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

SILVER SPIRIT PLASTIC, INC.,
Petitioner,

-versus-

SEC Case No. 08-04-33
(CRMD Case No. 04-08-692)

CWB PLASTIC CORPORATION,
Respondent.
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DECISION

For consideration of the Commission *En Banc* is a petition to set aside the Order dated 04 August 2004 lifting the order that revoked the certificate of registration of CWB Plastics Corp. ("CWB" for brevity)

The relevant facts of the case are:

CWB is a domestic corporation registered with the Commission on 13 April 1994 under SEC Reg. No. AS94003329. On the other hand, Silver Spirit Plastic, Inc. ("Silver Spirit" for brevity) is also a domestic corporation registered with the Commission on 26 July 1996 with SEC Reg. No. A199602992.

CWB's Certificate of Registration was revoked by virtue of SEC Order dated 30 September 2003 for non-compliance with the Commission's reportorial requirements. CWB then filed a petition praying that the order revoking its certificate of registration be set aside. Finding the petition meritorious, the Director of the Company Registration and Monitoring Department of the Commission issued an Order dated 04 August 2004 granting the petition.

Upon discovering the questioned order, Silver Spirit filed the instant petition based on the following grounds:

1. The Commission has no power to set aside the revocation order.

2. The Order lifting the Revocation Order caused undue injury to Silver Spirit.

On 01 October 2004, CWB filed its *Comments* dated 30 September 2004. On 01 June 2007, an Order was issued directing Silver Spirit to file its reply to CWB's Comments and for the latter to submit its rejoinder. To date, however, no reply or rejoinder was filed. Thus, the case is now submitted for resolution.

The petition is unmeritorious.

MSB

First Issue: Power to set aside the Revocation Order

The power of the Commission to register, monitor and revoke the franchise of corporations, partnerships, and other forms of associations is stated in the Securities Regulation Code[1]:

> "SEC. 5. Powers and Functions of the Commission. — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
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> (a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;
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> xxx xxx xxx
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> (m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds[2] provided by law; and
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> (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."

The power to register includes the power to revoke the primary franchise of entities registered with the Commission. By necessary implication the Commission has also the power to set aside an order, which in its estimation is not in conformance with the existing circumstances. Further, the Commission is empowered to set aside an order that revoked the certificate of registration of a corporation that failed to comply with the reportorial requirements of the Commission such as the submission of the General Information Sheet and Audited Financial Statements. It is a matter of public policy that corporations should be protected from the danger of losing their corporate existence simply because the assigned corporate officers were remiss in their duty to submit reportorial

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[1] R. A. No. 8799 (2000).

[2] Some of the grounds are enumerated in P.D. No. 902-A, Section 6.i):

1. Fraud in procuring its certificate of registration;
2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;
3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;
4. Continuous inoperation for a period of at least five (5) years;
5. Failure to file by-laws within the required period;
6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period.

requirements especially if the corporation is in active operation or is willing to continue pursuing its business activities.[3]

In the case of CWB, its certificate of registration was revoked for its failure to file its periodic reports. CWB sought reconsideration and raised the ground that it failed to submit the required reports due to some internal disputes and will resume its operation as soon as the disagreement among its officers is resolved. The failure of the corporate officers of CWB to file the required reports with the Commission should not prejudice the right of the corporation to exist. This does not mean, however, that the negligent officers should also get away with such failure to discharge their functions with utmost diligence. The stockholders of CWB, or even its board of directors, may hold the corporate officers who are remiss in their duty liable for the wrong done to CWB.

Second Issue: Undue injury to Silver Spirit

Silver Spirit further alleges that the reinstatement of the registration of CWB caused undue injury to it (Silver Spirit). CWB asserts however that Silver Spirit is not even a stockholder of CWB and the truth of the matter is that it is CWB that has controlling shares in Silver Spirit. The cognizance by the Commission of the instant petition shall in no way be construed to mean that the Commission is declaring who between the contending parties is the majority stockholder of CWB since such matter is deemed an intra-corporate controversy, which the Supreme Court explained in this wise:

> "To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the Branches of the [Regional Trial Court] 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."[4]

The determination of who between Silver Spirit and CWB has the controlling interest was transferred from the Commission to the courts of general jurisdiction, or the appropriate RTC pursuant to Section 5.2 of R.A. No. 8799, the pertinent portion of which reads: "The Commission's jurisdiction over all cases enumerated under

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[3] 16A Fletcher Cyc Corp (Perm Ed) 203.
[4] Speed Distributing Corp., et al. vs. Court of Appeals, et al., G.R. No. 149351, 17 March 2004.

Section 5[5] of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court. xxx" Given the nature of the relationship of the parties in this case, the resolution of the issue of ownership in a particular corporation falls within the jurisdiction of the appropriate RTC.

Further, the matter of the ejectment suit in which Silver Plastic claims that it is the owner of the premises where the factory of CWB was situated is civil in character; hence, the regular court likewise has jurisdiction over the said issue. In other words, whether Silver Spirit suffered undue injury is not material to the resolution of setting aside the revocation order.

WHEREFORE, the instant appeal is hereby **DENIED**. Consequently, the Order dated 04 August 2004 issued by the Director of the Company Registration and Monitoring Department is **AFFIRMED**.

SO ORDERED.

Mandaluyong City, 10 June 2010.

JOSE B. BARIN
Chairperson

MA. JUANITA E. CUETO*
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

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*on leave

[5] "SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

b) Controversies arising out of intra-corporate or partnership relations, between and among 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 franchise or right to exist as such entity;

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