



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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**PHILIPPINE DEPOSIT
 INSURANCE CORPORATION,**
 Petitioner,

G.R. No. 218068

Present:

- versus -

COMMISSION ON AUDIT,
 Respondent.

GESMUNDO, C.J.,
 PERLAS-BERNABE, S.A.J.,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 GAERLAN,
 ROSARIO,
 LOPEZ, J.,
 DIMAAMPAO,
 MARQUEZ,
 KHO, JJ.

Promulgated:

March 15, 2022

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DECISION

M. LOPEZ, J.:

This Petition for *Certiorari*¹ under Rule 64, in relation to Rule 65, of the Revised Rules of Court assails the Decision No. 2012-120² dated August 2, 2012 and Resolution³ dated March 9, 2015 of the Commission on Audit (COA) Proper in COA CP Case No. 2012-025, which: 1) denied to

¹ *Rollo*, pp. 7–37.

² *Id.* at 38–46.

³ *Id.* at 47.

the condonation and write-off of portions of the financial assistance given by Philippine Deposit Insurance Corporation (PDIC) to Westmont Bank and Keppel Monte Savings Bank (KMSB), amounting to ₱1,656,830,000.00 and ₱325,000,000.00; and 2) ordered the issuance of notices of disallowance (ND) therefor.

ANTECEDENTS

The controversy involving Westmont Bank (formerly, Associated Bank; now, United Overseas Bank of the Philippines) spawned from the 1st Indorsement⁴ dated August 24, 2000 issued by the PDIC Corporate Auditor. In brief, the Corporate Auditor found upon post-audit that PDIC granted the following financial assistance to Westmont Bank, and condoned certain portions of it, *viz.*:

	Date Granted	Amount Granted	Amount Condoned
As Associated Bank	1989	₱400,000,000.00	
As Westmont Bank	July 20, 1994	₱1,395,000,000.00	₱110,290,000.00
As United Overseas Bank of the Philippines	December 10, 1999	₱6,800,000,000.00	₱1,546,540,000.00
TOTAL		₱8,595,000,000.00	₱1,656,830,000.00⁵

The amount of ₱1,656,830,000.00 consists of: 1) the waived buyback agreement amounting to ₱1,085,000,000.00; 2) early buyback incentives in the form of discounts, amounting to ₱76,470,000.00; 3) deferred regular interest amounting to ₱461,540,000.00; 4) refund of regular interest amounting to ₱31,220,000.00; and 5) abolition of PDIC interest spread amounting to ₱2,600,000.00.⁶ The waiver of the buyback agreement and condonation of the accumulated deferred interest were entered in the PDIC Books as expenses;⁷ the discounts for the early buyback was part of the original financial assistance terms; while the interests were admittedly condoned. The Corporate Auditor opined that these measures of financial assistance are tantamount to an outright release or condonation of Westmont Bank's principal obligation and accrued interests, which is prejudicial to the interests of the PDIC because it assumed the obligation without trade-off.⁸

The Corporate Auditor recognized the PDIC Board of Directors' power under its Charter to compromise, condone, or release any claim or settled

⁴ Id. at 466-487.

⁵ Id. at 470.

⁶ Id. at 466.

⁷ Id. at 469.

⁸ Id. at 471.

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liability to the PDIC. Section 36⁹ of Presidential Decree (PD) No. 1445,¹⁰ as amended, was, however, cited to justify the COA's review of the compromise or release of obligations done by PDIC. Thus, the matter was indorsed to be elevated to the COA Proper for its recommendation.¹¹

The Supervising Auditor, through a Memorandum dated January 26, 2004, as well as the COA Corporate Government Sector (CGS) Director, through a 1st Indorsement dated June 8, 2004, concurred in the Corporate Auditor's findings and conclusions. Thus, in a Memorandum dated June 30, 2004, the CGS Assistant Commissioner forwarded the case to the Director of the COA Legal Adjudication Office – Corporate (LAO-C).¹²

On the other hand, the KMSB (formerly Monte de Piedad Savings Bank and Keppel Monte Bank) case is rooted from the Corporate Auditor's issuance of Notice of Suspension (NS) No. 98-10 (97) dated September 17, 1998, suspending in audit the amount of ₱325,000,000.00 that was charged to PDIC's Expense-Cost for the Rehabilitation of then distressed KMSB. The amount was a portion of the ₱1,500,000,000.00-worth of non-performing loans purchased by PDIC from KMSB as a form of financial assistance. The purchased non-performing loans were initially recorded in the PDIC Books as "Financial Assistance – Acquired Assets for ₱1,500,000,000.00." However, from June 1997 to June 1998, PDIC alleged that part of these non-performing loans was found to be uncollectible. Thus, the uncollectible non-performing loans, amounting to an aggregate of ₱325,000,000.00, were reclassified in PDIC's Books as an expense account. The NS required PDIC to submit documentations such as the board resolution approving the reclassification of the ₱325,000,000.00-worth of non-performing loans as an expense. PDIC completed its compliance with the NS requirements on February 8, 2002, but the NS was not lifted.¹³

Upon review, the Supervising Auditor and the COA CGS Director recommended the write-off of the ₱325,000,000.00 due to the uncertainties in the collection of the non-performing loans. However, in a Memorandum dated

⁹ Section 36. Power to compromise claims. –

- (1) When the interest of the government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations to the National Assembly now Congress.**
- (2) The Commission may, in the interest of the government, authorize the charging or crediting to an appropriate account in the National Treasury, small discrepancies (overage or shortage) in the remittances to and disbursements of the National Treasury, subject to the rules and regulations as it may prescribe.

x x x x (Emphasis supplied)

¹⁰ Entitled, "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES," approved on June 11, 1987.

¹¹ *Rollo*, p. 471-472.

¹² *Id.* at 41.

¹³ *Id.*

August 12, 2004, the CGS Assistant Commissioner opined that the difficulty in collecting the non-performing loans and the high cost of collection are not sufficient bases to write off the non-performing loans account. The KMSB matter was, thus, also forwarded to the LAO-C Director.¹⁴

The LAO-C Director, jointly addressing the Westmont Bank and KMSB cases in a Memorandum dated May 23, 2007, opined that the COA's approval is not necessary for the PDIC's exercise of its power to compromise, condone, or release claims and settled liability. Nevertheless, it was advised that "the transactions be reviewed and examined in audit and that appropriate actions be taken should it be determined that the condonation and write-off made by the PDIC on the accounts of [Westmont Bank] and the KMSB have been improperly granted."¹⁵ In response, the PDIC Supervising Auditor informed the LAO-C Director through a Memorandum dated September 5, 2007 that the subject transactions had already been post-audited¹⁶ as evidenced by the NS dated September 17, 1998 covering the ₱325,000,000.00 write-off and the Audit Observation Memorandum (AOM) No. 00-12(99)¹⁷ dated May 10, 2000 for the condoned ₱1,656,830,000.00, wherein both transactions were found illegal and irregular.

COA PROPER RULING

Despite the questioned transactions having been implemented and subjected to post-audit, the COA still proceeded to rule on whether it should recommend the condonation or release of the banks' obligations. In its assailed Decision No. 2012-120¹⁸ dated August 2, 2012, the COA Proper disposed:

WHEREFORE, foregoing premises considered, this Commission **DENIES** to recommend the condonation of the [financial assistance] granted by PDIC to [Westmont Bank] in the amount of [₱]1,656,830,000.00 on the ground that it includes the principal loan thereof. Likewise, the request to write off the account of KMSB is **DENIED** since that said account does not appear to be uncollectible. Considering, however, that the account no longer exists in the books because it was subsequently taken up as an outright expense, the [Supervising Auditor] [in] PDIC is hereby directed to issue the necessary notice of disallowance.¹⁹ (Emphases in the original)

In a Resolution²⁰ dated March 9, 2015, COA denied PDIC's motion for reconsideration (MR) for lack of new and substantial matters raised to warrant reconsideration. Hence, this petition.

¹⁴ Id. at 42.

¹⁵ Id. at 42-43.

¹⁶ Id. at 489-502.

¹⁷ Id.

¹⁸ Id. at 38-46.

¹⁹ Id. at 45-46.

²⁰ Id. at 47.

In the main, PDIC argues that the unreasonable delay on the part of the COA in resolving the issues on the grants of financial assistance is an evasion of a positive duty, amounting to grave abuse of discretion.²¹ Substantively, PDIC maintains that it is empowered under its Charter to condone or release any claim or liability regardless of the amount, and that its actions were approved by the Monetary Board of the *Bangko Sentral ng Pilipinas* (BSP). Further, it contends that the COA Proper erred: when it considered the waiver of the buyback requirement as condonation; when it found the condonation of the accumulated interest to be outside PDIC's authority; and when it ruled that the non-performing loans are not uncollectible but merely difficult to collect.²²

In its Comment,²³ the Office of the Solicitor General (OSG) for the COA Proper counters that as a constitutional body, the COA is not subject to a specific time frame within which to render decision.²⁴ On the substantive issues, the OSG reiterates the Corporate Auditor's findings as stated in the 1st Indorsement dated August 24, 2000 that treating the financial assistance given to Westmont Bank and KMSB as outright expenses is prejudicial to PDIC's interest because it deprived PDIC of expected receivables from such aid, in contravention of Republic Act (RA) No. 3591²⁵ (PDIC Charter), as amended. Echoing the Corporate Auditor's report, the OSG underscores that the PDIC Charter does not authorize treatment of a financial assistance as an expense item. Instead, every financial aid authorized under the PDIC Charter, *i.e.*, loan grants, purchase of an asset, deposit and/or assumption of liability, has a corresponding receivable – in case of a loan, payment thereof is expected; the asset purchased from a distressed bank becomes PDIC's asset; in case of a deposit, PDIC thereby owns a deposit in the aided bank; and in case of assumption of liability, PDIC is subrogated to the distressed bank's rights as creditor. The OSG argues that the factual findings and assessment of the COA on the prejudice caused to the PDIC by the condonation and write-off deserves great weight in view of its expertise on the matter and constitutional mandate. Finally, the OSG maintains that the COA has the authority to approve PDIC's condonations and release of liability.

On July 10, 2015, pending resolution of this petition, ND No. 15-001-AFA-98²⁶ and ND No. 15-002-AFA-99²⁷ were issued pursuant to the directive in the assailed Decision No. 2012-120. Members of the PDIC Board of Directors (BOD) who approved the condonation and write-off, along with the officers of Westmont Bank and KMSB, were held liable to settle the disallowed amounts. On November, 23, 2015, a Notice of Finality of

²¹ Id. at 17–19.

²² Id. at 19–29.

²³ Id. at 445–465.

²⁴ Id. at 457–458.

²⁵ Entitled "AN ACT ESTABLISHING THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, DEFINING ITS POWERS AND DUTIES AND FOR OTHER PURPOSES," approved on June 22, 1963.

²⁶ Id. at 539–540.

²⁷ Id. at 541–542.

Decision²⁸ (NFD) was issued on the assailed Resolution denying PDIC's MR of Decision No. 2012-120. Thus, in its Reply,²⁹ PDIC adds that the issuance of the NDs and NFD is a manifest disrespect to the Court and judicial processes, and prays that the NDs and NFD be nullified.

ISSUES

- I. Whether the COA committed grave abuse of discretion in issuing the NFD;
- II. Whether there was unreasonable delay, amounting to grave abuse of discretion, on the part of the COA in resolving the case;
- III. Whether the COA committed grave abuse of discretion in recommending to deny the condonation/write-off; and
- IV. Whether the COA committed grave abuse of discretion in issuing the NDs.
- V. Whether the COA committed grave abuse of discretion in holding the PDIC BOD liable to settle the disallowance.

RULING

The petition lacks merit.

I. Issuance of the NFD was proper, but the present petition is not rendered moot.

Section 9, Rule X of the 2009 Revised Rules of Procedure of the [COA] (RRPC),³⁰ as amended,³¹ provides:

Section 9. Finality of Decisions or Resolutions. - A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution.

The filing of a petition for *certiorari* shall not stay the execution of the judgment or final order sought to be reviewed, unless the Supreme Court shall direct otherwise upon such terms as it may deem just. (Emphasis supplied)

²⁸ Id. at 543-544.

²⁹ Id. at 526-530.

³⁰ Approved on September 15, 2009.

³¹ COA Resolution No. 2011-006, Resolution Modifying Sections 9 and 10, Rule X of the 2009 Revised Rules of Procedure of the Commission on Audit dated August 17, 2011.

In this case, the Court did not issue any restraining order or injunction to stay the execution of the assailed Decision No. 2012-120 and Resolution dated March 9, 2015. Accordingly, upon expiration of the 30-day period, the assailed COA Proper Decision and Resolution lapsed into finality, and thereafter, execution may ensue despite the filing of this petition for *certiorari*.

Nevertheless, the petition is not rendered moot because it was filed within the reglementary period³² before the questioned COA Proper Decision and Resolution attained finality. Besides, if the Court grants the petition on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the COA Proper Decision and Resolution are, in contemplation of law, void *ab initio* that never became final and executory.³³ We, thus, proceed to discuss the principal issues presented.

