Republic of the Philippines
Department of Finance
Securities and Exchange Commission

In the matter of:
LEXBER, INC.

SEC *En Banc* Case No. 09-06-88
Petition for Review

LEXBER, INC.,
Petitioner

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RESOLUTION

For consideration of the Commission is an undated Petition for Review ("Petition") by Lexber, Inc. ("Lexber"), seeking that the Commission annul, reverse, and set aside the Order of the Corporate Finance Department (CFD)[1] dated 27 June 2006 ("Assailed Order"), the dispositive portion of which states:

> WHEREFORE, LEXBER, INC. is hereby directed to pay the penalty of P130,000.00 within five (5) days from receipt of this Order in cash, Manager or Cashier's Check.
>
> Failure of the company to settle the imposed penalties within the above-stated period shall constrain the Commission to initiate proceedings to suspend its Registration of Securities and Certificate of Permit to Sell Securities to the Public.
>
> SO ORDERED.

The penalty was imposed by the CFD for violation of SRC Rule 17, due to Lexber's late filing of its 2004 Annual Report or SEC Form 17-A.

The *Assailed Order* was received by Lexber on 7 July 2006. On 17 July 2006 Lexber filed with the CFD a *Letter*,[2] seeking for the reconsideration of the *Assailed Order*. On 26 July 2006, the CFD issued a *Notice of Hearing*, due to Lexber's failure to pay the imposed penalty within the period set by the *Assailed Order*. Construing the CFD's issuance of the *Notice of Hearing* as a denial of its request for reconsideration, Lexber filed this *Petition* on 5 September 2006.

In its *Petition*, Lexber submitted the following arguments:

1. The belated submission of the 2004 Audited Financial Statements is due to reasons beyond its control.
   a. According to Lexber, its accountant has not been reporting to work diligently during the period for the submission of the annual report.
   b. Likewise, Lexber avers that its external auditor failed to complete the financial statements on time.
2. Lexber's submission of the tentative financial statements is sufficient compliance with the SRC Rules, with the subsequent submission of the Audited Financial Statements a manifestation of its desire to comply with the law.
3. The imposition of the penalty is incongruous to the policy of the state in the Securities Regulation Code[3] (SRC) to "establish a socially conscious xxx market xxx encourage the widest xxx ownership in enterprise."

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[1] Currently the Corporate Governance and Finance Department.
[2] Dated 17 July 2005, Annex "B" of the *Petition*.
[3] Republic Act No. 8799 (2000).

Before proceeding any further, it should be emphasized that petitions for review on *certiorari* under Rule XVI of the Revised Rules of Procedure of 2000 of the Commission[4] ("2000 Rules") may be filed only on the following grounds:[5]

1. When the Hearing Officer/Panel of the Commission has acted without or in excess of its jurisdiction; or
2. When the Hearing Officer/Panel of the Commission has acted with grave abuse of discretion and there is no appeal, nor plain, speedy, and adequate remedy in the ordinary course of law.

It is already established that the office of *certiorari* is limited to the correction of defects of jurisdiction solely.[6] Stated otherwise, the remedy of *certiorari* is available only when a tribunal in the exercise of its functions, has acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion and there is no remedy by appeal.[7] Where a tribunal had jurisdiction over the subject matter and over the person, its decision of any question pertaining to the cause, however erroneous, cannot be corrected by *certiorari*.[8] Whenever the petitioner failed to show that there are no adequate remedies in the ordinary course of law available, and that the respondent tribunal acted in the premises without jurisdiction or in excess thereof, or with grave abuse of discretion that would render the challenged judgment null and void *ab initio*, such petition must be dismissed.[9]

In the case at bar, an appeal is available against the *Assailed Order*. Moreover, nowhere in the *Petition* did the Petitioners establish that the CFD acted without or in excess of jurisdiction, or with grave abuse of discretion.

Considering this defect in the *Petition*, a dismissal thereof is proper.

Furthermore, even assuming that the *Petition* is an appeal under Rule XVII of the 2000 Rules, the same shall be dismissed for being filed out of time. Considering that Lexber received the *Assailed Order* on 7 July 2016, the *Petition* is filed outside the fifteen-day period reckoned from notice of the order or decision by the appealing party. As further provided in the 2000 Rules, appeals are dismissible when it is not perfected within the prescribed period.[10] Lexber's filing of the request for reconsideration did not toll the running of the prescriptive period, because a motion for reconsideration or any similar request is a prohibited pleading[11] under the 2000 Rules.

Considering the foregoing, a dismissal of the instant *Petition* is in order.

At any rate, the reasons put forward by Lexber to justify a reversal of the *Assailed Order* are devoid of merit.

First, the failure to timely submit the Audited Financial Statements cannot be considered as due to reasons beyond Lexber's control. Lexber is not precluded from taking whatever necessary action in order to prevent the commission of a violation of the Rule or adopting remedial action in order to prevent subsequent commission of the same violation should there be any event that might lead into a violation of SRC Rule 17. In the case at bar, Lexber did not show that it took any step to prevent the violation of SRC Rule 17.1, i. e., timely submission of the Annual Report. It merely used its accountant's absence and external auditor's delay as excuses. Considering that Lexber failed to show any act on its part to prevent the violation, it cannot be accepted that the violation is due to circumstances beyond Lexber's control.

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[4] The 2000 Rules are the rules of procedure in effect when this *Petition* was filed.
[5] Rule XVI, Section 16-1 of the 2000 Rules.
[6] *Eva Cantelang, et al. vs. Rustico Medina, et al.*, G.R. Nos. L-50752-50830, 13 July 1979.
[7] Ibid., citing *Regala vs. Court of First Instance of Bataan*, G.R. No. L-781, 29 November 1946.
[8] Ibid., citing *Herrera vs. Barretto and Joaquin*, G.R. No. L-8692, 20 December 1913.
[9] Ibid.
[10] Rule XVII, Section 17-8 of the 2000 Rules.
[11] Section 3-5(c) of the 2000 Rules.

Second, the imposition of sanctions against corporations that fail to comply with the requirement under SRC Rule 17.1 is founded on the policy of the state of ensuring full and fair disclosure about securities.[12]

Investors are highly interested with the overall condition of the companies, and the information gathered in the reports aid the investors in arriving at an intelligent decision as to which business venture they will participate in. Securities transactions heavily depend on the timely and accurate disclosure of information vital to the decision-making of parties to such transactions. In this connection, the State has formulated rules to ensure the public availability of adequate information sought after by investors, with the ultimate goal of affording protection to the investing public. Of course, the protection of investors leads to their confidence in the securities market, and, consequently, the attainment of the state's policy of promoting capital market development.

Guided by this principle, Lexber was penalized for its unjustified late filing of its 2004 Annual Report. Consequently, the Commission finds no reason to annul, reverse, and set aside the *Assailed Order* as prayed for by Lexber.

WHEREFORE, premises considered, the *Petition* is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Pasay City, Philippines; 1 September 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

[12] Section 2, SRC.