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FIRST DIVISION

[G.R. No. 125198. March 3, 1997]

MSCI-NACUSIP Local Chapter, *petitioner, vs.* NATIONAL WAGES AND PRODUCTIVITY COMMISSION and MONOMER SUGAR CENTRAL, INC., *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; CAPITAL STOCK; PAID-UP CAPITAL, CONSTRUED.—** NWPC (National Wages and Productivity Commission) Guidelines No. 01, Series of 1992 as well as the new NWPC Guidelines No. 01 Series of 1996, define *Capital* as referring to paid-up capital at the end of the last full accounting period, in the case of corporations, or total invested capital at the beginning of the period under review, in the case of partnerships and single proprietorships. To have a clear understanding of what paid-up capital is, however, a referral to Sections 12 and 13 of BP Blg. 68 or the Corporation Code would be very helpful, *viz:* "Sec. 12. *Minimum capital stock required of stock corporations.* — Stock corporations incorporated under this Code shall not be required to have any minimum authorized capital stock except as otherwise specifically provided for by special law, and subject to the provisions of the following section." "Sec. 13. *Amount of capital stock to be subscribed and paid for purposes of incorporation.* — At least twenty-five (25%) percent of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of incorporation, and *at least twenty-five (25%) percent of the total subscription must be paid upon subscription,* the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors: *Provided, however,* That in no case shall the paid-up capital be less than five thousand (P5,000.00) pesos. (n)" By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid. To illustrate, where the authorized capital stock of a corporation is worth P1 million and the total subscription amounts to P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the

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paid-up capital or what should more accurately be termed as "paid-up capital stock."

2. **ID.; ID.; ID.; REQUIREMENTS FOR THE INCREASE/ DECREASE THEREOF; NOT SATISFIED IN THE CASE AT BAR.** — The treatment by the Board of the loans from MTII as part of MSCI's capital stock without satisfying certain mandatory requirements is proscribed under Section 38 of the Corporation Code which provides: "*Power to increase or decrease capital stock; incur, create or increase bonded indebtedness.* No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless *approved by a majority vote of the board of directors and, at a stockholders' meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock, or the incurring, creating or increasing of any bonded indebtedness. Written notice* of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholders' meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, *must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.*" The above requirements, which are condition precedents before the capital stock of a corporation may be increased, were unquestionably not observed in this case.

APPEARANCES OF COUNSEL

Rameses M. Padilla for petitioner.
Meer Meer & Meer for private respondent.

D E C I S I O N

HERMOSISIMA, JR., *J.*:

This is a petition or *certiorari* questioning the February 1, 1995 Decision of public respondent National Wages and Productivity Commission (Commission, for brevity) in NWPC Case No. E-93-007 which reversed on appeal the August 17, 1993 Decision of the Regional Tripartite Wages and Productivity Board VI

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(Board, for brevity) denying the application for exemption of private respondent Monomer Sugar Central, Inc. (MSCI, for brevity) from Wage Order No. RO VI-01 issued by the Board.

The relevant antecedents are undisputed.

On January 11, 1990, Asturias Sugar Central, Inc. (ASCI, for brevity), executed a Memorandum of Agreement with Monomer Trading Industries, Inc. (MTII, for brevity), whereby MTII shall acquire the assets of ASCI by way of a Deed of Assignment provided that an entirely new organization in place of MTII shall be organized, which new corporation shall be the assignee of the assets of ASCI.

By virtue of this Agreement, a new corporation was organized and incorporated on February 15, 1990 under the corporate name Monomer Sugar Central, Inc. or MSCI, the private respondent herein.

On January 16, 1991, MSCI applied for exemption from the coverage of Wage Order No. RO VI-01 issued by the Board on the ground that it is a distressed employer. In support thereto, MSCI submitted its audited financial statements and income tax returns duly stamped "received" by the Bureau of Internal Revenue (BIR) and the Securities and Exchange Commission (SEC) for the period beginning February 15, 1990 and ending August 31, 1990, including the quarterly financial statements and income tax returns for the two quarters ending November 30, 1990 and February 28, 1991.

The petitioner herein MSCI-NACUSIP Local Chapter (Union, for brevity), in opposition, maintained that MSCI is not distressed; that respondent applicant has not complied with the requirements for exemption; and that the financial statements submitted by MSCI do not reflect the true and valid financial status of the company, and that the paid-up capital would have been higher than P5 million and thus impairment would have been lower than 25% had the pre-organization agreement between ASCI and MTII been complied with.