II. There is no proof of inordinate delay on the part of the COA to warrant the dismissal of the case.

The speedy resolution of cases is a constitutional duty,³⁴ not only in criminal proceedings, but also in quasi-judicial and administrative cases. Section 16, Article III of the 1987 Constitution provides:

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

No branch of the government is exempt from duly observing the constitutional safeguard against any arbitrary delay.³⁵ However, it is settled that not every delay in the disposition of matters before any justice-administering body is arbitrary or a violation of the constitutional guarantee of speedy disposition of cases. Certain factors must be taken into account, depending on the circumstances obtaining in every case as we have discussed in *Remulla v. Sandiganbayan*,³⁶ viz.:

³² 2009 Revised Rules of Procedure of the Commission on Audit, Rule XII, Section 1. Petition for *Certiorari*. – Any decision order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court. x x x x; Rule 64, Revised Rules of Court, Section 2. Mode of review. – A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided; Rule 64, Revised Rules of Court, Section 3. Time to file petition. – The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

³³ *Philippine Transmarine Carriers, Inc. v. Legaspi*, 710 Phil. 838, 846 (2013) citing *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 92–93 (2010).

³⁴ *Central Cement Corporation v. Mines Adjudication Board*, 566 Phil. 275, 287 (2008).

³⁵ *Magante v. Sandiganbayan*, 836 Phil. 1108, 1119 (2018).

³⁶ 808 Phil. 739 (2017).

The right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed.

x x x [T]his Court, in *Martin v. Ver*, began adopting the “balancing test” to determine whether a defendant’s right to a speedy trial and a speedy disposition of cases has been violated. As this test necessarily compels the courts to approach such cases on an *ad hoc* basis, the conduct of both the prosecution and defendant are weighed *apropos* the four-fold factors, to wit: (1) length of delay; (2) reason for the delay; (3) defendant’s assertion or non-assertion of his right; and (4) prejudice to defendant resulting from delay. None of these elements, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.³⁷ (Citations omitted)

In the case of *Cagang v. Sandiganbayan (Cagang)*,³⁸ the Court laid down definitive guidelines in determining the existence of inordinate delay which violates the rights to speedy trial and speedy disposition, *viz.*:

To summarize, inordinate delay in the resolution and termination of a preliminary investigation violates the accused’s right to due process and the speedy disposition of cases, and may result in the dismissal of the case against the accused. The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused’s constitutional rights must also be examined on a case-to-case basis.³⁹ (Emphasis supplied)

³⁷ *Id.* at 747–748.

³⁸ 837 Phil. 815 (2018).

³⁹ *Id.* at 876–877.

In this case, the COA admittedly took a substantial length of time in issuing the NDs. The Court, however, takes judicial notice of the complexities dealt with by the COA in auditing the questioned transactions. For one, both Westmont Bank and KMSB cases involved substantial amounts, *i.e.*, ₱1,656,830,000.00 and ₱325,000,000.00, which required looking into numerous transactions dating back to the 1990's. It is also not difficult to recognize the factual and legal challenges faced by the COA in its auditing process as demonstrated by the varying rulings rendered by its officers. As keenly observed by Chief Justice Alexander G. Gesmundo during deliberations, the Supervising Auditor and the COA CGS Director recommended the write-off of ₱325,000,000.00 from the KMSB books due to the uncertainties in the collection of the non-performing loans. However, in a Memorandum dated August 12, 2004, the CGS Assistant Commissioner took exception from the recommendation, and instead opined that the difficulty in the collection of non-performing loans and the high cost of the collection process are not sufficient bases to write-off non-performing loan accounts. Subsequently, the LAO-C Director, jointly addressing the Westmont Bank and KMSB cases in a Memorandum dated May 23, 2007, opined that the COA's approval is not necessary for the PDIC to exercise its power to compromise, condone, or release claims and settled liability. Then finally, the COA Proper reversed the LAO-C Director's ruling, and denied to recommend the condonation granted to Westmont Bank and KMSB, maintaining its duty to recommend or deny condonations of government claims. Thus, the intricacies faced by the COA which protracted its post-audit process is undeniable, to which the alleged delay is owed.

Moreover, the period taken for the auditing process wherein the COA was gathering and assessing pertinent information regarding the transactions, akin to the fact-finding stages or preliminary investigations in criminal cases, should not be included in the determination of whether there has been inordinate delay.⁴⁰ At this stage, it cannot be said that the party under investigation suffered any vexation or prejudice.⁴¹ On this score, we cannot subscribe to PDIC's contention that the 60-day period to decide cases under Section 7, Article IX-A of the 1987 Constitution and Section 4, Rule X of the RRPC should be applied. These provisions state:

Section 7, Article IX-A of the 1987 Constitution:

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it **within sixty days from the date of its submission for decision or resolution**. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought

⁴⁰ Id. at 880.

⁴¹ See *Bautista v. The Honorable Sandiganbayan*, 857 Phil. 726, 740 (2019) citing *Cagang v. Sandiganbayan*, supra at 908.

to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

Section 4, Rule X of the 2009 RRPC:

Section 4. Period for Rendering Decision. – Any case brought to the Commission Proper shall be decided **within sixty (60) days from the date it is submitted for decision or resolution, in accordance with Section 4, Rule III hereof.** (Emphasis supplied)

Section 4, Rule III of the RRPC, in turn, provides:

Section 4. Quorum and voting. – The Commission Proper shall decide by a majority vote of all its members any case or matter brought to before it **within sixty (60) days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by these Rules or by the Commission Proper.** (Emphasis supplied)

We take emphasis that the 60-day period in these provisions is reckoned from the date a case is submitted for decision or resolution. The same provisions state that a case is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum. But the COA proceedings in question do not pertain to an adversarial case between two parties that requires pleadings, briefs, or memoranda. There were no opposing parties nor were there any pleading required from any party. The matter for the COA Proper's resolution was a report forwarded to it from the Corporate Auditor, requiring the COA Proper's recommendation on PDIC's condonation and write-off of claims.⁴² Hence, the 60-day period cannot be taken against the COA to circumscribe the duration of its auditing process and the issuance of its recommendation. Notably, COA rules do not provide for a specific time within which it should issue its recommendation after receiving a request for audit or upon notice of a report requiring such recommendation. Nevertheless, as we have held in *Cagang*,⁴³ the COA is reminded to set reasonable periods for its auditing processes, with due regard to the complexities and nuances of each case. Delays beyond this period may then be taken against it. Here, we stress that the prolonged process that it took the COA Proper to finally issue a recommendation is attributed to the peculiar circumstances encountered by the COA during the auditing process.

This Court further observed that PDIC failed to timely invoke its right to speedy disposition. It had the opportunity to do so before the COA Proper when it filed an MR of Decision No. 2012-120, but on a seeming afterthought, PDIC raises this right for the first time in this petition. This lapse did not only

⁴² *Rollo*, pp. 38–46. Subject of Decision No. 2012-120 states: “Request of the Philippine Deposit Insurance Corporation (PDIC) for approval of the condonation and write-off of a portion of the financial assistance (FA) granted to Westmont Bank (WB) and Keppel Monte Savings Bank (KMSB) in the amounts of [P]1,656,830,000.00 and ₱325,000,000.00, respectively.”

⁴³ *Supra* note 38.

deprive the COA Proper the opportunity to consider the matter in resolving the MR; it also casts doubt on the genuineness of PDIC's invocation of the right to speedy disposition.

Finally, there is no showing that PDIC was prejudiced by the alleged delay committed by the COA. In an attempt to prove such prejudice, PDIC avers that the disallowance could have been prevented had the COA resolved the case earlier. PDIC claims that the irregularities found were mere accounting treatments or book entries, which it could have easily corrected.⁴⁴ Records, however, show that PDIC was already apprised of the COA's observations through the NS issued in 1998, as well as in the 1st Indorsement and AOM issued in 2000,⁴⁵ but it never corrected the questioned entries in its books; hence, the issuance of the NDs. If it was a simple accounting matter as PDIC claims it to be, it could have corrected it back then upon notice, and prevented the ripening of the case into a disallowance.

In sum, we find no inordinate delay on the part of the COA to warrant the dismissal of case.

III. The COA is authorized and duty-bound to issue a recommendation on the condonations and release of claims.

The COA's authority to issue a recommendation on condonation or release of claims and settled liabilities is expressly mandated by governing laws and jurisprudence. This authority emanated from Section 36 of PD No. 1445, to wit:

Section 36. Power to compromise claims.

- (1) When the interest of the government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the Prime Minister, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the Prime Minister, with their recommendations, to the National Assembly.
- (2) The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions, or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters and**

⁴⁴ *Rollo*, p. 265.

⁴⁵ *Id.* at 466-502.

if in their judgment, the interest of their respective corporations or agencies so requires. When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph.

- (3) The Commission may, in the interest of the government, authorize the charging or crediting to an appropriate account in the National Treasury, small discrepancies (overage or shortage) in the remittances to and disbursements of the National Treasury, subject to the rules and regulations as it may prescribe. (Emphasis supplied)

This provision was superseded by Section 20, Chapter IV, Subtitle B, Title I, Book V of Executive Order (EO) No. 292⁴⁶ or the Administrative Code of 1987, which deleted paragraph 2 above-highlighted.⁴⁷ The provision now reads:

Section 20. Power to Compromise Claims. –

- (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding [₱10,000.00] arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding [₱100,000.00]. **In case the claim or liability exceeds [₱100,000.00], the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress;** and
- (2) The Commission may, in the interest of the Government, authorize the charging or crediting to an appropriate account in the National Treasury, small discrepancies (overage or shortage) in the remittances to, and disbursements of, the National Treasury, subject to the rules and regulations as it may prescribe. (Emphasis supplied)

Even before the amendment through the Administrative Code, the power to compromise or release any claim or liability of government-owned or controlled corporations (GOCC) and other agencies as expressly authorized by their charters may be exercised only **when the interest of the corporation or agency so requires**. Thus, it is not enough that there is an express statutory authority for the exercise of the power to compromise; such act must be justified by the interest of the corporation or agency. To this end, the Administrative Code categorically divested GOCCs and agencies with the “exclusive” power to compromise or release claims or liabilities, and instead, lodged such power to the COA or the Congress upon recommendation of the

⁴⁶ INSTITUTING THE “ADMINISTRATIVE CODE OF 1987.” Approved on July 25, 1987.

⁴⁷ See *Strategic Alliance Development Corporation v. Radstock Securities Limited*, 622 Phil. 431, 504 (2009).

COA and the Chief Executive in proper cases. This amendment is an apparent indication of the legislature's clear intent to uphold: (1) the power of control that the President, as Chief Executive, exercises over GOCCs;⁴⁸ and (2) the COA's constitutional mandate to examine, audit, and settle all accounts of the government, its subdivisions, agencies and instrumentalities, including GOCCs.⁴⁹

Verily, the revision was reflected in the amendment of Section 8 of the PDIC Charter under Section 14 and 15 of RA No. 10846,⁵⁰ viz.:

Section 14. Section 8 of the same Act is accordingly renumbered as Section 9.

Section 15. Section 9, paragraph Twelfth of the same Act, as renumbered, is hereby amended to read as follows:

“Twelfth – **The provisions of Presidential Decree No. 1445, as amended, Executive Order No. 292, and other similar laws notwithstanding**, to compromise, condone or release, in whole or in part, any claim or settled liability to the Corporation, regardless of the amount involved, under such terms and conditions as may be imposed by the Board of Directors to protect the interest of the Corporation, and to write off the Corporation's receivables and assets which are no longer recoverable or realizable;” (Emphasis supplied)

In *Binga Hydroelectric Plant, Inc. v. Commission on Audit*,⁵¹ the Court exhaustively explained the role of the COA in the compromise of claims and liabilities:

Under [Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code,] **the authority to compromise a settled claim or liability exceeding [P]100,000.00 involving a government agency is vested x x x exclusively in Congress.** An agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein. Thus, the provision applies to all GOCCs, with or without original charters. **A GOCC cannot validly invoke its autonomy to enter into a compromise agreement that is in violation of the above provision.**

x x x

⁴⁸ 1987 CONSTITUTION, Article VII, Section 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws are faithfully executed.; See *Philippine Economic Zone Authority (PEZA) v. Commission on Audit*, 797 Phil. 117, 137 (2016).

⁴⁹ 1987 CONSTITUTION, Article IX-D, Section 2(1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, x x x.

⁵⁰ Entitled “AN ACT ENHANCING THE RESOLUTION AND LIQUIDATION FRAMEWORK FOR BANKS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 3591, AS AMENDED, AND OTHER RELATED LAWS,” approved on May 23, 2016.

⁵¹ 836 Phil. 46 (2018).

Similarly in this case, the liabilities of the NPC in the amounts of \$5,000,000.00 and [P]40,118,442.79 far exceed [P]100,000.00 and consequently, in line with Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, Congress alone has the power to compromise the liabilities of the NPC. **The participation of the COA, in conjunction with the President, is merely to recommend whether to grant the application for relief or not.** In its Resolution denying the motion for reconsideration of BHEPI, the COA did make a recommendation to Congress, which unfortunately for BHEPI, was for the denial of the claim embodied in the Compromise Agreement. We find that the COA did not gravely abuse its discretion in making such recommendation, even if it went against a final and executory judgment of an appellate court. Contrary to the arguments of BHEPI and the NPC, the finality of the CA's judgment does not preclude the COA from ruling on the validity and veracity of the claims. As already discussed, **EO No. 292 and PD No. 1445 give the COA the authority to do so, prescinding from its role to recommend the compromise of claims before Congress. This is consistent with the general jurisdiction of the COA to examine, audit, and settle all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.**

In the past, we have ruled that this authority and power can still be exercised by the COA even if a court's decision in a case has already become final and executory. The COA still retains its primary jurisdiction to adjudicate a claim even after the issuance of a writ of execution. **We said that as a matter of fact, the claimant has to first seek the COA's approval of the monetary claim,** despite the rendition of a final and executory judgment validating said money claim against an agency or instrumentality of the Government. **Its filing with the COA is a condition sine qua non before payment can be effected. Concomitantly, the duty to examine, audit, and settle claims means deciding whether to allow or disallow the same. This duty involves more than the simple expedient of affirming or granting the claim on the basis that it has already been validated by the courts. To limit it would render the power and duty of the COA meaningless. This rationale also rings true with the Compromise Agreement at hand, which again, as we have demonstrated, needs not only the recommendation of the COA and the President, but also the approval of Congress pursuant to EO No. 292.**⁵² (Citations omitted and emphases supplied)

Hence, the COA correctly ruled that its recommendation was mandatory, and PDIC cannot *motu proprio* compromise a claim or liability. As held in *Philippine Deposit Insurance Corporation v. Commission on Audit*:⁵³

We agree with the COA's ruling that **the authority of PDIC to condone applies only to ordinary receivables, penalties and surcharges[,] and must be submitted to the [COA] before it is implemented. This procedure would enable the [COA] to inquire into the propriety of the condonation and to determine whether the same will not prejudice the government's interest, consistent with COA's constitutional mandate to**

⁵² Id. at 56–59.

⁵³ *Philippine Deposit Insurance Corporation v. Commission on Audit*, 570 Phil. 79 (2008).

examine, audit and settle all accounts of the government, its subdivisions, agencies and instrumentalities, including [GOCCs].⁵⁴
(Emphases supplied)

IV. The COA's factual findings must be respected absent grave abuse of discretion.

We note that under the normal course of the proceedings, the NDs should be appealed to the Director up to the COA Proper in accordance with the RRPC.⁵⁵ However, since the issues on hand had already been taken up all the way to the COA Proper, it would be impractical, if not futile, to go over the process again. The same issues on the impropriety of the condonation and write-off, and arguments raised in this petition had been exhaustively considered and addressed by the COA from its Corporate Auditor, Supervising Auditor, CGS Director, LAO-C, up to the COA Proper. Thus, absent any semblance of grave abuse of discretion, and in view of the COA's presumed expertise in these technical auditing matters, as well as in the laws that it is entrusted to enforce,⁵⁶ we accord not only respect, but also finality, to these factual findings, *viz.*:

In decisions of this Commission, approval of condonation is limited to interests and penalties where the principal loan is paid, considering that this will not result to a loss on the part of the government.

In the herein case, this Commission concurs in views that the condonation by the PDIC of [P]1,656,830,000.00 [financial assistance] granted to [Westmont Bank] was not proper, considering that the condonation includes portion of [Westmont Bank's] principal loan, regular interest[,] as well as accumulated interest.

As to the request to write off the account of KMSB, this Commission finds that PDIC failed to exert all efforts to collect said account and that the same does not appear to be uncollectible considering that records show that [P]2,400,000.00 was collected from June 1997 to June 1998. Hence, the [non-performing loans] are not uncollectible but are merely difficult to collect. To grant or allow write-off of accounts, it must be established that the accounts have been outstanding for a considerable period of time and that the concerned agency exerted all efforts to collect the same. In the herein case, the PDIC failed to establish both requirements.⁵⁷

It should also be stressed, at this juncture, that the disallowed condonation and write-off were implemented without Congressional approval in patent disregard of the mandatory requirements under the Administrative Code. Thus, the illegality of the condonation and write-off cannot be denied, warranting their disallowance.

⁵⁴ Id. at 87-88.

⁵⁵ See Rules IV and V of the 2009 Revised Rules of Procedure of the Commission on Audit.

⁵⁶ *Ablong v. Commission on Audit*, G.R. No. 233308, August 18, 2020.

⁵⁷ *Rollo*, p. 45.

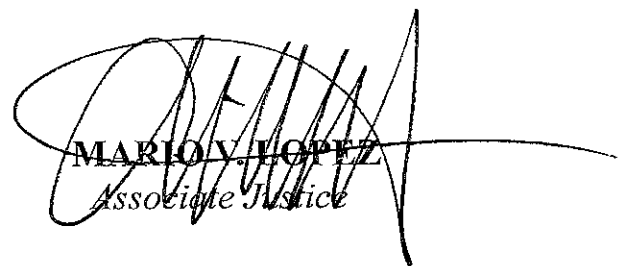
V. In authorizing the condonation and write-off, the PDIC BOD acted with gross negligence, amounting to bad faith, which justifies their liability for the disallowances.

The patent illegality of the condonation and write-off indubitably countermands PDIC's invocation of good faith. There is no justification to legitimize the palpable lapse of the PDIC BOD in simply ignoring the mandatory provisions of the Administrative Code, which had long been in effect before the condonation and write-off were implemented. In *Strategic Alliance Development Corporation v. Radstock Securities Limited*,⁵⁸ as cited in *Binga Hydroelectric Plant, Inc.*, the Court was emphatic in ruling that Section 20(1), Chapter IV, Subtitle B, Title I, Book V of the Administrative Code – requiring COA and Presidential recommendations and Congressional approval on the power to compromise – had superseded Section 36 of PD No. 1445, and that such amendment must be applied to all GOCCs.

The COA, therefore, committed no grave abuse of discretion in holding the PDIC BOD liable for the disallowed amounts. As we have held in *Madera v. Commission on Audit*,⁵⁹ solidary liability to settle the disallowed amount attaches to public officers upon a clear showing of bad faith, malice, or gross negligence in the performance of official duties. Parenthetically, well-settled is the rule that the palpable disregard of laws and established directives amounts to gross negligence, which is paradoxical to the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.⁶⁰

FOR THESE REASONS, the Petition for *Certiorari* is **DISMISSED**. Decision No. 2012-120 dated August 2, 2012 and Resolution dated March 9, 2015 of the Commission on Audit Proper, as well as Notice of Disallowance No. 15-001-AFA-98 and Notice of Disallowance No. 15-002-AFA-99, both dated July 10, 2015, are **AFFIRMED**.

SO ORDERED.



MARIO V. LOPEZ
Associate Justice


⁵⁸ 622 Phil. 431 (2009).

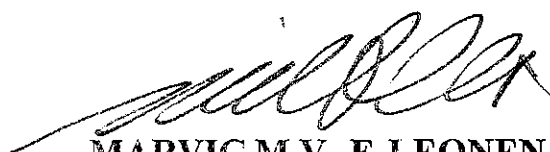
⁵⁹ G.R. No. 244128, September 8, 2020, 951 SCRA 221, 263.

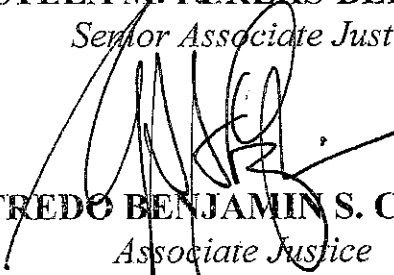
⁶⁰ *Ancheta v. Commission on Audit*, G.R. No. 236725, February 2, 2021.

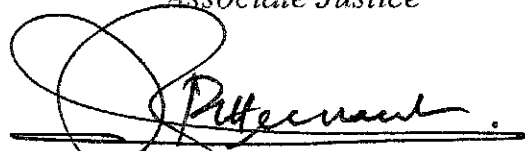
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

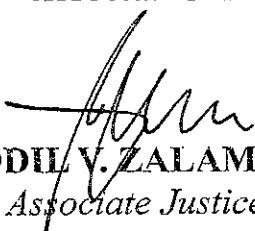

MARVIC M.V. F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

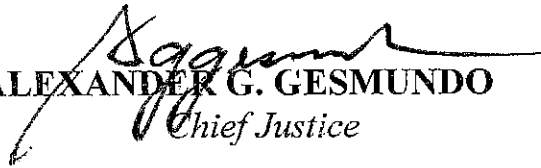

JAPAR B. DIMAAMPAO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice