IN THE MATTER of the extension of corporate life of **DOLORES ABOITIZ FOUNDATION, INC** (formerly named Asilo de la Milagrosa, Inc.) with SEC Reg. No. 28708 and for the issuance of a Certificate of Good Standing

SEC *En Banc* Case No. 04-19-455

DOLORES S. ABOITIZ FOUNDATION, INC.

Petitioner.

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DECISION

For the consideration of the Commission *En Banc* is the *Appeal Memorandum* dated 20 February 2019 (the "Appeal") filed on 22 February 2019 by **DOLORES S. ABOITIZ FOUNDATION, INC**. (the "Foundation"), praying that an Order be issued directing: (a) the Company Registration and Monitoring Department (CRMD) to issue a Certificate of Filing of Amended Articles of Incorporation; and (b) the SEC Cebu Extension Office (SEC CEO) to issue a Certificate of Good Standing (CSG) or a Certificate of No Derogatory Record (CNDR) in favor of the Foundation.

RELEVANT FACTS

Dolores S. Aboitiz Foundation, Inc. (formerly, Asilo de la Milagrosa, Inc.) is a domestic non-stock non-profit corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation bearing registration number CRN28708 on 15 February 1966.

During the meeting of the Board of Trustees (the "Board") of the Foundation held on 25 January 2016, two-thirds (2/3) of the members of the Board approved, among others, the amendment of the Fourth Article its Articles of Incorporation (AoI), extending the corporate life of the Foundation for another fifty (50) years counted from and after 15 February 2016. This action of the Board was approved by two-thirds (2/3) of the members of the Foundation during the Annual Membership

Meeting held on 3 February 2016.[1]

On 29 April 2016, the Foundation sent a letter dated 26 April 2016 addressed to the Chairperson of the Securities and Exchange Commission (the "Commission"), requesting for the approval of its application for extension of corporate term.[2] This letter was endorsed by the Office of the Chairperson to the CRMD on 11 May 2016.[3]

On 18 May 2016, the Foundation filed with the CRMD another letter dated 14 May 2016, reiterating its request for the approval of the extension of its corporate term. In support thereof, the Foundation submitted the Trustees' Certificate and the Amended AoI.[4] This was followed by the letters dated 2 November 2016 and 16 November 2016, essentially reiterating the Foundation's request.[5]

On 12 September 2018, the Foundation sent another letter inquiring on the status of its request for extension of corporate term. In the said letter, the Foundation enclosed Postal Money Order Checks (PMOs) covering the applicable fees.[6] Another letter dated 28 November 2018 was sent by the Foundation to follow up on the same matter.[7]

On 14 November 2018, the Foundation requested from the SEC CEO for a CNDR (the "First CGS Request"), to be used in relation to its application for accreditation with the Department of Social Welfare and Development (DSWD).[8] The request was processed by the SEC CEO, where the Foundation was assessed the amount of Pesos: Thirty-six Thousand Two Hundred and Fifty Pesos (Php36,250.00) as penalties for failure to comply with reportorial requirements.[9]

On 13 December 2018, the Foundation paid the assessed fines under protest. The SEC CEO however, did not issue the CNDR after it found that the Foundation is a party to a case that is pending with the Commission.[10]

On 15 January 2019, the CRMD informed the Foundation that its

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[1] *Appeal Memorandum*. Annex "A"
[2] *Id.*. ¶ 3.8.
[3] *Id.*, ¶ 3.10.
[4] *Id.*
[5] *Id.*, ¶¶ 3.13, 3.14.
[6] *Id.*, ¶¶ 3.19, 3.21.2
[7] *Id.*, ¶ 3.21.
[8] *Id.,* ¶ 3.20.
[9] *Id.*, Annex 7.
[10] *Id.* (Asilo de la Milagrosa and Daughters of Charity of St. Vincent de Paul vs. Dolores Aboitiz Foundation, Inc. and CRMD).

corporate term had already expired on 15 February 2016. Since it had allegedly failed to submit the documents required for pre-processing of its application for amendment of its AoI[11], the remedy available to the Foundation is to reincorporate using the same corporate name.[12]

