of fifty (50) years or until 25 May 2015.

On 28 January 2015, PCMC filed with the Commission, through the CRMD, an Application to amend its AoI to reflect its specific principal office address. However, upon initial evaluation, the CRMD found that there was a need for PCMC to indicate in its 2014 GIS the shareholdings of Lionel T. Gopez and James Howard Kaplan, and to "*clarify capital structure GIS page 2 and total paid-up in page 6*"[1]. Hence, the application documents of PCMC were returned to enable it to address the initial findings of, and comply with the requirements pointed out by CRMD.

On 12 February 2015, PCMC resubmitted its application which was again found to be deficient after the CRMD noted that there was an excess of its total paid up capital vis-à-vis the total subscribed capital.

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[1] Par. 3 (page 6) of the Appeal

To reconcile the discrepancies, a complete audit was carried out by the PCMC's Finance Department which took several months to complete.

While the audit was ongoing, a meeting was held on 08 April 2015 where the Board of Directors and stockholders of PCMC approved the extension of its corporate term for another fifty (50) years reckoned from 25 May 2015.[2]

In view of the unresolved discrepancies in PCMC's 2014 GIS and the ongoing audit, PCMC was thus precluded from filing its application to amend its AoI to extend its corporate term.

On July 2015, PCMC submitted a revised list of stockholders and their respective shareholdings which the CRMD refused to receive on the ground that its corporate term had already expired on 25 May 2015.[3]

On 6 November 2017, PCMC sent a letter to the CRMD requesting for the approval of its application for amendment of AoI to effect the change of its principal address and the extension of its corporate term for another fifty (50) years.

On 5 January 2018, Dir. Ferdinand B. Sales of CRMD issued the Assailed Decision denying PCMC's application for amendment of its AoI extending its corporate term for fifty (50) years.

Hence, the instant *Appeal.*

ISSUE

Did the CRMD commit reversible error in denying PCMC's application for the amendment of its AoI to extend its corporate term which has already expired?

RULING

The issue presented in the instant case is not novel. PCMC comes to this Commission seeking confirmation of, and securing a categorical interpretation/ruling on the right of corporations to extend their corporate term, consistent with the intent of the Corporation Code[4] (now, the Revised Corporation Code[5]).

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[2] Minutes of Meeting of BOD (Annex F of the Memorandum of Appeal); Minutes of Meeting of Stockholders (Annex G); Certificate of Amendment of AoI (Annex H)
[3] CRMD Monitoring Sheet
[4] BP Blg. 68
[5] R.A. No. 11232

In its Appeal, PCMC maintained that the CRMD committed reversible error denying its application for amendment of its AoI to extend its corporate term, arguing that the Assailed Decision was contrary to SEC Resolution No. 222, Series of 2017 (Resolution No. 222) which adopted a policy of liberality in acting on applications involving the extension of corporate term. In support thereof, PCMC argued that while its application was filed after its corporate term had expired, it has already opted and decided to extend its term and its efforts in addressing the monitoring requirements relative to its 2014 GIS caused the delay in filing the said application. PCMC thus argued that consistent with the policy embodying the liberal approach which was also adopted by the Supreme Court in a number of cases, the Assailed Decision should be reversed and it should be allowed to file its application to amend is AoI to extend its corporate term.

The Commission finds merit in the Appeal and hereby grants the same.

Under Batas Pambansa Blg. 68 (the "Corporation Code") which was the law applicable when the instant case was filed, matters relating to corporate term and its extension(s) are provided in Section 11 which states:

> "A corporation shall exist for a period not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended. The corporate term as originally stated in the articles of incorporation may be extended for periods not exceeding fifty (50) years in any single instance by an amendment of the articles of incorporation, in accordance with this Code; Provided, That no extension can be made earlier than five (5) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission."

A careful reading of the afore-quoted provision will reveal a clear intent and policy of the law to recognize and allow the perpetual existence of corporations by successive renewal of their corporate term.

It should be emphasized that as early as 2000, the Commission already issued Resolution No. 35, Series of 2000 implementing a policy recognizing and allowing perpetual existence of corporations, consistent with the spirit and intent of Section 11 of the Corporation Code. In the said Resolution, **the Commission considered an application for amendment of the articles of incorporation extending the corporate term duly filed with it, even if the same was made after the corporate term has expired, provided that board approvals covering the same were done prior to the expiration**.

The Supreme Court would eventually come up with a categorical pronouncement in the case of *Company Registration and Monitoring Department v. Ching Bee Trading Corp.*[6] (the "Ching Bee Case") that

[6] G.R. No. 205291 (Notice), November 12, 2014.

perpetual existence of corporations is recognized and allowed under Section 11 of the Corporation Code, and that all that is required of corporations that are intent of extending their corporate terms is to secure the necessary board and shareholders' approvals prior to the expiration of the corporate term, to wit:

> "Nevertheless, corporate death may be avoided as the State practically allows the unlimited perpetuation of a corporation by operation of Section 11 of the Code."
>
> xxx xxx xxx
>
> Accordingly, for as long as the corporation opts to extend its term while it is still alive and during the period allowed by the Code, that is, the filing of the necessary requirements, the burden shifts to the SEC to review, approve or disapprove the same before the corporation breathes its last. If no approval is secured within that limited time, the fault would have to be on the part of the SEC." (Emphasis ours)

To ensure that the intent of, and principle embodied in Section 11 of the Corporation Code is implemented, Section 17 of the Corporation Code[7] categorically mandated the Commission provide corporations a reasonable time within which to rectify amendment documents to ensure that they comply with existing laws, rules and regulations, thus:

> "The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, That the Commission **shall** give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment." (Emphasis ours)

Applying the fundamental rule in statutory construction that every part of a statute must be interpreted with reference to the other parts thereof to implement the general intent of the law,[8] **this Commission holds that the intent of Section 11 in relation to Section 17 of the Corporation Code is to grant perpetual existence to corporations that clearly show intent to extend their corporate terms**. The foregoing finds support in the Ching Bee Case where the Court ruled that:

> "Under Section 17 of the Code, however, the SEC must give a reasonable time to an applicant within which to make the necessary corrections should there be objectionable portions in the amendment. As cited by the CA, a reasonable time is defined as so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having regard for the rights and possibility of loss, if any to the other."

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[7] now Section 16 of the Revised Corporation Code

[8] See PHILIPPINE INTERNATIONAL TRADING CORPORATION vs Commission on Audit, G.R. No. 183517, June 22, 2010

In the instant case, the records show that on 08 April 2015, PCMC called for and conducted a board and stockholders' meeting where the matter relating to the proposed amendment of its AoI extending its corporate term was presented, deliberated upon and approved. PCMC was thus clearly aware that its corporate term is about to expire, hence, it approved and carried out a corporate act required under the Corporation Code to extend its corporate term i.e. approve the amendment of its AoI extending its corporate term.

Moreover, the Commission notes that on 28 January 2015, PCMC filed an application to amend its AoI for the purpose of specifying its principal office address which was required under SEC Memorandum Circular (MC) No. 6, s. 2014. This application should be considered in the context of PCMC's intent to extend its corporate term, with the view of filing the appropriate application to that effect. Otherwise, it makes no sense for PCMC to comply with SEC MC No. 6, s. 2014 by amending its AoI to specifying its office address if it is not intent on continuing its business as a corporate entity. Unfortunately for PCMC, its earlier application which encountered challenges effectively prevented it from filing the more important application to effect the extension of its corporate term.

Given the circumstances attendant in the instant case, this Commission holds that PCMC has complied with all the requirements prescribed under the Corporation Code and applicable regulations that warrants the approval of its application for amendment of its AoI extending its corporate term. More importantly, the approval by the Board and the shareholders of the amendment of PCMC's AoI extending its corporate term prior to its expiration warrants the application of the policy of liberality which is sanctioned in the Ching Bee Case and the resolutions of this Commission.

Relative thereto, the doctrine in the case of *Hotel Enterprises of the Philippines, Inc. vs. Hon. Teresita Herbosa et al*[9]., where the Supreme Court sustained the ruling of the Court of Appeals, is instructive, thus:

> "We deem that the circumstances of the instant case allow for the relaxation of the strict application of law, in the interest of substantial justice. For one, ***the extension of its corporate term was already passed and agreed upon by all the directors and stockholders during the February 24, 2012 meeting prior to its expiration on July 30, 2012***.xxx. Moreover, despite the expiration of its corporate term, ***HEPI has not shown any intention to liquidate. Rather, it continues to operate*** xxx.
>
> Furthermore, this Court is not blind to the economic implications were We to disallow the continuation of HEPI's corporate existence. Currently, Midas employs hundreds of employees which stand to lose their gainful employment should it cease to operate.

[9] CA-G.R. SP No. 132339, December 2, 2014

> xxx, ***the Court cannot see any prejudice to the State or the general public if the petitioner is allowed to continue as a going concern.*** It being a legitimate business operating a hotel and casino. ***On the other hand, the cessation of its significant stakeholders such as its stockholders, employees and creditors.*** xxx" (Emphasis supplied)

Moreover, it bears emphasis that in Resolution No. 222, the Commission reaffirmed the intent of Section 11 of the Corporation Code recognizing and allowing perpetual existence of corporations, and implemented the policy of liberality consistent with the doctrine in the Ching Bee Case, thus:

> "RESOLVED, **To ADOPT as policy, in cases for extensions of corporate terms, the liberal approach adopted by the Supreme Court in its latest decisions in the cases of: CRMD and SEC En Banc versus Ching Bee Trading Corporation** (G.R. No. 205291, 12 November 2014) and 3-D Industries versus Northern Islands Company, Inc. (G.R. No. 194891, 9 January 2017). The En Banc is aware that the very recent 2017 decision is not yet final. However, considering that the legal principle enunciated therein is consistent with the current Commission's thrust to adopt policies that 'promote ease of doing business' (i.e. the Corporation Coded amendment on perpetual corporate term pending in Congress), the En Banc similarly espouses the liberal approach adopted by the Supreme Court. All previous pronouncements, policies or rules inconsistent with this latest policy shall be deemed repealed, revoked, or amended.
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> RESOLVED FURTHER, That based on aforementioned cases, and subject to compliance with the pertinent Corporation Code provisions, <u>all corporations similarly situated in relation to the matter of the expiration of its term of existence, shall be ALLOWED to FILE their applications to amend their articles of incorporation to extend their corporate term</u> before the Company Registration and Monitoring Department, which shall present it for approval of the Commission En Banc so as to continue as going concern, provided that (1) <u>The intent to continue operations is supported by approvals given by the Board of Stockholders **prior** to the expiration of the term, as certified in written document</u>; (2) <u>the application is filed before the CRMD</u> and all requirements of the latter are satisfied; and (3) all appropriate filling fees paid for." (Emphasis supplied)

In the Assailed Decision, the CRMD denied the request for approval of the application for amendment of PCMC's AoI to extend its corporate term on the ground that the latter cannot be considered as "*corporations similarly situated*" contemplated in Resolution No. 222, as PCMC did not present its Application for amendment to extend its term before the expiration of its corporate existence.

We do not agree with CRMD.

The factual circumstances in the instant case militate against the decision of CRMD to refuse receipt of PCMC's amendment documents which on its face showed a clear intent to extend its corporate life. PCMC presented Resolutions showing that its Board and shareholders approved the extension of its corporate term way before it expired. Given the clear intent of Section 11 of the Corporation Code, and the applicable regulations, it behooves the CRMD to have considered the policy of the Commission[10] to grant perpetual existence to corporations that clearly opts to do so. The CRMD should have acted on the matter with liberality and should have exercised its regulatory power to promote/further the continued existence of PCMC. The case of *Isip v. Municipal Council of Cabiao, Nueva Ecija*[11] is instructive, to wit:

> "If we must choose between a strict and literal interpretation of the law and a liberal and reasonable interpretation of the law, if we must choose between the letter of the law which "killeth" and the spirit of the law which "giveth life", can anyone doubt what our decision will be? We adopt that construction which will produce the most beneficial results."

In February 2019, the policy under Section 11 of the Corporation Code recognizing and allowing the perpetual existence of corporations (by successive renewal of its corporate term) was made explicit in Section 11 of Republic Act No. 11232 otherwise known as the Revised Corporation Code (RCC) which provides:

> "A corporation shall have perpetual existence unless its articles of incorporation provides otherwise.
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> Corporations with certificates of incorporation issued prior to the effectivity of this Code and which continue to exist shall have perpetual existence, unless the corporation, upon a vote of its stockholders representing a majority of its articles of incorporation: *Provided,* That any change in the corporate right of dissenting stockholders in accordance with the provisions of this Code."

With the enactment of the RCC, all doubts relating to the policy which recognized, sanctioned and granted perpetual existence to corporations under Section 11 of the Corporation Code were thus cleared and settled once and for all.

Moreover, insofar as the afore-quoted provision is concerned, the RCC can be considered as a curative statute because it is intended to enable the Commission to carry out and recognize the policy and intent of giving perpetual existence to corporations sans the act of amending the articles of incorporation.[12] Before the RCC was enacted, the corporate term of a number of corporations have expired because of inadvertence, oversight or misapprehension of the law; these corporations were denied extension notwithstanding presentation of documents which showed intent to extend corporate term. Section 11 of the RCC has addressed this evil. The doctrine

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[10] Embodied in Resolution 35-2000.
[11] G.R. No. L-18947 April 29, 1922.
[12] Philippine Health Insurance Corp. v. Commission on Audit, G.R. No. 222710 (Resolution), [September 10, 2019].

in the Ching Bee Case should be applied to the instant case to implement the mandate of Section 11 i.e. to grant perpetual existence to PCMC which has clearly manifested an intent to continue its business.

WHEREFORE, premises considered, the *Memorandum of Appeal* of PCMC is hereby **GRANTED**. The Letter-Ruling of the CRMD dated 05 January 2018 is hereby **REVERSED AND SET ASIDE.** The CRMD is hereby directed to accept the Application for amendment of Philippine Carpet Manufacturing Corporation's Articles of Incorporation to extend its corporate term and change its principal office address and to act on the same based on applicable laws, rules and regulations.

SO ORDERED.

Pasay City, Philippines; 9 November 2021.

EMILIO B. AQUINO
Chairperson

*On official leave
EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner