G.R. No. 183573 – DIZON COPPER SILVER MINES, INC., *petitioner* **–*versus*– DR. LUIS D. DIZON,** *respondent.*

Promulgated:

JUL 18 2012

SEPARATE CONCURRING OPINION

BRION, *J.*:

I **concur** with the *ponencia* in denying the petition for review on *certiorari* of Dizon Copper-Silver Mines, Inc. (*Dizon Mines*). The denial of the petition effectively affirms the Order dated December 29, 2005 of the Secretary of the Department of Environment and Natural Resources (*DENR*) declaring void *ab initio* the two Mineral Production Sharing Agreement (*MPSA*) applications of Dizon Mines (**MPSA-P-III-16** which was assigned by Benguet Corporation to Dizon Mines and **MPSA-P-III-03-05** which was filed by Dizon Mines itself). A review of the facts and the applicable laws shows that **there is legal basis to dismiss Dizon Mines' MPSA applications.**

The 1987 Constitution introduced a radical change in the system of exploration, development, and utilization of the country's natural resources. "No longer is the utilization of [natural resources made] through license, concession or lease under the 1935 or 1973 Constitutions"[1]; the present Constitution instead declares, under Section 2, Article XII, that the "exploration, development, and utilization of natural resources shall be under the full control and supervision of the State." Accordingly, the State is authorized to "directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements"[2] with qualified entities.

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1 *Miners Association of the Philippines v. Hon. Factoran, Jr., et al.*, 310 Phil. 113, 119 (1995).

2 CONSTITUTION, Article XII, Section 2.

Pursuant to this mandate, Congress enacted Republic Act (*RA*) No. 7942 or the Philippine Mining Act of 1995, which provides for only three modes of mineral agreements between the government and a qualified contractor: **mineral production-sharing agreement**, **co-production agreement**, and **joint venture agreement**.[3] The previous laws on mining (which authorized, among others, mining claims and mining lease contracts) that were inconsistent with RA No. 7942 were expressly repealed.[4] **Notwithstanding the repeal, RA No. 7942 recognized and respected previously issued valid and existing mining licenses under the old mining laws**. The pertinent provisions of RA No. 7942 state:

> Section 19. *Areas Closed to Mining Applications.* - **Mineral agreement** or financial or technical assistance agreement **applications shall not be allowed:**
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> x x x x
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> **c. In areas covered by valid and existing mining rights;**
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> x x x x
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> Section 112. *Non-Impairment of Existing Mining/Quarrying Rights*. - **All valid and existing mining lease contracts**, permits/licenses, leases pending renewal, mineral production-sharing agreements granted under Executive Order No. 279, **at the date of effectivity of this Act, shall remain valid, shall not be impaired, and shall be recognized by the Government:** Provided, That the provisions of Chapter XIV on government share in mineral production-sharing agreement and of Chapter XVI on incentives of this Act shall immediately govern and apply to a mining lessee or contractor unless the mining lessee or contractor indicates his intention to the secretary, in writing, not to avail of said provisions: Provided, further, That **no renewal of mining lease contracts shall be made after the expiration of its term**: Provided, finally, That such leases, production-sharing agreements, financial or technical assistance agreements shall comply with the applicable provisions of this Act and its implementing rules and regulations.
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> Section 113. *Recognition of Valid and Existing Mining Claims and Lease/Quarry Applications.* - **Holders of valid and existing mining claims, lease/quarry applications shall be given preferential rights to enter into any mode of mineral agreement with the government within two (2) years from the promulgation of the rules and regulations implementing this Act.** [italics and emphases ours]

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3 RA No. 7942, Section 26.

4 *Id.*, Section 115.

Dizon Mines claims to hold two sets of mining rights under repealed mining laws, both are the subjects of its two MPSA applications: (1) the six mining claims covered by Mining Lease Contracts (MLCs), and (2) the 51 mining claims assigned to it by Celestino M. Dizon and his heirs in 1967. The recognitions of these two mining rights are separetely governed by Sections 112 and 113 of RA No. 7942, and should be treated accordingly.

a. The mining rights under the MLCs

The *ponencia* pointed out that the six mining claims covered by the MLCs were in the names of Celestino and his heirs, not Dizon Mines. Hence, these mining claims cannot be included in MPSA-P-III-16 for conversion to MPSA by Dizon Mines, without the individual consent of Celestino and his heirs. Accordingly, any authorization by Dizon Mines for conversion of the MLCs to MPSAs would not be material.

Justice Caprio dissented from the *ponencia* by pointing out that long before the issuance of the MLCs (in 1978), all the 57 mining claims have been assigned by Celestino and his heirs in favor of Dizon Mines (in 1966). Although the MLCs were issued in the names of Celestino and his heirs, these were held in trust for Dizon Mines which acquired all the mining claims by virtue of the assignment. Justice Carpio thus claims that Dizon Mines was not required to secure the consent of Celestino and his heirs to file the MPSA applications with respect to the six mining claims covered by the MLCs.

With due respect, I find the need for authorization from Celestino and his heirs with respect to the six mining claims covered by the MLCs irrelevant. These MLCs were to expire on January 31, 2005.[5] Section 19 of RA No. 7942, however, prohibits mineral agreement applications involving areas that are covered by valid and existing mining rights. Section 112 of RA No. 7942 specifically provides that "[a]ll valid and existing mining lease

[5] *Rollo*, pp. 538, 546, 554, 562 and 570.

contracts x x x at the date of effectivity of [the] Act, shall remain valid, shall not be impaired, and shall be recognized by the Government[.]" Hence, under the law, **any application *filed by any entity* involving areas covered by the MLCs filed on or before January 31, 2005 is premature and should be denied.** Dizon Mines' MPSA-P-III-16 and MPSA-P-III-03-05 were filed on December 16, 2004[6] and January 31, 2005, respectively; as both MPSA applications were filed before the opening of the period for application, the dismissal of the applications with respect to the areas covered by the MLCs is thus proper.

b. The mining rights under the remaining 51 mining claims

What, therefore, remains is the validity of the two MPSA applications insofar as they involve the other 51 mining claims. The recognition and protection guaranteed under Section 19 of RA No. 7942 similarly extend to these 51 mining claims, but Section 113 of the same law limits the guarantee to a two-year period, counted from the date of promulgation of RA No. 7942's implementing rules and regulations. Within this two-year period, two rules should be observed: (1) no application for mineral agreements may be filed involving the areas covered by the mining claims,[7] and (2) the holder of the mining claims has the preferential right to enter into a mineral agreement with the government involving the areas covered by the holder's mining claims.[8] In other words, for the duration that the holder of mining claims has preferential rights to enter into a mineral agreement, no application for mineral agreements may be filed by other interested entities.

Section 273 of DENR Administrative Order No. 96-40 or the *Revised Implementing Rules and Regulations of Republic Act No. 7942 Otherwise Known as the "Philippine Mining Act of 1995"* sets the two-year cut off period on September 14, 1997. Since September 14, 1997 fell on a Sunday,

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6 Based on a letter of the same date sent by Dizon Mines to DENR Mines and Geosciences Bureau Regional Office III requesting inclusion of the 6 mining claims under MLCs in MPSA-P-III-16; *id.* at 440. The request was approved on January 4, 2005; *id.* at 342.

7 RA No. 7942, Section 19.

8 *Id.*, Section 113.

the DENR clarified in its Memorandum Order No. 97-07 (dated August 27, 1997) that holders of existing and valid mining claims would have until September 15, 1997 to exercise their preferential rights. As the *ponencia* pointed out, only Benguet Corporation's MPSA application (MPSA-P-III-16) was filed before the September 15, 1997 deadline. The problem, however, was that Benguet Corporation was not a holder of the 57 mining claims but a mere operator, and it did not have the proper authority to file MPSA applications in behalf of Dizon Mines.[9]

On this point, I agree with the *ponencia*'s finding that Benguet Corporation did not have the proper authority to file the MPSA applications. While Benguet was authorized "to prepare, execute, amend, correct, supplement and register any document x x x necessary to carry out the intents and purposes"[10] of the Operating Agreement, entering into an MPSA with the government could not have been among those contemplated. The Operating Agreement was executed in 1975 when the mining laws provided only minimal participation by the State in mining activities; the passage of the 1987 Constitution, on one hand, and of RA No. 7942, on the other hand, drastically changed the system by giving the State full control and supervision over exploration, development and utilization of natural resources, and allowing only limited forms of mining agreements. Such dynamic change in the relationship between the State and the mining right holder could not have been among those that Benguet Corporation was authorized to enter into under the Operating Agreement.

A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents *when authorized by a board resolution or its bylaws*.[11] Dizon Mines never submitted proof that Juvencio Dizon, Dizon Mines' President, was authorized by the Board or its bylaws. While the letter dated June 14, 1991,

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9 Parenthetically, Benguet Corporation cannot file the MPSA-P-III-16 application in its own capacity because of the restriction under Section 19 of RA No. 7942.

10 Section 9.04 of the Operating Agreement.

11 *Antonio P. Salenga v. Court of Appeals, et al. and Clark Development Corporation*, G.R. No. 174941, February 1, 2012.

addressed to Benguet Corporation and signed by Juvencio Dizon, states that –

> We hereby confirm and approve the filing of the MPSA proposal in accordance with plan presented in your letter dated June 3, [1991,]

it was not accompanied by a resolution from Dizon Mines' Board of Directors, either agreeing with Benguet Corporation's MPSA application or granting its President the authority to agree with the application.

Thus, at the time of filing, Benguet Corporation's MPSA application could not validly be considered as filed in behalf of Dizon Mines in the absence of a proper authorization from the latter. By the time Benguet Corporation assigned to Dizon Mines its MPSA application on October 22, 2004, the September 15, 1997 deadline had already lapsed. Hence, Dizon Mines was unable to exercise its preferential rights within the period set by law.

Under Section 10 of DENR Memorandum Order No. 97-07, "any valid and existing mining claim x x x for which the concerned holder failed to file [the necessary] Mineral Agreement application by September 15, 1997, shall [be] considered **automatically abandoned** and **the area covered thereby rendered open to Mining Applications effective September 16, 1997**[.]" Since MPSA-P-III-16 and MPSA-P-III-03-05 were transferred to/filed by Dizon Mines after the September 15, 1997 cut-off date, the *ponencia* considered these as new MPSA applications. However, the same administrative issuance disqualifies holders who failed to exercise their preferential rights from applying for MPSAs on areas covered by their abandoned mining claims:

> DENR Memorandum Order No. 97-07. Section 11. *Acceptance of Mining Application Over the Areas Subject to Mining Claims and Lease/Quarry Applications Abandoned After September 15, 1997.*
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> x x x x

> The holder of a valid and existing mining claim or lease/quarry application who **failed to file the necessary Mineral Agreement Application** on or before September 15, 1997 shall be **disqualified** from thereafter filing a Mining Application over the same area covered by such abandoned claim or application.

Accordingly, Dizon Mines is disqualified from filing any Mineral Production Sharing Agreement application involving the areas covered by the 57 mining claims. Given the foregoing consideration, I agree that the Department of Environment and Natural Resources Secretary's denial of Dizon Copper-Silver Mines, Inc.'s MPSA-P-III-16 and MPSA-P-III-03-05 is proper.

ARTURO D. BRION
Associate Justice