Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the Matter of Revoking the Approved Decrease of the Authorized Capital Stock of Sinophil Corporation

SINOPHIL CORPORATION,
Appellant,

- versus -

SEC *En Banc* Case No. 06-13-294

COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellee.

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DECISION

For the consideration of the Commission *En Banc* is the *Memorandum on Appeal*[1] filed by Sinophil Corporation (Sinophil) on 20 June 2013 assailing the Order dated 4 June 2013 of the Company Registration and Monitoring Department (CRMD) of the Commission which denied Sinophil's request to revoke the approval by the CRMD of its decrease in authorized capital stock.

Sinophil was registered with the Commission on 26 November 1993 with SEC Registration No. ASO93-009289. Sinophil filed three (3) applications for the decrease of its authorized capital stock as follows:

Date of the Certificate of Decrease of Capital Issued by the Commission	Computation in the Reduction of the Authorized Capital Stock	Number of Shares Reduced
1. 28 March 2006[2] (First Decrease)	From 20,000,000,000 shares to 18,130,000,000 shares	1,870,000,000 shares reduced
2. 24 June 2008[3] (Second Decrease)	From 18,130,000,000 shares to 17,130,000,000 shares	1,000,000,000 shares reduced
3. 9 July 2009[4] (Third Decrease)	***From 17,130,000,000 shares to 16,130,000,000 shares***	*1,000,000,000 shares reduced*

1 Memorandum on Appeal dated 20 June 2013.
2 *Id*, Annex "D" (Certificate of Decrease of Capital Stock dated 28 March 2006 issued by the Commission).
3 *Id.*, Annex "E" (Certificate of Decrease of Capital Stock dated 24 June 2008 issued by the Commission).
4 *Id.*, Annex "F" (Certificate of Decrease of Capital Stock dated 9 July 2009 issued by the Commission).

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On 18 August 1998, Sinophil, together with Belle Corporation, entered into a Share Swap Agreement with Paxell Investments Limited (Paxell), Metroplex Berhad (Metroplex) and Legend International Resorts Limited (Legend). Metroplex and Paxell are collectively referred to as the "Metroplex Group". In the Share Swap Agreement, the Metroplex Group agreed to transfer to Sinophil 40%, or a total of 46,381,600 outstanding shares, in Legend. In exchange for the shares of stock in Legend, Sinophil shall issue to the Metroplex Group an aggregate of 3.870 billion of its own shares.[5]

However, on 23 August 2001, the parties to the Share Swap Agreement mutually agreed, in a Memorandum of Agreement (Unwinding Agreement), to rescind it in its entirety and to cancel all obligations stated therein after a dispute on the implementation and compliance thereof. Under the Unwinding Agreement, the Metroplex Group was to surrender the certificates for the Sinophil Shares to Sinophil as follows: (i) 1,870,000,000 shares to be surrendered upon the execution thereof; and (ii) 2,000,000,000 shares which were pledged by the Metroplex Group to the International Exchange Bank and Global Bank shall be surrendered to Sinophil within five (5) days from the release by said banks. On the other hand, Sinophil shall surrender the shares in Legend to the Metroplex Group.[6]

Sinophil alleges that it only had in its possession the stock certificates covering the 1,870,000,000 Sinophil shares but it was not able to recover the other 2,000,000,000 Sinophil shares.

Thereafter, in order to fully implement the Unwinding Agreement, Sinophil's stockholders and board of directors approved the *first decrease* of its authorized capital stock by 1,870,000,000 shares which the Commission approved on 28 March 2006.[7]

Sinophil further alleges that it was able to negotiate the acquisition of Legend's loan obligation from Union Bank of the Philippines, which was secured by a pledge of 1,000,000,000 Sinophil shares, and was able to acquire said shares.[8]

As a consequence, its board of directors on 3 May 2007 and its stockholders on 21 June 2007 approved the following proposals: (i) to decrease Sinophil's authorized capital stock by 1,000,000,000 common shares; and (ii) to further reduce the authorized capital stock by another 1,000,000,000 shares "<u>in the event that the Metroplex Group's remaining One Billion shares are subsequently acquired or otherwise cancelled</u>".[9]

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[5] *Id.*, pars. 7-8 and Annex "B" (Share Swap Agreement).
[6] *Id.*, par. 9 and Annex "C" (Unwinding Agreement).
[7] *Id.*, Annex "D" (Certificate of Decrease of Capital dated 28 March 2006 issued by the Commission).
[8] *Id.*, pars. 14-15.
[9] *Id.*, par. 14.

