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

BABEL HOLDINGS, INC., MANUEL M. LAZARO, MICHELLE B. LAZARO, ROMMEL M. SANTIAGO, AND PHILIPE T. ACQUINO
Appellants,

- versus -   **SEC En Banc Case No. 03-22-494**

DINDO A. ESPELETA and KAREN M. ESPELETA,,
Appellees.
x - x

D E C I S I O N

Before this Commission is the Appeal Memorandum filed on 16 March 2022 by BABEL HOLDINGS, INC., Manuel M. Lazaro, Michelle B. Lazaro, Rommel M. Santiago, and Philipe T. Aquino, assailing the Order dated 10 February 2022 (the "Assailed Order") issued by the Company Registration and Monitoring Department, which revoked the Certificate of Incorporation of BABEL HOLDINGS, INC., on the basis of a finding that the same was fraudulently procured, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, the Certificate of Registration of BABEL HOLDINGS, INC., registered on 12 February 2016 under SEC Reg. No. CS201603004, is hereby REVOKED. Moreover, the issuance of a permanent cease-and-desist order has been rendered moot and academic."

THE PARTIES

BABEL HOLDINGS, INC. (BHI) is a stock corporation duly organized and existing under the laws of the Republic of the Philippines, having been issued a Certificate of Incorporation bearing Company Registration No. CS201603004. Its principal office address is at the 19th Floor Chatham House Bldg., 116 Valero cor. V.A. Rufino Street., Salcedo Village, Makati City, Philippines.

Appellants Manuel M. Lazaro, Michelle B. Lazaro, Rommel M. Santiago, and Philipe T. Aquino (the "Individual Appellants"), and Appellees Dindo A. Espeleta and Karen M. Espeleta, are the incorporators and stockholders of BHI whose shareholdings therein, based on the latest filed General Information Sheet (2018), are as follows:

NAME	SHARES SUBSCRIBED AND PAID		
	NUMBER OF SHARES	AMOUNT (IN PHP)	%
DINDO A. ESPELETA	25,000	25,000,000.00	25
KAREN M. ESPELETA	25,000	25,000,000.00	25
MANUEL M. LAZARO	41,000	41,000,000.00	41
MICHELLE B. LAZARO	3,000	3,000,000.00	3
ROMMEL M. SANTIAGO	3,000	3,000,000.00	3
PHILIPE T. AQUINO	3,000	3,000,000.00	3

RELEVANT FACTS

Sometime around 15 October 2015, Appellees Dindo A. Espeleta and Karen M. Espeleta, and the Individual Appellants agreed in principle to form a corporation, and pool their money in the amount of One Hundred Million Pesos (PhP100,000,000.00), for the purpose of acquiring Mausonon Island in Palawan (the "Island").[1]

On 12 February 2016, the Commission approved the application of BHI and issued its Certificate of Incorporation.

On 5 July 2016, BHI purchased the Island from Mariano V. Araneta, Jr., Emmanuel L. Regio, Demetrio P. Sonza, Angel L. De Leon, Jr., Esteban V. Tajanlangit III (collectively, the "Seller"), where they opened an Escrow Agreement Account with Eastwest Bank for One Hundred Twenty-Six Million Pesos (PhP126, 000,000.00), which was paid to the Seller by Appellee Dindo Espeleta on behalf of BHI.[2]

On 29 September 2021, Appellees Dindo A. Espeleta and Karen M. Espeleta filed with the Company Registration and Monitoring Department (CRMD) of this Commission a Petition for Revocation of Company Registration (with Application for the Issuance of Cease and Desist Order), an administrative action seeking the revocation of the Certificate of Registration of BHI for having been allegedly obtained through fraud, invoking Sec. 5(i)[1] of PD 902-A[3], as amended.

