Republic of the Philippines
Department of Finance
Securities and Exchange Commission

Commission En Banc

ATTY. ROGEL C. GATCHALIAN,
Appellant,

-versus- **SEC En Banc Case No. 09-14-345**

TIGER CONSULTING AND SOFTWARE DEV'T., INC.,
Appellee.

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DECISION

Before this Commission is the Notice of Appeal with Appeal Memorandum dated 24 September 2014 ("Appeal") filed by Atty. Rogel C. Gatchalian ("Atty. Gatchalian") with the Commission En Banc through the Office of the General Counsel ("OGC") on 26 September 2014. The Appeal seeks to reverse the Letter-Order dated 25 August 2014 ("Assailed Order") issued by then Director Jose P. Aquino ("Dir. Aquino") of the Enforcement and Investor Protection Department ("EIPD"). The Assailed Order dismissed the *Complaint-Affidavit* filed by Atty. Gatchalian based on a finding that Tiger Consulting and Software Dev't., Inc. ("TCSDI") did not commit any serious misrepresentation on what it can do or is doing to the great prejudice of or damage to the public to warrant the revocation of its corporate registration, the dispositive portion of which reads, to wit:

> "In view of the foregoing premises, the complaint against TCSDI is hereby DISMISSED for lack of merit."

THE RELEVANT FACTS

TCSDI is a corporation registered with the Commission under SEC Registration No. CS200810527. TCSDI's primary purpose as stated in its Articles of Incorporation ("AoI") is:

> "To engage in the practice of business consulting, software development and offshore outsourcing that specializes in custom applications for software companies, enterprises and online business customers."

On 30 July 2010, Appellant Atty. Gatchalian allegedly purchased six hundred thousand (600,000) TCSDI shares (the "TCSDI Shares") for One

Hundred Thousand pesos (₱150,000.00), which resulted in his election as a member of the board of directors of TCSDI.[1]

On 5 February 2014, Appellant Atty. Gatchalian and Mr. Anthony Gaw Chua (Mr. Chua") executed a Deed of Sale of Shares of Stock where the former sold his TCSDI Shares for One Hundred Fifty Thousand Pesos (₱150,000.00) to the latter.[2] On an even date, Mr. Chua executed an Acknowledgment of Sale which contained a provision expressly freeing and clearing Appellant Atty. Gatchalian of any liabilities and obligations of TCSDI.[3]

Thereafter, Appellant Atty. Gatchalian allegedly facilitated the registration of the transfer of the TCSDI Shares to the name of Mr. Anthony Gaw Chua with the BIR and the Commission but was unable to fully accomplish it because TCSDI failed to provide the necessary documentary requirements.[4]

Sometime in February 2014, TCSDI entered into and executed an Agreement with Manila International Airport Authority (MIAA) which was tagged as Contract No. 13025C[5] (the "Contract") for the supply of programming services, including the supply of monitors, AVRs, and other electronic equipment and gadgets.

On 14 March 2014, Appellant Atty. Gatchalian filed his *Complaint-Affidavit* (the "Complaint") with the EIPD praying for the issuance of an order dissolving TCSDI pursuant to Section 121 of the Corporation Code. In support of the Complaint, Appellant Atty. Gatchalian alleged that: (a) TCSDI grossly misrepresented to MIAA that it had the financial capability when it entered into the Contract[6] because at that time, the corporation was already suffering from a "tremendous financial crisis"[7]; and (b) TCSDI misrepresented to MIAA its principal place of business.[8] He argued that the foregoing constitutes sufficient grounds to involuntarily dissolve TCSDI.

On 25 August 2014, the EIPD issued the Assailed Decision which resulted in the filing of the instant Appeal.

On 21 October 2014, TCSDI filed its *Reply Memorandum* dated 11 October 2014 ("Reply") which essentially refuted the allegations of Atty. Gatchalian and prayed for the dismissal of the Complaint.

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[1] Paragraphs 17-19 of the Appeal
[2] Paragraph 29 of the Appeal
[3] Paragraph 30 of the Appeal
[4] Paragraph 31 of the Appeal
[5] See Annex 1 to the Manifestation dated 06 November 2020
[6] Paragraph 26 of the Complaint-Affidavit
[7] Paragraph 10 of the Complaint-Affidavit
[8] Paragraph 27 and 28 of the Complaint Affidavit

On 7 November 2014, Appellant Atty. Gatchalian filed his *Comment* (Re: TCSDI's "Reply Memorandum") dated 11 October 2014, praying for the reversal and the setting aside of the Assailed Decision, and the dissolution of TCSDI pursuant to Article(sic) 121 of the Corporation Code.

On 16 December 2014, the MIAA issued a Certificate of Completion therein certifying that TCSDI satisfactorily completed the project covered by the Contract.[9]

On 25 November 2015, the MIAA issued a Notice of Acceptance in favor of TCSDI for the purpose, among others, of enabling the latter to claim its 10% retention under the Contract.[10]

On 26 October 2020, the Commission, through the OGC issued an Order directing the parties to submit a Manifestation on any supervening events relating to the instant case. The Order was duly served upon and received by the parties.

On 6 November 2020, TCSDI submitted its *Manifestation* of even date, stating, among others, that the present case has become moot and academic by virtue of the completion of the MIAA project and prayed for the dismissal of the Appeal.

ISSUES

(A) Whether the EIPD committed reversible error in finding that TCSDI did not commit serious misrepresentation on what it can do as a corporation.

(B) Did the EIPD commit reversible error in not dissolving TCSDI pursuant to Section 121 of the Corporation Code.

I. TCSDI did not commit serious misrepresentation that warrants the revocation of its Certificate of Registration.

In his Appeal, Appellant Atty. Gatchalian maintained that TCSDI is guilty of serious misrepresentation as to what it can do as a corporation after it made it appear to MIAA that it had the financial capability to enter into and perform the Contract and for its failure to disclose its correct address. Appellant Atty.

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[9] Ibid
[10] Annex "1" of the Manifestation dated 6 November 2020 filed by TCSDI

Gatchalian thus argued that TCSDI's act of executing the Contract with MIAA, sans the alleged financial capacity, warranted the revocation of its certificate of registration.

Appellant's arguments fail to convince.

Section 6(i)(2) of Presidential Decree 902-A provides that serious misrepresentation as to what the corporation can do or is doing is a ground for suspension or revocation of a certificate of incorporation.[11]

This ground has been interpreted to cover what is called *ultra vires* acts or acts committed outside the object for which a corporation was created as defined by the law of its organization, and those which are beyond the powers granted to it by law or its corporate franchise.[12] *Ultra vires* acts are expressly prohibited under Section 44 of the Corporation Code which provides, thus:

> "No corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred."

In *National Power Corporation vs Judge Vera*[13], the Supreme Court held that the test in determining whether or not a corporation may validly perform a particular act or enter into a particular transaction, one should consider the logical and necessary relation between the act/transaction assailed and the corporate purpose expressed by the law or in the charter. If the act/transaction were one which is lawful in itself, or not otherwise prohibited and done for the purpose of serving corporate ends, or reasonably contributes to the promotion of those ends in a substantial and not merely in a remote and fanciful sense, it may be fairly be considered to be within its corporate powers.

The prohibition on *ultra vires* acts is anchored on the very nature of corporations as artificial beings whose enjoyment of the privilege to exist as a corporate entity is conditioned on its faithful compliance with applicable laws, rules and regulations, and its corporate franchise. Specifically in relation to the performance of corporate acts, the Supreme Court emphasized in *University of*

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

(i) 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:

xxx xxx xxx

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

[12] Republic v. Acoje Mining Co., Inc., G.R. No. L-18062, February 28, 1963;

[13] G.R. No. 83558 February 27, 1989

Mindanao, Inc. vs Banko Sentral ng Pilipinas[14] the following established rule, to wit:

> "**Corporations are artificial entities granted legal personalities upon their creation by their incorporators in accordance with law. Unlike natural persons, they have no inherent powers**. Third persons dealing with corporations cannot assume that corporations have powers. It is up to those persons dealing with corporations to determine their competence as expressly defined by the law and their articles of incorporation.
>
> **A corporation may exercise its powers only within those definitions. Corporate acts that are outside those express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created" are ultra vires**." (Emphasis supplied)

In the instant case, a perusal of the the Articles of Incorporation of TCSDI will show that the corporation is specifically authorized to engage, among others, in the business of providing consulting and software development. In relation thereto, the records show that TSCDI entered into and executed a Contract with MIAA for the provision and delivery of a Flight Information Display System and Departure Control System Workstation at Terminal 4. Given these factual backdrop, the Commission holds that the execution by TCSDI of the Contract and its assumption of the obligations set forth therein, is within the powers and authority granted under its AOI for which reason, the said corporate cannot be considered *ultra vires*. The provision of programming services made by TCSDI pursuant to the Contract directly relates to the conduct of the business of the corporation, and were made pursuant to the purpose for which the corporation was established. On the other hand, the supply of monitors, AVRs, and other electronic equipment and gadgets are acts which were made for the purpose of serving corporate ends, or reasonably contributes to the promotion of those ends in a substantial and not merely in a remote and fanciful sense, hence, can be fairly considered within TCSDI's corporate powers.

II. The dissolution of TCSDI under Section 121 of the Corporation Code is not warranted by the evidence on record.

Section 121 of the Corporation Code provides:

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

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[14] G.R. No. 194964-65, January 11, 2016

The afore-quoted provision expressly grants the Commission the authority to dissolve a corporation by the issuance of an order, after notice and hearing, revoking its certificate of registration on grounds provided by law.[15] Dissolution is a condition of law and fact which ends the capacity of a body corporate to act as such, and necessitates a liquidation and extinguishment of all legal relations existing in respect of the corporate enterprise.

In the instant case, Appellant Atty. Gatchalian invoked the exercise by the Commission of its authority to dissolve TCSDI under Section 121 of the Corporation Code, alleging that it is guilty of serious misrepresentation as to what it can do or is doing as a corporation, which under PD 902-A is a ground to revoke a certificate of incorporation. This, however, cannot be sustained on the ground that, as established and explained earlier, the act of entering into and executing the Contract with MIAA was within TCSDI'S power to make.

More importantly, the allegation of serious misrepresentation as to what TCSDI can do or is doing as a corporation was not substantiated by Appellant Atty. Gatchalian. Appellant Atty. Gatchalian's allegation that TCSDI did not have the financial capacity to perform its obligations under the Contract as it was allegedly on the brink of dissolution[16] was not supported by evidence. The allegation that Mr. Anthony Chua Gaw infused an additional capital in the amount of Nine Million Pesos (₱9,000,000.00) without any contract or any board resolution to rehabilitate TCSDI, devoid of any document to support the same, will not suffice to prove or establish the veracity of the claim that TCSDI was almost bankrupt. Basic is the evidentiary rule that "*bare allegations, unsubstantiated by evidence, are not equivalent to proof.*"[17]

The allegation of Appellant Atty. Gatchalian that TCSDI misrepresented to MIAA that it had the financial capability to perform its obligations and provide the services set forth in the Contract, and its business address which was different from that provided in its Articles of Incorporation partakes of the

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[15] "Presidential Decree 902-A grants exclusive jurisdiction to the SEC over any controversy between the corporation and the state insofar as it concerns its individual franchise or right to exist as such entity. However, under the Rules of Court, *quo warranto* proceedings questioning the right of the corporation to continue existing as such is filed by the Solicitor General or fiscal before the proper Court of First Instance, now the Regional Trial Court. Does Presidential Decree 902-A replace and repeal the Rules of Court on this matter, thus depriving the Regional Trial Courts of any jurisdiction in *quo warranto* proceedings against corporations? The Corporation Code in providing for involuntary dissolution in Section 121 mentions only the SEC but not the Regional Trial Court. Both the Corporation Code and Presidential Decree 912-A have a clause repealing all laws inconsistent with their respective provisions. Although Section 121 of the Code is not necessarily inconsistent with the Rules of Court, since together they can be reasonably interpreted to mean that the SEC and Regional Trial Court have concurrent jurisdiction over cases of involuntary dissolution, the language of the Presidential Decree 902-A is a quite specific when it grants exclusive jurisdiction to the SEC in question between the corporation and the state concerning the corporation's "individual franchise or right to exist as such entity." (Unilongo vs Court of Appeals. G.R. No. 123910, April 5, 1999)

