Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

JRT TRADING AND CONSTRUCTION CORPORATION, ET. AL.,
Appellants,

SEC En Banc Case No. 12-13-310

-versus-

HYOSUNG CORPORATION AND THE ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Appellees.

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DECISION

Before this Commission is the *Memorandum of Appeal* dated 9 December 2013 filed by Appellants JRT Trading and Construction Corporation and Julio R. Templonuevo (the "Appellants") assailing the Order dated 20 November 2013 (the "Assailed Order") of the Enforcement and Investor Protection Department (EIPD) insofar as it failed to revoke the license of HYOSUNG Corporation after finding that the latter committed *ultra vires* acts, the dispositive portion of which reads:

> "*For committing an ultra vires act, Hyosung Corporation is ordered to pay the Commission a penalty in the amount of TEN THOUSAND PESOS (P10,000.00) pursuant to Section 144 of the Corporation Code of the Philippines, and to immediately cease and desist from engaging in the same construction and transmission business.*"

THE PARTIES

Appellant Julio R. Templonuevo is a Filipino, of legal age and the President of JRT at the time of the institution of the instant case.

Appellant JRT is a domestic corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation bearing No. AS091196453. JRT conducts business at its principal office located at 144 Sta. Cruz Street, Bato, Catanduanes.

Appellee Hyosung Corporation (the "Appellee") is a corporation organized and existing under the laws of the Republic of Korea, with principal office at 450 Gongdeok-Dong Mapo-Gu, Seoul 121-720, South Korea. Appellee maintains and operates branch office in the Philippines with office at Unit 614, 6/F East Tower, Philippine Stock Exchange Center (Tektite), Exchange Road, Ortigas Center, Pasig City, pursuant to the License to Transact Business in the Philippines bearing No. FS201100871 issued on 7 February 2011 by the Commission.

RELEVANT FACTS

On 7 February 2011, the Commission issued to Appellee's Branch Office in the Philippines a License to Transact Business in the Philippines with Company Reg. No. FS201100871 (the "License"). The License granted Appellee the authority "*to engage in the business of project consultancy services on the improvement and upgrade of industrial or power plants and buildings, but not to engage in the exercise of any profession.*"[1]

On separate dates in 2010, Appellee entered into and executed three (3) contracts[2] (the "NGC Contracts") with the National Grid Corporation where the former undertook and agreed to provide labor, materials, equipment and other incidentals required for the completion and delivery of the projects as defined therein.[3]

Appellee subcontracted and engaged the services of Appellant JRT to perform some of its obligations and provide certain deliverables under the NGC Contracts. For purposes thereof, Appellee and Appellant JRT entered into three (3) Subcontract Agreements for the NGC Contracts.[4]

On 3 May 2013, Appellant Templonuevo filed a Complaint praying for the revocation of Appellee's License for allegedly engaging in construction business which is not an authorized activity. In support thereof, Appellant Templonuevo attached copies of the Subcontract Agreements.

In its Counter-Affidavit, Byung Won Lee, in his capacity as the authorized representative of Appellee argued that the Complaint is without merit and should thus be dismissed on the ground that Appellant Templonuevo (a) does not have legal interest in filing the Complaint, (b) has not shown that Appellee actually conducted business in violation of the License, and (c) being a delinquent obligor, he should not be allowed to use the Corporation Code to harass a foreign obligee.

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[1] Annex "G" of the Complaint.
[2] (1) Contract for the Luzon Substation Expansion Project 1 on 30 September 2010; (2) Contract for the San Estaban - Laoag 230 lV Transmission Project on 5 November 2010; and (3) Contract for the Bohol Backbone Transmission Project on 10 December 2010.
[3] Paragraph 5 of the Complaint dated 2 May 2013.
[4] Paragraph 4 of the Complaint.

On 28 June 2013, Appellant Templonuevo filed his Reply dated 25 June 2013 maintaining that the evidence on record warrants the revocation of Appellee's License based on a clear showing i.e. the Subcontract Agreements that was engaged in a business which was not authorized under such License. Appellant Templonuevo likewise attached to his Reply a Secretary's Certificate to show that Appellee JRT authorized the filing of the Complaint and designated him as its authorized representative.

In its Rejoinder dated 25 July 2013, Appellee Hyosung reiterated the position and allegations of Byung Won Lee in his Counter-Affidavit. Appellee further alleged that Appellants violated the rule on forum shopping after it failed to declare that a case involving the same subject matter or issue has been previously filed with the Construction Industry Arbitration Committee. This, according to Appellee, is a ground for the dismissal of the Complaint and merits the exercise by the Commission of its contempt powers.[5]

On 20 November 2013, EIPD issued the Assailed Order which resulted in the filing of the instant Appeal.

On 9 December 2013, the Commission approved the Amended License[6] of Appellee which broadened the scope of the authority given, to wit:

> "To engage in the business of project consultancy services on the improvement and upgrade of of industrial or power plants and buildings, but not to engage in the exercise of any profession specified in the Foreign Investment Negative List; undertake general construction in the Philippines, except contracts for the construction and repair of local funded public works (unless otherwise allowed under applicable laws) and contracts for the construction of defense related structures."

On 12 December 2013, Appellee paid the fine imposed by the EIPD in the Assailed Order.[7]

On 23 December 2013, Appellee filed its Reply Memorandum praying for the dismissal of the Appeal on the ground that the revocation of its License will not, under the supervening circumstances, serve the ends of justice.

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[5] See pages 2-4 of the Rejoinder.
[6] See Annex 3 of the Appellee's Reply Memorandum.
[7] See Annex 5 of the Appellee's Reply Memorandum.

ISSUE

Does the finding of the commission of ultra vires act warrant the revocation of Hyosung's License?

DISCUSSION

In their Appeal, Appellants maintained that EIPD committed reversible error in not revoking the License of Appellee, arguing that the latter's act of engaging in construction business which is impressed with public interest was an *ultra vires* act that warranted the revocation of the License.

Section 134 of Batas Pambansa Blg. 68 (the "Corporation Code") which is the law applicable in the instant case, provides:

> "Without prejudice to other grounds provided by special laws, the license of a foreign corporation to transact business in the Philippines **may** be revoked or suspended by the Securities and Exchange Commission upon any of the following grounds:
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> xxx xxx xxx
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> 7. Transacting business in the Philippines outside of the purpose or purposes for which such corporation is authorized under its license." (Emphasis supplied)

The acts contemplated in the afore-quoted provision are also called *ultra vires* acts of corporations, or acts committed outside the object for which a corporation was created as defined by the law of its organization, and thereof beyond the powers conferred upon it by law.[8] Section 45 of the Corporation Code provides that "*no corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred*."

A review of the records of the case will show that, and as found by EIPD, the act of Appellee in entering into the NGC Contracts (and the subsequent Subcontracts Agreement) where it assumed the obligation to perform and deliver the projects defined therein was *ultra vires* because it was not among the authorized acts conferred in its License.

It bears emphasis however, that the commission of an *ultra vires* act does not automatically and in all instances warrant the revocation of a

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

corporate franchise or license. The reason for this was explained in *University of Mindanao v. Bangko Sentral ng Pilipinas*[9], where the Court ruled that, and to quote:

> "Unauthorized acts that are merely beyond the powers of the corporation under its articles of incorporation are not void ab initio.
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> In *Pirovano, et al.*, this court explained that corporate acts may be ultra vires but not void. Corporate acts may be capable of ratification:
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>> [A] distinction should be made between corporate acts or contracts which are illegal and those which are merely ultra vires. The former contemplates the doing of an act which is contrary to law, morals, or public order, or contravene some rules of public policy or public duty, and are, like similar transactions between individuals, void. They cannot serve as basis of a court action, nor acquire validity by performance, ratification, or estoppel. Mere ultra vires acts, on the other hand, or those which are not illegal and void ab initio, but are not merely within the scope of the articles of incorporation, are merely voidable and may become binding and enforceable when ratified by the stockholders." (Emphasis supplied)

In the context of the afore-quoted doctrine, it appears that while an *ultra vires* act is a ground under Sec. 134 of the Corporation Code for the suspension or revocation of a license granted to a foreign corporation, only those that are illegal, contrary to morals or public order warrant the revocation of a license. The foregoing finds support in the use of the word "may" which gives the Commission the discretion to evaluate the nature and severity of the act, and the attendant circumstances.

In *Loyola Grand Villas Homeowners (South) Association, Inc. v. Hon. Court of Appeals, et al.*[10], the Supreme Court held that, to wit:

> "Even under the foregoing express grant of power and authority, there can be no automatic corporate dissolution simply because the incorporators failed to abide by the required filing of by-laws embodied in Section 46 of the Corporation Code. There is no outright "demise" of corporate existence. Proper notice and hearing are cardinal components of due process in any democratic institution, agency or society. In other words, the incorporators must be given the chance to explain their neglect or omission and remedy the same.
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> xxx xxx xxx

[9] G.R. No. 194964-65, January 11, 2016.
[10] G.R. No. 117188, August 7, 1997.

> In this regard, private respondents are correct in relying on the pronouncements of this Court in *Chung Ka Bio v. Intermediate Appellate Court*[11], as follows:
> ". . . Moreover, failure to file the by-laws does not automatically operate to dissolve a corporation but is now considered only a ground for such dissolution.
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> xxx xxx xxx
>
> Non-filing of the by-laws will not result in automatic dissolution of the corporation. Under Section 6(I) of PD 902-A, the SEC is empowered to 'suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of a corporation' on the ground inter alia of 'failure to file by-laws within the required period.' **It is clear from this provision that there must first of all be a hearing to determine the existence of the ground, and secondly, assuming such finding, the penalty is not necessarily revocation but may be only suspension of the charter.** In fact, under the rules and regulations of the SEC, failure to file the by-laws on time may be penalized merely with the imposition of an administrative fine without affecting the corporate existence of the erring firm. xxx"

In *Securities and Exchange Commission v. Universal Rightfield Property Holdings, Inc.*[12], the Court sustained the Commission's revocation of a secondary license after a finding of repeated violation of the reportorial requirements prescribed under the SRC and its IRR as the same undermined the policy of protecting investors through the timely, full and fair disclosure of information on securities, to wit:

> "As can be gleaned from the afore-quoted ruling, the revocation of registration of securities and permit to sell them to the public is not an exercise of the SEC's quasi-judicial power, but of its regulatory power. A "quasi-judicial function" is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.[33] Although Section 13.1 of the SRC requires due notice and hearing before issuing an order of revocation, the SEC does not perform such quasi-judicial functions and exercise discretion of a judicial nature in the exercise of such regulatory power. It neither settles actual controversies involving rights which are legally demandable and enforceable, nor adjudicates private rights and obligations in cases of adversarial nature. Rather, when the SEC exercises its incidental power to conduct administrative hearings and make decisions, it does so in the course of the performance of its regulatory and law enforcement function.
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> Therefore, notwithstanding the belated filing of the said reports, as well as the claim that public interest would be better served if the SEC will merely impose penalties and allow it to continue in order to become profitable

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[11] G.R. No. 71837, July 26, 1988.
[12] G.R. No. 181381, July 20, 2015.

again, the SEC cannot be faulted for revoking once again URPHI's registration of securities and permit to sell them to the public due to its repeated failure to timely submit such reports. Needless to state, such continuing reportorial requirements are pursuant to the state policies declared in Section 2[38] of the SRC of protecting investors and ensuring full and fair disclosure of information about securities and their issuer." (Emphasis supplied)

The Commission has likewise revoked the registration or license of entities whose *ultra vires* acts were carried out to defraud or deceive the investing public.[13]

Under Section 134 of the Corporation Code, a finding of an *ultra vires* act committed by a foreign corporation may be meted with the penalty of either suspension or revocation, at the discretion of the Commission, taking into consideration the nature and severity of the act, as well as the attendant circumstances. Nowhere in the said provision can we find an option of imposing a monetary penalty on the erring foreign corporation, which was what the EIPD did. We thus agree with Appellant that the EIPD committed reversible error in imposing a penalty which is not provided and sanctioned by Section 134 of the Corporation Code. On the basis of existing and applicable jurisprudence, the penalty of suspension should have been imposed as the appropriate penalty. This finds support in *Republic v. Acoje Mining Co., Inc*.[14] where the Court held that an *ultra vires* act is susceptible of being ratified, thus:

> "Even assuming arguendo that the resolution in question constitutes an ultra vires act, the same however is not void for it was approved not in contravention of law, customs, public order or public policy. The term ultra vires should be distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated. It being merely voidable, an ultra vires act can be enforced or validated if there are equitable grounds for taking such action. Here it is fair that the resolution be upheld at least on the ground of estoppel. On this point, the authorities are overwhelming:
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> > "The weight of authority in the state courts is to the effect that a transaction which is merely ultra vires and not malum in se or malum prohibitum, is, if performed by one party, not void as between the parties to all intents and purposes, and that an action may be brought directly on the transaction and relief had according to its terms." (19 C.J.S., Section 976, p. 432, citing Nettles vs. Rhett, C.C.A.S.C., 94 F. 2d, reversing, D.C., 20 F. Supp. 48.)

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[13] See In the Matter of: Kapa Community Ministry International, Inc. (SEC Admin. Case No. 02-19-181); In the Matter of Philbio Renewable Energy Resources Corp., (SEC Admin. Case No. 11-10-124, April 27, 2016).
[14] G.R. No. L-18062, February 28, 1963.

> "This rule is based on the consideration that as between private corporations, one party cannot receive the benefits which are embraced in total performance of a contract made with it by another party and then set up the invalidity of the transaction as a defense." (London & Lancashire Indemnity Co. of America vs. Fairbanks Steam Shovel Co., 147 N.E. 329, 332, 12 Ohio St. 136.)
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> "The defense of ultra vires rests on violation of trust or duty toward stockholders, and should not be entertained where its allowance will do greater wrong to innocent parties dealing with corporation.
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> "The acceptance of benefits arising from the performance by the other party may give rise to an estoppel precluding repudiation of the transaction." (19 C.J.S., Section 976, p. 433.)
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> "The current of modern authorities favors the rule that where the ultra vires transaction has been executed by the other party and the corporation has received the benefit of it, the law interposes an estoppel, and will not permit the validity of the transaction or contract to be questioned, and this is especially true where there is nothing in the circumstances to put the other party to the transaction on notice that the corporation has exceeded its powers in entering into it and has in so doing overstepped the line of corporate privileges." (19 C.J.S., Section 977, pp. 435-437, citing Williams vs. Peoples Building & Loan Ass'n. 97 S.W. 2d 930, 193 Ark. 118, Hays vs. Galion Gas Light Co., 29 Ohio St. 330.)" (Emphasis supplied)

The foregoing notwithstanding, the records however show that on 9 December 2013 or nineteen (19) days after the issuance of the Assailed Order, Appellee secured an approval from the Commission of its Amended License which granted it the authority to engage in the transactions covered by the NGC Contracts and the Subcontract Agreements. The records also show that Appellee paid the fine imposed by the EIPD on 13 December 2013. These are supervening events that have rendered the issue presented in the instant case moot and academic. The approval and issuance of the Amended License had the effect of vesting Appellee with the authority to perform and carry out its obligations under the NGC Contracts and the Subcontract Agreements; it effectively removed the legal impediment of Appellee to comply with what was incumbent upon it in the NGC Contracts and the Subcontract Agreements.

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*[15], the considers a case or issue to have become moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so

[15] G.R. No. 208660, March 5, 2014.

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 of the petition.

Applying the foregoing doctrine to the instant case, the approval and issuance of the Amended License which granted Appellee the authority, among others, *to undertake general construction in the Philippines* has resulted in the cessation of the justiciable controversy which was originally present in this case. With the approval and issuance of the Amended License, the Appellants have ceased to have a valid ground to sustain its complaint for revocation. Thus, any decision issued by this Commission revoking the License of Appellee at this time will necessarily be void and tainted with arbitrariness and abuse of discretion considering that the ground for the same i.e. *ultra vires* act, is already inexistent.

In *Pasig Printing Corporation v. Rockland Construction Company, Inc.*,[16] the Court emphasized that in instances where the case or the issues have become moot and academic, the dismissal of the case is, as a general rule, imperative, thus:

> "It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition." (Emphasis supplied)

On account of the foregoing, the Commission hereby resolves to deny the Appeal on the ground that the issue presented herein has become moot and academic.

WHEREFORE, premises considered, the *Memorandum of Appeal* of Appellants JRT Trading and Construction Corporation and Julio R. Templonuevo is hereby DENIED on the ground of mootness.

SO ORDERED.

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[16] G.R. No. 193592, February 5, 2014

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Pasay City, Philippines, 13 August 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner