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As such, EYIS must be considered as the prior and continuous user of the mark "VESPA" and its true owner. Hence, EYIS is entitled to the registration of the mark in its name.

WHEREFORE, the petition is hereby *GRANTED.* The CA's February 21, 2008 Decision and October 6, 2008 Resolution in CA-G.R. SP No. 99356 are hereby *REVERSED* and *SET ASIDE.* The Decision dated May 25, 2007 issued by the IPO Director General in *Inter Partes* Case No. 14-2004-00084 and the Decision dated May 29, 2006 of the BLA Director of the IPO are hereby *REINSTATED.*

No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 185567. October 20, 2010]

ARSENIO Z. LOCSIN, *petitioner, vs.* **NISSAN LEASE PHILS. INC. and LUIS BANSON,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; LABOR RELATIONS; PROPER REMEDY OF AN AGGRIEVED PARTY WHEN THE LABOR ARBITER DENIES A MOTION TO DISMISS.— [T]he CA clearly erred in the application of the procedural rules by disregarding the relevant provisions of the NLRC Rules, as well as the requirements for a petition for *certiorari* under the Rules of Court. To reiterate, the proper

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action of an aggrieved party faced with the labor arbiter's denial of his motion to dismiss is to submit his position paper and raise therein the supposed lack of jurisdiction. The aggrieved party cannot immediately appeal the denial since it is an interlocutory order; the appropriate remedial recourse is the procedure outlined in Article 223 of the Labor Code, not a petition for *certiorari* under Rule 65.

2. ID.; ID.; ID.; STRICT IMPLEMENTATION OF THE RULES OF PROCEDURE RELAXED IN VIEW OF EXISTING EXCEPTIONAL CIRCUMSTANCES.— We arrived at the conclusion that we should go beyond the procedural rules and immediately take a look at the intrinsic merits of the case based on several considerations. *First,* the parties have sufficiently ventilated their positions on the disputed employer-employee relationship and have, in fact, submitted the matter for the CA's consideration. *Second*, the CA correctly ruled that no employer-employee relationship exists between Locsin and Nissan. Locsin was undeniably Chairman and President, and was elected to these positions by the Nissan board pursuant to its By-laws. As such, he was a corporate officer, not an employee. The CA reached this conclusion by relying on the submitted facts and on Presidential Decree 902-A, which defines corporate officers as "those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws." Likewise, Section 25 of Batas Pambansa Blg. 69, or the Corporation Code of the Philippines (*Corporation Code*) provides that corporate officers are the **president**, secretary, **treasurer** and such **other officers as may be provided for in the by-laws**. *Third.* Even as Executive Vice-President/Treasurer, Locsin already acted as a corporate officer because the position of Executive Vice-President/Treasurer is provided for in Nissan's By-Laws.

3. COMMERCIAL LAW; CORPORATIONS; INTRA-CORPORATE DISPUTE; THE LEGALITY OF A CORPORATE OFFICER'S DISMISSAL IS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT NOT THE LABOR ARBITER.— Given Locsin's status as a corporate officer, the RTC, not the Labor Arbiter or the NLRC, has jurisdiction to hear the legality of the termination of his relationship with

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Nissan. As we also held in *Okol*, a corporate officer's dismissal from service is an intra-corporate dispute: x x x a **corporate officer's dismissal is always a corporate act**, or an **intra-corporate controversy** which arises between a stockholder and a corporation.

4. ID.; ID.; ID.; ID.; SUBSTANTIVE MERITS OF THE CASE AND THE ELEMENT OF JURISDICTION MUST TAKE PRECEDENCE OVER STRICT ENFORCEMENT OF PROCEDURAL RULES.— [W]e have to give precedence to the merits of the case, and primacy to the element of jurisdiction. Jurisdiction is the power to hear and rule on a case and is the threshold element that must exist before any quasi-judicial officer can act. In the context of the present case, the Labor Arbiter does not have jurisdiction over the termination dispute Locsin brought, and should not be allowed to continue to act on the case after the absence of jurisdiction has become obvious, based on the records and the law. In more practical terms, a contrary ruling will only cause substantial delay and inconvenience as well as unnecessary expenses, to the point of injustice, to the parties. This conclusion, of course, does not go into the merits of termination of relationship and is without prejudice to the filing of an intra-corporate dispute on this point before the appropriate RTC.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for petitioner.

Castillo Laman Tan Pantaleon & San Jose for respondents.

D E C I S I O N

BRION,[*] *J.*:

Through a petition for review on *certiorari*,[1] petitioner Arsenio Z. Locsin (*Locsin*) seeks the reversal of the Decision[2] of the Court of Appeals (*CA*) dated August 28, 2008,[3] in *"Arsenio Z. Locsin v. Nissan Car Lease Phils., Inc. and Luis Banson,"* docketed as CA-G.R. SP No. 103720 and the Resolution dated December 9, 2008,[4] denying Locsin's Motion for Reconsideration. The assailed ruling of the CA reversed and set aside the Decision[5] of the Hon. Labor Arbiter Thelma Concepcion (*Labor Arbiter Concepcion*) which denied Nissan Lease Phils. Inc.'s (*NCLPI*) and Luis T. Banson's (*Banson*) Motion to Dismiss.

THE FACTUAL ANTECEDENTS

On January 1, 1992, Locsin was elected Executive Vice President and Treasurer (*EVP/Treasurer*) of NCLPI. As EVP/ Treasurer, his duties and responsibilities included: (1) the management of the finances of the company; (2) carrying out the directions of the President and/or the Board of Directors regarding financial management; and (3) the preparation of financial reports to advise the officers and directors of the financial condition of NCLPI.[6] Locsin held this position for 13 years, having been re-elected every year since 1992, until

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[*] Designated Acting Chairperson of the Third Division, per Special Order No. 906 dated October 13, 2010.

[1] Filed under Rule 45 of the Rules of Court, *rollo* p. 9.

[2] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Noel G. Tijam and Arturo G. Tayag concurring, *id.* at 60-73.

[3] *Id.* at 60.

[4] *Id.* at 75.

[5] Dated March 10, 2008, *id.* at 268.

[6] *Id.* at 227.

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January 21, 2005, when he was nominated and elected Chairman of NCLPI's Board of Directors.[7]

On August 5, 2005, a little over seven (7) months after his election as Chairman of the Board, the NCLPI Board held a special meeting at the Manila Polo Club. One of the items of the agenda was the election of a new set of officers. Unfortunately, Locsin was neither re-elected Chairman nor reinstated to his previous position as EVP/Treasurer.[8]

Aggrieved, on June 19, 2007, Locsin filed a complaint for illegal dismissal with prayer for reinstatement, payment of backwages, damages and attorney's fees before the Labor Arbiter against NCLPI and Banson, who was then President of NCLPI.[9]

The Compulsory Arbitration Proceedings before the Labor Arbiter.

On July 11, 2007, instead of filing their position paper, NCLPI and Banson filed a Motion to Dismiss,[10] on the ground that the Labor Arbiter did not have jurisdiction over the case since the issue of Locsin's removal as EVP/Treasurer involves an intra-corporate dispute.

On August 16, 2007, Locsin submitted his opposition to the motion to dismiss, maintaining his position that he is an employee of NCLPI.

On March 10, 2008, Labor Arbiter Concepcion issued an Order denying the Motion to Dismiss, holding that her office acquired "jurisdiction to arbitrate and/or decide the instant complaint finding extant in the case an employer-employee relationship."[11]

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[7] *Id.* at 212.

[8] *Id.* at 215-216.

[9] *Id.* at 100-101.

[10] *Id.* at 105-117.

[11] *Id.* at 269.

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NCLPI, on June 3, 2008, elevated the case to the CA through a Petition for *Certiorari* under Rule 65 of the Rules of Court.[12] NCLPI raised the issue on whether the Labor Arbiter committed grave abuse of discretion by denying the Motion to Dismiss and holding that her office had jurisdiction over the dispute.

The CA Decision - Locsin was a corporate officer; the issue of his removal as EVP/Treasurer is an intra-corporate dispute under the RTC's jurisdiction.

On August 28, 2008,[13] the CA reversed and set aside the Labor Arbiter's Order denying the Motion to Dismiss and ruled that Locsin was a corporate officer.

Citing PD 902-A, the CA defined "corporate officers as those officers of a corporation who are given that character either by the Corporation Code or by the corporations' by-laws." In this regard, the CA held:

> Scrutinizing the records, We hold that petitioners successfully discharged their *onus* of establishing that private respondent was a corporate officer who held the position of Executive Vice-President/ Treasurer as provided in the by-laws of petitioner corporation and that he held such position by virtue of election by the Board of Directors.
>
> That private respondent is a corporate officer cannot be disputed. The position of Executive Vice-President/Treasurer is specifically included in the roster of officers provided for by the (Amended) By-Laws of petitioner corporation, his duties and responsibilities, as well as compensation as such officer are likewise set forth therein.[14]

Article 280 of the Labor Code, the receipt of salaries by Locsin, SSS deductions on that salary, and the element of control in the performance of work duties – indicia used by the Labor

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[12] *Id.* at 242-264.

[13] *Id.* at 60.

[14] *Id.* at 68.

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Arbiter to conclude that Locsin was a regular employee – were held inapplicable by the CA.[15] The CA noted the Labor Arbiter's failure to address the fact that the position of EVP/Treasurer is specifically enumerated as an "office" in the corporation's by-laws.[16]

Further, the CA pointed out Locsin's failure to "state any circumstance by which NCLPI engaged his services as a corporate officer that would make him an employee." The CA found, in this regard, that Locsin's assumption and retention as EVP/Treasurer was based on his election and subsequent re-elections from 1992 until 2005. Further, he performed only those functions that were "specifically set forth in the By-Laws or required of him by the Board of Directors."[17]

With respect to the suit Locsin filed with the Labor Arbiter, the CA held that:

> Private respondent, in belatedly filing this suit before the Labor Arbiter, questioned the legality of his "dismissal" **but in essence, he raises the issue of whether or not the Board of Directors had the authority to remove him from the corporate office to which he was elected pursuant to the By-Laws of the petitioner corporation**. Indeed, had private respondent been an ordinary employee, an election conducted by the Board of Directors would not have been necessary to remove him as Executive Vice-President/Treasurer. However, in an obvious attempt to preclude the application of settled jurisprudence that corporate officers whose position is provided in the by-laws, their election, removal or dismissal is subject to Section 5 of P.D. No. 902-A (now R.A. No. 8799), private respondent would even claim in his Position Paper, that since his responsibilities were akin to that of the company's Executive Vice-President/Treasurer, he was "hired under the pretext that he was being 'elected' into said post.[18] [Emphasis supplied.]

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[15] *Id.* at 69.

[16] *Ibid.*

[17] *Id.* at 70.

[18] *Id.* at 70.

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As a consequence, the CA concluded that Locsin does not have any recourse with the Labor Arbiter or the NLRC since the removal of a corporate officer, whether elected or appointed, is an intra-corporate controversy over which the NLRC has no jurisdiction.[19] Instead, according to the CA, Locsin's complaint for "illegal dismissal" should have been filed in the Regional Trial Court (*RTC)*, pursuant to Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Controversies.[20]

Finally, the CA addressed Locsin's invocation of Article 4 of the Labor Code. Dismissing the application of the provision, the CA cited Dean Cesar Villanueva of the Ateneo School of Law, as follows:

x x x the **non-coverage of corporate officers from the security of tenure clause under the Constitution is now well-established principle** by numerous decisions upholding such doctrine under the aegis of the 1987 Constitution in the face of contemporary decisions of the same Supreme Court likewise confirming that security of tenure covers all employees or workers including managerial employees.[21]

THE PETITIONER'S ARGUMENTS

Failing to obtain a reconsideration of the CA's decision, Locsin filed the present petition on January 28, 2009, raising the following procedural and substantive issues:

(1) Whether the CA has original jurisdiction to review decision of the Labor Arbiter under Rule 65?

(2) Whether he is a regular employee of NCLPI under the definition of Article 280 of the Labor Code? and

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[19] *Id.* at 71, citing *Paguio v. National Labor Relations Commission*, G.R. No. 116662, February 1, 1996, 253 SCRA 166.

[20] A.M. No. 01-2-04-SC.

[21] CESAR L. VILLANUEVA, *PHILIPPINE CORPORATE LAW* 358 (2001).

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(3) Whether Locsin's position as Executive Vice-President/ Treasurer makes him a corporate officer thereby excluding him from the coverage of the Labor Code?

Procedurally, Locsin essentially submits that NCLPI wrongfully filed a petition for *certiorari* before the CA, as the latter's remedy is to proceed with the arbitration, and to appeal to the NLRC after the Labor Arbiter shall have ruled on the merits of the case. Locsin cites, in this regard, Rule V, Section 6 of the Revised Rules of the National Labor Relations Commission (*NLRC Rules*), which provides that a denial of a motion to dismiss by the Labor Arbiter is not subject to an appeal. Locsin also argues that even if the Labor Arbiter committed grave abuse of discretion in denying the NCLPI motion, a special civil action for *certiorari,* filed with the CA was not the appropriate remedy, since this was a breach of the doctrine of exhaustion of administrative remedies.

Substantively, Locsin submits that he is a regular employee of NCLPI since - as he argued before the Labor Arbiter and the CA - his relationship with the company meets the "four-fold test."

First, Locsin contends that NCLPI had the power to engage his services as EVP/Treasurer. *Second,* he received regular wages from NCLPI, from which his SSS and Philhealth contributions, as well as his withholding taxes were deducted. *Third,* NCLPI had the power to terminate his employment.[22] *Lastly,* Nissan had control over the manner of the performance of his functions as EVP/Treasurer, as shown by the 13 years of faithful execution of his job, which he carried out in accordance with the standards and expectations set by NCLPI.[23] Further, Locsin maintains that even after his election as Chairman, he essentially performed the functions of EVP/ Treasurer – handling the financial and administrative operations of the Corporation – thus making him a regular employee.[24]

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[22] *Rollo,* p. 31.

[23] *Id.* at 32.

[24] *Ibid.*

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Under these claimed facts, Locsin concludes that the Labor Arbiter and the NLRC – not the RTC (as NCLPI posits) – has jurisdiction to decide the controversy. Parenthetically, Locsin clarifies that he does not dispute the validity of his election as Chairman of the Board on January 1, 2005. Instead, he theorizes that he never lost his position as EVP/Treasurer having continuously performed the functions appurtenant thereto.[25] Thus, he questions his "unceremonious removal" as EVP/ Treasurer during the August 5, 2005 special Board meeting.

THE RESPONDENT'S ARGUMENTS

It its April 17, 2009 Comment,[26] Nissan prays for the denial of the petition for lack of merit. Nissan submits that the CA correctly ruled that the Labor Arbiter does not have jurisdiction over Locsin's complaint for illegal dismissal. In support, Nissan maintains that Locsin is a corporate officer and not an employee. In addressing the procedural defect Locsin raised, Nissan brushes the issue aside, stating that (1) this issue was belatedly raised in the Motion for Reconsideration, and that (2) in any case, Rule VI, Section 2(1) of the NLRC does not apply since only *appealable* decisions, resolutions and orders are covered under the rule.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

At the outset, we stress that there are two (2) important considerations in the final determination of this case. On the one hand, Locsin raises a procedural issue that, if proven correct, will require the Court to dismiss the instant petition for using an improper remedy. On the other hand, there is the substantive issue that will be disregarded if a strict implementation of the rules of procedure is upheld.

Prefatorily, we agree with Locsin's submission that the NCLPI incorrectly elevated the Labor Arbiter's denial of the Motion to Dismiss to the CA. Locsin is correct in positing that the denial of a motion to dismiss is unappealable. As a general rule, an

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[25] *Id.* at 42.

[26] *Id.* at 461-493.

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aggrieved party's proper recourse to the denial is to file his position paper, interpose the grounds relied upon in the motion to dismiss before the labor arbiter, and actively participate in the proceedings. Thereafter, the labor arbiter's decision can be appealed to the NLRC, not to the CA.

As a rule, we strictly adhere to the rules of procedure and do everything we can, to the point of penalizing violators, to encourage respect for these rules. We take exception to this general rule, however, when a strict implementation of these rules would cause substantial injustice to the parties.

We see it appropriate to apply the exception to this case for the reasons discussed below; hence, we are compelled to go beyond procedure and rule on the merits of the case. In the context of this case, we see sufficient justification to rule on the employer-employee relationship issue raised by NCLPI, even though the Labor Arbiter's interlocutory order was *incorrectly* brought to the CA under Rule 65.

The NLRC Rules are clear: the denial by the labor arbiter of the motion to dismiss is not appealable because the denial is merely an interlocutory order.

In *Metro Drug v. Metro Drug Employees*,[27] we definitively stated that the denial of a motion to dismiss by a labor arbiter is not immediately appealable.[28]

We similarly ruled in *Texon Manufacturing v. Millena*,[29] in *Sime Darby Employees Association v. National Labor Relations Commission*[30] and in *Westmont Pharmaceuticals v. Samaniego.*[31] In *Texon,* we specifically said:

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[27] G.R. No. 142666, September 26, 2005, 471 SCRA 45.

[28] *Id.* at 56.

[29] G.R. No. 141380, April 14, 2004, 427 SCRA 377.

[30] G.R. No. 148021, December 6, 2006, 510 Phil. 204.

[31] G.R. Nos. 146653-54 and G.R. Nos. 147407-08, February 20, 2006, 482 SCRA 611.

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The Order of the Labor Arbiter denying petitioners' motion to dismiss is interlocutory. It is well-settled that a **denial of a motion to dismiss a complaint is an interlocutory order** and hence, **cannot be appealed**, until a final judgment on the merits of the case is rendered. [Emphasis supplied.][32]

and indicated the appropriate recourse in *Metro Drug*, as follows:[33]

x x x The NLRC rule proscribing appeal from a denial of a motion to dismiss is similar to the general rule observed in civil procedure that an order denying a motion to dismiss is interlocutory and, hence, not appealable until final judgment or order is rendered [1 Feria and Noche, Civil Procedure Annotated 453 (2001 ed.)]. The remedy of the aggrieved party in case of denial of the motion to dismiss is to **file an answer and interpose, as a defense or defenses, the ground or grounds relied upon in the motion to dismiss, proceed to trial and, in case of adverse judgment, to elevate the entire case by appeal in due course** [*Mendoza v. Court of Appeals*, G.R. No. 81909, September 5, 1991, 201 SCRA 343]. In order to avail of the extraordinary writ of *certiorari*, it is incumbent upon petitioner to establish that the denial of the motion to dismiss was tainted with grave abuse of discretion. [*Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, G.R. No. 115104, October 12, 1998, 297 SCRA 602]

In so citing *Feria* and *Noche*, the Court was referring to Sec. 1 (b), Rule 41 of the Rules of Court, which specifically enumerates **interlocutory orders** as one of the court actions that cannot be appealed. In the same rule, as amended by A.M. No. 07-7-12-SC, the aggrieved party is allowed to file an appropriate special civil action under Rule 65. The latter rule, however, also contains limitations for its application, clearly outlined in its Section 1 which provides:

Section 1. Petition for *certiorari.*

When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or

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[32] *Supra* note 29, at 383.

[33] *Supra* note 27, at 56.

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excess of jurisdiction, and **there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

In the labor law setting, a plain, speedy and adequate remedy is still open to the aggrieved party when a labor arbiter denies a motion to dismiss. This is Article 223 of Presidential Decree No. 442, as amended (*Labor Code*),[34] which states:

ART. 223. *APPEAL*

Decisions, awards, or orders of the Labor Arbiter are final and executory unless **appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders**. Such appeal may be entertained only on any of the following grounds:

(a) If there is ***prima facie*** **evidence of abuse of discretion** on the part of the Labor Arbiter; x x x [Emphasis supplied.]

Pursuant to this Article, we held in *Metro Drug* (citing *Air Services Cooperative, et al. v. Court of Appeals*[35]) that the NLRC is clothed with sufficient authority to correct any claimed "erroneous assumption of jurisdiction" by labor arbiters:

In *Air Services Cooperative, et al. v. The Court of Appeals, et al.*, a case where the jurisdiction of the labor arbiter was put in issue and was assailed through a petition for *certiorari*, prohibition and annulment of judgment before a regional trial court, this Court had the opportunity to expound on the nature of appeal as embodied in Article 223 of the Labor Code, thus:

> x x x Also, while the title of the Article 223 seems to provide only for the remedy of appeal as that term is understood in procedural law and as distinguished from the office of *certiorari*, nonetheless, a closer reading thereof reveals that it is not as limited as understood by the petitioners x x x.

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[34] Cited in *Metro Drug, id.*

[35] G.R. No. 118693, July 23, 1998, 293 SCRA 101.

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> **Abuse of discretion is admittedly within the ambit of *certiorari* and its grant of review thereof to the NLRC** indicates the lawmakers' intention to broaden the meaning of appeal as that term is used in the Code. For this reason, **petitioners cannot argue now that the NLRC is devoid of any corrective power to rectify a supposed erroneous assumption of jurisdiction by the Labor Arbiter** x x x. [*Air Services Cooperative, et al. v. The Court of Appeals, et al*. G.R. No. 118693, 23 July 1998, 293 SCRA 101]

Since the legislature had clothed the NLRC with the appellate authority to correct a claimed "erroneous assumption of jurisdiction" on the part of the labor arbiter – a case of grave abuse of discretion – the **remedy availed of by petitioner in this case is patently erroneous as recourse in this case is lodged**, under the law, **with the NLRC**.

In *Metro Drug,* as in the present case, the defect imputed through the NLCPI Motion to Dismiss is the labor arbiter's lack of jurisdiction since Locsin is alleged to be a corporate officer, not an employee. Parallelisms between the two cases is undeniable, as they are similar on the following points: (1) in *Metro Drug,* as in this case, the Labor Arbiter issued an Order denying the Motion to Dismiss by one of the parties; (2) the basis of the Motion to Dismiss is also the alleged lack of jurisdiction by the Labor Arbiter to settle the dispute; and (3) dissatisfied with the Order of the Labor Arbiter, the aggrieved party likewise elevated the case to the CA *via* Rule 65.

The similarities end there, however. Unlike in the present case, the CA denied the petition for *certiorari* and the subsequent Motion for Reconsideration in *Metro Drug*; the CA correctly found that the proper appellate mechanism was an appeal to the NLRC and not a petition for *certiorari* under Rule 65. In the present case, the CA took a different position despite our clear ruling in *Metro Drug,* and allowed, not only the use of Rule 65, but also ruled on the merits.

From this perspective, the CA clearly erred in the application of the procedural rules by disregarding the relevant provisions of the NLRC Rules, as well as the requirements for a petition for *certiorari* under the Rules of Court. To reiterate, the proper

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action of an aggrieved party faced with the labor arbiter's denial of his motion to dismiss is to submit his position paper and raise therein the supposed lack of jurisdiction. The aggrieved party cannot immediately appeal the denial since it is an interlocutory order; the appropriate remedial recourse is the procedure outlined in Article 223 of the Labor Code, not a petition for *certiorari* under Rule 65.

A strict implementation of the NLRC Rules and the Rules of Court would cause injustice to the parties because the Labor Arbiter clearly has no jurisdiction over the present intra-corporate dispute.

Our ruling in *Mejillano v. Lucillo*[36] stands for the proposition that we should strictly apply the rules of procedure. We said:

> Time and again, we have ruled that procedural rules do not exist for the convenience of the litigants. Rules of Procedure exist for a purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. **Procedural rules were established primarily to provide order to and enhance the efficiency of our judicial system**. [Emphasis supplied.]

An exception to this rule is our ruling in *Lazaro v. Court of Appeals*[37] where we held that the strict enforcement of the rules of procedure may be relaxed in *exceptionally meritorious cases*:

> x x x **Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights.** Like all rules, **they are required to be followed *except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed***. The Court reiterates that rules of procedure, especially those prescribing the time within which certain acts must be done, "have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly

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[36] G.R. No. 154717, June 19, 2009, 590 SCRA 1, 9.

[37] G.R. No. 137761, April 6, 2000, 330 SCRA 208, 214.

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and speedy discharge of business. x x x The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice x x x. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions." Indeed, in no uncertain terms, the Court held that the said rules **may be relaxed only in exceptionally meritorious cases.** [Emphasis supplied.]

Whether a case involves an *exceptionally meritorious* circumstance can be tested under the guidelines we established in *Sanchez v. Court of Appeals*,[38] as follows:

Aside from **matters of life, liberty, honor or property** which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) **the existence of special or compelling circumstances**, (b) the **merits of the case**, (c) a **cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules**, (d) a **lack of any showing that the review sought is merely frivolous and dilatory**, and (e) the **other party will not be unjustly prejudiced thereby**. [Emphasis supplied.]

Under these standards, we hold that exceptional circumstances exist in the present case to merit the relaxation of the applicable rules of procedure.

Due to existing exceptional circumstances, the ruling on the merits that Locsin is an officer and not an employee of Nissan must take precedence over procedural considerations.

We arrived at the conclusion that we should go beyond the procedural rules and immediately take a look at the intrinsic merits of the case based on several considerations.

First, the parties have sufficiently ventilated their positions on the disputed employer-employee relationship and have, in fact, submitted the matter for the CA's consideration.

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[38] G.R. No. 152766, June 20, 2003, 404 SCRA 540, 546.

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Second, the CA correctly ruled that no employer-employee relationship exists between Locsin and Nissan.

Locsin was undeniably Chairman and President, and was elected to these positions by the Nissan board pursuant to its By-laws.[39] As such, he was a corporate officer, not an employee. The CA reached this conclusion by relying on the submitted facts and on Presidential Decree 902-A, which defines corporate officers as "those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws." Likewise, Section 25 of Batas Pambansa Blg. 69, or the Corporation Code of the Philippines (*Corporation Code*) provides that corporate officers are the **president**, secretary, **treasurer** and such **other officers as may be provided for in the by-laws**.

Third. Even as Executive Vice-President/Treasurer, Locsin already acted as a corporate officer because the position of Executive Vice-President/Treasurer is provided for in Nissan's By-Laws. Article IV, Section 4 of these By-Laws specifically provides for this position, as follows:

ARTICLE IV

Officers

Section 1. Election and Appointment – The Board of Directors at their first meeting, annually thereafter, shall elect as officers of the Corporation a Chairman of the Board, a President, **an Executive Vice-President/Treasurer**, a Vice-President/General Manager and a Corporate Secretary. The other Senior Operating Officers of the Corporation shall be appointed by the Board upon the recommendation of the President.

x x x x x x x x x

Section 4. Executive Vice-President/Treasurer – The Executive Vice-President/Treasurer shall have such powers and perform such duties as are prescribed by these By-Laws, and as may be required of him by the Board of Directors. As the concurrent Treasurer of the Corporation, he shall have the charge of the funds, securities, receipts,

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[39] *Rollo,* p. 212.

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and disbursements of the Corporation. He shall deposit, or cause to be deposited, the credit of the Corporation in such banks or trust companies, or with such banks of other depositories, as the Board of Directors may from time to time designate. He shall tender to the President or to the Board of Directors whenever required an account of the financial condition of the corporation and of all his transactions as Treasurer. As soon as practicable after the close of each fiscal year, he shall make and submit to the Board of Directors a like report of such fiscal year. He shall keep correct books of account of all the business and transactions of the Corporation.

In *Okol v. Slimmers World International*,[40] citing *Tabang v. National Labor Relations Commission*,[41] we held that –

x x x an "office" is **created by the charter of the corporation and the officer is elected by the directors or stockholders**. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee. [Emphasis supplied.]

In this case, Locsin was **elected** by the NCLPI Board, in accordance with the **Amended By-Laws** of the corporation. The following factual determination by the CA is elucidating:

More important, private respondent failed to state any such "circumstance" by which the petitioner corporation "engaged his services" as corporate officer that would make him an employee. In the first place, the Vice-President/Treasurer was *elected* on an annual basis as provided in the By-Laws, and no duties and responsibilities were stated by private respondent which he discharged while occupying said position *other than those specifically set forth in the By-Laws or required of him by the Board of Directors*. The unrebutted fact remains that private respondent held the position of Executive Vice-President/Treasurer of petitioner corporation, a position provided for in the latter's by-laws, by virtue of election by the Board of Directors, and has functioned as such Executive Vice-President/Treasurer pursuant to the provisions of the said By-Laws. Private respondent knew very

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[40] G.R. No. 160146, December 11, 2009, 608 SCRA 97.

[41] G.R. No. 121143, January 21, 1997, 266 SCRA 462, 467.

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well that he was simply not re-elected to the said position during the August 5, 2005 board meeting, but he had objected to the election of a new set of officers held at the time upon the advice of his lawyer that he cannot be "terminated" or replaced as Executive Vice-President/ Treasurer as he had attained tenurial security.[42]

We fully agree with this factual determination which we find to be sufficiently supported by evidence. We likewise rule, based on law and established jurisprudence, that **Locsin**, at the time of his severance from NCLPI, was the latter's **corporate officer.**

a. The Question of Jurisdiction

Given Locsin's status as a corporate officer, the RTC, not the Labor Arbiter or the NLRC, has jurisdiction to hear the legality of the termination of his relationship with Nissan. As we also held in *Okol,* a corporate officer's dismissal from service is an intra-corporate dispute:

> In a number of cases [*Estrada v. National Labor Relations Commission*, G.R. No. 106722, 4 October 1996, 262 SCRA 709; *Lozon v. National Labor Relations Commission*, 310 Phil. 1 (1995); *Espino v. National Labor Relations Commission*, 310 Phil. 61 (1995); *Fortune Cement Corporation v. National Labor Relations Commission*, G.R. No. 79762, 24 January 1991, 193 SCRA 258], we have held that a **corporate officer's dismissal is always a corporate act**, or an **intra-corporate controversy** which arises between a stockholder and a corporation.[43] [Emphasis supplied.]

so that the RTC should exercise jurisdiction based on the following legal reasoning:

> Prior to its amendment, Section 5(c) of Presidential Decree No. 902-A (PD 902-A) provided that intra-corporate disputes fall within the jurisdiction of the Securities and Exchange Commission (SEC):
>
> > 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

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[42] *Rollo*, p. 70.

[43] *Supra* note 40.

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it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

Subsection 5.2, Section 5 of Republic Act No. 8799, which took effect on 8 August 2000, transferred to regional trial courts the SEC's jurisdiction over all cases listed in Section 5 of PD 902-A:

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate **Regional Trial Court**. [Emphasis supplied.]

b. <u>Precedence of Substantive Merits; Primacy of Element of Jurisdiction</u>

Based on the above jurisdictional considerations, we would be forced to remand the case to the Labor Arbiter for further proceedings if we were to dismiss the petition outright due to the wrongful use of Rule 65.[44] We cannot close our eyes, however, to the factual and legal reality, established by evidence already on record, that Locsin is a corporate officer whose termination of relationship is outside a labor arbiter's jurisdiction to rule upon.

Under these circumstances, **we have to give precedence to the merits of the case, and primacy to the element of jurisdiction. Jurisdiction is the power to hear and rule on a case and is the threshold element that must exist before any quasi-judicial officer can act. In the context of the present case, the Labor Arbiter does not have jurisdiction over the termination dispute Locsin brought, and should not be allowed to continue to act on the case after the absence of jurisdiction has become obvious, based on the records and the law.** In more practical terms, a contrary ruling will only

[44] *Supra* note 27, at 59.

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cause substantial delay and inconvenience as well as unnecessary expenses, to the point of injustice, to the parties. This conclusion, of course, does not go into the merits of termination of relationship and is without prejudice to the filing of an intra-corporate dispute on this point before the appropriate RTC.

WHEREFORE, we *DISMISS* the petitioner's petition for review on *certiorari*, and *AFFIRM* the Decision of the Court of Appeals, in CA-G.R. SP No. 103720, promulgated on August 28, 2008, as well as its Resolution of December 9, 2008, which reversed and set aside the March 10, 2008 Order of Labor Arbiter Concepcion in NLRC NCR Case No. 00-06-06165-07. This Decision is without prejudice to petitioner Locsin's available recourse for relief through the appropriate remedy in the proper forum.

No pronouncement as to costs.

SO ORDERED.

Carpio,[**] *Nachura,*[***] *Mendoza,*[****] and *Sereno, JJ.*, concur.

[**] Designated Additional Member of the Third Division, per Raffle dated October 20, 2010.

[***] Designated Additional Member of the Third Division, per Special Order No. 907 dated October 13, 2010.

[****] Designated Additional Member of the Third Division, per Special Order No. 911 dated October 15, 2010.