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EN BANC

[G.R. No. 258527. May 21, 2024]

ARTHUR N. AGUILAR, MA. THERESA T. DEFENSOR, JEREMY Z. PARULAN, FERMIN S. LUSUNG, ANTONIO T. VILAR, ENRIQUE C. CUEJILO, JR., GUILLERMO N. HERNANDEZ, ROLANDO L. MACASAET, and WILFREDO P. CU, *Petitioners*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for *Certiorari*[1] (Petition) under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Resolution No. 2020-479[2] of the Commission on Audit (COA). In its Resolution, the COA affirmed with modification the Notice of Disallowance (ND) No. 11-002-(2007-2010)[3] dated July 8, 2011, issued by the COA Post-Audit Team which disallowed the gratuity benefits paid by the Philippine National Construction Corporation (PNCC) to its directors and senior officers during the years 2007 to 2010, in the total amount of PHP 90,784,975.21.

Antecedents

In 1966, PNCC, formerly Construction Development Corporation of the Philippines (CDCP), was incorporated as a stock corporation pursuant to Batas Pambansa Blg. 68, otherwise known as the "Corporation Code of the Philippines" (Corporation Code). CDCP was engaged in the business of general construction.[4]

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1 *Rollo*, pp. 3–43.

2 *Id.* at 44–59. The Resolution No. 2020-479, dated January 31, 2020, was issued by COA Chairperson Michael G. Aguinaldo, together with COA Commissioners Jose A. Fabia and Roland C. Pondoc.

3 *Id.* at 74–81.

4 *Rollo*, p. 6.

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In 1977, CDCP was granted a franchise under Presidential Decree No. (PD) 1113 to construct, operate, and maintain toll facilities in the North Luzon Expressway (NLEX) and South Luzon Expressway (SLEX).[5] The franchise was effective for a period of 30 years from May 1, 1977,[6] or until May 1, 2007.[7]

During its operations, CDCP incurred substantial credit obligations from both private and government sources. However, CDCP could not settle its maturing credit obligations to several government financial institutions (GFIs) as they fell due.[8]

On February 23, 1983, then President Ferdinand E. Marcos issued Letter of Instruction (LOI) No. 1295 for the rehabilitation of CDCP and the conversion of its obligations to its creditor GFIs into equity in CDCP.[9] Following the debt-to-equity conversion, the government became the owner of 76.8% of the authorized capital stock of CDCP.[10] It was also renamed as PNCC to reflect the extent of the government's equity investment in CDCP.[11]

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[5] *Rollo*, pp. 6–7, Petition.

[6] PD 1113, Section 1, which reads:

SECTION 1. Any provision of law to the contrary notwithstanding, there is hereby granted to the Construction and Development Corporation of the Philippines (CDCP), a corporation duly organized and registered under the laws of the Philippines, hereinafter called the GRANTEE, for a period of thirty (30) years from May 1, 1977 the right, privilege and authority to construct, operate and maintain toll facilities covering the expressways from Balintawak (Station 9 + 563) to Carmen, Rosales, Pangasinan and from Nichols, Pasay City (Station 10 + 540) to Lucena, Quezon, hereinafter referred to collectively as North Luzon Expressway, respectively.

The franchise herein granted shall include the right to collect toll fees at such rates as may be fixed and/or authorized by the Toll Regulatory Board hereinafter referred to as the Board created under Presidential Decree No. 1112 for the use of the expressways above-mentioned.

[7] *See Strategic Alliance Dev't Corp. v. Radstock Securities Limited*, 622 Phil. 431, 590 (2009), where the Court noted that the franchise of PNCC expired on May 1, 2007.

[8] *Rollo*, pp. 6–7.

[9] *Id.* at 7.

[10] *Id.* at 247.

[11] *Id.* at 7.

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In 1986, then President Corazon Aquino issued Presidential Proclamation No. 50, creating the Asset Private Trust that shall take title to and possession of, conserve, provisionally manage, and dispose of government assets which have been identified for privatization,[12] including the government's equity shares in PNCC.[13] In relation thereto, then President Corazon Aquino issued Administrative Order (AO) No. 59, directing all executive agencies, offices, and instrumentalities of the government to take steps to dissolve government acquired-asset corporations which had not been disposed of to the private sector.[14]

Pursuant to the directive for the privatization of PNCC, several agreements were executed between PNCC and private entities for the eventual turn-over of PNCC's tollway operations in the NLEX, SLEX, and the Metro Manila Skyway.[15]

In anticipation of PNCC's turn-over of its tollway operations to private entities and the inevitable retrenchment or retirement of PNCC's officers and employees,[16] the PNCC Board of Directors (Board) passed several resolutions (collectively, Board Resolutions) for the payment of gratuity benefits to its directors and senior officers, as follows:

(1) Resolution No. BD-028-2005 dated March 29, 2005, authorizing the grant of gratuity pay to the outgoing directors equivalent to one month gross remuneration for every year of continuous and uninterrupted service;

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[12] Proclamation No. 50 (1986), art. III, sec. 9 states:

SECTION 9. *Creation*. — There is hereby created a public trust to be known as the Asset Privatization Trust, hereinafter referred to as the Trust, which shall, for the benefit of the National Government, take title to and possession of, conserve, provisionally manage and dispose of assets as defined in Section 2 herein which have been identified for privatization or disposition and transferred to the Trust for the purpose, pursuant to Section 23 of Proclamation.

[13] *Rollo*, p. 247.

[14] *Rollo*, p. 8.

[15] *Id.*

[16] *Id.* at 8–9.

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(2) Board Resolution No. BD-031-2007 dated April 25, 2007, authorizing the creation of PNCC Retirement/Resignation/ Gratuity Benefit Program [(Retirement Fund)] for Directors and Senior Officers. Under this Resolution, retirement gratuity [was] granted[,] in addition to retirement benefits, to Executive Directors such as President and [Chief Executive Officer] (CEO), Executive Vice-President (EVP), Senior Vice[-] President (SVP), Corporate Secretary and Assistant Corporate Secretaries and its Corporate Secretariat Staff;

(3) Board Resolution No. BD-043-2007 dated August 30, 2007, creating a Board of Trustees of the PNCC Retirement Fund with the power and authority to approve full and partial payments and releases of advance payments of retirement gratuity to eligible beneficiaries or entitled members of the Board and Senior Management;

(4) Board Resolution No. BD-019-2009 dated August 27, 2009, grant cash gratuity to [petitioner] Mr. Rolando L. Macasaet, former President and Chairman of the Board and its subsidiaries, and [to petitioner] Mr. Wilfredo P. Cu, former President of PNCC and PNCC Skyway Corporation and its subsidiaries; and

(5) Resolution No. BD-031-2008 dated November 5, 2008, granting additional powers and duties to the [PNCC] BOD to re-align and distribute savings and other income from its budget to the retirement trust fund and implement payment of regular gratuity approved under [Board] Resolution No. BD-028-2005, as amended.[17]

On the basis of the Board Resolutions, PNCC paid gratuity benefits to Arthur N. Aguilar (Aguilar), Ma. Theresa T. Defensor (Defensor), Garth Noel P.E. Tolentino (Tolentino), Jeremy Z. Parulan (Parulan), Fermin S. Lusung (Lusung), Antonio T. Vilar[18] (Vilar), Marvin V. Paule (Paule), Enrique C. Cuejilo, Jr.[19] (Cuejilo, Jr.), Roy Eduardo T. Lucero (Lucero), Ottomama

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[17] *Id.* at 46–47.

[18] "Villar" in some parts of the *rollo*; *id.* at 48.

[19] Sometimes appearing as "Enrique C. Cuejilo" in some parts of the *rollo* (*Id.* at 3, 76).

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Marajom[20] Benito (Benito), Guillermo N. Hernandez (Hernandez), Abraham A. Puruganan (Puruganan), Rolando L. Macasaet (Macasaet), Wilfredo P. Cu (Cu), Segundo M. Gaston (Gaston), Manuel Luis C. Antonio (Antonio), and Jaime Manuel F. Armonio (Armonio) (collectively, gratuity recipients), in the total amount of PHP 90,748,975.21, from years 2007 to 2010.[21]

After the conduct of post-audit, the COA Audit Team issued ND No. 11-002-(2007-2010)[22] dated July 8, 2011, and disallowed the grant of gratuity benefits.[23] As stated in the ND, the disbursement was disallowed because it was contrary to COA Circular No. 85-55-A dated September 9, 1985, or the Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures or Uses of Funds and Property, as well as Section 2[24] of the Department of Budget and Management (DBM) Circular Letter No. 2002-2 dated January 2, 2002. It further stated that the disbursement was excessive and unreasonable because PNCC has been incurring losses from 2003 to 2006. In addition, the gratuity benefits were found to be extravagant, given that the members of the Board are only entitled

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[20] "Morohom" in some parts of the *rollo*; *id.* at 48.

[21] *Id.* at 47–48.

[22] *Id.* at 74–80. Issued by Co-Audit Team Leader Virginia A. Lero, Audit Team Leader Glorina B. Suson, and Supervising Auditor Aurora Liveta-Funa.

[23] *Id.* at 65.

