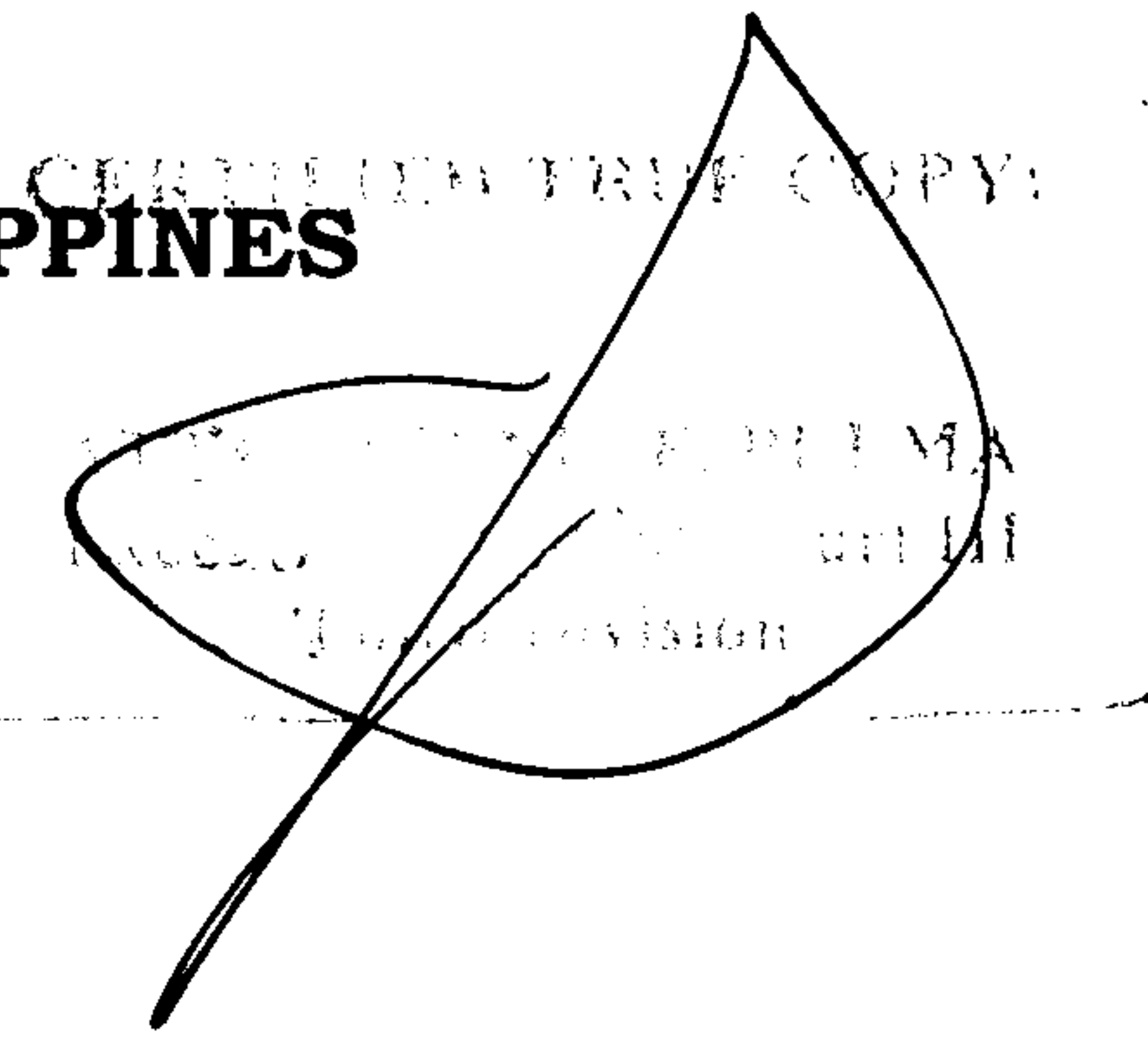


REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN

QUEZON CITY

THIRD DIVISION



PEOPLE OF THE  
PHILIPPINES,

Plaintiff,

CRIM CASE NO. SB-15-  
CRM-0079

For: Violation of Sec. 3(e) of  
R.A. No. 3019

- versus -

RICO VADELLON y POBLETE,  
ET AL.

Accused.

Present:

CABOTAJE-TANG, P.J.,  
Chairperson,  
MARTIRES, J. and  
FERNANDEZ, J.

Promulgated on:

APRIL 22, 2016

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**RESOLUTION**

**CABOTAJE-TANG, P.J.:**

For resolution is accused Don Thed J. Ramirez's *Motion for Reconsideration*<sup>1</sup> dated November 20, 2015; and the Prosecution's *Opposition*<sup>2</sup> thereto dated December 18, 2015.

In his motion, accused Ramirez seeks to reverse and set aside this Court's *Resolution*<sup>3</sup> promulgated on November 4, 2015, which resolved the various motions for *Judicial Determination of Probable Cause* filed by the accused in this case. In the same *Resolution*, this Court found the existence of

<sup>1</sup> p 244, Record, Vol. II


<sup>2</sup> p 257, *id*

<sup>3</sup> p 212, *id*

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probable cause against all the accused and, accordingly, issued warrants for their arrest.

In the present motion, accused Ramirez insists that the Bids and Awards Committee's (BAC's) acceptance of the amended Environmental Compliance Certificate (ECC) of the joint venture was authorized by Section 24 2.c of the Instructions to Bidders (ITB) as amended by Supplemental Bid Bulletin (SBB) Number 1. "*As clearly stated in Section 24 2.c, the winning bidder has a non-extendible period of three (3) calendar days from receipt of the notice from the BAC to submit the appropriate licenses and permits required by law AND those licenses permits, inspection/verification report STATED IN THE BID [sic];*"<sup>4</sup> Accused Ramirez argues that the fact that the amended ECC falls under item 9.1 of the BDS gives the BAC more reason to accept the submission thereof within the three-day period because "*it is a license or permit stated in the BID[sic];*"<sup>5</sup> Accused Ramirez further argues that an ECC is a permit or license within the contemplation of Sec. 24 2.c of the ITB, contrary to this Court's pronouncement that "*the ECC is not a permit or license within the contemplation of Sec. 24.2 of the Instruction to Bidders but a "planning tool" as stated no less by the amended ECC.*"<sup>6</sup> In support thereof, accused Ramirez cites provisions from P.D. No. 1586 and R.A. No. 9003 which refer to an ECC as a permit<sup>7</sup>.

Accused Ramirez also reiterates his argument that this Court should have appreciated the resolution of the Ombudsman in OMB-C-C-12-0075-B (*Ledesma*) entitled *Far East Fuel Corporation vs. Ledesma*, which exculpated the herein same accused for insufficient evidence.<sup>8</sup> He asserts that "*The complaint in Ledesma that allegedly resulted to 'unwarranted benefit, preference or advantage' is the act of the BAC and Pres Ledesma in awarding the project to the Joint Venture of AC, GIM which is the **same act** for which Ramirez is being criminally charged in this case.*"<sup>9</sup> 

<sup>4</sup> Par 4, p. 2, Accused Ramirez's Motion for Reconsideration (Of the Resolution dated 05 November 2015 which was received by the undersigned on 09 November 2015); p 244, Record, Vol. II

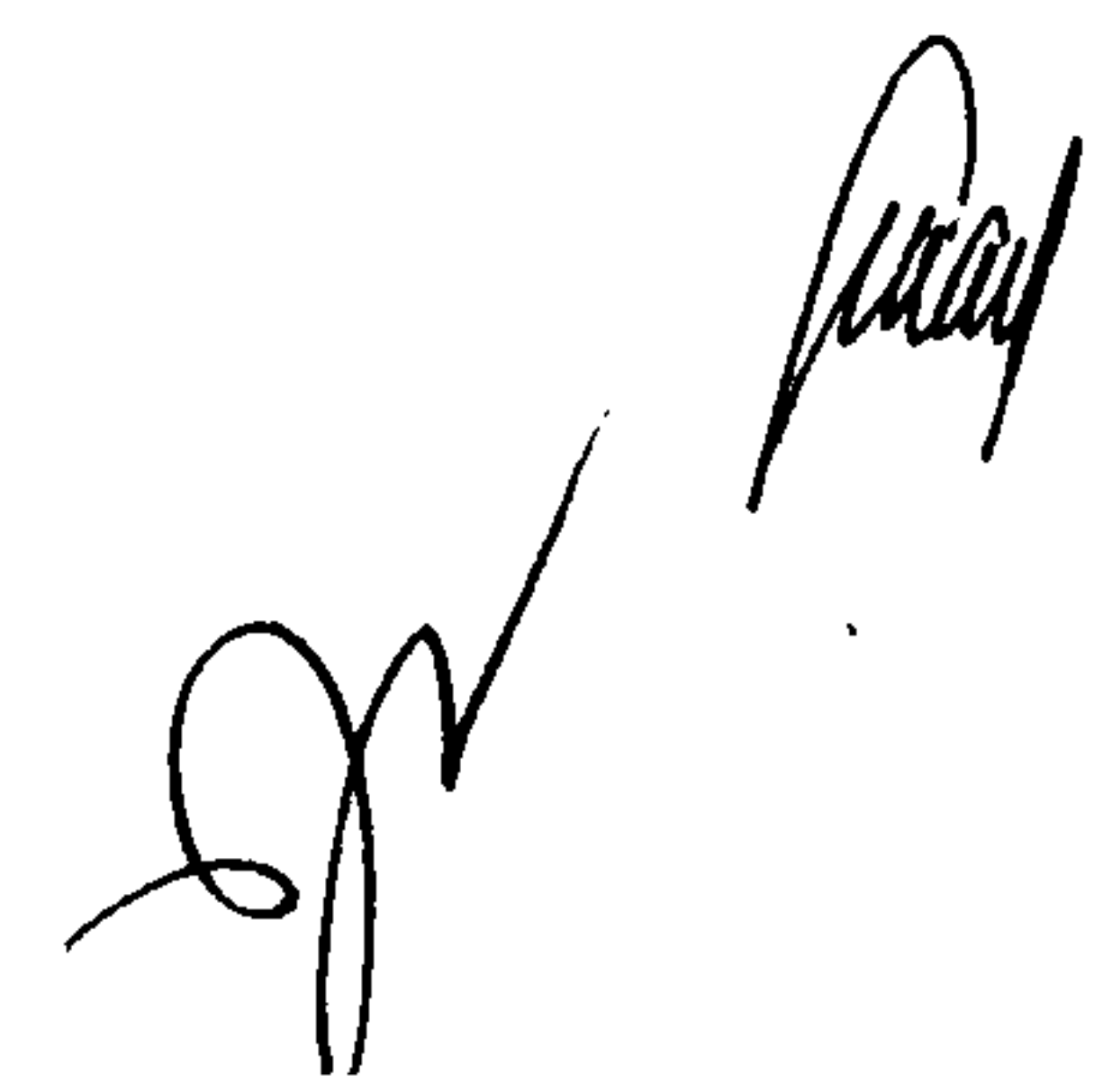
<sup>5</sup> Par 5, *id*; *id*

<sup>6</sup> Par 6, *id*; *id*

<sup>7</sup> Pp 3-4, *id*; p246-247, *id*

<sup>8</sup> Par 10-11, p. 4, *id*; p247-248, *id*

<sup>9</sup> *id*



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Lastly, accused Ramirez faults this Court for relying too much on the position taken by the Technical Working Group (TWG) that the capability of the joint venture to treat/process the waste oil per PSALM requirements should be based on the old ECC, not on the new ECC which was submitted only during post qualification.<sup>10</sup> Accused Ramirez argues that it is not within the mandate of the TWG to choose which between the two (2) ECCs should be considered, and that their findings are merely recommendatory which does not mandatorily bind the BAC.

The prosecution prays for the denial of accused Ramirez's *Motion for Reconsideration* in its *Opposition* dated December 18, 2015.<sup>11</sup> According to the prosecution, the *Motion for Reconsideration* fails to raise any new issue that has not already been considered by this Court in its November 5, 2015 *Resolution*, nor does it present any new evidence that would warrant the reversal of said *Resolution*.<sup>12</sup> The prosecution also argues that the finding of probable cause is justified as the BAC inexplicably declared the Joint Venture as the Highest Responsive Bidder based on the amended ECC which was belatedly submitted during the Post-Qualification stage, after the November 17, 2011 deadline for the submission of modified bids.<sup>13</sup> The prosecution further argues that the ECC is an eligibility document which must be submitted during the Pre-qualification stage and not during the Post-Qualification stage.<sup>14</sup> Lastly, the prosecution argues that the points at issue in *Ledesma* are entirely different from this case as shown by the assertions of Far East Fuel Corporation in that case.<sup>15</sup>

### THE COURTS RULING

The Court finds accused Ramirez's Motion for Reconsideration devoid of merit. The issues raised in his

<sup>10</sup> Par 12, p 5, *id*; p 248, *id*.

