Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of the Petition for Involuntary
Dissolution of

STARCONNECTION INC. SEC Case No. 06-09-271

ATTY. LEONARDO W. BERNABE,
Petitioner.
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DECISION

For consideration of the Commission is the petition for the dissolution of Starconnection, Inc. ("Starconnection") for an alleged violation of Section 53 of the Corporation Code of the Philippines.[1]

In his petition, petitioner alleges that: (1) He is one of the stockholders of Starconnection, a duly organized corporation with SEC Registration No. CS200520192; (2) He was a director and the Corporate Secretary until he was ousted in an election held on 05 August 2008; (3) Starconnection entered into a Franchise Agreement with Filippi Nouvelle, Inc. ("FNI") on 22 November 2005, but the same was terminated by the new Board of Directors; (4) Eventually, the restaurant ceased its business operation, and FNI, in its 01 September 2008 letter, informed the Board of Directors of Starconnection of its terminating the franchise; and (5) Starconnection has never held or called for any regular or special meeting of its directors in violation of Section 53 of the Corporation Code. Petitioner, thus, prays for the revocation of the license of Starconnection, dissolution and winding up of the affairs of the said corporation and the issuance of an order to return the money of petitioner given by him to Starconnection.

Acting on the petition, the Commission issued a summons duly received by its treasurer, Vicente Angliongto, Jr. Despite due receipt of the summons, no answer has yet been filed to date. Thus, respondent corporation is deemed to have waived its right to file any responsive pleading, and the instant case is now deemed submitted for resolution.

The sole issue involved in this case is whether there is a valid ground for the dissolution of Starconnection.

The petition is bereft of merit.

[1] Batas Pambansa Blg. 68 (1980)

Section 53 of the Corporation Code provides:

> "Sec. 53. ***Regular and special meetings of directors or trustees.*** - Regular meetings of the board of directors or trustees of every corporation shall be held monthly, unless the by-laws provide otherwise.
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> Special meetings of the board of directors or trustees may be held at any time upon the call of the president or as provided in the by-laws.
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> Meetings of directors or trustees of corporations may be held anywhere in or outside of the Philippines, unless the by-laws provide otherwise. Notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least one (1) day prior to the scheduled meeting, unless otherwise provided by the by-laws. A director or trustee may waive this requirement, either expressly or impliedly. (n)"

The penalty for a violation of any of the provision of the Corporation Code is provided for in Section 144 of the Corporation Code, thus:

> "Sec. 144. *Violations of the Code.* - Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. (190 1/2 a)"

The foregoing provision is a substantial reproduction of Section 190 ½ of the old Corporation Law. Thus, the observation of the Supreme Court in the case of the *Government of the Philippine Islands v. El Hogar Filipino*[2] is still applicable in the instant case, thus:

> "No corporate enterprise of any moment can be conducted perpetually without some trivial misdemeanor against corporate law being committed by some one or other of its numerous employees.xxx The provision now under consideration has not impaired the discretion of this court in applying the writ of *quo warranto.*"

In other words, the law does not intend that every casual infraction of the Corporation Code is a valid ground for dissolving the erring corporation. Forfeiture of

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[2] 50 Phil 399 (1927).

corporate registration is not favored. Further, well-established is the rule that statutes in derogation of rights, forfeiture of corporate registration for instance, are strictly construed.[3]

The drastic remedy of dissolving a corporation must be exercised with great caution and not in doubtful cases.[4] This holds true in case where an individual's interest and not of 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 adequate remedy is available.[5]

In the instant case, non-calling of a directors' meeting hardly calls for the dissolution of Starconnection considering that the petitioner has other recourse aside from seeking the forfeiture of the corporate registration of Starconnection. Petitioner's remedy, however, lies within the jurisdiction of the regular courts considering that the instant case involves an intra-corporate controversy between a corporation and one of its stockholders, and the issue involves the conduct of the affairs of the corporation, that is, the meeting of the board members. In one case, the Supreme Court explained the nature of an intra-corporate controversy as follows:

> "To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the Branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.
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> The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership or association of which they are stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation."[6]

Further, the record of the case is also bereft of any evidence that would show that the attention of the concerned officers of Starconnection was called on the alleged non-holding of the meeting of the directors. Finally, it is also worthy to note that what is involved here is an alleged deprivation of the exercise of right of a board member to attend any board meeting, and to receive any investment he may

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[3] Agpalo, Ruben E. STATUTORY CONSTRUCTION 308-309, 5th ed (2003).
[4] 16A Fletcher Cyc Corp (Perm Ed) sec. 8035, at p. 155.
[5] Fletcher, *supra*, sec. 8043 at 167.
[6] Speed Distributing Corp., *et al.* v. Court of Appeals, *et al.*, G.R. No. 149351, March 17, 2004.

have with Starconnection. These matters must be threshed out in the proper forum, and not with the Commission in the guise of a petition for dissolution of the subject corporation.

IN VIEW OF THE FOREGOING PREMISES, the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

City of Mandaluyong, 07 January 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner