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

ANTONIO Y. PINZON,
Respondent-Appellant

-versus-

MANUEL S.C. ASENSIO III,
Petitioner-Appellee.

SEC En Banc Case No. 10-10-221
(SEC Case No. 12-07-201)
For: Calling of Annual Stockholders Meeting

x---x

DECISION

For consideration of the Commission *En Banc* is the *Memorandum on Appeal*, dated 29 October 2010, filed by Antonio Y. Pinzon ("***Appellant***" for brevity) assailing the 06 October 2010 Order ("***Assailed Order***" for brevity) of the Office of the General Counsel ("***OGC***" for brevity). The dispositive portion of the Assailed Order reads:

> "**WHEREFORE**, premises considered, the petition is hereby GRANTED. Petitioner is **DIRECTED** to call a meeting of Asensio-Pinzon Aggregates Corporation and preside thereat as mandated by Section 50 of the Corporation Code.
>
> Parties are likewise **ORDERED** to use the Stock and Transfer Book registered with the Commission on July 9, 1990 to determine the stockholders of record entitled to vote.
>
> Finally, petitioner is hereby ordered to submit proof of the stockholders' meeting within thirty (30) days from date of the meeting."

Appellant is the President and Chief Executive Officer of Asensio-Pinzon Aggregates Corporation (APAC).[1] Manuel S.C. Asensio III ("***Appellee***" for brevity), on the other hand, is the Chairman of the Board of APAC.[2]

On 05 December 2007, Appellee filed a Petition for Calling of Stockholders Meeting, dated 03 December 2007, alleging that APAC has been besieged with devices and schemes and acts of some directors, stockholders and officers amounting to fraud and misrepresentation, including controversies in the election or appointment of directors and officers. He, further alleged that he has made honest attempts at

[1] Memorandum on Appeal dated 29 October 2010. Records, p. 25.
[2] Ibid. Records, p. 24.

convening a board meeting and stockholders' meeting based on the by-laws of APAC, but these have been thwarted by the directors, officers and stockholders of APAC to the detriment of the other stockholders, the corporation, and the public in general.[3]

In its *Answer* dated 19 March 2008, the Board of Directors of APAC, through the Appellant, alleged that it is the Appellee who has been perpetrating the fraud and misrepresentation against APAC. Moreover, Appellant alleged that a stockholders' meeting was held in January 2005 at EDSA Shangri-La Hotel and the stockholders were unable to elect the members of the board and officers due to the issue of the existence of two stock and transfer books and as to which stock and transfer book (STB) should be followed. Furthermore, Appellant alleged that the parties agreed to settle the issue before the appropriate tribunal prior to the calling of another stockholders' meeting.[4]

On 06 October 2010, the OGC issued the Assailed Order granting Appellee's Petition and directing the parties to use the Stock and Transfer Book registered with the Commission on July 9, 1990 to determine the stockholders of record entitled to vote.

On 29 October 2010, Appellant filed a *Notice of Appeal*[5] and *Memorandum on Appeal*[6] based on the following grounds. First, despite Appellee's coming to this Commission with unclean hands by securing another STB, the Commission still rewarded him by granting his petition. Second, the unjustified refusal of the Commission to nullify the second STB in the possession of Appellee, despite a clear finding of violation in its application and issuance, smacks of gross abdication of its duty to regulate and supervise private corporations as provided under Section 5.1 (c),[7] (d),[8] (f),[9] (h),[10] and (n)[11] of Republic Act No. 8799 (Securities Regulation Code). And third, the questioned order is contrary to the agreement of the parties during the stockholders meeting in January 2005.

On 30 November 2010, Appellee filed his *Comment/Opposition*,[12] dated 22 November 2010, arguing as follows. First, the appeal should be dismissed outright considering that Appellant is not authorized by the Board of APAC. Second, the Commission has the power to compel the calling of stockholders meeting under Section

---

[3] 06 October 2010 Order of the OGC. Records, p. 7.
[4] Ibid. Records, pp. 6-7.
[5] Records, pp. 26- 28.
[6] Records, pp. 9-25.
[7](c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;
[8](d) Regulate, investigate or supervise the activities of persons to ensure compliance;
[9](f) Impose sanctions for the violation of laws and rules, regulations and orders, and issued pursuant thereto;
[10](h) Enlist the aid and support of and/or deputized any and all enforcement agencies of the Government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and function under its Code;
[11](n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.
[12] Records, pp. 33 to 37.