[16] Paragraphs 63 and 64 of the Appeal

[17] Rogelia Gatan and the Heirs of Bernardino Gatan versus Jesusa Vinarao and Spouses Cabauatan, G.R. No. 205912, 18 October 2017 *citing* Domingo vs. Robles, 453 SCRA 812, 818 [2005]

nature of contractual representations (a statement of fact)[18] or warranties (a promise that a fact is true)[19] of TCSDI which are within the power of MIAA to exact and demand. The Commission, not being a party to the Contract, cannot intervene and revoke the corporate franchise of TCSDI by reason of the latter's alleged breach of its warranties or representations. This is not one of the power or authority granted to the Commission; neither is the same a ground for the revocation of a certificate of incorporation.

The drastic remedy of dissolving a corporation must be exercised with great caution and not in doubtful cases.[20] This holds true in a case where an individual's interest and not the public is involved. In any event, all remedies must be exhausted before imposing the harsh penalty of dissolution. Also, the corporation must be given an opportunity to correct any misdeed or comply with the law since a dissolution will not be decreed unless no other remedy is available.[21] In the instant case, the records show that Appellant Atty. Gatchalian's insistence on securing the dissolution of TCSDI was brought about by the latter's act of executing the Contract with MIAA prior to the transfer of his TCSDI Shares to the name of Mr. Chua which was allegedly agreed upon. This is a matter that clearly involves the interest of Appellant Atty. Gatchalian, and not the public, that does not warrant the dissolution of TCSDI.[22]

On account thereof, the Commission finds that the EIPD did not commit reversible error in dismissing the Complaint of Appellant Atty. Gatchalian for lack of merit.

Finally, the records show that the MIAA issued a Notice of Acceptance and a Certificate of Completion in favor of TCSDI which enabled the latter to claim its 10% retention and released it from its obligations under the Contract. These are supervening events that have rendered the issue in the instant case moot and academic. With these documents, the question on TCSDI's financial capacity upon which Appellant Atty. Gatchalian anchored his allegation of misrepresentation/fraud necessarily disappeared.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal

[18] A representation is a statement made before or at the time of making the contract regarding a past fact or existing circumstance related to the contract which influences each party to enter into a contract. (https://dictionary.thelaw.com/representation/)
[19] CBS vs Ziff-Davis Publ. Co., 75 NY 2d 496 (1990)
[20] 16A Fletcher *Cyc Corp* [Perm Ed] sec. 8035 at p. 155
[21] Fletcher, *supra*, sec. 8043 at p. 167.
[22] See Paragraph 28 of the Appeal

of the petition.[23] This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.[24]

On account of the foregoing disquisitions, the dismissal of the Appeal for lack of merit and for being moot is in order.

WHEREFORE, premises considered, the Appeal Memorandum filed by Atty. Rogel C. Gatchalian is hereby **DENIED** for lack of merit and for being moot and academic.

SO ORDERED.

Pasay City, Philippines; 2 February 2021.

EMILIO B. AQUINO
Chairperson

[On Leave]
EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

[23] Macario D. Carpio vs. Court of Appeals, G.R. No. 183102, February 27, 2013 citing Sergio R. Osmena III vs. Social Security System, G.R. No. 165272, September 13, 2007.
[24] Alexander A. Padilla, et. al. vs. Congress of the Philippines, G.R. No. 231671, July 25, 2017 citing Randolf S. David vs Gloria Macapagal-Arroyo, G.R. No. 171396, May 3, 2006.