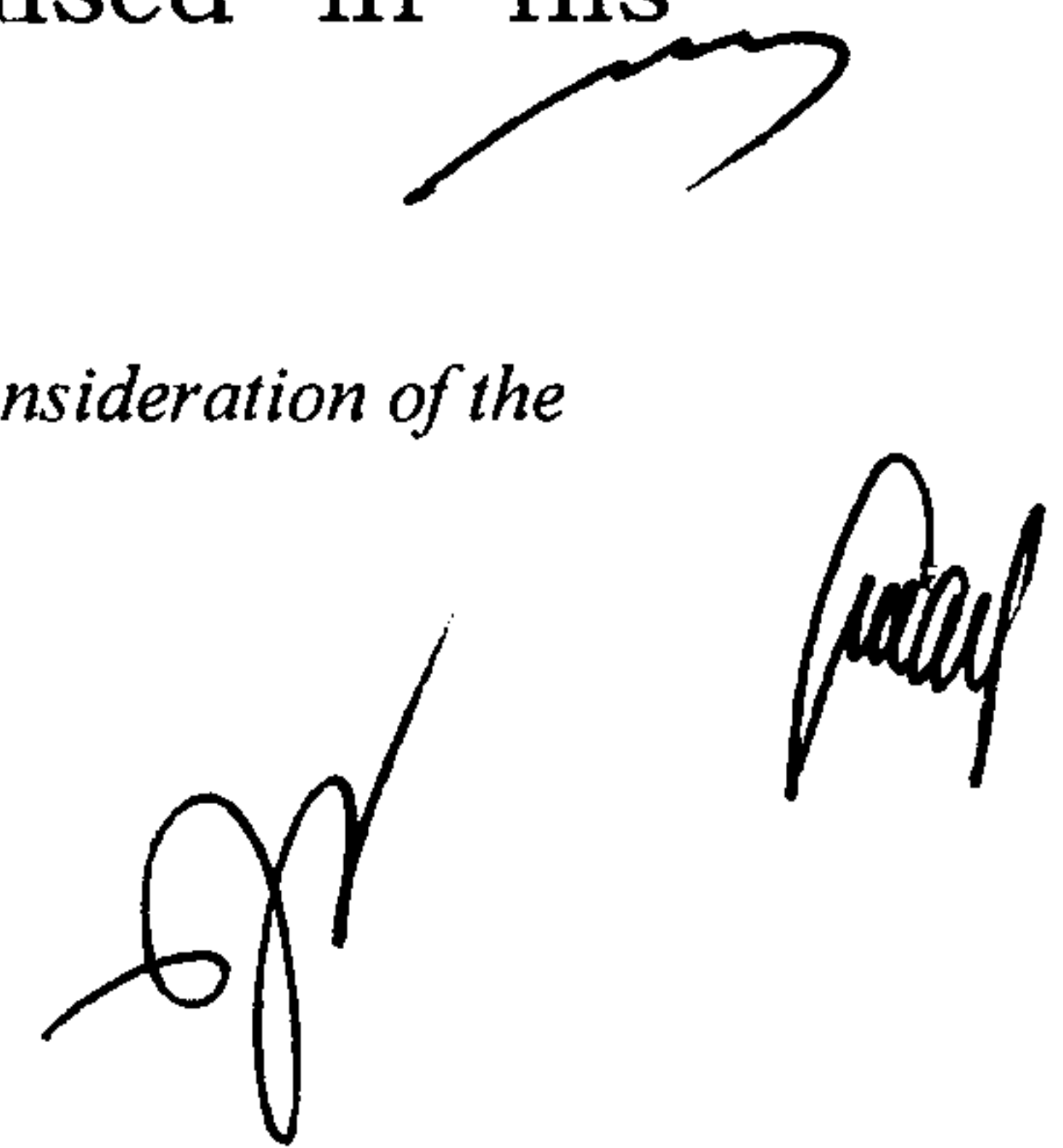
<sup>11</sup> p 257, Record, Vol. II

<sup>12</sup> Par 2, Prosecution's *Opposition (Re: Don Thed J. Ramirez's Motion for Reconsideration of the Resolution dated 5 November 2015)*; p 258, *id*

<sup>13</sup> Par 3(j), *id*; p 260, *id*

<sup>14</sup> Par 4, *id*; p 261, *id*

<sup>15</sup> Par 7, *id*; p 263, *id*

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motion are a mere rehash of the arguments he raised in his *Motion for Judicial Determination of Probable Cause* dated March 20, 2015.<sup>16</sup> These have been thoroughly considered and extensively discussed by this Court in its assailed resolution.

It must be stressed that at this stage of the proceedings, the only matter to be decided by this Court is the existence of probable cause for the issuance of a warrant of arrest against the accused. In a judicial determination of probable cause, the judge is tasked to merely determine the probability, not the certainty, of guilt of the accused.<sup>17</sup> After a perusal of accused Ramirez's *Motion for Reconsideration* and the Prosecution's *Opposition* thereto, this Court sees no reason to reverse its November 4, 2015 *Resolution* finding probable cause for the issuance of warrants of arrest against the accused.

This Court notes that accused Ramirez's argument that the ECC is *a permit* within the ambit of Section 24.2 (c) of the ITB is an evidentiary matter which is best threshed out in a full blown trial on the merits. Moreover, accused Ramirez has not controverted this Court's finding that the amended ECC is one of the "**other eligibility documents**" as expressly declared in Section 9.1 of the BDS and, thus, should have been contained in the first envelope pursuant to item 9 of the ITB.<sup>18</sup>

Accused Ramirez's invocation of *Ledesma* similarly deserves scant consideration. As the Court previously ruled,<sup>19</sup> the matters at issue are completely different. The information in this case charges the accused with violating Section 3 (e) of R.A. No. 3019 "*by accepting a belatedly submitted ECC during the post qualification, thereby facilitating the undue post qualification and award of contract to the 'joint venture',*"<sup>20</sup> whereas the issues passed upon in *Ledesma* were as follows:

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<sup>16</sup> p. 276, Record

<sup>17</sup> *Hao v. People of the Philippines*, G.R. No. 183345, September 17, 2014.

<sup>18</sup> p. 223, Record, Vol. II

<sup>19</sup> P. 225, *id*

<sup>20</sup> p. 2, Record

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a. The bid of Atomillion and its alleged joint venture partners was P20 Million less than FEFC's Php 55,500,000.00 bid. The government stands to lose assured P20M revenue and in utter breach of PSALM's fiduciary obligation to 'manage the orderly sale, disposition, and privatization of NPC generation assets, xxx in an **optimal manner.**'

b. The appeal of FEFC before respondent President and CEO was still unresolved at the time of the award in gross violation of FEFC's right to due process;

c. Atomillion Corporation is not accredited by DENR-EMB as treater of oil. Neither is it accredited to haul toxic and hazardous wastes, or compliant with pertinent requirement of Section 5 of Republic Act 8479, otherwise known as "Downstream Oil Industry Deregulation Act of 1998."<sup>21</sup>

