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

**In Re:**

**Petition for Dissolution and/ Revocation of Certificate of Registration of NEXT MOBILE, INC.**

**SEC En Banc Case No. 07-10-207**

**ANTONIO M. URERA,**
*Appellant,*

**ENFORCEMENT AND PROSECUTION DEPARTMENT,**
*Appellee.*

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## DECISION

For consideration of the Commission *En Banc* is the appeal filed by Antonio M. Urera ("Appellant") on 09 July 2010, from a decision of the Enforcement and Prosecution Department ("EPD"/ ("Appellee") of the Commission denying his Petition for Dissolution and/or Revocation of the Certificate of Registration of NEXT MOBILE, INC. ("NMI") for violation of Sections 6, 38, and 50 of the Corporation Code[1] (the "Code").

## FACTS OF THE CASE

NMI is a domestic stock corporation registered with the Commission on 05 October 1987 under SEC Reg. No. 0000144973, in the name of Satellite Paging Systems Philippines, Inc. On 08 August 1994, its name was changed to Infocom Communications Network, Inc.; on 15 October 1999, this was again changed to Nextel Communications Philippines, Inc., until finally, on 12 February 2003, its name was changed to its present name of NEXT MOBILE, INC.[2] Its primary purpose is to engage in the telecommunications industry and its current address is Next Mobile Building 2244 España Boulevard, Sampaloc, Manila.[3]

Appellant filed a petition with the Company Registration and Monitoring Department ("CRMD") of the Commission dated 10 September 2009 praying, after

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[1] Batas Pambansa Blg. 68 (1980).
[2] Articles of Incorporation dated 5 October 1987; Certificate of Filing of Amended Articles of Incorporation dated 08 August 1994, 15 October 1999, 12 February 2003, Amending Article I thereof.
[3] General Information Sheet filed on 04 March 2011.

notice and hearing, that the NMI be dissolved and/ or its certificate of registration be revoked. He believes that NMI should be penalized for violating his rights as a stockholder [4] under Sections 6, 38, and 50 of the Code.

Appellant alleged that: 1) He was deprived of his voting rights provided in Section 6[5]; 2) NMI failed to send him written notice of the stockholders' meeting to vote on the increase of appellee's capital stock, in violation of Section 38[6]; and 3) His rights as a stockholder provided in Section 50[7] were violated by NMI, also by failing to send him written notice of regular stockholders' meetings.

Appellant also asserted that the violations against his rights were serious considering that seven (7) stockholders' meetings on major decisions were held without sending him due notice.[8]

Prior to the instant case, appellant Urera filed a case in the commercial court. On 19 December 2008, Branch 158 of the Regional Trial Court of Pasig City ("RTC Pasig") ruled in SEC Case No. 04-49, that appellant remains a stockholder of NMI as he continues to hold the stock certificate of NMI issued to him in his name and has not yet transferred the same to the name of its alleged real owner. However,

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[4] Notice of Appeal dated 29 June 2010, p.2.

[5] "The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, That *no share may be deprived of voting rights* except those classified and issued as "preferred" or "redeemable" shares, xxx" (Italics supplied).

[6] "Power to increase or decrease capital stock; incur, create or increase bonded indebtedness. — No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless approved by a majority vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. *Written notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholder's meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.*xxx" (italics supplied)

[7] "Regular and special meetings of stockholders or members. — Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: Provided, *That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws.* (Italics supplied)

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Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member. xxx"

[8] *Op. cit.*, p. 3.

appellant's Complaint was denied insofar as it sought to annul the Commission's Certificates of Amendment, due to the fact that majority of the Board of Directors and two thirds (2/3) of NMI's outstanding capital stock had approved the corporate acts undertaken during the stockholders' meetings wherein appellant was not given notice. The RTC Pasig held that to annul the corporate acts that were undertaken during the said meetings "xxx would be too drastic in the light of the fact that only plaintiff, holding a single share, was not given notice xxx." Nevertheless, appellant was not left without any relief. The RTC Pasig directed NMI to pay appellant nominal damages in the amount of ONE HUNDRED THOUSAND PESOS (Php 100,000.00) and attorney's fees in the amount of ONE HUNDRED THOUSAND PESOS (Php 100,000.00),[9] for violation of his rights under Sections 6, 38, and 50 of the Code.

Emboldened by the RTC Pasig decision, appellant filed his petition with CRMD dated 10 September 2009, as mentioned above, seeking the revocation of the certificate of registration of NMI, pursuant to Section 144[10] of the Code. CRMD endorsed the case to the EPD on 23 February 2010.

On the power of the Commission to dissolve corporations for any violation of the provisions of the Code under Section 144, EPD explained that "not every violation of the Code would warrant automatic dissolution of the corporation unless it constitutes a serious breach undermining the substantial rights of the investing public." EPD concluded that the acts attributed to NMI do not constitute serious breach upon the rights of the investing public.[11] Hence, in its letter dated 12 May 2010, the EPD resolved the issue of whether or not the failure of NMI to give notice of stockholders' meeting to appellant, a stockholder with a single share, is sufficient ground to revoke its certificate of registration. Referring to the rationale of the RTC Pasig decision, EPD dismissed the petition for lack of merit.[12]

Appellant sought reconsideration of the EPD decision in a petition dated 01 June 2010 arguing, among others, that the Commission should not be reluctant to

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[9] *Id.*, Annex "A."

[10] SECTION 144. Violations of the Code. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. *If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission*: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. (Italics supplied)

[11] *Op. cit.*, Annex "B."

[12] *Id.*, p. 2.

impose penalty against NMI. In a letter dated 10 June 2010, EPD reiterated its previous decision and dismissed the appellant's petition.[14]

Appellant now prays that the decisions of the EPD dated 12 May 2010 and 10 June 2010 be set aside, and an Order be issued directing the EPD to prosecute NMI for violating Sections 6, 38, and 50 of the Corporation Code.[15] Relying on Section 144 of the Code, appellant ultimately seeks the dissolution and/or revocation of the Certificate of Registration of NMI.[16]

## ISSUE

Whether Next Mobile Inc.'s Certificate of Registration should be revoked for alleged violation of Sections 6, 38, and 50 of the Corporation Code.

## RULING

The petition is bereft of merit.

The power of the Commission to dissolve or revoke corporations is conferred by the following provisions of law:[17]

a) The Corporation Code:

"Section 121. Involuntary dissolution. — A corporation may be dissolved by the Securities and Exchange Commission upon filing of a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations."

"Section 144. Violations of the Code. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punishable by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. *If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission*; Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided further,

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[14] *Id.,* Annex "D."
[15] *Id.,* p.6.
[16] *Id.,* p.6.
[17] SEC Opinion dated June 6, 1994 addressed to Dir. Benedicto C. Acierto.

That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code." (Italics supplied)

b) P.D. 902, as amended:

"SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

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l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law including the following:

1. Fraud in procuring its certificate of registration;

2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;

3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to grave violation of its franchise;

4. Continuous in operation for a period of at least five (5) years;

5. Failure to file by-laws within the required period;

6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period.

The general rule is, a minority shareholder has to accede to the will of the majority, based on the following principle:

> Any person "who buys stock in a corporation does so with the knowledge that he impliedly contracts that the will of the majority shall govern in all matters within the limits of the act of incorporation and xxx" To this extent, therefore, the stockholder may be considered to have "parted with his personal right or privilege to regulate the disposition of his property which he has invested in the capital stock of the corporation, and surrendered to the will of the majority of his fellow incorporators. xxx It cannot therefore be justly said that the contract, express or implied, between the corporation and the stockholders is infringed xxx by any act of the former which is authorized by the majority."[18]

[18] Gokongwei, Jr. vs. Securities and Exchange Commission No. L-45911 (April 11, 1979), citing 6 Thomson 369, Sec. 4490.

Appellant, owning only one (1) share out of three million three hundred ninety – seven thousand six hundred sixty-three (3,397,663) shares issued and outstanding, or a mere .0029[20] percent of NMI's total stocks,[21] is undeniably a minority stockholder of NMI. As such, appellant does not appear to have the right to demand for the dissolution of the corporation.

However, in cases of mismanagement and fraudulent conduct of corporate affairs, even minority stockholders may ask for dissolution, under the theory that such minority members, if unable to obtain redress and protection of their rights within the corporation, must not and should not be left without redress and remedy.[23] Since the appellant did not allege nor show any proof of mismanagement and fraudulent conduct of the corporate affairs by NMI, the Commission cannot consider the dissolution of the corporation.

In SEC Case No. 04-49, the RTC Pasig found that the appellant's right to notice of meetings under Sections 6, 38, and 50 of the Code was violated by NMI. However, the RTC Pasig ruled, that to annul the corporate acts undertaken during the meetings wherein the required vote to approve the corporate acts were obtained, would be too drastic in the light of the fact that only the appellant, who holds a single share was not given notice of said meetings. With more reason would it be too drastic for the Commission to dissolve NMI under Section 121 in relation to Section 144 of the Code on the ground that NMI violated appellant's right to notice under Sections 6, 38, and 50 of the Code.

In a recent decision of the Commission involving a petition for involuntary dissolution of a corporation,[24] the Commission ruled that, Section 144 of the Code "does not intend that every casual infraction of the Code is a valid ground for dissolving the erring corporation. Forfeiture of corporate registration is not favored. Further, well established is the rule that the statutes in derogation of rights, forfeiture of corporate registration for instance, are strictly construed."[25]

Finally, appellant did not show any evidence that would warrant the dissolution and/ or revocation of NMI, based on the grounds enumerated in P.D. 902-A, as amended.

**IN VIEW OF THE FOREGOING PREMISES,** the instant appeal is hereby **DENIED** for lack of merit.

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[20] This should be 0.000029%

[21] *Op. cit.,* Annex "A" p.9.

[23] Financing Corporation of the Philippines vs. Teodoro et al. G.R. No. L-4900 (August 31, 1953)

[24] In the Matter of the Petition for Involuntary Dissolution of Starconnection Inc. SEC Case No. 06-09-271 dated 7 January 2010.

[25] Id., citing Agpalo, R. E. Statutory Construction 308-309, 5th ed.(2003).

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**SO ORDERED.**

Mandaluyong City, 31 March 2011.

**FE B. BARIN**
Chairperson

**MA. JUANITA E. CUETO**
Commissioner

**RAUL J. PALABRICA**
Commissioner

**MANUEL HUBERTO B. GAITE**
Commissioner

**ELADIO M. JALA**
Commissioner