Aggrieved by the ruling of the CRMD, the Foundation filed the instant Appeal, arguing that under Republic Act No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (EODBA) which took effect on 17 June 2018, its request for approval of its Amended AoI was deemed automatically approved pending action by the Commission.[13]

On 21 May 2019, the CRMD filed its *Comment* where it stated that based on its records, the Foundation has not filed an application for amendment of its AoI for the purpose of extending its corporate term prior to 15 February 2016, which is the date of the expiration of its corporate term. This fact, according to the CRMD, resulted in the cessation of existence as a corporate entity, hence, there is no more corporate term to speak of. The CRMD argued that the letter requesting for the extension of the corporate term which the Foundation filed on 29 April 2016 could no longer be acted upon as its corporate term has already expired.

On 11 June 2019, SEC-CEO filed its *Comment (To Petitioner's Appeal/Appeal Memorandum to the Commission En Banc)*, therein refuting the allegations of inaction by pointing out that the failure of the Foundation to comply with all the requirements prescribed under existing regulations, coupled with the fact that in the CIS-URDB system, it had a pending case with the Commission, prevented the issuance of the CGS or CNDR.[14]

On 15 July 2019, the Foundation filed its *Consolidated Comment To The Comments of the CRMD and SEC-CEO*, where it argued that RA 11032 covers, and is applicable in the instant case, which resulted in the approval, *ipso jure*, of its applications (a) for extension of its corporate term, and (b) for the issuance of a CGS or CNDR, after the lapse of the relevant period prescribed therein.[15]

On 16 September 2019, the Commission conducted a clarificatory hearing pursuant to an *Order* dated 3 September 2019. During the

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[11] CRMD's Comment, at ¶ 2 (21 May 2019).
[12] *Id.*
[13] *Id.*, ¶ 1.4.
[14] Comment filed by SEC-CEO. *See* ¶¶ 6, 9 & 17
[15] *Consolidated Comment to the Comments of the CRMD and SEC-CEO* dated 15 July 2019. ¶ 43

hearing, the Foundation manifested its willingness to withdraw the present Appeal upon the issuance of the Memorandum Circular on the Revival of Corporations pursuant to the Revised Corporation Code (RCC). The proceedings on the present Appeal were then suspended until the issuance of the Memorandum Circular on the Revival of Corporations.[16]

On 25 September 2019, the Foundation again requested from the SEC CEO for a CGS, which was denied on the ground that its corporate term has already expired and is thus already considered inexistent. The SEC CEO posited that the Commission is bereft of authority to issue a CGS/CNDR to an inexistent corporation.[17] This denial resulted in the filing by the Foundation of a *Motion to File Manifestation to Supplement Appeal* on 13 November 2019, and an *Appeal with Motion to Consolidate (and Suspend)* on 14 February 2020.

On 16 September 2021, the Foundation filed a *Motion for Leave to File Respectful Second Supplement to Appeal Memorandum with Second Supplement Incorporated hereto and with Motion to Continue Proceedings* dated 14 September 2021, praying for the application by the Commission of the principles of liberality, and for the granting of the extension of its corporate term. The Foundation also prayed for the issuance of an order directing the continuation of the proceedings in the ordinary course of law.[18]

On 20 December 2021, *Motion for Leave to File Reply to SEC CEO Comment on Second Supplement to Appeal Memorandum* dated 14 December 2021 reiterating its prayer for the Commission to apply the liberal rule in applications for extension of corporate term.[19]

Thereafter, the case was submitted for decision.

ISSUE

The Commission will resolve the following issues:

1. Whether the application for the Amendment of AoI extending the corporate term of the Foundation should be given due course.

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[16] Minutes of the Clarificatory Hearing (16 September 2019).
[17] *Id.*
[18] Motion for Leave to File Respectful Second Supplement to Appeal Memorandum with Second Supplement Incorporated hereto and with Motion to Continue Proceedings (Second Supplement), at 22 (14 September 2021).
[19] Motion for Leave to File Reply to SEC CEO Comment on Second Supplement to Appeal Memorandum, ¶ 3 (14 December 2021).

2. Whether a Certificate of No Derogatory Record or Certificate of Good Standing can be issued to the Foundation.
3. Whether the relevant provisions of the EODBA which provides for automatic approval of pending requests are applicable in the instant case.

