Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF:

MONDRAGON LEISURE AND RESORTS CORPORATION

SEC EN BANC CASE NO. 06-06-80

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DECISION

Sought to be reversed by the Appeal of Mondragon Leisure and Resorts Corporation ("MLRC") is the 22 May 2006 Order of the Corporation Finance Department (CFD) which affirmed the 8 December 2004 Order of Revocation issued against MLRC.

FACTS OF THE CASE

MLRC is a wholly-owned subsidiary of Mondragon International Philippines, Inc. ("MIPI") which is engaged in the gaming and leisure business, more particularly, the operation of the Mimosa Leisure Estate ("Mimosa Estate") in the Clark Special Economic Zone in Clarkfield, Pampanga. MLRC, on the other hand, is in charge of the operations of the Mimosa Estate.

In an Order dated 29 October 2002, the Commission suspended the company's registration of securities subject to a continuing disclosure of all material information relative thereto.[1]

Be that as it may, MLRC failed to comply with its reportorial obligations. Thus, on 27 August 2003, MLRC was meted a penalty of Five Hundred Thirty Thousand Nine Hundred Pesos (PhP530,900.00). The penalty was reduced by seventy five percent (75%) "as a matter of policy, for violations prior to 2003, for corporations with negative operating results."[2] MLRC was then directed to pay instead One Hundred Thirty Two Thousand Seven Hundred Twenty Five Pesos (PhP132,725.00) in twelve (12) equal monthly installments, otherwise, the Commission shall proceed with the revocation of its certificate of registration.[3]

Despite the penalty reduction, MLRC defaulted in its payment. This left the CFD no other recourse but to issue on 8 December 2004 an Order of Revocation of registration of securities against MLRC.[4]

MLRC sought for reconsideration[5] on 20 December 2004 where it was alleged that the company failed to pay the imposed penalty because 1) the company is experiencing "severe financial difficulties" as a result of the government takeover of the Mimosa Estate;[6] 2) the

[1] Records, at 179.
[2] *Id.*, at 11.
[3] *Id.*, at 10.
[4] *Id.*, at 197-198.
[5] *Id.*, at 169-176.
[6] *Id.*, at 174.

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closure of the Mimosa Regency Casino and the takeover of the Mimosa Estate by the government "came at a time when the Philippine economy was reeling from the effects of the Asian economic crisis";[7] and 3) the company "has practically no income and resources".[8] In fact, the corporation "is also left with just a couple of employees after having been forced to lay off practically all of its employees because of its financial situation."[9]

On 8 September 2005, the CFD was directed to submit additional information on the 1) sale or issuance of securities after the 8 December 2004 Order of Revocation; 2) whether a Temporary Restraining Order (TRO) was issued by the Supreme Court against Clark Development Corporation (CDC) to stop the bidding procedures conducted for the privatization of Mimosa Estate; 3) whether the takeover by CDC of Mimosa Estate would mean the assumption by CDC of the reportorial requirements to the Commission of MLRC; and 4) status of the case of MIPI which is similarly situated with MLRC.[10]

Per inquiry by CFD and the manifestations of the parties during the conferences that were held, CFD made the following findings of fact:

> "1. There were no securities sold/issued after the Order of Revocation was issued by the Commission. CDC during the [28 September 2005] conference manifested that they have not issued new shares to the public since the [takeover] in 1999. Likewise, a list of members/shareholders was submitted to CFD by CDC after it has requested the club members, through advertisements, to show proof of their membership/title to the shares owned, for them to continue enjoying their rights to the Club. CDC, in a letter dated [7 December 2005], manifested that it will continue to allow former members of the Mimosa Golf and Country Club to enjoy using the facilities provided they pay monthly dues and pay for whatever they consume or use within the facilities.
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> 2. No TRO was issued, as the case is still pending with the Third Division of the Supreme Court. However, during the conference on [3 May 2006], both CDC and MLRC manifested that said Petition for Mandamus with TRO is already moot and academic since there was already a declaration of "failure to bid" by CDC of the first bidding procedure that was the subject of the said Petition.
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> 3. CDC only took over the facilities of MLRC in Mimosa [Estate] after the termination of their Lease Agreement, when MLRC failed to pay back rentals. As we quote from the reply of CDC in its letter dated [23 March 2006], **"CDC is not the current owner of MLRC as a corporation. It merely manages and operates the property formerly leased by MLRC along with its movable assets. As such CDC is not in a position to submit the audited financial statements for fiscal years 2003, 2004 and 2005 of MLRC, the latter being a separate entity from CDC."**
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> 4. A review of the precedent case of [MIPI], MLRC's parent company, [shows] that MIPI's defenses, for its failure to submit the required reports and pay the penalties for the series of violations committed in the two (2) Motions for Reconsideration submitted, [are] exactly the same as that being raised by MLRC."[11] (emphasis in the original)

On 3 May 2006, a conference was held where MLRC manifested that it will no longer submit any documents to the Commission, in order that its claims against CDC will not be prejudiced.

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[7] *Id.*, at 173.
[8] *Id.*
[9] *Id.*
[10] *Id.*, at 195.
[11] *Id.*, at 195.

On 22 May 2006, the Commission promulgated an Order[12] denying MLRC's Motion for Reconsideration.

Aggrieved, MLRC filed the instant Appeal[13] on 9 June 2006.

ISSUE

The sole issue in this case is whether the CFD erred in issuing the Order of Revocation of MLRC's registration of securities and permit to sell securities to the public.[14]

RULING

We rule in the negative.

The Securities Regulation Code (SRC)[15] provides:

> SEC. 17. *Periodic and other Reports of Issuers.* -17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:
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> (a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and
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> (b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.

The above provision is amplified by Section 17.1 of the Amended Implementing Rules and Regulations (IRR) of the SRC, as follows:

> "SRC Rule 17.1 – Reportorial Requirements
> (formerly, SRC Rule 17 - Requirements to File Annual, Quarterly, Current, Predecessor and Successor Reports)
>
> "1. Reporting and Public Companies
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> "The reportorial provisions of this paragraph shall apply to reporting and public companies as defined in SRC Rule 3. However, the obligation of a company, which has sold a class of its securities pursuant to a registration under Section 12 of the Code shall be suspended for any fiscal year if as of the first day of any such fiscal year, it has less than one hundred (100) holders of such class of securities and the Commission is duly notified of the same. Such suspension shall only be availed of after the year said registration becomes effective.
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> "A. Every issuer set forth in paragraph 1 hereof, shall file with the Commission:

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[12] *Id.*, at 195-196.
[13] *Id.*, at 1-29.
[14] *Id.*, at 24.
[15] Republic Act No. 8799. Approved 19 July 2000.

"i. An annual report on SEC Form 17-A for the fiscal year in which the registration statement was rendered effective by the Commission, and for each fiscal year thereafter, within one hundred five (105) days after the end of the fiscal year.

"ii. A quarterly report on SEC Form 17-Q, within forty five (45) days after the end of each of the first three (3) quarters of each fiscal year. The first quarterly report of the issuer shall be filed either within forty five (45) days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required previously to file reports on SEC Form 17-Q, whichever is later.

"iii. 1. A current report on SEC Form 17-C, as necessary, to make a full, fair and accurate disclosure to the public of every material fact or event that occurs, which would reasonably be expected to affect investors' decisions in relation to those securities. In the event a news report appears in the media involving an alleged material event, a current report shall be made within the period prescribed herein, in order to clarify said news item, which could create public speculation if not officially denied or clarified by the concerned company.

2. The disclosure required by paragraph 1(A)(iii)(1) above shall be made by the issuer:

"a. promptly to the public through the news media;

"b. if the issuer is listed on an Exchange, to that Exchange within ten (10) minutes after occurrence of the event and prior to its release to the public through the news media, copy furnished the Commission;

"c. to the Commission on SEC Form 17-C within five (5) days after occurrence of the event being reported, unless substantially similar information as that required by Form 17-C has been previously reported to the Commission by the registrant.

3. An illustrative, non-all inclusive, list of events which shall be reported pursuant to this paragraph is contained in SEC Form 17-C. Merely because an event does not appear in that list does not mean that it does not have to be reported if, in fact, it is material.

"iv. In addition to the above reports, issuers of registered commercial papers shall file the following in the form prescribed by the Commission until all the outstanding commercial papers have been paid:

"1. Monthly reports (M-101-40) on commercial paper total issuances/outstanding as at the end of each month, to be submitted within ten (10) business days following the end of the reference month;

"2. A list of issuances, outstanding balance and maturing commercial papers as at the end of each quarter, to form part of the required SEC Form 17-Q.

"The obligation to file reports under this item shall not be suspended even when the number of holders of the issuer's commercial papers shall be reduced to less than one hundred (100).

"B. Any disclosure signed and filed with the Commission and the Exchange where the securities of the issuer are listed, or released in mass media, in the personal capacity of any director, executive officer or a substantial stockholder (as defined under SRC Rule 38.1) direct or indirect, of an issuer shall be considered as part of any report mentioned in paragraph 1(A)(iii) hereof and deemed as an official filing of such company if it does not deny the subject information within two (2) days from the filing/release of the aforementioned disclosure. Any misleading statement, misrepresentation or omission of a material fact therein shall be the joint responsibility of the issuer and the reporting director, officer or substantial stockholder.

"C. An owner of more than five percent (5%) of the voting rights of a listed company or any related party thereof, who holds material information which may materially affect such company may be required by the Commission to disclose such information within the period prescribed under paragraph 1(A)(iii) of this Rule. Failure to provide the required information shall subject said stockholder to sanctions applicable to violations of this Rule.

"D. "Every issuer having securities registered with the Commission shall file an annual report on SEC Form 17-A for each of its predecessors which had securities registered with the Commission covering the last full fiscal year of the predecessor prior to the registrants succession, unless such report has been filed by the predecessor. Such annual report shall contain the information that would be required if filed by the predecessor.

"E. "In the event that a non-reporting issuer (in connection with succession by merger, consolidation, exchange of securities or acquisition of assets) issues equity securities to holders of equity securities issued by a reporting issuer, the non-reporting issuer shall assume the same obligation as the reporting issuer to file reports pursuant to Section 17 of the Code, and the non-reporting issuer shall file such reports on the same forms as the reporting issuer."

In the instant case, MLRC failed to show that it has complied with the above provisions of the SRC and its IRR. In fact, MLRC admits that there is non-compliance on its part, although several reasons were offered as an excuse, chief among which is the alleged "severe financial difficulties" of the company.

Question then is, is "severe financial difficulties" a ground for exemption? We rule that it is not. Note that MLRC has not cited a single provision of law or jurisprudence to support its attempt at exoneration. Indeed, much as we commiserate with the plight of MLRC, our hands are tied by the mandate of the SRC to see to it that there is full compliance with the law.[16] Nonetheless, the Commission has been more than generous with MLRC when it reduced its penalty by 75%, *i.e.*, from PhP530,900.00 to PhP 132,725.00 which is even payable within a span of one (1) year. Moreover, we cannot disregard the fact that the Order of Suspension of registration of securities was promulgated on 29 October 2002, while the Order of Revocation of securities was only

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[16] Section 5 of the SRC provides"

"Powers and Functions of the Commission.- 5.1. xxx the Commission shall have, among others, the following powers and functions:

"xxx

"(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

"(d) Regulate, investigate or supervise the activities of persons to ensure compliance;

"xxx

"(f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;

"xxx

"(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws."

promulgated 8 December 2004 or more than two (2) years thereafter. That was more than a reasonable extension given to MLRC in order to comply.

MLRC itself admits that it has only a couple of employees and practically no income and resources. It appears to be an implicit admission on its part that it can no longer comply with its reportorial obligations to the Commission. We are thus left with no option but to affirm the revocation of its secondary license. It bears emphasis that the stringent reportorial requirements are imposed by law and implemented by the Commission considering the paramount importance given to the interests of the investing public.[17]

WHEREFORE, premises considered, the instant Appeal is **DISMISSED** for lack of merit and the 22 May 2006 Order of the Corporation Finance Department **AFFIRMED.**

SO ORDERED.

Mandaluyong City; 06 June 2013.

TERESITA J. HERBOSA*
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA F. IBE**
Commissioner

*On official travel

**did not participate

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[17] *Union Bank of the Philippines v. Securities and Exchange Commission*, G.R. No. 138949, 06 June 2001.