50[13] of the Corporation Code in relation to Section 5.1(k)[14] of the Securities Regulation Code especially under the facts of the present case where there was no stockholder's meeting conducted since 2004. And third, the Commission only exercises prudence when it declared that although the STB in the possession of the Appellant's group should be followed, the same does not result in the nullification of the STB of the Appellee's Group because the determination as to whether or not the STB of the latter represents the correct shareholding of the corporation requires full blown proceedings, which should be the subject of a separate case.

The issues to be resolved are as follows: (1) Whether or not Appellant has the legal personality to file the present Appeal; (2) Whether or not the OGC committed a reversible error when it granted Appellee's Petition for Calling of Meeting; and, (3) Whether or not the OGC committed a reversible error when it refused to nullify Appellee's STB.

Anent the first issue, Appellee argues that the filing of an appeal is a major act of the corporation that requires board concurrence, hence, absent any authority from the board of directors of APAC, Appellant cannot file the instant appeal. This argument is not persuasive.

The Supreme Court, in a number of cases, has recognized certain officials or employees of a corporation that **<u>could sign the verification and certification without need of a board resolution</u>**, such as but not limited to: the Chairperson of the Board of Directors, the **<u>President of a corporation</u>**, the General Manager or Acting General Manager, Personnel Officer, and an Employment Specialist in a labor case. [15] Here, it is undisputed that Appellant is the President and the Chief Executive Officer of APAC; thus, he can sign the verification and certification necessary for the filing of the instant appeal without proof that it is authorized by the Board of Directors of APAC.

Granting but not conceding that Appellant is not authorized to file this appeal, the same has already been ratified by acquiescence. In ***Yasuma vs. Heirs of De Villa***,[16] the Supreme Court emphasized that an unauthorized act of its corporate officer can be ratified expressly or impliedly (*e.g.* acquiescence), to wit:

> "However, the corporation may ratify the unauthorized act of its corporate officer. Ratification means that the principal voluntarily adopts, confirms and gives sanction to some unauthorized act of its agent on its

---

[13] Section 50. xxx Whenever, for any cause, there is no person authorized to call a meeting, the Securities and Exchange Commission, upon petition of a stockholder or member on a showing of good cause therefor, may issue an order to the petitioning stockholder or member directing him to call a meeting of the corporation by giving proper notice required by this Code or by the by-laws. The petitioning stockholder or member shall preside thereat until at least a majority of the stockholders or members present have chosen one of their number as presiding officer.

[14] (k) Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;

[15] Spouses Eugene L. Lim and Constancia Lim vs. Court of Appeals, G.R. No. 192615, January 30, 2013, citing Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue, G.R. No. 151413, February 13, 2008. Emphasis and underscoring supplied.

[16] G.R. No. 150350, August 22, 2006.

behalf. It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized and becomes the authorized act of the party so making the ratification. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ratification can be made either expressly or impliedly. **Implied ratification may take various forms like silence or acquiescence, acts showing approval or adoption of the act, or acceptance and retention of benefits flowing therefrom**."[17]

In this case, no objection was interposed by other members of the board of APAC; thus, their assent to this appeal can be reasonably inferred from their silence.

Furthermore, Appellee is already estopped from questioning the authority of Appellant to represent APAC or its board. A perusal of the records would reveal that it was thru Appellant that the Board of Directors filed its verified *Answer*[18] to Appellee's *Petition for Calling of Stockholders Meeting* without any board resolution attached to the said Answer. It is now too late for Appellee to question Appellant's authority to represent APAC or its board. It is settled that an Appeal is a continuation of the original suit.[19] Appellant, therefore, has the legal personality to file the instant Appeal.

As regards the second issue, Appellant claims that the OGC erred in granting the Petition for the following reasons. First, Appellee filed his Petition with unclean hands as Appellee's act of securing another STB was the cause of the continued failure of APAC to hold a stockholders' meeting. Second, no good cause was shown by Appellee for the calling of meeting considering that he failed to adduce evidence to prove that he exhausted available remedies under the by-laws of the corporation. And third, considering the parties' agreement not to call any stockholders meeting pending the resolution on the issue of the two STBs during the stockholders' meeting of APAC in 2005, the Assailed Order, therefore, is contrary to the said agreement. The foregoing arguments are untenable.

Under its regulatory responsibilities, the Commission may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners associations, and labor unions); **compel legal and regulatory compliances**; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.[20]

Section 50 of the Corporation Code[21] provides:

---

[17] Emphasis and underscoring supplied.
[18] Answer Ex Abundante Ad Cautelam, dated 19 March 2008.
[19] Madrigal Transport, Inc. vs. Lapanday Holdings Corporation, et. al., G.R. No. 156067, August 11, 2004.
[20] Securities and Exchange Commission vs. Universal Rightfield Property Holdings, Inc., G.R. No. 181381, July 20, 2015, citing, Gamboa vs. Finance Secretary, G.R. No. 176579, June 28, 2011. Emphasis and underscoring supplied.
[21] Batas Pambansa Blg. 68 (1980).

"**Regular meetings of stockholders or members <u>SHALL</u> be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees**: Provided, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws. x x x"[22]

It is clear that the holding of a regular/annual meeting is *mandatory* as it is during this meeting that the board of directors are elected, and during which the stockholders or members have the opportunity to know the condition of the company, its plans and programs. When the by-laws provide for the time of holding of an annual meeting for the election of directors, the same should be held on the regular appointed time, unless the meeting cannot be held. [23]

Certainly, whether or not Appellee filed his Petition with unclean hands, or whether or not there is an agreement between the parties during the stockholder's meeting of APAC in 2005 is immaterial for what is involved in Petitions for Calling of Meeting is the exercise of the Commission's power to compel legal and regulatory compliances from corporations. Further, by Appellant's own admission that no stockholder's meeting was held since 2006,[24] a stockholders' meeting is, indeed, in order.

As to the third issue, Appellant contends that the Commission committed a reversible error when it refused to nullify Appellee's STB despite the finding that said STB did not conform to the records of the Commission. He argues that such unjustifiable refusal is a gross abdication of Commission to regulate and supervise private corporations under Section 5.1(c), (d), (f), (h), and (n) of the Securities Regulation Code.[25] Further, he claims that the instruction to file a separate petition to nullify Appellee's STB is not only contrary to the rules but also duplicitous and encourages delay and expensive litigation.

We agree with Appellant.

There is no question that the determination of whether a STB is valid necessarily falls within the regulatory jurisdiction of the Commission as held by the Supreme Court in ***Provident International Resources Corporation vs. Joaquin T. Venus***.[26] Thus:

"Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise -- from which a corporation owes its legal existence -- **<u>the SEC must likewise have the</u>**

[22] Emphasis and underscoring supplied.
[23] De Casa, Handbook on Private Corporations (Domestic & Foreign) p. 426-427 (2009) citing SEC Opinion dated 8 March 1995 addressed to Mr. Ratan A. Vaswani.
[24] Records, p. 20.
[25] Supra, Notes 7 to 11.
[26] G.R. No. 167041, June 17, 2008.

lesser power of merely recalling and canceling a STB that was erroneously registered.

Going to the particular facts of the instant case, we find that the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC as early as September 1979. **As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction.** Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents.

As the regulatory body, it is the SECs duty to ensure that there is only one set of STB for each corporation. The determination of whether or not the 1979-registered STB is valid and of whether to cancel and revoke the August 6, 2002 certification and the registration of the 2002 STB on the ground that there already is an existing STB is impliedly and necessarily within the regulatory jurisdiction of the SEC."[27]

In the Assailed Order, the parties were directed to use the STB in the possession of Appellant considering the fact that the STB in Appellee's possession do not conform to the records of the Commission. However, Appellee's STB was not nullified and, instead, Appellant was instructed to file a separate petition for nullification with the Company Registration and Monitoring Department should the latter wish to nullify the same.[28]

It cannot be overemphasized that the rules of procedure of the Commission must be liberally construed to assist the parties in obtaining a just, prompt, expeditious, and inexpensive resolution, settlement, and/or disposition of all actions brought before it.[29] Further, the essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side.[30]

As borne out by the records, nine preliminary conferences[31] were conducted in order to settle the issue on STBs. Memoranda[32] were also issued to the Company

---

[27] Emphasis and underscoring supplied.
[28] Supra, Note 3. Records, p. 2.
[29] Section 1-3, Rule I, The 2006 Rules of Procedure of the Securities and Exchange Commission.
[30] F/O Augustus Z. Ledesma vs. Court of Appeals, et. al., G.R. No. 166780, December 27, 2007.
[31] Held on 06 October 2008, 04 November 2008, 26 November 2008, 02 December 2008, 14 January 2009, 24 February 2009, 24 March 2009, 15 April 2009, and July 28, 2010.

Registration and Monitoring Department (CRMD) of the Commission requesting the assistance of the latter in determining which of the two STBs is valid. In fact, an interview was conducted with Ms. Annette Tamayo, Records Officer III of Corporate Filing and Records Division (CFRD) of the CRMD[33] regarding the process on how to determine the validity of a STB using primary and secondary sources.[34] Moreover, position papers were filed by the parties concerning their respective stand on the issue. And based on the foregoing, the OGC found that Appellant's STB was registered within the prescribed period, and is supported by documentary evidence, whereas Appellee's STB is marred by irregularities.[35]

Clearly, an extensive proceeding had already been undertaken to determine which of the two STBs is valid. To require Appellant to file another petition to nullify Appellee's STB will only lead to redundancy and will only waste the precious time and resources not only of the parties but of the Commission's as well.

---

[32] Memorandum dated 18 November 2008 addressed to Director Benito A. Cataran of the Company Registration and Monitoring Department and Memorandum dated 12 July 2010 addressed to Assistant Director Gerardo F. Del Rosario.

[33] Supra, Note 3, Footnote No. 14. Records, p. 4.

[34] Prior to 1996, the primary source is the registration of the stock and transfer book evidenced by the stamp at the back of the Certificate of Registration. Another primary source is the STB Registration Form which the CFRD-CRMD started using sometime in 1996. The secondary source is the monitoring sheet. (Assailed Order, Records, p. 4)

[35] Records show that the STB of the Pinzon Group was registered within the prescribed period stated above. The stamp at the back of the Certificate of Registration contains the following information: Date 7-9-90; Volume 1, Serial No. 001976. These entries, including the signature of initial of Ms. Connie Ranches, a retired employee assigned at the defunct Supervision and Monitoring Department, are reflected on the first page of the certified true copy of the STB submitted by the Pinzon Group. The fact of the registration of the STB of the Pinzon Group is corroborated by the Monitoring Sheet dated November 22, 2003, a secondary source. Under the entry, Stock and Transfer Book, 7-9-90 OT (On Time) appears.
xxx
The petitioner attached a copy of the 1st page of the STB in their possession which states: "This STB Vol. I has been inspected and approved for the use of Asensio-Pinzon Aggregates Corp. in accordance with the Rules of the Commission," dated November 25, 2003. What the petitioner failed to attach is a copy of the Stock and Transfer Book/Membership Book Registration Form, a copy of which we have on file. It clearly notes that "The STB/MB must be registered within 30 days from receipt of certificate of registration." Yet, although APAC's approval of primary license was on 6 July 1990, the registration of the STB of the Asensio Group was done only on November 25, 2003. It also states: "This is to certify that the STB/MB being registered is (please check appropriate box0" and "VOLUME No. 1" was checked. It continues, "and that this company is not in possession of any other copy of the volume being registered under this application or under previous registrations." "Ethel B. Pinzon" was handwritten as the Corporate Secretary, but she was not the signatory. Rather, the word "for" was written and it was signed by somebody else whose handwriting is illegible. (Assailed Order, Records, pp. 2-3)

WHEREFORE, premises considered, the *Memorandum on Appeal* is **PARTIALLY GRANTED**. The Stock and Transfer Book in the possession of Appellee Manuel S.C. Asensio III is hereby nullified.

Appellee is directed to call a meeting of the Asensio-Pinzon Aggregates Corporation and preside thereat as mandated by Section 50 of the Corporation Code. Appellee is further ordered to submit proof of the stockholder's meeting within 30 days from date of the meeting.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for proper notation and action.

SO ORDERED.

Pasay City, Philippines, 11 October 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

Antonieta Fortuna - Ibe
ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG *
Commissioner

Blas James G. Viterbo
BLAS JAMES G. VITERBO
Commissioner

*On Leave