In support thereof, Appellees Dindo A. Espeleta and Karen M. Espeleta alleged that the Individual Appellants, who obtained the registration of BHI from the Commission[4], made serious and deliberate misrepresentations in the documents that were submitted as part of BHI's application for incorporation.[5] Specifically, Appellees declared that Karen M. Espeleta's signature in the Treasurer's Affidavit was forged as she did not sign the said document[6], and

[1] Par. 4 of the Appeal
[2] Par. 7 of the Appeal
[3] Par. 12 of the Petition cited Part I, Rule II, Section 2-2(a)(1)(a) of the 2016 Rules of Procedure of the Securities and Exchange Commission, which grants the CRMD the jurisdiction over petitions for revocation of certificates of incorporation on the ground of fraud in the procurement thereof.
[4] Par. 7 of the Petition
[5] Par. 14 of the Petition
[6] Pars. 15 and 16 of the Petition

that the representations in BHI's Articles of Incorporation (AoI) on the company's paid-up capital are false and fraudulent, because the Individual Appellants did not pay the shares that they fully subscribed to.[7] Appellees Dindo A. Espeleta and Karen M. Espeleta substantiated the foregoing with the bank statement issued by BPI Alabang Prime Center where the alleged lone bank account of BHI was lodged.[8]

Relative to their prayer for the issuance of a Cease and Desist Order (CDO), Appellees Dindo A. Espeleta and Karen M. Espeleta posited that the same is warranted to prevent BHI and the Individual Appellants from further defrauding and misrepresenting to the public, by making it appear that the company had sufficient capitalization and has a stellar financial condition to transact a wide array of business.[9] Specifically, Appellees Dindo A. Espeleta and Karen M. Espeleta argued that BHI and Individual Appellants should be enjoined from conducting shareholders' meetings, which are venues where Individual Appellants transfer and reorganize their equity participation and capital assets in various companies i.e. Copperstar Holdings, Inc., Eagle II Holdco, Inc. and Eagle I Landholdings, Inc.[10]

On the basis of the authority granted by the Commission *En Banc*[11] in a Resolution dated 5 October 2021, the CRMD issued *ex parte* a CDO directing BHI to immediately cease and desist from transferring, selling, disposing, and/or conveying its properties, securities, shares of stock, and other real/personal properties, and from transacting any, and all business involving the funds in its depositary bank.

The CRMD also issued a Summons dated 6 October 2021, directing BHI and Individual Appellants to file their verified Answer within a period of fifteen (15) days from receipt thereof.

In their Entry of Appearance with Answer, BHI and the Individual Appellants prayed for (a) the dismissal of the Petition for its failure to show with clear and convincing evidence, the alleged falsity and/or fraud, and (b) the recall and setting side of the CDO, which was allegedly issued without basis and/or with abuse of discretion.

BHI and the Individual Appellants countered with the argument that the incorporation documents of BHI, specifically its Articles of Incorporation (AoI), which provide for the full subscription and payment of the authorized capital stock of the corporation, enjoy a presumption of regularity being a notarized document, which can only be overturned by clear and convincing evidence.[12] They further argued that Appellees Dindo A. Espeleta and Karen M. Espeleta have not denied executing the AoI, which estops them from

[7] Pars. 17, 18 and 21of the Petition
[8] Par. 19 of the Petition
[9] Par. 29 of the Petition
[10] Pars. 30 and 31 of the Petition
[11] To determine whether the issuance of a CDO is warranted based on the allegations and evidence on record
[12] Pars. 15 and 18 of the Answer

claiming that the shares that were subscribed to by BHI's incorporators were not fully paid.[13] Finally, BHI and the Individual Appellants maintained that the purchase by BHI of the Island belies the allegation of Appellees that BHI was not funded.[14] Hence, the transactions and the documents that were executed by BHI, through Appellee Dindo Espeleta, in his capacity as President and incorporator, show to the public that the corporation was in a stellar financial condition, because its capital stock has been fully subscribed and paid.[15]

The Assailed Order which imposed the penalty of revocation of BHI's Certificate of Registration led to the filing of the instant Appeal.

In their Appeal, BHI and the Individual Appellants maintained that the CRMD committed reversible error in revoking BHI's Certificate of Incorporation, on the basis of the finding that the registration documents were improperly notarized and did not thus enjoy the presumption of regularity, because Appellees did not deny signing BHI's AoI.[16] BHI and the Individual Appellants posit that the requirement of notarization is merely formal, and a defect in the notarization of the registration documents does not affect the validity or enforceability of the transaction; nor can the same be used as basis in determining if there was fraud in the procurement of the certificate of registration.[17] With Appellees Dindo A. Espeleta and Karen M. Espeleta having admitted that they personally signed the AoI, BHI and the Individual Appellants argued that the declaration relating to the parties' full payment of the shares that they subscribed were not false.[18]

BHI and the Individual Appellants also pointed out that other than the Treasurer's Affidavit, there is nothing in the previous Corporation Code and in the RCC that require a corporation to deposit cash in a bank account registered under its name.[19] Hence, they argued that CRMD's reliance on the bank certificate submitted by Appellees as conclusive proof that BHI's paid-up capital was only Five Million Pesos (PhP5,000,000.00) is questionable, as it disregarded the documentary evidence showing the contrary which was submitted by BHI and the Individual Appellants. Moreover, BHI and the Individual Appellants also emphasized that the transactions which BHI entered into, through Appellee Dindo Espeleta, during the span of five (5) years from its incorporation in 2016, show that BHI was fully capitalized and was validly incorporated.[20]

Finally, BHI and the Individual Appellants reiterated their argument that Appellants Dindo A. Espeleta and Karen M. Espeleta should not be

[13] Par. 16 of the Answer
[14] Par. 33 of the Answer
[15] Par. 31 of the Answer
[16] Par. 10 of the Appeal
[17] Pars. 15 and 16 of the Appeal
[18] Pars. 20, 35, 36, and 39 of the Appeal
[19] Pars. 27, 29 of the Appeal
[20] Pars. 30, 33 and 34 of the Appeal

allowed to benefit from their own wrongdoing based on the doctrine of unclean hands.

On 8 April 2022, Appellees Dindo A. Espeleta and Karen M. Espeleta filed their Comment/Opposition praying for the full affirmation of the Assailed Order, and the dismissal of the Appeal. They argued that the act of Individual Appellants in having the AoI and the Treasurer's Affidavit of BHI notarized, despite the physical absence of the former, will never amount to substantial compliance with the requirements under Sections 14 and 15 of the Corporation Code, because the same constitutes a false statement in the acknowledgment.[21]

Appellees Dindo A. Espeleta and Karen M. Espeleta further maintained that the forgery of the signature of the latter in the Treasurer's Affidavit was proven by substantial evidence, which merits the revocation of BHI's Certificate of Incorporation.[22] The Commission is not estopped from revoking BHI's Certificate of Incorporation which was fraudulently procured, because there is a positive law which sanctions such revocation.[23]

In relation to the paid-up capital of BHI, Appellees Dindo A. Espeleta and Karen M. Espeleta maintained that the same only stood at Five Million Pesos (PhP 5,000,000.00), based on the documentary records submitted, and not One Hundred Million Pesos (PhP100,000,000.00) as stated in BHI's AoI. This shows that the statements in the AoI and Treasurer's Affidavit of the Corporation were false[24], and that the incorporation of BHI was fraudulently made.

In compliance with the Order dated 7 April 2022 issued by the Commission, through the Office of the General Counsel, BHI and the Individual Appellants filed their Position Paper on 28 April 2022, while Appellees Dindo A. Espeleta and Karen M. Espeleta filed their Position Paper on 22 April 2022. The Parties basically reiterated their respective arguments embodied in their earlier pleadings.

ISSUE

The sole issue presented to this Commission is whether the revocation of the Certificate of Incorporation of BHI on the ground of fraud in its procurement was correct based on the records and evidence.

RULING

The Appeal is impressed with merit.

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[21] Pars. 7 and 10 of the Comment/Opposition
[22] Pars. 28 and 29 of the Comment/Opposition
[23] Par. 32 of the Comment/Opposition
[24] Pars. 38, 39, 48 of the Comment/Opposition

The corporate medium, being endowed with a personality separate and distinct from the stockholders/members composing it, is recognized practically in all jurisdictions as the preferred vehicle in conducting, maintaining, developing, and growing a business enterprise, because of the legal, operational and practical advantages that accompany it, compared to other business media.

Under Batas Pambansa Blg. 78 or the Corporation Code of the Philippines[25], the law in effect when BHI was incorporated, a corporation has, among others, a right of succession[26] which facilitates its continued existence independently of its shareholders, and the powers expressly granted by law[27], its Articles of Incorporation (AoI), and/or incident to its existence. This was explained by the Supreme Court in *University of Mindanao, Inc. vs Bangko Sentral ng Pilipinas*[28], 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.
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> 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.
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> The only exception to this rule is when acts are necessary and incidental to carry out a corporation's purposes, and to the exercise of powers conferred by the Corporation Code and under a corporation's articles of incorporation. This exception is specifically included in the general powers of a corporation under Section 36 of the Corporation Code."

It is in this context that the grant of corporate existence is conditioned on the applicant's full compliance with the requirements of the Corporation Code which the State, as the creator of corporations, has prescribed. Stated otherwise, incorporation is not a right that persons can demand from the State, but a mere privilege granted to those that are able to show, to the satisfaction of the Commission, which administers and implements the Corporation Code, that all the statutory/regulatory requirements have been complied with.

Sections 10 to 14 of the Corporation Code[29], embody the requirements that all applicants for incorporation must comply. It is the Commission's duty

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[25] Repealed by Republic Act No. 11232 or the Revised Corporation Code (see Section 187)
[26] Section 2 of the Corporation Code
[27] Sections 36 to 44 of the Corporation Code
[28] G.R. No. 194964-65, January 11, 2016
[29] "**Section 10.** *Number and qualifications of incorporators.* – Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. Each of the incorporators of s stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation.

to verify and ensure, that all the requirements and information prescribed therein, are provided/contained in the Articles of Incorporation (as well as the other supporting documents) submitted to it.

Relative thereto, it is settled in jurisprudence that in the exercise of its regulatory functions[30], the Commission is mandated to determine if the statutory requirements have been complied with, and the Commission may even be compelled by mandamus to act on a matter presented/filed with it considering that the same does not involve the exercise of discretion. The Commission has therefore no authority to waive compliance with any requirement prescribed by law. Thus, in *Gamboa vs Teves*[31], the Supreme Court affirmed the authority of the Commission to disapprove the AoI of any corporation that falls short in complying with the requirements prescribed under the Constitution and/or the laws, to wit:

> "This Court has held that the SEC "has both regulatory and adjudicative functions." Under its regulatory functions, the SEC can be compelled by mandamus to perform its statutory duty when it unlawfully neglects to perform the same. Under its adjudicative or quasi-judicial functions, the SEC can be also be compelled by mandamus to hear and decide a possible violation of any law it administers or enforces when it is mandated by law to investigate such violation.
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> Under Section 17(4) of the Corporation Code, the SEC has the regulatory function to reject or disapprove the Articles of Incorporation of any corporation where "the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution." Thus, the SEC is the

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Section 11. *Corporate term.* – 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.
Section 12. *Minimum capital stock required of stock corporations.* – Stock corporations incorporated under this Code shall not be required to have any minimum authorized capital stock except as otherwise specifically provided for by special law, and subject to the provisions of the following section.
Section 13. *Amount of capital stock to be subscribed and paid for the purposes of incorporation.* – At least twenty-five percent (25%) of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of incorporation, and at least twenty-five (25%) per cent of the total subscription must be paid upon subscription, the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors: Provided, however, That in no case shall the paid-up capital be less than five Thousand (₱5,000.00) pesos."

[30] "Administrative agencies possess two kinds of powers, the quasi-legislative or rule-making power, and the quasi-judicial or administrative adjudicatory power. The first is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers. The issuance of the assailed A.O. No. 00-05, Resolution. No. 03-211 and the other issuances by the PCSD was in the exercise of the agency's quasi-legislative powers. The second is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it." (*The Chairman and Executive Director, Palawan Council for Sustainable Development vs Ejercito Lim*, G.R. No. 183173, August 24, 2016)

[31] G.R. No. 176579, June 28, 2011