Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

CLA-RO MERCHANDISING CORPORATION,

- versus -

COMPANY REGISTRATION AND MONITORING DEPARTMENT
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SEC En Banc Case No. 04-15-371
Non-filing of AFS during years when a corporation was not operating

DECISION

This is an Appeal from the Letter-Order[1] of the **COMPANY REGISTRATION AND MONITORING DEPARTMENT (CRMD)** dated 7 May 2014,[2] directing **CLA-RO MERCHANDISING CORPORATION (CLA-RO)** to file its Annual Financial Statements for the years 2006 to 2014, despite the latter's explanation that it had already ceased all business operations since October 2005, otherwise it shall be liable for Fine, viz:

> This refers to your Letter dated 21 April 2014 informing the Commission of [**CLA-RO**]'s cessation of business since 2006 and that the Commission has been consistently [and yearly] furnished the **Affidavit of No Business Operations** duly filed with the BIR. xxx
>
> Please be advised that [**CLA-RO**], despite its non-operation shall still comply with the annual submission of the financial statements within 120 days from end of fiscal year. Corresponding fines shall be assessed upon such non/late filing.

CLA-RO argued that "doing business" is condition *sine qua non* for the requirement of Annual Financial Reports under Section 141 of the Corporation Code, viz:

> **Sec. 141.** ***Annual report of corporations.*** **–** Every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations, together with a financial statement of its assets and liabilities, certified by any independent certified public accountant in appropriate cases xxx

Because it admits to non-operation for those years, **CLA-RO** argues that it cannot be said to be "doing business" and therefore exempt from filing, viz:

> CLA-RO, because of the world economic crisis, which also greatly affected the Philippines, **retired its business** in October 2005, **with reservation to re-open business [at] some future, better time.** After it retired its business, CLA-RO stopped all business activities, laid-off all employees, conducted no business transactions, and completely stopped its sales transactions. It has not done any pursuit of the purposes for which CLA-RO was organized.[3] xxx
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> Since it does not do any activity xxx for which it was organized, CLA-RO xxx is **not doing business**. CLA-RO is, therefore, not

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[1] **Annex H** of CLA-RO Merchandising Corporation's **Memorandum on Appeal** filed 15 April 2015.
[2] Reiterated in CRMD Letter-Orders dated 30 June 2014, 30 November 2014, and 25 March 2015.
[3] Page 14 of Memorandum on Appeal filed 15 April 2015.

> covered by the requirement to file the annual audited financial statements under Section 141 of the Corporation Code.[4] xxx
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> It is **not logical or reasonable** to require CLA-RO, which has suspended its operation and totally stopped business activities, to file yearly financial statements, audited by an independent certified public accountant.[5]

On the other hand, the **CRMD** contends that:

> Please do not be confused with the term "doing business" as mentioned in Section 141 of the Code as mere undertaking of commercial operations. It is worthwhile stressing that [the] term also connotes administrative **operation** of a corporation. As you even admitted, your corporation has submitted general information sheets to the Commission and maintains a President who oversees its affairs. Suffice [it] to say, while commercially dormant, it is still in operation.
>
> **Until a decree of revocation is issued** by the Commission, insofar as the Commission is concerned, the corporation is still registered and **operating**, and therefore subject to the requirements of the Commission.[6]

Upon perusal of the Commission's records,[7] the **CLA-RO** filed a 2016 General Information Sheet (GIS) and has evidently resumed operations.

On **5 February 2018**, the En Banc issued an Order to Produce Documents, the dispositive portion of which reads:

> WHEREFORE, appellant CLA-RO MERCHANDISING CORPORATION is directed to submit to the En Banc within five (5) days of receipt the following documents:
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> (1) Affidavits of No Business Operations filed annually, *with evidence of receipt* by the BIR from 2006-2014 (total of 9 affidavits), and
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> (2) Income Tax Returns filed annually, *with evidence of receipt* by the BIR from 2006-2014 (total of 9 tax returns).
>
> SO ORDERED.

On **19 February 2018**, CLA-RO submitted its **COMPLIANCE** (in the form of a Letter dated 8 February 2018, signed by CLA-RO President Glicerio S. Ferrer, addressed to SEC General Counsel Camilo S. Correa), accompanied by (1) Affidavits of No Business Operations from 2006-2014, and (2) Income Tax Returns from 2006-2014.

Hence, this Appeal.

In a **SEC Opinion dated 2 January 1973**, the Commission laid-down this policy, which is still relied upon today:

> You are inquiring about the liability of a corporation xxx to the Securities and Exchange Commission, where that corporation has "ceased to operate xxx"

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[4] Page 15 of Memorandum on Appeal filed 15 April 2015.
[5] Page 16 of Memorandum on Appeal filed 15 April 2015.
[6] **Annex L** of CLA-RO Merchandising Corporation's **Memorandum on Appeal** filed 15 April 2015.
[7] SEC I-View last accessed on 13 January 2018.

> xxx xxx xxx
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> [A]ny suspension of business operation xxx must be reported to the SEC by the corporation.
>
> xxx [I]n order to exempt the corporation from filing its annual financial statements with this Commission, it should file in duplicate, an **affidavit** of its manager stating the fact of suspension of the corporate business and the cause thereof.[8]

This is clearly the justification for the annually-filed Affidavit of No Business Operations that CLA-RO has been furnishing the Commission. Although this policy is based on the *repealed* Section 19 of the Corporation Law, it is not inconsistent with the phrase **"lawfully doing business"** found in the present **Section 141 of the Corporation Code**, which may be construed as a condition *sine qua non* for the requirement of Annual Financial Statements.

However, on 16 February 2012, the Commission released **Financial Reporting Bulletin (FRB) 005**, which mandates that, *"If (a company covered by SRC Rule 68 as amended) has had no operations for the last two (2) years, the income statement need not be included in the audited financial statements."* **SRC Rule 68** covers, among others, "stock corporations with paid-up capital of P50,000 or more."[9] Thus, from 2012 onwards, *even though exempt from filing the Income Statement,* non-operating companies that are covered by SRC Rule 68 and FRB 005 must still file the annual Audited Financial Statements, containing its Balance Sheet.

In its AFS dated 31 December 2005, just before its non-operation, **CLA-RO** had Paid-up Capital in the amount of P900,000 and is thus covered by SRC Rule 68 and FRB 005.

WHEREFORE, premises considered, the En Banc rules as follows:

For the years 2006-2011, since it was able to submit **Affidavits of No Business Operations** to the Commission in the years prior to the release of FRB 005, **CLA-RO** is exempted from the requirement to file annual financial statements.

For the years 2012-2014, however, **CLA-RO** is only exempted from submitting the Income Statement and must still submit its annual Audited Financial Statements, containing its Balance Sheet. **This matter is referred to CRMD for purposes of computing the appropriate penalty, reckoned from the time of non-compliance up to the present.**

SO ORDERED.

Pasay City, Philippines; 5 April 2018.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

EMILIO B. AQUINO
Commissioner

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[8] De Leon, Corporation Code of the Philippines Annotated (2013), p. 834-835.
[9] Part I(1)(A)(i)(a) of SRC Rule 68 as amended.