On 24 June 2008, the Commission approved the *second decrease* of capital stock of Sinophil by 1,000,000,000 shares which had the effect of decreasing its authorized capital stock from **18,130,000,000** to **17,130,000,000 shares.**[10]

Sinophil also alleges that it entered into negotiations to reacquire the 1,000,000,000 Sinophil shares which were held by one of the creditors of the Metroplex Group as collateral. It claims that, since it believed that the deal was imminent, it filed an application with the Commission for the *third decrease* of another 1,000,000,000 shares.[11] The Commission approved the third reduction of Sinophil's authorized capital stock on 9 July 2009 from **17,130,000,000** to **16,130,000,000 shares.**[12]

Sinophil, however, claims that it failed to reacquire the 1,000,000,000 shares of Sinophil held by one of the creditors of the Metroplex Group. It filed a *Petition to Revoke the Approved Decrease of Capital Stock* (Petition) on 11 May 2012 with the CRMD praying for the revocation of the Commission's approval of the third decrease of Sinophil's authorized capital stock.

The CRMD issued the assailed *Order* denying the Petition of Sinophil holding that the latter's application for the *third decrease* was complete and regular on its face, and complied with all the requirements under Section 38 of the Corporation Code, and that the decrease in capital stock were certified by the latter's board of directors and corporate secretary. Thus, it denied Sinophil's Petition for the revocation of the *third decrease.*[13]

Hence, this Appeal.

In its *Memorandum on Appeal*, Sinophil argues that there is a suspensive condition accompanying the approval by its board of directors and stockholders of the decrease in capital stock. The suspensive condition allegedly lies in the statement in the Director's Certificate which states: "*in the event that Metroplex Group's remaining One Billion shares are subsequently acquired or otherwise cancelled;* and x x x". Moreover, Sinophil's application for the reduction of its authorized capital stock was made in good faith and in the belief that the acquisition of the subject shares was imminent and forthcoming. Lastly, Sinophil argues that the approval of the decrease of the Sinophil shares may result in deleterious consequences since it is a listed company and traded in the Philippine Stock Exchange.[14]

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[10] *Id.*, Annex "E" (Certificate of Decrease of Capital Stock dated 24 June 2008).
[11] *Id.*, par. 16.
[12] *Id.*, Annex "F" (Certificate of Decrease of Capital Stock dated 9 July 2009).
[13] *Id.*, Annex "A" (Order of the CRMD dated 4 June 2013).
[14] *Id.*, pp. 5-10.

Sinophil filed a *Supplement to the Memorandum on Appeal* (Supplement) on 31 July 2013 in which it submitted additional documentary proof to support its ground that the approval of the Sinophil shares may result in deleterious consequences.[15]

In response, the CRMD maintains that it followed established procedures in the processing of Sinophil's application for the third decrease of its authorized capital stock and that it has all fair reasons to assume that all the conditions were already complied with. Moreover, the CRMD avers that Sinophil, during the course of its third decrease, has not made any declaration that it has not yet acquired the shares from the creditor holding the shares in pledge and that the same is still being negotiated.[16]

A *Second Supplement to the Memorandum on Appeal* (2nd Supplement) was filed by Sinophil on 28 November 2013 before the Commission, which cited SEC Memorandum Circular No. 14, Series of 2013 (Memorandum), claiming that the reversal or reconsideration of the Commission is not unprecedented.[17]

In its *Comment* filed on 26 February 2014, the CRMD claims that the Memorandum refers to the "Guidelines Covering the Use of Properties that Requires Ownership Registration as Paid-up Capital of Corporations" and cannot be made to apply to the application for the reduction of capital stock.[18]

A *Memorandum of Arguments with Clarification* (Memorandum of Arguments) was filed by Sinophil on 1 April 2014 in order to synthesize, re-emphasize, amplify and clarify its position and arguments in its earlier submissions. Moreover, Sinophil claims that Clause 1(a) was inaccurately stated and gave the impression that it was the basis for the *third decrease.* Lastly, Sinophil claims that there was no consideration for the *third decrease.*[19]

Thereafter, a *Supplemental Manifestation (re: Memorandum of Arguments with Clarification)*[20] (Supplemental Manifestation) was filed by Sinophil on 7 April 2014 in order to clarify that the issues involved in this instant case do not touch upon the issues in the case pending before the Supreme Court entitled "*Metroplex Berhard and Paxell Investment Limited v. Sinophil Corporation, et al.*".[21]

The Commission issued an Order dated 16 April 2014 directing the CRMD to comment on the Memorandum of Arguments filed by Sinophil.

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15 *Supplement*, par. 2.
16 Reply Memorandum dated 27 August 2013 filed by the CRMD on 2 September 2013, p. 2.
17 2nd Supplement dated 25 November 2013, par. 7.
18 Comment dated 26 February 2014.
19 Memorandum of Arguments filed on 1 April 2014, pp. 9 and 10.
20 Supplemental Manifestation filed on 7 April 2014.
21 G.R. No. 208281.

On 22 April 2014, Sinophil filed a *Notice of Withdrawal of Appeal* stating that it has decided to withdraw the instant appeal and explore other options since, in almost two (2) years of pursuing the petition and subsequent appeal, its corporate actions and plans had to be deferred due to the pending resolution of this instant appeal. As a consequence, it can no longer hold off the implementation of its pressing business objectives.

On 30 April 2014, the CRMD filed a Manifestation in response to the Order dated 16 April 2014 stating that, in view of the Notice of Withdrawal of Appeal filed by Sinophil, it is of the view that it is no longer necessary to comment further on the Memorandum on Arguments.

Despite the filing of the Notice of Withdrawal of Appeal, we deem it necessary to rule on the merits of the case due to the novelty of the subject matter and to provide guidance on the rules, regulations and orders of the Commission pursuant to Section 5.1(g) of the Securities Regulation Code (SRC).[22] Moreover, we would like to note that the Commission is not in delay in resolving the appeal considering that Sinophil filed the following: Supplement filed on 31 July 2013, 2nd Supplement filed on 28 November 2013, Memorandum of Arguments filed on 1 April 2014, and Supplemental Manifestation filed on 7 April 2014.

Thus, the main issue to be resolved, which is a factual issue and not a legal issue, is whether the approval by the Commission of the *third decrease* of capital stock of Sinophil on 9 July 2009 should be revoked based on the suspensive condition stated in the Director's Certificate.

Section 38 of the Corporation Code provides for the requirements for the decrease of capital stock of a corporation. One of the documents required to be submitted pursuant to Section 38 of the Corporation Code is the director's sworn statement signed by a majority of the directors and countersigned by the chairman and secretary of the stockholders' meeting evidencing, among others, the approval of the board of directors and stockholders of the decrease in the capital stock, which is the bone of contention in this case.

To reiterate, Sinophil filed three (3) applications for the decrease of its authorized capital stock as follows:

Date of the Certificate of Decrease of Capital Issued by the Commission	**Computation in the Reduction of the Authorized Capital Stock**	**Number of Shares Reduced**
28 March 2006[23] (First Decrease)	From 20,000,000,000 shares to 18,130,000,000 shares	1,870,000,000 shares reduced

[22] Republic Act No. 8799 (2000).
[23] *Id*, Annex "D" (Certificate of Decrease of Capital Stock dated 28 March 2006 issued by the Commission).

24 June 2008[24] (Second Decrease)	From 18,130,000,000 shares to 17,130,000,000 shares	1,000,000,000 shares reduced
9 July 2009[25] *(Third Decrease)*	***From 17,130,000,000 shares to 16,130,000,000 shares***	*1,000,000,000 shares reduced*

With respect to the *third decrease* of capital stock of Sinophil on 9 July 2009, Sinophil argues that there was a suspensive condition accompanying the approval by its board of directors and stockholders of the decrease in capital stock. The suspensive condition in the reduction of authorized capital stock by 1,000,000,000 shares lies in the statement in the Director's Certificate which reads: "*in the event that Metroplex Group's remaining One Billion shares are subsequently acquired or otherwise cancelled;* and x x x". Sinophil claims that the suspensive condition, i.e., subsequent acquisition by it of its shares held by the Metroplex Group, was not fulfilled and that Section 38 of the Corporation Code was not complied with. That the non-fulfillment effectively places it in the same situation as if the conditional approval was never given.[26]

We are not convinced. The Director's Sworn Statement of Sinophil executed on 18 July 2008 which was submitted specifically for the *third decrease*, states the following:

> "1. At the aforesaid meetings of the Board of Directors and Stockholders of the Corporation, the requirements of Section 38 of the Corporation Code having been complied with, the following proposals were presented for consideration:
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> a. ***To DECREASE*** the authorized capital stock of the Corporation ***from*** **Seventeen Billion One Hundred Thirty Million Pesos (P 17,130,000,000.00)**, ***to*** **Sixteen Billion One Hundred Thirty Million Pesos (P 16,130,000,000.00)**, Philippine Currency;
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> b. To ***FURTHER REDUCE*** the authorized capital stock of the Corporation by ***ANOTHER One Billion Pesos (P 1,000,000,000)***, or One Billion (1,000,000,000) Common Shares, *in the event that the Metroplex Group's remaining One Billion shares are subsequently acquired or otherwise cancelled*; and x x x"[27] (Emphasis Ours)

A closer evaluation of Sinophil's Director's Sworn Statement, above-stated, clearly reveals that there is no suspensive condition in Clause 1(a) therein. Otherwise stated, the suspensive condition will only apply to Clause 1(b) and not to Clause 1(a) therein. Clause 1(a) mentions the decrease of authorized capital stock from **Php 17,130,000,000.00** to **Php 16,130,000,000.00,** as indicated by the Certificate of Decrease

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[24] *Id.*, Annex "E" (Certificate of Decrease of Capital Stock dated 24 June 2008 issued by the Commission).
[25] *Id.*, Annex "F" (Certificate of Decrease of Capital Stock dated 9 July 2009 issued by the Commission).
[26] *Id.*, par. 26-30.
[27] *Id.*, Annex "G" (Sinophil's Director's Sworn Statement dated 18 July 2008).

of Capital Stock dated 9 July 2009 issued by the Commission, and is thus referring to the *third decrease*. Hence, the *third decrease* was not subject to the suspensive condition.

Subject Sinophil's Director's Sworn Statement was executed and submitted on 18 July 2008, a date subsequent to the approval by the Commission of the *second decrease* on 24 June 2008. This clearly indicates the intention of Sinophil's board of directors and stockholders to approve the *third reduction*, without any qualification or condition, as indicated in Clause 1(a).

Moreover, Sinophil submitted the following documents in support of its application for the *third reduction* which clearly do not reveal the intention of imposing a suspensive condition thereon: (i) Letter of Sinophil's counsel dated 18 July 2008; (ii) Secretary Certificate executed on 3 July 2009; and (iii) Publisher's Affidavit of the publication of the Notice of the Decrease of Capital.

In the Letter of Sinophil's counsel dated 18 July 2008, the said counsel[28] did not apprise the Commission that there was any suspensive condition imposed on the *third reduction.* Therein stated "request for the Commission's approval of the Amendment to Article Seventh of its Articles of Incorporation of the Corporation, decreasing its authorized capital stock ***from*** Seventeen Billion One and Hundred Thirty Million Pesos (17,130,000,000.00) x x x to Sixteen Billion One and Hundred Thirty Million Pesos (16,130,000.00) x x x" is unequivocal and unqualified.

Next, in the Secretary's Certificate executed by the Assistant Corporate Secretary of Sinophil on 3 July 2009,[29] she did not mention any suspensive condition imposed on the *third reduction*. She merely stated that Sinophil filed an application for the decrease of authorized capital stock and that the approval of the decrease will not result in the damage or prejudice to the rights of its stockholders.

Further, in the Notice of the Decrease of Capital published in the Manila Times on 17 July 2008, the said Notice likewise did not mention any suspensive condition imposed on the *third reduction*. The said Notice only mentioned that Sinophil will decrease its authorized capital stock from Php 17,130,000,000.00 to Php 16,130,000.00 which was approved by its board of directors and stockholders. Moreover, neither is there any indication in the documents in support of its application of the *first* and *second reduction* of its authorized capital stock. Clearly, Sinophil did not reveal to the Commission any suspensive condition imposed on any of the reductions in its application.

Lastly, Sinophil claims that Clause 1(a) of its Director's Sworn Statement was inaccurately stated which gave the impression that it was the basis for the *third decrease.*

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[28] Atty. Jason C. Nalupta

[29] Michelle B. San Buenaventura-Dy.

However, the following rule shall apply: "El que es causa de la causa es causa del mal causado." He, who is the cause of the cause is the cause of the evil caused.[30] Thus, we cannot give credence to the claim of Sinophil with respect to Clause 1(a).

Thus, the CRMD clearly followed the procedures in the processing of Sinophil's application for the *third decrease* and was justified in relying on the representations made by Sinophil in its application for the same. As above-stated, Sinophil has not made any declaration in the documents submitted in support of its application that there is a suspensive condition attached thereto. Worse, and as aptly pointed out by CRMD, Sinophil, after these unqualified representations, took three (3) years to request for the revocation of the *third* decrease, which smacks of bad faith. The Commission agrees with the CRMD that Sinophil should not be permitted to make a mockery of the Commission's procedures.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** with prejudice and the Order of the Company Registration and Monitoring Department dated 4 June 2013 is hereby **AFFIRMED.**

SO ORDERED.

Mandaluyong City, 3 June 2014.

TERESITA J. HERBOSA*
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE* *
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

* Away On Official Business

[30] Padilla v. Sto. Tomas, et al., G.R. 109444 (1995), citing 1 Cuello Calon, Codigo Penal, 12th ed. 1968, pp. 335-336.

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