The Board conducted hearings on the application, during which the applicant was required to submit additional documents such

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as its Articles of Incorporation, Memorandum of Agreement between ASCI and MTII, SEC registration, including the schedules of its long-term liabilities, income and expenses, production reports and mill share, among others.

On August 17, 1993, the Board denied MSCI's application for exemption based on the finding that the applicant's losses of P3,400,738.00 for the period February 15, 1990 to August 31, 1990 constitute an impairment of only 5.25% of its paid-up capital of P64,688,528.00, can not be said to be sufficient to meet the required 25% in order to qualify for the exemption, as provided in NWPC Guidelines No. 01, Series of 1992 entitled "REVISED GUIDELINES ON EXEMPTION FROM COMPLIANCE WITH THE PRESCRIBED WAGE/COST OF LIVING ALLOWANCE INCREASES GRANTED BY THE REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARDS":

"SECTION 3. CRITERIA FOR EXEMPTION —

The following criteria shall be used to determine whether the applicant establishment is qualified for exemption:

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3. For Distressed Establishments:

a. In the case of a stock corporation, partnership, single proprietorship, non-stock, non-profit organization or cooperative engaged in a business activity or charging fees for its services —

a.1 *When accumulated losses for the last 2 full accounting periods and interim period, if any, immediately preceding the effectivity of the Order have impaired by at least 25 percent the:*

— *Paid-up capital at the end of the last full accounting period preceding the effectivity of the Order, in the case of corporations*:

— Total invested capital at the beginning of the last full accounting period preceding the effectivity of the Order in the case of partnerships and single proprietorships.

x x x x x x x x x."

The motion for reconsideration, filed by MSCI on September 20, 1993, was denied by the Board on October 12, 1993.

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A timely appeal was brought before the public respondent Commission. In its decision dated February 1, 1995, the Commission reversed and set aside the foregoing orders of the Board, and granted MSCI's application for exemption from Wage Order No. RO VI-01, for a period of one (1) year from its effectivity or from November 27, 1990 to November 26, 1991, in the following manner:

"WHEREFORE, premises considered, the Orders of the Board appealed from are hereby REVERSED and SET ASIDE. Monomer is hereby GRANTED full exemption from Wage Order No. RO VI-01, for a period of one year from effectivity of the Wage Order, which is from 27 November 1990 to 26 November 1991.

SO DECIDED."[1]

Petitioner has come before us by way of a Petition for *Certiorari* under Rule 65.

The issue posed is whether or not respondent MSCI can qualify as a distressed employer from February 15, 1990 to August 31, 1990 as well as during the interim period from September 1, 1990 to November 30, 1990 and thus be entitled to exemption from compliance with Wage Order No. RO VI-01. To resolve this issue, however, a pivotal determination must first be made: What is the correct paid-up capital of MSCI for the pertinent period covered by the application for exemption — P5 million or P64,688,528.00?

The Board held that the paid-up capital of MSCI on the aforesaid dates was actually P64,688,528.00 and not P5 million as claimed by MSCI in its application for exemption and, thus, the established losses amounting to P3,400,738.00 constitute an impairment of only 5.25% of the true paid-up capital of P64 million plus,[2] which losses are not enough to meet the required 25% impairment requirement. This conclusion is anchored on the belief of the Board that the value of the assets of ASCI, party to the Memorandum of Agreement, transferred to MSCI on March 28, 1990 should be taken into consideration in computing the paid-

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[1] Decision, page 7; *Rollo*, p. 31.

[2] Decision, p. 7; *Rollo*, p. 43.

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up capital of MSCI to reflect its true financial structure. Moreover, the loans or advances extended by MTII, the other party to the Agreement, to MSCI should allegedly be treated as additional investments to MSCI,[3] and must therefore be included in computing respondent's paid-up capital.

Public respondent Commission thought otherwise. In reversing the Board and granting the exemption, the Commission held that the Board exceeded its authority in computing and giving new valuation to what should be the paid-up capital of MSCI. It stressed that RA No. 6727, or the Wage Rationalization Act, and its implementing guidelines have not conferred upon the Board the authority to change the paid-up capital of a corporation.[4]

The foregoing asseveration of the parties considered, we find no grave abuse of discretion on the part of the Commission in setting aside the findings of the Board and granting full exemption to MSCI from Wage Order No. RO VI-01.

NWPC Guidelines No. 01, Series of 1992 as well as the new NWPC Guidelines No. 01, Series of 1996, define *Capital* as referring to paid-up capital at the end of the last full accounting period, in the case of corporations or total invested capital at the beginning of the period under review, in the case of partnerships and single proprietorships. To have a clear understanding of what paid-up capital is, however, a referral to Sections 12 and 13 of BP Blg. 68 or the Corporation Code would be very helpful, *viz*:

"Sec. 12. *Minimum capital stock required of stock corporations.* — Stock corporations incorporated under this Code shall not be required to have any minimum authorized capital stock except as otherwise specifically provided for by special law, and subject to the provisions of the following section."

"Sec. 13. *Amount of capital stock to be subscribed and paid for purposes of incorporation.* — At least twenty-five (25%) percent of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of incorporation, and *at least twenty-five (25%) percent of the total subscription must be paid upon subscription*,

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[3] Decision, p. 5; *Rollo*, p. 41.

[4] Decision, pp. 4-5; *Rollo*, pp. 28-29.

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the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors: *Provided, however*, That in no case shall the paid-up capital be less than five thousand (P5,000.00) pesos. (n)"

By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid. To illustrate, where the authorized capital stock of a corporation is worth P1 million and the total subscription amounts to P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the paid-up capital or what should more accurately be termed as "paid-up capital stock."[5]

In the case under consideration, there is no dispute, and the Board even mentioned in its August 17, 1993 Decision, that MSCI was organized and incorporated on February 15, 1990 with an authorized capital stock of P60 million, P20 million of which was subscribed. Of the P20 million subscribed capital stock, *P5 million was paid-up.*[6] This fact is only too glaring for the Board to have been misled into believing that MSCI's paid-up capital stock was P64 million plus and not P5 million.

The submission of the Board that the value of the assets of Asturias Sugar Central, Inc. transferred to MSCI on March 28, 1990, as well as the loans or advances made by MTII to MSCI should have been taken into consideration in computing the paid-up capital of MSCI is unmeritorious, at best, and betrays the Board's sheer lack of grasp of a basic concept in Corporation Law, at worst. Not all funds or assets received by the corporation can be considered paid-up capital, for this term has a technical signification in Corporation Law. Such must form part of the authorized capital stock of the corporation, subscribed and then actually paid up.

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[5] Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, Vol. III, 1984 ed., p. 153.

[6] Decision, p. 3; *Rollo*, p. 39.

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Furthermore, the Commission aptly observed that the loans and advances of MTII to respondent MSCI cannot be treated as investments, unless the corresponding shares of stocks are issued. But as it turned out, such loans and advances were in fact treated as liabilities of MSCI to MTII as shown in its 1990 audited financial statements.[7] The treatment by the Board of these loans as part of MSCI's capital stock without satisfying certain mandatory requirements is proscribed under Section 38 of the Corporation Code which provides:

"*Power to increase or decrease capital stock; incur, create or increase bonded indebtedness.* No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless *approved by a majority vote of the board of directors and, at a stockholders' meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. Written notice* of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholders' meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, *must be addressed to each stockholders at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.*"

The above requirements, which are condition precedents before the capital stock of a corporation may be increased, were unquestionably not observed in this case. Henceforth, the paid-up capital stock of MSCI for the period covered by the application for exemption still stood at P5 million. The losses, therefore, amounting to P3,400,738.00 for the period February 15, 1990 to August 31, 1990 impaired MSCI's paid-up capital of P5 million by as much as 68%. Likewise, the losses incurred by MSCI for the interim period from September 1, 1990 to November 30, 1990, as found by the Commission, per MSCI's quarterly income statements, amounting to P13,554,337.33 impaired the company's

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[7] Decision, p. 5; *Rollo*, p. 29.

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paid-up capital of P5 million by a whooping 271.08%,[8] more than enough to qualify MSCI as a distressed employer. Respondent Commission thus acted well within its jurisdiction in granting MSCI full exemption from Wage Order No. RO VI-01 as a distressed employer.

WHEREFORE, the petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and *Kapunan, JJ.,* concur.

FIRST DIVISION

[G.R. No. 84449. March 4, 1997]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENEDICTO** (Benito) **JAVIER, ANGELITO** (Manolito) **JAVIER, REDENCIO** (Esteban) **JAVIER, DOMINGO JAVIER, and EDWIN DE PERALTA,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; IMPOSSIBILITY OF PHYSICAL PRESENCE AT THE SCENE AT THE TIME OF THE CRIME, WANTING IN CASE AT BAR.—** For alibi to prosper it is not enough to prove that appellants were somewhere else when the offense was committed, but it must likewise be demonstrated that they were so far away that they could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. Their alleged whereabouts at the time of the incident were not sufficiently shown to be of such distance as to foreclose any possibility for the appellants to be at the crime scene.

[8] *Supra.*, note 1.