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

A&F DEVELOPMENT CORPORATION,
Appellant,

-versus-

SEC En Banc Case No. 07-16-407

COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellee.
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DECISION

For the consideration of this Commission is the *Memorandum on Appeal* (the "Appeal") and *Supplement to Memorandum of Appeal* dated 7 July 2016 and 15 July 2016, respectively, filed by A&F Development Corporation (A&F) assailing the Letter-Resolution of the Company Registration and Monitoring Department (CRMD) of the Commission dated 23 June 2016 (Assailed Resolution) denying A&F's request for reconsideration of CRMD's denial of its application for extension of its corporate term via an Amendment of its Articles of Incorporation.

RELEVANT FACTS

On 17 May 1966, A&F was duly incorporated and issued a Certificate of Incorporation (the "Certificate") by the Commission. Under Article FOURTH of its Articles of Incorporation (AoI), the term for which A&F is to exist is fifty (50) years from 17 May 1966.

On 2 May 2016, the Board of Directors and stockholders of A&F held a joint meeting and approved to amend,[1] among others, Article FOURTH of its AoI by extending the corporate life of A&F for another fifty (50) years.

In the morning of 17 May 2016, A&F filed its Audited Financial Statement (AFS); and in the afternoon of the same day, A&F filed its General Information Sheet (GIS). Both documents were received by the Commission.

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[1] The Board and Stockholders of A&F also approved (a) Article THIRD of its AoI which amended its business address, and (b) Article SEVENTH of its AoI which increased its authorized capital stock to P25Million.

On 17 May 2016, A&F, through Purification R. Santos, attempted to file before the CRMD an application for amendment of its AoI together with the documents in support thereof. CRMD did not accept the application for amendment and the documents of A&F on the ground that under SEC Memorandum Circular No. 21, Series of 2014 ("MC 21-2014"), the corporate term of A&F had already expired on 16 May 2016.

In a Letter dated 19 May 2016, A&F sought the reconsideration of the action of CRMD in denying receipt of the application, but the same was denied in the Assailed Resolution signed by Dir. Ferdinand Sales. The CRMD ruled that A&F's failure to file the necessary requirements while it was still in existence warranted the denial of the amendment on the basis of the Ching Bee doctrine,[2] to wit:

> "*In the instant case, although there were meetings of the directors and stockholders approving the extension of term before it expires, the subject corporation failed to file its application for amendment with the CRMD during the period allowed by the Code, thus, there was nothing for the CRMD to review, approve or disapprove.*
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> *In view of the foregoing, we regret that we cannot act favorably on your request.*"

On 7 July 2016 and 15 July 2016, A&F filed the Appeal and the Supplement to Memorandum of Appeal where A&F attached therein a news clipping from the Businessworld dated 30 April 2015 entitled "Points to Keep in Mind When Computing for Corporate Life" for the consideration of the Commission.

ISSUE

Whether the CRMD committed reversible error in denying acceptance of A&F's application for amendment of its AoI on 17 May 2016 on the ground that its corporate existence already expired on 16 May 2016.

RULING

In its appeal, A&F maintained that the date of expiration of its corporate life was 17 May 2016, hence, it was erroneous for CRMD to deny

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[2] Company Registration and Monitoring Department and Securities and Exchange Commission, En Banc vs Ching Bee Trading Corporation; G.R. No. 205291, 14 November 2014.

receipt and processing of its amended AoI on the said date. A&F argued that CRMD committed reversible error in using MC 21-2014 as basis for its decision on the alleged ground that it is contrary to the doctrines established in the cases of ***Commissioner of Internal Revenue v. Primetown Property Group***[3] (Primetown Case) *and* ***SEC and CRMD v. Ching Bee Trading Corporation***[4] (Ching Bee Case).

After a careful review of the arguments presented by the parties, in the context of applicable jurisprudence, the Commission finds merit in the appeal and hereby grants the same.

In its Order, the CRMD recognized that Appellant was able to show that its Board of Directors approved the amendment of its AoI extending its corporate term before the expiration date thereof. However, CRMD refused acceptance of the application and supporting documents when it was filed by A&F on 17 May 2016 on the ground that based on MC 21-2014, A&F's corporate existence expired on 16 May 2016, and that "*there was nothing for the CRMD to review, approve or disapprove".*

The Corporation Code and applicable jurisprudence recognize and allow perpetual existence of corporations.

Under Batas Pambansa Blg. 68 (the "Corporation Code") which was the law applicable when the instant case was filed, matters relating to corporate term and its extension(s) are provided in Section 11 which states:

> "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."

A careful reading of the aforequoted provision will reveal a clear intent and policy of the law to recognize and allow the perpetual existence of corporations by successive renewal of their corporate term. The Supreme Court spelled this out in the case of *Company Registration and Monitoring Department v. Ching Bee Trading Corp.*[5] (the "Ching Bee Case"), to wit:

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[3] G.R. No. 162155, 28 August 2007.
[4] G.R No. 205291, 12 November 2014.
[5] G.R. No. 205291 (Notice), [November 12, 2014].

> "Nevertheless, corporate death may be avoided as the State practically allows the unlimited perpetuation of a corporation by operation of Section 11 of the Code." (Emphasis ours)

To ensure that the intent and principle underlying Section 11 of the Corporation Code is implemented, Section 17 of the Corporation Code categorically mandated the Commission provide corporations reasonable time within which to rectify amendment documents to ensure that they comply with existing laws, rules and regulations, thus:

> **"**The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, That the Commission **shall** give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment." (Emphasis ours)

Applying the fundamental rule in statutory construction that every part of a statute must be interpreted with reference to the other parts thereof to implement the general intent of the law,[6] the Commission holds that the clear intent of Section 11 in relation to Section 17 of the Corporation Code is to grant perpetual existence to corporations that clearly show intent to extend their corporate terms. The foregoing finds support in the Ching Bee Case where the Court ruled that:

> "Under Section 17 of the Code, however, the SEC must give a reasonable time to an applicant within which to make the necessary corrections should there be objectionable portions in the amendment. As cited by the CA, a reasonable time is defined as so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having regard for the rights and possibility of loss, if any to the other."

A&F provided proof of its intent to extend it corporate term.

In the instant case, the records will show that on 2 May 2016, A&F called for and conducted a board and stockholders' meeting where the matter relating to the proposed amendment of its AoI extending its corporate term was presented, deliberated upon and approved. 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. This unquestionably shows a clear and categorical intent on the part of A&F to extend its corporate term.

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[6] See PHILIPPINE INTERNATIONAL TRADING CORPORATION vs Commission on Audit, G.R. No. 183517, June 22, 2010.

In the Ching Bee Case, the Supreme Court took into consideration the attendant circumstances which showed a clear intent on the part of Ching Bee to extend its corporate life, acted on the matter with liberality and rendered a dicision favorable to the continued existence of Ching Bee.

The Commission notes that in the year 2000, it issued Resolution No 35 implementing a policy favorable to the perpetual existence of corporations, consistent with the spirit of Section 11 of the Corporation Code. In the said Resolution, the Commission considered an amendment extending the corporate term duly filed with it, even if the same was done after the expiry date provided that board approvals covering the same were done prior to the expiration. Through Resolution No 35, the Commission thus put flesh to the spirit of Section 11. Again, the foregoing finds affirmation, albeit unwittingly, in the Ching Bee Case where the Supreme Court ruled that:

> "Accordingly, for as long as the corporation opts to extend its term while it is still alive and during the period allowed by the Code, that is, the filing of the necessary requirements, the burden shifts to the SEC to review, approve or disapprove the same before the corporation breathes its last. If no approval is secured within that limited time, the fault would have to be on the part of the SEC."

In the instant case, the CRMD outrightly refused acceptance of A&F's application and supporting documents on 17 May 2016 on the ground that based on MC 21-2014, A&F's corporate life was extinguished on 16 May 2016.

We do not agree with CRMD.

The records of the case show that on 17 May 2016, A&F filed two (2) documents with the Commission i.e. its AFS for the period ended 31 December 2015 in the morning, and its GIS in the afternoon, which were duly received, and attempted to file its amendment documents. While we are aware that receipt of reportorial documents are ministerial on the part of the Commission, the act of A&F in filing its AFS and GIS is consistent with, and corroborates the approval made by the board of directors and stockholders to extend its corporate life. A&F clearly intended in continuing and even expanding its operations.

The factual circumstances in the instant case militate against the decision of CRMD to refuse receipt of A&F's amendment documents which on its face showed a clear intent to extend its corporate life. Instead of applying immediately MC-21-2014, CRMD should have considered at the first instance, the policy of the Commission[7] to grant perpetual existence to corporations that clearly opts to do so because this is consistent with the spirit and intent of Section 11 of the Corporation Code. The CRMD should have acted on the matter with liberality and should have exercised its regulatory power to promote/further the continued existence of A&F instead of handing it a death sentence. The case of *Isip v. Municipal Council of Cabiao, Nueva Ecija*[8] is instructive, 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 any one doubt what our decision will be? We adopt that construction which will produce the most beneficial results.”

In February 2019, the policy under Section 11 of the Corporation Code recognizing and allowing the perpetual existence of corporations (by successive renewal of its corporate term) was made explicit in Section 11 of Republic Act No. 11232 otherwise known as the Revised Corporation Code (RCC) which provides:

> “A corporation shall have perpetual existence unless its articles of incorporation provides otherwise.
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> Corporations with certificates of incorporation issued prior to the effectivity of this Code and which continue to exist shall have perpetual existence, unless the corporation, upon a vote of its stockholders representing a majority of its articles of incorporation: *Provided*, That any change in the corporate right of dissenting stockholders in accordance with the provisions of this Code.”

With the enactment of the RCC, all doubts relating to the policy which recognized, sanctioned and granted perpetual existence to corporations under Section 11 of the Corporation Code were thus cleared and settled once and for all.

Moreover, insofar as Section 11 is concerned, the RCC can be considered as a curative statute because it is intended to enable the Commission to carry out and recognize the policy and intent of giving perpetual existence to corporations sans the act of amending the articles of incorporation.[9] Before the RCC was enacted, the corporate term of a number of corporations have expired because of inadvertence, oversight or misapprehension of the law; these corporations were denied extension notwithstanding presentation of documents which showed intent to extend

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[7] Embodied in Resolution 35-2000.
[8] G.R. No. L-18947 April 29, 1922.
[9] Philippine Health Insurance Corp. v. Commission on Audit, G.R. No. 222710 (Resolution), [September 10, 2019].

corporate term. Section 11 of the RCC has addressed this evil. The doctrine in the Ching Bee Case should be applied to the instant case to implement the mandate of Section 11 i.e. to grant perpetual existence to A&F which has clearly manifested an intent to continue its business.

Finally, the Commission notes that A&F's position that its corporate existence expired on 17 May 2016 (which the 50th year from its incorporation in 17 May 1966) finds support in the Ching Bee Case where the Supreme Court made a pronouncement to the effect that the last day of the 50-year corporate life which commenced on 23 December 1960 (date of incorporation), was on 23 December 2010. The Court thus held that the filing made on 22 December 2010 by Ching Bee was timely as it was "one day before the last day of corporate existence". On the basis of the foregoing, We hold that CRMD made a reversible error in refusing acceptance of the application documets filed by A&F on 17 May 2016 because A&F's corporate life was not yet extinguished.

WHEREFORE, premises considered, the Memorandum of Appeal of A&F is hereby **GRANTED**. The Letter-Resolution of the CRMD dated 23 June 2016 is hereby **REVERSED AND SET ASIDE.** The CRMD is hereby directed to accept the application for amendment of A&F's Articles of Incorporation and to act on the same based on apllicable laws, rules and regulations."

SO ORDERED.

Pasay City, Philippines, 19 May 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner