Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

**COMMISSION EN BANC**

**In the matter of:**
**Singfil Hydro Builders Corporation**

**SEC Admin Case No. 06-15-176**
**For: Revocation of Certificate of Incorporation**

**Enforcement and Investor Protection Department**

Petitioner.

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# D E C I S I O N

Before the Commission is a Petition (For the Revocation of the Certificate of Incorporation) dated 25 January 2015 filed by the Enforcement and Investor Protection Department (EIPD) against Singfil Hydro Builders Corporation (Singfil).

THE RELEVANT FACTS

Singfil is a corporation duly registered with the Commission on 27 September 2010.

The case arose from a letter sent by Engr. Cristeto Dinopol (Engr. Dinopol) to the EIPD alleging that the Articles of Incorporation of Singfil was falsified because the names of three incorporators: Anastacio Muntuerto, Teresa B. Tompar and William Maceren were merely added after the notarization of the document and before the same was submitted to the SEC.[1]

EIPD held a preliminary conference with the incorporators and officers of Singfil to inquire on the issue raised by Engr. Dinopol. Incorporators Muntuerto and Maceren denied the allegations and argued that: (1) the certification from the Office of the Clerk of Court of Pasig was based on a machine copy of the Articles and not the original document; (2) Engr. Dinopol made a judicial admission in his Answer to the intra-corporate controversy that the three are incorporators of Singfil; (3) Engr. Dinopol already withdrew his complaint for falsification and use of falsified documents with the Office of the City Prosecutor of Mandaluyong City; and (4) the other five incorporators of the corporation do not dispute the position of the three persons as incorporators and directors.[2]

In a conference with Singfil's corporate secretary Atty. Viernesto, the latter mentioned that the Articles of Incorporation was prepared by Engr. Dinopol's staff and that the same was signed by the eight incorporators on different dates and on different places.

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[1] Paragraph 7 of the Petition
[2] Paragraph 8 of the Petition

Atty. Viernesto also stated that he saw the incorporators sign the document but they did not appear before a notary public.[3]

Based on EIPD's investigation, the two Singaporean nationals: Tay Seng Lee and Tay Hock Jin, Alvin signed and acknowledged the Articles of Incorporation before a notary public on 18 August 2010 but based on the travel records issued by the Bureau of Immigration the two arrived and departed on 21 August 2010. Therefore it was physically impossible for the two Singaporeans to be present when the document was acknowledged.[4]

EIPD concludes that the statement in the Articles of Incorporation that the two Singaporeans appeared before a notary public on 18 August 2010 is false and misleading and that it does not comply with Sections 14 and 15 of the Corporation Code. EIPD further alleges that Singfil's officers and directors failed to explain this falsity despite notice and reasonable time to address the same. These facts therefore warrant the revocation of their certificate of incorporation under Section 6 (i) (1) of PD 902-A which reads:

> **"Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:**
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> **(i) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:**
>
> **1. Fraud in procuring its certificate of registration; xxx."[5]**

EIPD argues that Singfil and the two Singaporeans falsely declared that they duly signed and acknowledged the document despite the fact that they cannot be physically present on the date indicated in the document. Despite the document's falsity, Singfil still made use of it when it registered with the Commission. As such Singfil is guilty of fraud in procuring its Certificate of Incorporation under Section 6(i)(1) of PD 902-A.[6]

In their Answer, Singfil alleges that there has been a mistake on the part of Atty. Carpio, the notary public, on the date indicated in the Articles of Incorporation. According to Singfil, Atty. Carpio made a manifestation in open court (in a case entitled Antonio Tompar et. al. vs. Atty. Ramon Carpio and John Does") that the actual date of notarization was on 21 August 2010 and not on 18 August 2010. Therefore, there was no conflict as to the actual date of arrival of the Singaporeans and the actual date of notarization. Singfil further alleges that the acknowledgement portion is a certification of the notary public not the incorporators.[7]

In their Reply[8], EIPD rebutted Singfil's claim that the notary public made a mistake on the date of notarization as indicated in the Articles of Incorporation. The EIPD attached in its Reply a copy of the Notarial Register of Atty. Carpio obtained from the Office of the

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[3] Paragraph 9 of the Petition
[4] Paragraphs 10 to 12 of the Petition, Annex "E-E-3" of the Petition.
[5] Paragraphs 13 to 17 of the Petition.
[6] Paragraphs 18 to 21 of the Petition.
[7] Answer filed by Singfil
[8] Dated October 5, 2015

Clerk of Court of Pasig Regional Trial Court.[9] The notarial register indicated the date of notarization as 18 August 2010. EIPD contends that Singfil failed to rebut Atty. Viernesto's statement that he saw the incorporators sign the same but they did not appear before the notary public. EIPD reiterates that the certificate of incorporation of Singfil should be revoked due to fraud in procuring the same.[10]

LAWS INVOLVED

Section 14 of the Corporation Code reads:

> "**Sec. 14.** ***Contents of the articles of incorporation.*** - All corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages ***duly signed and acknowledged by all of the incorporators...***" (emphasis supplied)

Section 15 of the same code includes a notarial acknowledgment in the prescribed form of the Articles of Incorporation.

Section 6 (i) (1) of the Securities Regulation Code (PD 902-A) vests on the Commission the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations which are procured through fraud.

ISSUE

The issue to be resolved in the present case is: whether there was fraud in the procurement of Singfil's Certificate of Incorporation and thus revocable, because the two Singaporean incorporators were not present at the time the document was acknowledged before the notary public?

DISCUSSION

The petition lacks merit. Singfil's certificate of incorporation was not procured through fraud.

Singfil claims that their Articles of Incorporation was notarized on 21 August 2010. Documentary evidence proves otherwise since the date appearing on the document[11] is 18 August 2010 which is the same date reflected in the copy of the notarial register attached to the EIPD's Reply. The best evidence of the contents of the document is the document itself. The contents of the document speak for itself and it cannot be overridden even by the manifestation in open court of the Notary Public that it is otherwise or was just a mistake.

Sufficient evidence establishes that Tay See Lee and Tay Hock Jin, Alvin were not or cannot be in the country on 18 August 2010 when the Articles of Incorporation was

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[9] Annex "A" of the Reply
[10] Paragraphs 5 to 9 of the Reply
[11] Annex "A" of the Petition

notarized because based on the Certification issued by the Bureau of Immigrations, the two arrived and departed in the Philippines on 21 August 2010.[12] There is therefore **a defect in the notarization of the Articles of Incorporation**.

Which leads to the question: what is the effect of a defective notarization and more particularly, how does it affect the document notarized? The case of Meneses vs. Venturozo[13] enunciates that a defect in the notarization will strip the document of its public character and reduce it into a private instrument. In Tigno vs. Spouses Aquino[14] a case involving a Deed of Sale notarized by a person who does not have the capacity to do so, the Supreme Court held that such defect will not result to the avoidance of the sale of the property involved. The Court pointed out that the requirement that certain documents be in a public instrument under Article 1358 of the New Civil Code is **for convenience and not for validity or enforceability of the transaction involved**. Therefore, a document with a defective notarization is reduced to a private document and the presumption of regularity in its execution is removed. However, it will not result to rendering void the transaction subject of the document notarized. The requirement of notarization is merely formal and not substantive as it does not affect the validity or enforceability of the transaction involved.

Applying the said rationale to the requirement of notarization under Sections 14 and 15 of the Corporation Code leads to the conclusion that the notarization of the Articles of Incorporation is considered as a formal requirement, not a substantive one. It must be pointed out that there was in fact an acknowledgement in the present case although the same is defective due to the absence of the two Singaporeans on the date of the Articles of Incorporation's notarization but such fact alone does not warrant the revocation of the Certificate of Incorporation.

Section 6 (i)(1) PD 902-A empowers the Commission to revoke certificates of incorporation fraudulently procured. A defect in the notarization of the Articles of Incorporation, in the absence of any other finding that material statements made in the document were false and misleading cannot be considered as fraudulent to warrant the revocation of Singfil's Certificate of Incorporation.

In order that the Certificate of Registration be revoked due to fraud in procuring the same, the fraud employed must be contained in or in connection with the documents and/or papers submitted to the Commission.[15] Any material misstatement made by the corporation in its Articles of Incorporation which is found later to be a falsehood by the Commission is deemed to be fraudulent regardless of the intent or knowledge of the incorporator or the corporation concerned.[16]

In the previous rulings made by the Commission where the Certificate of Incorporation had been revoked, aside from the fact that the incorporators failed to appear before the notary public for notarization, other material statements such as: falsehood in

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[12] Annex "E-1" and "E-2" of the Petition
[13] G.R. No. 172196, October 19, 2011
[14] G.R. No. 129416, November 25, 2004
[15] In the matter of Nature Garden Park Resort and Spa Corporation SEC Admin Case No. 03-15-173 citing In the matter of Silvermoon Security & Investigation Agency, Inc. et. al., SEC Case No. 12-05-99 further citing In the matter of Charlyn Marketing Enterprise SEC Case No. 03-05-49
[16] In the matter of Nature Garden Park Resort and Spa Corporation SEC Admin Case No. 03-15-173 citing In the matter of Knight Capital Phils., Inc., SEC Admin Case No. 07-10-121.

the residence of the incorporators[17], forgery in one of the incorporator's signature[18] or falsehood in the nationality of one of the incorporators[19] were present. These surrounding circumstances reasonably indicated that the incorporators indeed committed fraud to procure their Certificates of Incorporation because not only did some of its incorporators fail to appear before the notary public but more importantly, there were material misstatements in their Articles of Incorporation.

In the case of Singfil other than the non-appearance of the two Singaporeans during notarization there is no factual misstatement in the Articles of Incorporation itself. No less than the Supreme Court said, "liberal construction of the Rules may be invoked in cases where there ***may be some formal deficiency*** or error in a pleading, provided that the same does not subvert the essence of proceedings and ***connotes at least a reasonable attempt to comply with the Rules***" (emphasis supplied).[20]

EIPD failed to adduce any evidence to indicate that aside from the fact that the two Singaporeans were not present during notarization Singfil made any untrue or falsified any information in their Articles of Incorporation or has mislead the Commission to believe a fact to be true which had the Commission known would result to the denial of the issuance of a certificate of incorporation.

Also noteworthy to point out is the fact that it was the staff of Engr. Dinopol who prepared the Articles of Incorporation as per Atty. Viernesto's testimony before the EIPD conference. Suffice to say that if there was any defect or irregularity in the notarization, Engr. Dinopol, from whom this present case started, is not without fault or liability. The rule that he who comes to court must come with clean hands not only applies to courts of law but also in administrative bodies, this Commission included.[21]

In essence, the failure of the two Singaporeans to be present during the notarization of the Articles of Incorporation only resulted to a defect in form. Formal requirements may sometimes be relaxed provided that there has been substantial compliance. Even the wordings of Section 15 of the Corporation Code provides that "the articles of all domestic corporations shall ***comply substantially with the following form***: xxx" (emphasis supplied). The remedy is to order the amendment of the document so that it would comply with the prescribed form and it is only when the corporation failed to amend and correct such deficiency after reasonable time that the Commission can reject or disapprove the Articles of Incorporation.[22]

The Commission believes that Singfil was able to comply substantially with the required form despite the defective acknowledgement. Neither can the said absence be construed as the kind of fraud sanctioned by Section 6 (i)(1) PD 902-A to warrant the revocation of their Certificate of Incorporation.

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[17] In the matter of Donggwang Clark Corporation SEC Admin Case No. 10-13-168 (SEC-EPD Case No. 12-3010)
[18] In the matter of Natures Garden Park Resort and Spa Corporation SEC Admin Case No. 03-15-173
[19] In the matter of Terracota Villas, Inc. SEC Admin Case No. 11-11-137
[20] Sps. Heber & Charlita Edillo vs. Sps. Norberto & Desideria Dulpina, G.R. No. 188360, January 21, 2010
[21] The clean hands doctrine was used by the Department of Agrarian Reform Adjudication Board (DARAB) on the determination of the validity of a compromise agreement presented for its adjudication (Soriano, et. al. vs. Bravo, et. al., G. R. No. 152086, December 15, 2010 citing Dequito v. Llamas, G.R. No. L-28090, September 4, 1975).
[22] Section 17 of the Corporation Code

**WHEREFORE**, premises considered, the instant Petition is hereby **DENIED** for lack of merit.

Singfil is hereby ordered to submit an amended Articles of Incorporation PROPERLY NOTARIZED within 30 days from receipt of this Decision. Failure to comply shall render its Articles of Incorporation revoked.

**SO ORDERED.**

Pasay City, Philippines, 24 January 2019.

**EMILIO B. AQUINO**
Chairperson

**ANTONIETA F. IBE**
Commissioner

**EPHYRO LUIS B. AMATONG**
Commissioner

**JAVEY PAUL D. FRANCISCO**
Commissioner