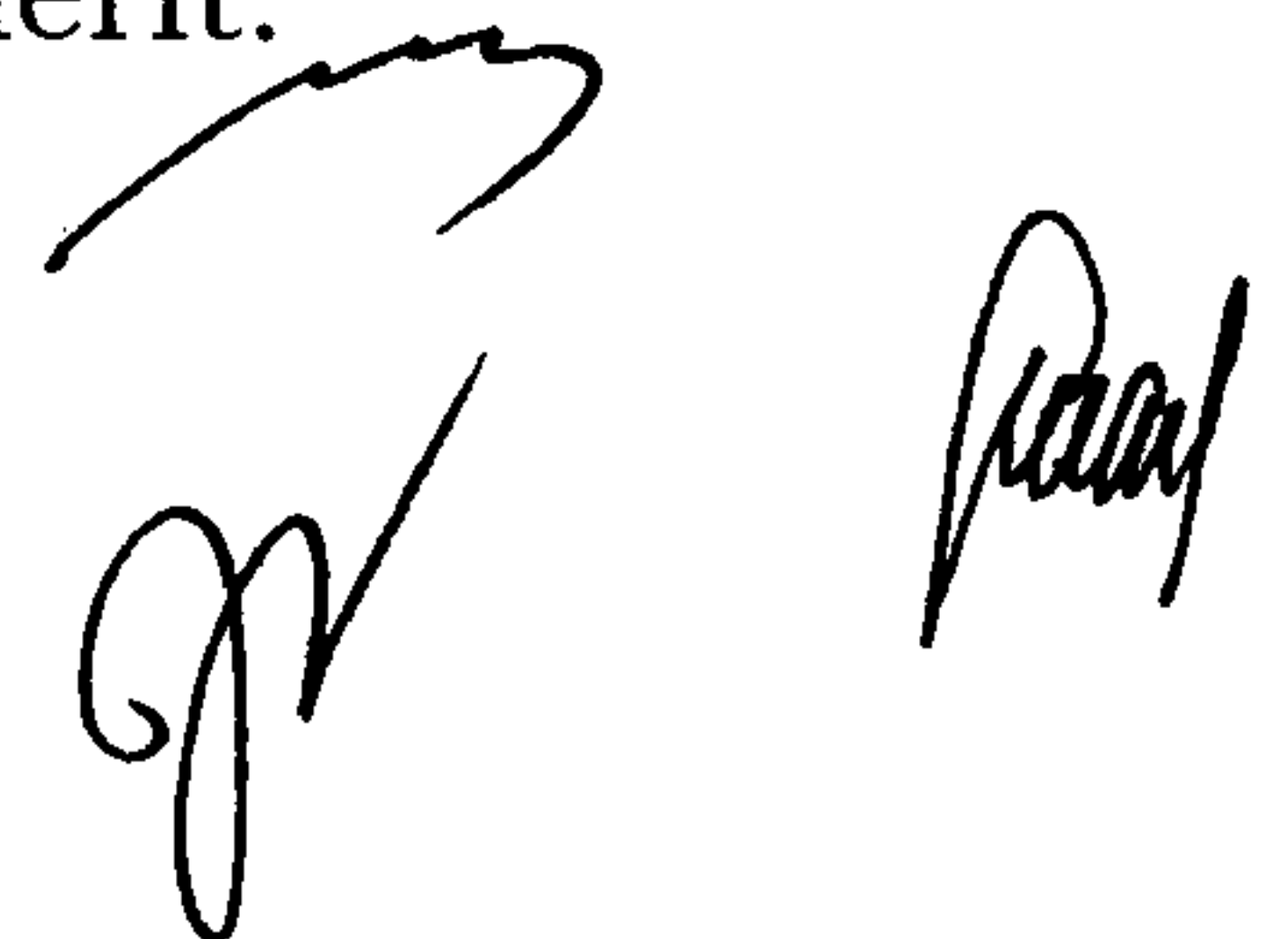
A mere comparison of the above-mentioned issues *vis-a-vis* the information filed in this case readily shows the complete dissimilarity of the issues raised and facts in dispute.

Lastly, accused Ramirez's arguments assailing the Court's reliance on the findings of the TWG do not sway. The fact that the TWG was not mandated to choose between the two (2) ECCs, or that their findings were merely recommendatory to the BAC, does not diminish the probative value of their findings. Furthermore, it was precisely the BAC's disregard of the TWG's recommendation that this Court took notice of as part of the evidence of irregularity in its determination of the existence of probable cause for the crime charged.<sup>22</sup>

**WHEREFORE**, accused Don Thed J. Ramirez's *Motion for Reconsideration (Of the Resolution dated 05 November 2015 which was received by the undersigned on 09 November 2015)*, dated November 20, 2015 is **DENIED** for lack of merit.

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<sup>21</sup> p. 316, *id*  
<sup>22</sup> p. 224, Record, Vol. II



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**SO ORDERED.**

Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson

**WE CONCUR:**

  
**SAMUEL R. MARTIRES**  
Associate Justice

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice