The Status Of Our Law On Merger Or Consolidation Of Corporations

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THE terms "merger" and "consolidation" have well known legal meanings. While the results of either event is practically the same, there is, however, this difference: In merger one corporation absorbs the other and remains in existence, the other being thereby dissolved. In consolidation a new corporation is created and the consolidating corporations are extinguished. In either event, the resulting corporation acquires all the property, rights, and franchises of the dissolved corporation, and their stockholders become its stockholders (*Pinellas Ice & Cold Storage Co. vs. Comm. of Internal Revenue, 57 Fed. [2nd] 188; Vicksburg, etc. Telephone Co. vs. Citizen's Telephone Co., 30 So. 725*). Thus, a merger of two corporations occurs when two corporations having a distinct body of stockholders desire to throw their assets and liabilities into a common pool and thereafter have the two enterprises operated and managed as one; and as an incident to the merger, reclassification and readjustments of the capital structure may be involved (*Havender vs. Federal United Corporation, 2 Atl. [2nd] 143*). The essence of a merger is the absorption by one corporation of the properties and franchises of another whose stock it has acquired, whereupon the merging corporation alone survives (*Ahles Realty Corp. vs. Comm. of Internal Revenue, 71 Fed. [2nd] 150*). Consolidation, on the other hand, is a combination by agreement between two or more corporations under authority of law, by which their rights, franchises, privileges, and property are united and become the rights, franchises, privileges and property of a single corporation, composed generally, although not necessarily, of the stockholders of the original corporation (*Atlantic & G. R. Co. vs. Georgia, 98 U. S. 359*). Consolidation implies a blending of all assets under a common control and assuming by the joint responsibility of all the liabilities of each; the creation of a new corporate body which displaces and destroys an individual existence of its predecessors (*2 Words & Phrases, p. 1452, citing Buford vs. Keokuk Line Packet Co., 3 Mo. App. 159, 171*).

Our law on merger or consolidation is found in Act No. 2772, as amended by Act No. 2789. Section 1 thereof provides:

> "Section 1.—Any corporation organized, or to be organized, under any law, or laws of the Philippines, is hereby authorized to merge or consolidate into a single corporation organized, or to be organized, under any law, or laws of the United States, or of the Philippines, *and owning and operating any railroad lines within the Philippines:* Provided, however, That no such merger or consolidation shall take place between any railroad corporation or between any railroad corporation and other carrier by land or water whereby competing agencies of transportation are reduced to one control. (Italics supplied).

Ambiguities lurk in the above-quoted provision. Does the said section apply only to railroad corporations because of the qualifying clause "and owning and operating railroad lines within the

the Philippines?" Or did the framers of the said law contemplate merger or consolidation between public utilities, such as carriers by land or sea, on the one hand, and railroad corporations, on the other, subject to the proviso therein specified? In other words, must one of the merging or consolidating corporations own and operate railroad lines in order to come within the law? Or is Act No. 2772, as amended, a general legislative authority for all classes of corporations to merge or consolidate, without any qualifications whatsoever, because of the universal word "any" which modifies the term "corporation"?

The legislative journals of the law-making power which enacted Act No. 2772 do not enlighten us much. There was practically no debate nor discussion when Act No. 2772 was passed, which may illustrate the legislative intent. (*See Diario de Sesiones del Senado de Filipinas, Vol. 2, pp. 565-566*).

Act No. 2772 was amended almost a year later by Act No. 2789. The amendatory law was sponsored on the floor of the Philippine Senate by Senator Jose Altavas, of the Eighth Senatorial District. From his statements during the discussions of Senate Bill No. 242, it could be deduced that Act No. 2772 refers to railroad corporations and more specifically to the Manila Railroad Company. Senator Altavas said in substance that the principal object of Act No. 2772 was to convert the Manila Railroad Company to a Philippine corporation. But under the said law, the power to merge or consolidate is vested only in one corporation. Under the laws of the State of New Jersey, under which the Manila Railroad Company was organized, a corporation is prohibited to merge or consolidate with another unless such corporation is also organized under the laws of the United States. Besides, at that time, Senator Altavas elucidated further, the railroad lines of the Manila Railroad Company in the Island of Luzon were heavily mortgaged and one of the conditions of the mortgage was that it could not merge or consolidate with another corporation unless the latter is also organized under the laws of the United States. Hence, attempts to transfer all the properties and franchises of the Manila Railroad Company to a Philippine corporation failed. Act No. 2789 was passed to remedy the situation. It was planned, Senator Altavas stated, to transfer the assets of the Manila Railroad Company to a corporation in the State of Alabama which permits merger or consolidation with corporations organized outside of the United States. And from the State of Alabama, the properties of the Manila Railroad Company thus transferred would be acquired by a Philippine corporation to be organized by the Philippine Government. (*See Diario de Sesiones del Senado de Filipinas, Vol. 3, pp. 500-502, Feb. 4, 1919*).

Taking the legislative records as guide, it is reasonable to conclude that our law on merger or consolidation refers to railroad corporations, and particularly the Manila Railroad Company. This explains the requirement that one of the merging or consolidating corporations must "own and operate railroad lines in the Philippines." This view is further sustained by the additional requisites of Section 2, paragraph (b) of the said law to the effect that the merger or consolidation agreement must be submitted to the Public

Service Commission for approval before registration of the articles of incorporation of the merged or consolidated corporation with the Securities and Exchange Commission. But considering that the Public Service Commission exercises no supervision or control over the Manila Railroad Company, except as to its rates and that under its charter the Manila Railroad Company is empowered, even without a certificate of public convenience from the Public Service Commission, to establish all facilities for the transportation of passengers in Luzon (*Batangas Trans. Co. vs. Manila Railroad Co. & Public Service Commission, V Lawyers Journal, 648*), it is doubtful indeed if the Manila Railroad Company would care to consolidate or merge with any other corporation. But will the provisions of Act No. 2772, as amended, be of practical benefit to the Philippine Railway Company which owns also railroad lines in the Island of Panay? Obviously not, for the simple reason that it is of general and public knowledge that it is a bankrupt corporation.

Having arrived at the conclusion that our law on merger or consolidation applies only to railroad corporations, it results, therefore, that Act No. 2772, as amended, is a dead law. Other classes of corporations have no authority to merge or consolidate, because the power to consolidate or merge exists only by virtue of a plain legislative enactment (*William B. Riker & Son Co. vs. United Drug Co. 82 Atl. 930*). Such power is not to be implied and is conferred only by legislation that may be read into the contract of incorporation (*Colgate vs. United States Leather Co., 72 Atl. 126*). Consolidation or merger, therefore, is not within the powers of other classes of corporations in the Philippines, because legislative authority is just as essential to the exercise of such power as in the creation of corporations in the first instance (*Pierce vs. Madison I. R. R. Co., 16 L. ed. 184*).