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

In the Matter of:
LOVPRIT LENDING & TRADING CO.

SEC ADMIN. CASE NO. 11-11-138
FOR: Revocation of Certificate of Partnership

ENFORCEMENT AND PROSECUTION DEPARTMENT, now known as the Enforcement and Investor Protection Department

Petitioner.

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DECISION

For the consideration of the Commission *En Banc* is the *Petition (For Revocation of Certificate of Registration of Partnership)* (Petition) dated 16 November 2011 filed by petitioner Enforcement and Prosecution Department (EPD), now the Enforcement and Investor Protection Department (EIPD) of the Commission, praying for the revocation of the Certificate of Registration of Partnership of LOVPRIT LENDING & TRADING CO. (LOVPRIT).[1]

LOVPRIT is a partnership duly formed and recorded in the SEC Book of Partnership and was issued SEC Registration No. A199817348 on 19 November 1998.[2] The purpose of LOVPRIT is "to engage in the business of lending investor, lending money to persons and entities under the terms and conditions allowed by the laws of the Republic of the Philippines, provided that the company shall not engage in financial activities under R.A. 5980 as amended nor pawnbroking activities under P.D. 114, and likewise, borrowing shall be sourced or derived from not more than nineteen (19) lenders." The partners of LOVPRIT include Erlinda Doroga, Harbans Singh Rai, Jagtar Singh and Mukand Singh[3]

The EPD alleges that on 30 November 2010, it received a Memorandum from the Corporation Finance Department (CFD), now the Corporate Governance and Finance Department (CGFD) of the Commission, endorsing cases of various companies, including LOVPRIT, that are allegedly engaged in lending business activities without

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1 Filed on 23 November 2011.
2 Petition, Annex "A", (Certificate of Registration of LOVPRIT)
3 *Id.*, Annex "B" (Articles III and V of the Articles of Partnership of LOVPRIT).

securing from the Commission the required Certificate of Authority (CA) in violation of Republic Act (R.A) No. 9474, otherwise known as the Lending Company Regulation Act of 2007.[4]

The EPD alleges that, on 21 January 2011, it conducted a surveillance on the principal office of LOVPRIT to determine if it is still engaged in lending business. However, upon arrival, there was no indication that any lending company was operating at the principal office address but there was an establishment with a lotto outlet. The surveillance team noticed a gate next to the establishment in which several rows of apartments existed. The surveillance team inquired from a cashier of the lotto outlet if there is a lending company in one of the apartments and the latter responded that there is an Indian national residing therein who is engaged in lending.[5] Thereafter, the surveillance team inquired from the Indian national if he is still engaged in the business of lending under the LOVPRIT. The Indian national confirmed that it is the address of LOVPRIT but he is currently not lending money due to financial difficulties. He stated that he may lend money "when business is good again".[6]

On 10 February 2011, Harbans Singh Rai, a partner of LOVPRIT, was called to a conference to discuss matters pertaining to the alleged failure of LOVPRIT to secure a CA but he failed to appear on the said date. Another conference was set on 22 March 2011 directing Jagtar Singh, a partner of LOVPRIT, to appear at the conference but he failed to appear.[7]

A Subpoena Duces Tecum/Ad Testificandum dated 2 May 2011 was issued by the EPD directing Harbans Singh Rai to appear before the EPD to discuss such matters.[8]

On 16 May 2011, the accountant of LOVPRIT appeared and explained that the partners thereof formed a new corporation distinct from LOVPRIT. The accountant admitted that that they have not dissolved the LOVPRIT but signified their willingness to do so. **Further, the accountant confirmed that LOVPRIT engaged in lending activities but has stopped operations.** Thereafter, the accountant was advised to file an application for the dissolution of LOVPRIT since it should have incorporated within one (1) year after the effectivity of R.A 9474 in 2007.[9]

The EPD alleges further that, in a Letter dated 8 June 2011, LOVPRIT, through its partners Harbans Singh Rai and Mukand Singh, was ordered to pay the maximum penalty assessed under R.A. 9474 and its IRR in the amount of Php 50,000.00 for failing

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[4] Petition, par. 5.
[5] *Id.*, par. 8.
[6] *Id.*
[7] *Id.*, par. 9, and Annex "E" (Notice of Conference dated 2 February 2011) and Annex "F" (2nd Notice of Conference dated 7 March 2011).
[8] *Id.*, Annex "G" (Subpoena Duces Tecum/Ad Testificandum).
[9] *Id.*, Annex "H" (Summary of Conference).

to incorporate it as a stock corporation. However, LOVPRIT failed to settle the assessed penalty and it was given another opportunity to do so. Again, no such payment was made.[10]

Hence, the instant Petition.

Summons dated 29 November 2011 were served and issued to LOVPRIT,[11] Harbans Singh Rai[12] and Mukand Singh.[13] However, LOVPRIT has not entered its appearance nor filed its Answer within the fifteen (15)-day period mandated in the *Summons*, or until 21 December 2011. The Commission declared, in an Order dated 27 February 2013, LOVPRIT in default for failing to file its Answer within the required period pursuant to Sec. 3-12 of Rule III of the 2006 Rules of Procedure of the Commission (Rules).[14]

A lending company is defined under Section 3(a) of R.A. 9474 as a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons. Clearly, LOVPRIT was organized as a lending company. Under its Articles of Partnership, the purpose of LOVPRIT is "*to engage in the business of lending investor, lending money to persons and entities x x x*". Moreover, the accountant explicitly confirmed during the hearing before the Commission on 16 May 2011 that LOVPRIT is engaged in lending activities.

As a lending company, it is obliged to operate as a corporation, not as a partnership, and must obtain a CA from the Commission, pursuant to Section 4 of R.A. 9474, to wit:

> "Sec. 4. *Form of Organization*. - **A lending company shall be established only as a CORPORATION**: *Provided* that **existing lending investors organized as** single proprietorships or **partnerships shall be disallowed from engaging in the business of granting loans to the public *one year* after the date of effectivity of this Act**.
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> **No lending company shall conduct business unless granted an authority to operate by the SEC.**" (Emphasis ours)

Rule 3 of the Implementing Rules and Regulations of R.A. 9474 (IRR) likewise provides:

"(a) Form of Organization

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[10] *Petition*, par. 12 and Annexes "I", "J", "K", "L", "M" and "N" (Letters of the EPD dated 8 June 2011).
[11] Affidavit of Service executed on 5 January 2012, Records, p. 52.
[12] Affidavit of Service executed on 5 January 2012, *Id.*, p. 46.
[13] Affidavit of Service executed on 5 January 2012, *Id.*, Records. 43.
[14] Sec. 3-12 of Rule III of the Rules provides that **if the respondent FAILS TO ANSWER the complaint within the above-stated period, he shall be considered as *in default*.**

A lending company shall be established as a stock corporation.

i. ***Existing Lending Companies*** **organized as** single proprietorships or **partnerships shall, within a period of one (1) year from the effectivity of the Act, organize themselves as a stock corporation** with the minimum capitalization prescribed under the Act **and secure a Certificate of Authority to operate a lending company. Otherwise, they shall be disallowed from engaging in the business of granting loans to the public.**"

In short, the business of lending money can no longer be carried on under a partnership and must be done through a corporation pursuant to Section 4 of R.A. 9474 and Rule 3 of its IRR. Moreover, those existing partnerships engaged in the business of lending must organize themselves as a stock corporation within one (1) year from the effectivity of R.A. 9474 in 2007, and must secure the required CA from the Commission.

In the case at bar, the accountant of LOVPRIT admitted during the hearing on 16 May 2011 that the corporation has been engaging in lending activities. Thus, LOVPRIT had to organize itself as a corporation pursuant to Section 4 of R.A. 9474 and Rule 3 of its IRR. However, despite several notices, LOVPRIT failed to organize itself as a corporation and failed to secure the required CA from the Commission. As a consequence thereof, LOVPRIT was ordered by the EPD to pay the maximum penalty assessed under R.A. 9474[15] and its IRR[16] in the amount of Php 50,000.00 for failing to incorporate it as a corporation. However, despite opportunities to do so, LOVPRIT, to date, has not obtained or applied for a CA nor paid the afore-said penalty.

In which case, the Certificate of Registration of LOVPRIT must be revoked pursuant to Section 6(l)(2) and (3) of Presidential Decree No. 902-A for serious misrepresentation as to what a corporation can do and for its refusal to comply and defiance of the lawful order of the Commission. Here, LOVPRIT has practically misrepresented to the public that it can lawfully engage in the business of lending, despite the fact that it did not obtain a CA from the Commission. Further, the EPD gave LOVPRIT opportunities to settle the assessed penalty by ordering, in a Letter dated 8 June 2011, to do so prior to the filing of this instant Petition. In fact, LOVPRIT was warned that "otherwise the EPD will be constrained to take enforcement and/or administrative action against the former". LOVPRIT, however, did not comply with the lawful order of the Commission since it did not take action to incorporate and obtain a CA, or to otherwise remedy the situation, nor pay the assessed the penalty stated in the Orders of the Commission.[17]

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[15] Section 12.
[16] Rule 8.
[17] See Note 10.

WHEREFORE, premises considered, the instant *Petition (for Revocation of Certificate of Registration)* is hereby **GRANTED** against LOVPRIT LENDING & TRADING CO. Its Certificate of Registration bearing SEC Registration No. A199817348 is hereby **REVOKED** pursuant to Section 6(l)(2) and (3) of Presidential Decree No. 902-A.

Let a copy of this Order be furnished the Company Registration and Monitoring Department, the Enforcement and Investor Protection Department, and the Economic Research and Information Department for their information and appropriate action.

SO ORDERED.

Mandaluyong City, 6 November 2014.

TERESITA J. HERBOSA
Chairperson

MANUEL B. GAITE
Commissioner

Antonieta Fortuna - Ibe

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

Blas James G. Viterbo

BLAS JAMES G. VITERBO
Commissioner