RULING

The Appeal is partly meritorious.

This Commission is once again asked to revisit and uphold its rulings in *Pamintuan Enterprises (Davao), Inc. vs CRMD*[20] and *A&F Development Corp. vs CRMD*[21] (the "Cited Cases") where it applied the principle of liberality, and favorably acted on applications for extension of corporate term which was filed after the corporate term of the applicant expired. The Cited Cases, which also applied the doctrine in the case of *Company Registration and Monitoring Department v. Ching Bee Trading Corp.*[22] (the "Ching Bee Case"), and the Commission's Resolution No. 35 (2000), implemented the policy recognizing the perpetual existence of corporations, which was eventually made explicit in Section 11 of the Revised Corporation Code (RCC).

The Foundation argues that since its application/request for extension of corporate term was filed/submitted prior to the effectivity of the RCC, the Commission should uniformly apply the doctrine in the Cited Cases, the Ching Bee Case, and the policy in Resolution No. 35.

The CRMD and the SEC CEO disagree with the Foundation and maintain that the principle of liberality is unavailing in the instant case. Invoking the rule in our jurisdiction that a corporation ceases to exist upon the expiration of its corporate term, the CRMD posits that there is no more corporate term to extend as there is no more corporation to speak of. The SEC CEO shared this position and used the same to justify the denial of the Foundation's request for issuance of CNDR/CGS.

We do not find any compelling reason to deviate from the policy that We applied in the Cited Cases, especially at this time that we already have an express Congressional fiat on the perpetual existence of corporations, thus:

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[20] SEC *En Banc* Case No. 02-17-422
[21] SEC *En Banc* Case No. 07-16-407
[22] G.R. No. 205291 (Notice). [12 November 2014].

> "*A corporation shall have perpetual existence unless its articles of incorporation provides otherwise*."[23]

Prior to the effectivity of the RCC, the Commission had already implemented the policy and intent of Section 11 of the old Corporation Code (Batas Pambansa Blg. 68) which recognized the perpetual existence of corporations by successive renewals. The Commission in fact applied the principle of liberality in deference to the said policy and extended the corporate term of the subject corporation(s) notwithstanding the fact that the application for amendment of AoI extending the corporate term was filed after such term has expired. This Commission, invoked the doctrine in *Isip vs Municipal Council of Cabiao, Nueva Ecija*[24] in justifying the implementation of the intent and purpose of the law as against the strict interpretation thereof, 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 the Cited Cases, this Commission considered the intent of affected corporations to extend their corporate term <u>and</u> gave weight to the positive act of amending their AoI effecting the extension of corporate term before the expiration date thereof.[25] Applying Resolution No. 35, this Commission emphasized the rule that an amendment extending the corporate term duly filed with it should be given due course, even if the same was done after the corporate term has already expired provided that the board approvals were obtained prior to the expiration. Thus, the fact that an application for amendment of an AoI extending the corporate term is deficient or incomplete is no longer considered a ground to deny approval since what is primordial is the implantation of the intent/spirit

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[23] Section 11 of the RCC
[24] G.R. No. L-18947 April 29, 1922
[25] "A&F 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." (*See* Decision in A&F Development Corporation vs CRMD. SEC *En Banc* Case No. 07-16-407 at 5)
See also the Decision in In the Matter of: Amendment of the Articles of Incorporation of Pamintuan Enterprises (Davao) Inc., doing business under the name and style APO VIEW HOTEL vs. CRMD (SEC *En Banc* Case No. 02-17-422), where the Commission held that: "[i]n the instant case, the Appellant was incorporated on 22 February 1966. Before the expiration of its corporate term, Appellant's BOD approved the extension during a special meeting held on 27 May 2014. This was thereafter ratified by the Appellant's stockholders, representing at least two-thirds (2/3) of the outstanding capital stock, in a special stockholders' meeting on 17 June 2014."

of the law allowing perpetual existence of corporations.

With the enactment of the RCC, all doubts relating to the previous policy of this Commission which recognized, sanctioned, and granted perpetual existence to corporations under Section 11 of the old Corporation Code were settled once and for all. Section 11 of the RCC has categorically affirmed the correctness of the said policy. Moreover, being a curative provision in the sense it now grants perpetual existence to all corporations *sans* the act of amending the articles of incorporation[26], the spirit/intent of Sec. 11 of the RCC should now pervade in considering applications for extension of corporate term filed after the corporate term has expired, if the required board and stockholders/members' approvals have been obtained.

In the instant case, the records show that during the meeting of the Board of the Foundation held on 25 January 2016, two-thirds (2/3) of the members thereof approved the amendment of the Fourth Article of its AoI, extending the corporate life of the Foundation for another fifty (50) years from 15 February 2016. Thereafter, two-thirds (2/3) of the members of the Foundation ratified the action of the Board during the Annual Membership Meeting held on 3 February 2016. The foregoing shows that the Foundation, through its Board and members, was well aware that its corporate term was about to expire for which reason, it approved the extension of its corporate term, and executed the relevant documents required under the old Corporation Code prior to the expiration of its corporate term. These factual circumstances warrant the application of the principle of liberality to effectively implement the policy and intent of Section 11 of the RCC granting perpetual existence to all corporations. This Commission will be utterly remiss in its duty of efficiently implementing the provisions of the RCC, specifically Section 11 thereof, if We completely disregard the positive act of the Foundation's Board and members who voted to extend its corporate term, and insist on a strict interpretation on the legal consequence(s) of the expiration of a corporate term.

On the basis thereof, this Commission hereby resolves to give due course to and grant the request/application of the Foundation to amend its AoI extending its corporate term.

In light of the foregoing decision, the Foundation's application/request for CNDR/CGS should likewise be given due course and approved. With the issue on the extension of the Foundation's

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[26] Philippine Health Insurance Corp. vS. Commission on Audit, G.R. No. 222710 (Resolution), [September 10, 2019]

corporate term having been passed upon favorably, coupled with the fact, duly established by substantial evidence, that the Foundation is no longer involved in any case after the SC Case has finally disposed of, this Commission finds no cogent reason to deny issuance of a CNDR/CGS in favor of the Foundation, subject to existing and applicable rules and regulations.

Having passed upon the first and second issues presented in this Appeal, this Commission no longer finds it necessary to rule on the third issue relating to the provisions under Republic Act No. 11032 (the "EODBA") which provides for the grant of automatic approval to pending requests. Be that as it may, this Commission nonetheless finds it apt to emphasize that under the Implementing Rules and Regulations of the EODBA ("EODBA IRR"), it is the Anti-Red Tape Authority (ARTA), and not this Commission, which has the power and authority to declare applications as automatically approved, to wit:

> "**Section 4. Issuance of Order for Automatic Approval, Extension, or Renewal of License, Clearance, Permit, Certification, or Authorization**
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> Upon complaint together with the presentation of the acknowledgment receipt and/or the official receipt, upon due investigation and verification that the applicant has indeed fully submitted all the necessary documents and paid all the required fees, **the [Anti-Red Tape] Authority shall issue a declaration of completeness and order the concerned office or agency to issue the approval, extension, and/or renewal of the license, clearance, permit, certification, or authorization** which is deemed automatically approved as provided by Sec. 10 of the Act." [Emphasis supplied][27]

While Sec. 10 of the EODBA provides for automatic approval of an application, the afore-quoted provision of the EODBA IRR expressly states that such automatic approval takes effect only after the issuance by the ARTA of a declaration of completeness, together with an order directing the concerned agency to issue the approval. We find no such document in the records of this case.

WHEREFORE, premises considered, the instant Appeal is hereby **GRANTED**. The Company Registration and Monitoring Department is hereby **DIRECTED** to give due course and approve the application for amendment of the Articles of Incorporation filed by Dolores S. Aboitiz

[27] EODBA IRR, rule VIII, § 10.

Foundation, Inc., subject to the latter's compliance with the requirements prescribed under existing laws, rules, and regulations.

The SEC Cebu Extension Office is also hereby **DIRECTED** to give due course and issue the Certificate of No Derogatory Record and/or Certificate of Good Standing, subject to the latter's compliance with the requirements prescribed under existing laws, rules, and regulations.

SO ORDERED.

Makati City, Philippines; 27 February 2024.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO *
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO *
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On Official Business