[24] 2.0 To clarify and address issues/requests concerning the same, the following compensation policies are hereby reiterated:
2.1. [Personnel Economic Relief Allowance (PERA)], [Additional Compensation (ADCOM)], [Year-End Bonus (YEB)] and retirement benefits, are personnel benefits granted in addition to salaries. As fringe benefits, those shall be paid only when the basic salary is also paid.
2.2. Members of the Board of Directors of agencies are not salaried officials of the government.
2.3. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law.
2.4. Department Secretaries, Undersecretaries and Assistant Secretaries who serve as Ex-officio Members of the Board of Directors are not entitled to any remuneration in line with the Supreme Court ruling that their services in the Board are already paid for and covered by the remuneration attached to their office.

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to reasonable per diems under the law. Finally, the disbursement was disallowed for being illegal upon the finding that the Board had no authority to create the Retirement Fund.[25]

Accordingly, the COA Audit Team found Aguilar, Defensor, Tolentino, Parulan, Lusung, Vilar, Paule, Cuejilo, Jr., Lucero, Benito, Hernandez, Puruganan, Macasaet, Cu, Gaston, Antonio, Armonio, Miriam M. Pasetes (Pasetes), and Glenna Jean R. Ogan (Ogan) (collectively, named petitioners) liable for the settlement of the disallowed amount, as follows:[26]

Persons Liable	Positions/ Designations	Nature of Participation in the Transaction
Arthur N. Aguilar	Chairman/Director	Approved the payment; payee
Ma. Theresa T. Defensor	President/Chief Executive Officer (CEO)	Approved the payment; payee
Marvin V. Paule	Member of the Board	Approved the payment; signed checks and approved a check voucher for payment; payee
Enrique C. Cuejilo[, Jr.]	Member of the Board	Approved the payment; signed checks and approved a check voucher for payment; payee
Segundo M. Gaston	Senior Vice-President; Head-Support of the Service Group	Approved the payment; signed checks and approved check vouchers for payment; payee
Miriam M. Pasetes	Senior Vice-President, Head-Treasury	Approved the payment; signed checks and approved check vouchers for payment; certified check vouchers; approved disbursements as budgeted; certified the availability of funds
Glenna Jean R. Ogan	Vice-President; Head-Legal	Signed checks for payment

[25] *Rollo*, p. 66.

[26] *Id.* at 47–48.

Garth Noel P. E. Tolentino	Member of the Board	Payee
Jeremy Z. Parulan	Member of the Board	Payee
Fermin T. Lusung	Member of the Board	Payee
Antonio T. Vilar	Member of the Board	Payee
Roy Eduardo T. Lucero	Member of the Board	Payee
Ottomama Marahom Benito	Member of the Board	Payee
Guillermo N. Hernandez	Member of the Board	Payee
Abraham A. Puruganan	Executive Vice-President - Director	Payee
Rolando L. Macasaet	Former Director	Payee
Wilfredo P. Cu	Former Director	Payee
Manuel Luis C. Antonio	Vice-President, Head-TMD	Payee
Jaime Manuel F. Armonio	Assistant Corporate Secretary	Payee[27]

Aggrieved, Tolentino, Cuejilo, Jr., Benito, Defensor, Hernandez, Parulan, and Vilar appealed ND No. 11-002-(2007-2010) to the COA Corporate Government Sector (CGS).[28]

The Decision of the COA-CGS

In its Decision No. 2014-02,[29] the COA-CGS denied the appeal and affirmed ND No. 11-002-(2007-2010), *viz.*:

> WHEREFORE, foregoing premises considered, the instant appeal is hereby DENIED. Accordingly, Notice of Disallowance No. (ND) [sic] No. 11-002-(2007-2010) dated July 8, 2011 in the total amount of [PHP] 90,748,975.21 is hereby AFFIRMED.

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[27] *Id.* at 47–48.

[28] *Id.* at 85–106, Appeal Memorandum.

[29] *Id.* at 63–73. Penned by Director IV Leila S. Paras.

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In rendering its Decision, the COA-CGS relied on *Strategic Alliance Dev't Corp. v. Radstock Securities Limited*,[30] where the Court declared that PNCC is a GOCC that is subject to the audit jurisdiction of the COA.

The COA-CGS ruled that the gratuity benefits were disallowable in audit pursuant to DBM Circular Letter No. 2002-2, which proscribed the grant of personnel benefits to members of the Board. It also found that approval from the Office of the President (OP) was necessary for the gratuity benefits pursuant to Section 3,[31] OP Memorandum Order No. 20[32] dated June 25, 2001, and AO No. 103 dated August 31, 2004. In addition, it determined that the Board did not have the authority to approve the payment of gratuity benefits under Section 5.09[33] of the PNCC By-Laws.

Dissatisfied, Tolentino, Cuejilo, Jr., Benito, Defensor, Hernandez, Parulan, Vilar, and Lusung (collectively, appellants) filed a Petition for Review[34] with the COA Proper.

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[30] 622 Phil. 431 (2009).

[31] Section 3. Any increase in salary or compensation of GOCCs/GFIs that are not in accordance with the SSL shall be subject to the approval of the President.

[32] Directing Heads of Government-Owned-and-Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Subsidiaries Exempted from or Not Following the Salary Standardization Law (SSL) to Implement Pay Rationalization in all Senior Officer Positions.

[33] As cited in the COA-CGS Decision [*rollo*, p. 67], Section 5.09 of the PNCC By-Laws states: Directors' Fees and Other Remunerations –

Unless otherwise determined by the Board of Directors, a fee or per diem of ONE THOUSAND PESOS ([PHP] 1,000.00) shall be paid to each Director for attendance at any meeting of the Board of Directors, for each day of session; provided however, that nothing herein contained shall be construed to preclude any Director from serving in any other capacity and receiving compensation therefore [sic]. The Board shall fix the compensation and other remuneration of any Director or any other officer of the Corporation should they be designated to perform executive functions or any special service to the Corporation.

[34] *Rollo*, pp. 108–160.

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The Ruling of the COA Proper

In its Decision No. 2015-457[35] dated December 29, 2015, the COA Proper initially dismissed the petition for having been filed beyond the reglementary period of 180 days under Section 3,[36] Rule VII of the 2009 Revised Rules of Procedure of the COA.

The appellants, in their Motion for Reconsideration,[37] argued that they received a copy of ND No. 11-002-(2007-2010) only on July 25, 2011, which meant that their appeal was filed within 180 days from receipt of the ND.

In the Resolution No. 2020-479,[38] the COA Proper partially granted the Motion for Reconsideration. It found that the appeal was timely filed but nonetheless affirmed ND No. 11-002-(2007-2010) with modification, viz.:

> WHEREFORE, premises considered, the Motion for Reconsideration is PARTIALLY GRANTED. Accordingly, Commission on Audit Corporate Government Sector-Cluster 4 Decision No. 2014-02 dated April 2, 2014, sustaining Notice of Disallowance (ND) No. 11-002-(2007-2010) dated July 8, 2011, on the payment of gratuity benefits/pay to the members of the Board of Directors (BOD), officers, and Assistance Corporate Secretary in calendar years 2007 to 2010, in the total amount of ₱90,748,975.21, is hereby AFFIRMED with MODIFICATION, in that, Ms. Glenna Jean R. Ogan, Vice-President, Head-Legal, is excluded from liability under the ND. All other persons named liable under the ND shall remain liable therefor to the extent of the amount they received or participation in the disallowance transaction.
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> The Audit Team Leader and the Supervising Auditor are hereby directed to verify the participation of the members of the BOD in the

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[35] *Id.* at 161–164.

[36] Section 3. *Period of Appeal*. — The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the [Adjudication and Settlement Board (ASB)].

[37] *Rollo*, pp. 165–173.

[38] *Id.* at 44–59. Decided by COA Chairperson Michael G. Aguinaldo, together with COA Commissioners Jose A. Fabia and Roland C. Pondoc.

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grant of authority for the payments of the disallowed allowances and benefits, aside from being mere payees, and issue a supplemental ND, if warranted.[39]

In its Resolution, the COA Proper was persuaded that the period to appeal must be counted from July 25, 2011, the date of appellants' actual receipt of ND No. 11-002-(2007-2010); thus, it determined that the appeal was timely filed.[40] However, the COA Proper agreed with the COA-CGS that the gratuity benefits paid by PNCC from 2007 to 2010 were disallowable in audit.[41] It explained that PNCC is a GOCC because 90.3% of PNCC's equity is owned by the government, which was confirmed by the Court in *Radstock*.[42]

The COA Proper thus ruled that the PNCC Board did not have the authority to grant the gratuity benefits in question without prior approval of the OP pursuant to Section 6,[43] PD 1597 and Section 9, Joint Resolution No. 4 jointly issued by the Senate and House of Representatives on June 17, 2009.[44] It also pointed out that Section 5.09 of the PNCC By-Laws merely authorizes the Board to fix the compensation of board members for every actual

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[39] *Id.* at 57–58.

[40] *Id.* at 45.

[41] *Id.* at 47–48 and 57–58.

[42] *Id.* at 49–51 and 54–56.

[43] Presidential Decree No. 1597, sec. 6 provides:

SECTION 6. *Exemptions from OCPC Rules and Regulations*. — Agencies, positions, or groups of officials and employees of the national government, including government-owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

[44] *Rollo*, p. 52.

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attendance in meetings and cannot be the basis for the payment of the gratuity benefits.[45]

The COA Proper also held that the power of the PNCC Board to grant additional benefits was suspended by Section 1,[46] Memorandum Order No. 20 dated June 25, 2001, and Section 3 (c),[47] AO No. 103. It also referred to Items 2.2[48] and 2.3[49] of DBM Circular Letter No. 2002-2 which provide that board members are non-salaried officials and are therefore not entitled to retirement benefits unless expressly provided by law.[50]

Finally, the COA Proper did not find merit in the argument that the named petitioners acted in good faith. It held that the Board cannot feign ignorance of the afore-stated rules and issuances depriving them of authority to approve the payment of gratuity benefits, given that the regulations were already effective when the Board Resolutions were passed.[51]

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[45] *Id.*

[46] Section 1. Immediately suspend the grant of any salary increases and new or increased benefits such as, but not limited to, allowances; incentives; reimbursement of expenses; intelligence, confidential or discretionary funds; extraordinary expenses, and such other benefits not in accordance with those granted under SSL. This suspension shall cover senior officer level positions, including Members of the Board of Directors or Trustees.

[47] SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

. . . .

(c) For other non full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans; and (ii) in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (₱20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (₱20,000.00) per month.

[48] 2.2. Members of the Board of Directors of agencies are not salaried officials of the government.

[49] 2.3. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law.

[50] *Rollo*, p. 54.

[51] *Id.* at 56.

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However, the COA modified ND No. 11-002-(2007-2010) in that Ogan, then Vice-President and Head-Legal of PNCC, was excluded from the officers liable for the disallowed disbursement. The COA Proper determined that there was insufficient basis for Ogan's liability because signing of the checks was ministerial for Ogan once the disbursement vouchers had been signed by the head of the Accounting Division and approved by the agency head. In the absence of any irregularity in the said procedure, the COA Proper held that Ogan cannot be made liable under the ND.[52]

Thus, the present Petition.[53]

Proceedings Before the Court

In the Resolution[54] dated March 8, 2022, the Court initially dismissed the Petition for late filing and failure to submit proof of authority to cause the preparation of the Petition, considering that only Aguilar, Defensor, Parulan, Lusung, Vilar, Cuejilo, Jr., Hernandez, Macasaet, and Cu (collectively, petitioners) signed the Certification on Non-Forum Shopping (CNFS).

Petitioners then filed their Motion for Reconsideration[55] of the Resolution dated March 8, 2022. Upon review of the records, the Court found merit in the Motion. Thus, in the Resolution[56] dated September 6, 2022, the Court granted the Motion, ordered the reinstatement of the Petition, and directed the COA to submit its Comment on the Petition.

Notably, only petitioners sought the reinstatement of the Petition through their Motion for Reconsideration. Hence, the COA's findings as to Tolentino, Paule, Lucero, Benito, Puruganan, Gaston, Antonio, Pasetes, Ogan, and Armonio, who did not join the Motion for Reconsideration or sign the CNFS, will no longer

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[52] *Id.* at 57.

[53] *Id.* at 3–43.

[54] *Id.* at 183–184.

[55] *Id.* at 185–215.

[56] *Id.* at 244–245.

be disturbed by the Court. The Petition shall be resolved only insofar as petitioners are concerned.

Petitioners' Arguments

In their Petition and Reply,[57] petitioners aver that the gratuity benefits paid by PNCC to its directors and senior officers from 2007 to 2010 are not disallowable in audit. Petitioners point out that Section 2(a) of AO No. 59 expressly states that an "acquired-asset corporation as defined in the next paragraph shall not be considered as GOCC or government corporation."[58] Petitioners also cite *Philippine National Construction Corp. v. Pabion*[59] and *Cuenca v. Hon. Atas*[60] where the Court supposedly ruled that PNCC is a private corporation and not a GOCC.[61] They argue that the laws, circulars, and issuances, cited by the COA Proper, which pertain to government agencies and GOCCs, do not cover PNCC;[62] instead, Section 36(10)[63] of the Corporation Code must be applied which supposedly allows the Board to establish the Retirement Fund.[64]

Petitioners assert that *Radstock*, which was decided in 2009, cannot be retroactively applied to the Board Resolutions.[65] They also

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[57] *Id.* at 270–302, attached to the Motion for Leave of Court to File Reply to the Respondent's Comment on the Petition for Certiorari under Rule 64 of the Rules of Court. In the interest of justice and for the full and just disposition of the case, the Court admits the Reply and considers the same in the resolution of the present Petition.

[58] *Id.* at 25–26; *id.* at 273.

[59] 377 Phil. 1019 (1999).

[60] 561 Phil. 186 (2007).

[61] *Rollo*, pp. 16–18.

[62] *Id.* at 16–18 and 25–26; *id.* at 273–276.

[63] SECTION 36. *Corporate Powers and Capacity*. — Every corporation incorporated under this Code has the power and capacity:

. . . .

(10) To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees[.]

[64] *Rollo*, pp. 29–30; *id.* at 290.

[65] *Id.* at 20–21; *id.* at 286–288.

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argue that the Doctrine of Operative Fact precludes the retroactive application of *Radstock*; instead, *Pabion* and *Cuenca* must prevail in determining the propriety and validity of the PNCC Retirement Fund.[66]

Finally, petitioners reiterate that they acted in good faith when they created and approved the Retirement Fund because *Pabion* was the prevailing case law at that time. They insist that the creation of the Retirement Fund was in consideration of the past meritorious services of the gratuity recipients to the PNCC. Citing *Madera v. Commission on Audit*,[67] petitioners argue that the approving and certifying officers who acted in good faith cannot be made civilly liable under ND No. 11-002-(2007-2010).[68]

Respondent's Arguments

In its Comment,[69] the COA, through the Office of the Solicitor General, argues that PNCC is a GOCC and therefore subject to laws and regulations on the power of GOCCs to grant additional benefits to directors, officers, and employees, including Section 6, PD 1597, which require the prior approval of the OP in the establishment and payment of the PNCC Retirement Fund. The COA also cites Section 1, OP Memorandum Order No. 20 and Section 3(c), Administrative Order No. 103 which suspended the authority of GOCCs to grant additional benefits to directors and senior officers.

The COA argues that *Pabion* is not a valid basis for the gratuity benefits because even in that case, the Court recognized that PNCC may be a GOCC. Further, in *Pabion*, the Court applied AO No. 59, which excluded an acquired-asset corporation from the definition of a GOCC only as used in the very same Administrative Order and not in any other case.[70]

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66 *Id.* at 22–24; *id.* at 288–290.

67 882 Phil. 744 (2020).

68 *Rollo*, pp. 296–298, Reply.

69 *Id.* at 246–263.

70 *Id.* at 251–254.

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Thus, the COA insists that Section 2(13)[71] of Executive Order No. (EO) 292 must be applied in determining the nature of PNCC as a juridical entity. Under this provision of law, PNCC is a GOCC without an original charter because the government owns at least 51% of its capital stock. It stresses that EO 292 was already in effect in 2005 and 2007 when the Board approved the gratuity pay to PNCC directors and established the Retirement Fund, respectively. Although *Radstock* was decided in 2009, the COA argues that the case merely confirmed the status of PNCC as a GOCC in accordance with law.[72]

Finally, the COA reiterates that Section 5.09 of the PNCC By-Laws did not grant the Board the authority to create the Retirement Fund because it merely authorized the Board to fix the amount of per diems payable to a board member for every actual attendance in board meetings.[73]

The Issue

The core issue for the Court's resolution is *whether the COA acted with grave abuse of discretion in affirming with modification the ND No. 11-002-(2007-2010) and holding that the gratuity benefits to PNCC's directors and senior officers from 2007 to 2010 in the total amount of PHP 90,784,975.21 are disallowable disbursements*.

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[71] SECTION 2. . . . .

. . . .

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

[72] *Rollo*, pp. 254–258.

[73] *Id.* at 259.

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The Court's Ruling

The Petition is denied for lack of merit.

The COA Proper did not act with grave abuse of discretion in sustaining the disallowance of the gratuity benefits in question and holding that petitioners are civilly liable to return the disallowed disbursements.

In petitions for *certiorari* assailing the findings of the COA Proper in disallowance cases, it is settled that Section 7,[74] Article IX-A of the 1987 Constitution and Section 2,[75] Rule 64 in relation to Rule 65, Section 1[76] of the Rules of Court limit the permissible scope of inquiry only to errors of jurisdiction or grave abuse of discretion.[77]

For the COA Proper to have acted with grave abuse of discretion, petitioners must show that COA Resolution No. 2020-479 is bereft of legal or evidentiary basis, was reached in a capricious or

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[74] 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 to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

[75] 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.

[76] Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[77] *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713, 723 (2016).

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whimsical exercise of judgment, is in utter and blatant disregard of the applicable law and rules,[78] or was rendered arbitrarily or in disregard of the evidence on record.[79]

None of the foregoing circumstances are present in the case at bar. As further discussed below, the COA Proper judiciously exercised its discretion in issuing Resolution No. 2020-479.

ND No. 11-002-(2007-2010) has already become final and executory as to Aguilar and Lusung because they failed to observe the procedure for appeal therefrom.

At the outset, it must be pointed out that both Aguilar and Lusung *did not sign* the Appeal Memorandum,[80] which questioned ND No. 11-002-(2007-2010) before the COA-CGS. Lusung appears to have initiated the appeal process only in the Petition for Review with the COA Proper[81] which he signed; meanwhile, Aguilar began his appeal process only in the present Petition, where his signature appears in the Verification and CNFS.[82] This means that both Aguilar and Lusung did *not* appeal the ND to the Director of the COA-CGS.

Pertinently, Sections 48 to 50[83] of PD 1445[84] (Government Auditing Code of the Philippines) provide the procedure for

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[78] *Land Bank of the Phils. v. Yatco Agricultural Enterprises*, 724 Phil. 276, 288–289 (2014); *Cruz v. People*, 812 Phil. 166, 173 (2017).

[79] *Eureka Personnel & Management Services, Inc. v. Valencia*, 610 Phil. 444, 452–453 (2009).

[80] *Rollo*, pp. 85–106.

[81] *Id.* at 108–160.

[82] *Id.* at 40–41.

[83] Section 48. *Appeal from Decision of Auditors*. – Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

Section 49. *Period for Rendering Decisions of the Commission*. – The Commission shall decide any case brought before it within sixty days from the date of its submission for resolution. If the account or claim involved in

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appeals from decisions of COA. Under Section 51 of the same law, "[a] decision of the Commission or of any auditor upon any matter within its or his jurisdiction, *if not appealed as herein provided, shall be final and executory*." Similarly, under Section 8,[85] Rule IV of the 2009 Revised Rules of Procedure of the COA, the decisions of COA auditors, as the authorized representatives[86] of the COA, shall become *final* upon the expiration of six (6) months from the date of receipt thereof, *unless an appeal to the Director* is taken within that period.

In view of the foregoing, ND No. 11-002-(2007-2010) must already be taken as final and executory against Aguilar and Lusung, given that they both failed to appeal the ND to the COA-CGS Director within the prescribed period.

In any case, even if the Court considers Aguilar and Lusung to have timely filed their appeal, the Court finds that the COA did not act with grave abuse of discretion in holding them civilly liable to

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the case needs reference to other persons or offices, or to a party interested, the period shall be counted from the time the last comment necessary to a proper decision is received by it.

Section 50. *Appeal from Decisions of the Commission*. – The party aggrieved by any decision, order or ruling of the Commission may within thirty days from his receipt of a copy thereof appeal on certiorari to the Supreme Court in the manner provided by law and the Rules of Court. When the decision, order, or ruling adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.

[84] "Government Auditing Code of the Philippines," approved on June 11, 1978.

[85] Section 8, Rule IV of the 2009 Revised Rules of Procedure of the COA states:

Section 8. *Finality of the Auditor's Decision*. – Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

[86] Section 1, Rule IV of the 2009 Revised Rules of Procedure of the COA, which reads:

Section 1. *Auditors as representatives of the Commission*. – The Auditors shall exercise such powers and functions as may be authorized by the Commission in the examination, audit and settlement of the accounts, funds, financial transactions, and resources of the agencies under their respective audit jurisdiction.

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return the disallowed disbursements under the ND No. 11-002-(2007-2010), as discussed below.

PNCC is a GOCC without an original charter.

The status of PNCC as a GOCC without an original charter is already jurisprudentially settled.

In *Alejandrino v. Commission on Audit*,[87] the Court reiterated *Radstock* and held that "PNCC is a GOCC without original charter but under the audit jurisdiction of COA."[88]

Only recently, the Court again ruled in *Philippine National Construction Corp. v. National Labor Relations Commission*[89] that PNCC is a non-chartered GOCC and is therefore "subject to such guidelines and policies as may be issued by the President governing position classifications, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits,"[90] as provided in Section 6 of PD 1597.

The Court's ruling in Radstock applies retroactively because it merely confirmed the status of PNCC as a GOCC in accordance with the applicable laws.

Petitioners nevertheless insist that PNCC was considered a private corporation at the time when the Board Resolutions were passed because *Pabion* was then the prevailing case law. They argue that *Radstock*, which allegedly overturned *Pabion*, must be applied prospectively.

Petitioners' argument is unavailing.

The Court's interpretation of a law or regulation is prospective in application if the law or regulation was invalidated for being

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87 866 Phil. 188 (2019).

88 *Id.* at 203.

89 G.R. No. 248401, June 23, 2021.

90 *Id.*

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illegal or unconstitutional.[91] In such a case, the law or issuance, though declared invalid, is an *operative fact* that cannot be undone by a subsequent interpretation; hence, the Court's ruling must be applied prospectively.[92] However, when no law or regulation was invalidated nor doctrine abandoned by the Court, a judicial interpretation of the law should be deemed incorporated at the moment of legislation or issuance.[93] Otherwise stated, *the application of a judicial interpretation is retroactive, except when an old doctrine was overruled by a new one*.[94]

Applying the foregoing principles, the Court concludes that the Operative Fact Doctrine is not applicable to the present case because no law, regulation, or jurisprudential doctrine, was overturned in *Radstock*.

First, *Pabion* is not a binding judicial precedent on the controversy at hand, *i.e.*, the power of the PNCC Board to increase the benefits of its directors and senior officers. Indeed, a prior ruling of the Court is a binding judicial precedent *only* on the parties to the case *and* on future parties with *similar* or *identical* factual situations.[95]

As pointed out by petitioners, "the issue in *Pabion* was whether [the Securities and Exchange Commission (SEC)] can compel PNCC to hold a shareholders' meeting for the purpose of electing their corporate board."[96] Simply, *Pabion* pertained to an intra-corporate controversy regarding the conduct of election of the PNCC Board Members and did not at all involve any issue on the power of the Board to approve the payment of gratuity benefits to its officers or employees, as in the case. Evidently, *Pabion* cannot be relied upon by petitioners because the factual circumstances in that case and the present case are *not* identical or similar.

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91 *Castro v. Hon. Deloria*, 597 Phil. 18, 26 (2009).

92 *Id.*

93 *Id.*

94 *Velasquez v. Commission on Audit*, 884 Phil. 319, 326 (2020).

95 *Fetalino v. Commission on Elections*, 700 Phil. 129, 148 (2012).

96 *Rollo*, p. 278.

Second, there is no inconsistency between *Pabion* and *Radstock*.

In *Pabion*, the Court explained that AO No. 59 did *not* supersede the definition of a GOCC under EO 292. Instead, the exclusion of an acquired-asset corporation from the definition of a GOCC under AO No. 59 "explicitly applies *only* to that particular administrative order," as it sought to "distinguish GOCCs in general from those that are sought to be privatized." Thus, the Court clarified in *Pabion* that PNCC is a GOCC under EO 292, but it is *further classified* in AO No. 59 as an acquired-asset corporation or a *GOCC set to be privatized*.

Accordingly, the Court holds that its ruling in *Radstock applies retroactively* to the time when the Board Resolutions for the gratuity benefits were passed by the PNCC Board. Thus, the COA did not act with grave abuse of discretion in considering PNCC as a GOCC that is governed by relevant laws and regulations, including PD 1597 and other issuances related thereto.

The COA correctly held that the gratuity benefits to PNCC's directors and senior officers are disallowable disbursements.

The Court further holds that the COA did not commit grave abuse of discretion in finding that the gratuity benefits paid to PNCC's directors and senior officers from 2007 to 2010 are disallowable disbursements.

As stated in Board Resolution No. BD-031-2007, the gratuity benefits in question were provided to PNCC's directors and senior officers *in addition to retirement benefits*.[97] Thus, the gratuity benefits constitute additional compensation.

In the similar case of *Dimagiba v. Espartero*,[98] the Court ruled that the gratuity pay provided to Board Members of a GOCC, *in addition to* separation pay and in consideration of their satisfactory performance of their work, was taken as a form of "bonus,"

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[97] *Id.* at 46.

[98] 691 Phil. 16 (2012).

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which, by its very nature, partakes of an *additional remuneration or compensation*;[99] thus:

> *The gratuity pay being given to petitioners by the HSDC Board was by reason of the satisfactory performance of their work* under the trust agreement. It is considered a bonus and by its very nature, a bonus partakes of an additional remuneration or compensation. It bears stressing that when petitioners were separated from LIVECOR, they were given separation pay which also included gratuity pay for all the years they worked thereat and concurrently in HSDC/SIDCOR. *Granting them another gratuity pay for the works done in HSDC under the trust agreement would be indirectly giving them additional compensation for services rendered in another position which is an extension or is connected with his basic work* which is prohibited. This can only be allowed if there is a law which specifically authorizes them to receive an additional payment of gratuity. . . . [100] (Emphases supplied)

In the case, Board Resolution No. BD-028-2005 pegged the gratuity pay due to outgoing directors at one (1) month gross remuneration "for every year of continuous and uninterrupted *service*[.]"[101] Petitioners also aver that "the grant of gratuity benefits to all retiring, resigning and/or retrenched officers and employees were in consideration of their past and meritorious *services* to the corporation."[102]

Evidently, the gratuity benefits in question are additional compensation. As such, they were covered by Section 6 of PD 1597, which requires GOCCs to observe guidelines and policies issued by the President governing position classifications, salary rates, and other forms of *compensation* and fringe benefits.[103] Further, as correctly pointed out by the COA, the resolutions of the PNCC Board affecting the Retirement Fund and gratuity pay should have

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[99] *Id.* at 32–33.

[100] *Id.*

[101] *Rollo*, p. 46.

[102] *Id.* at 297.

[103] *Philippine National Construction Corp. v. National Labor Relations Commission*, G.R. No. 248401, June 23, 2021.

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been reviewed and approved by the DBM before they were paid out to the recipients.[104]

Moreover, the COA appropriately determined that at the time when the Board Resolutions were passed, several regulations and presidential issuances then in effect *suspended* the grant of additional benefits to PNCC directors, officers, and employees, and *prohibited* the Board from granting the gratuity benefits *except* with prior approval of the President.

Specifically, Section 1,[105] OP Memorandum Order No. 20 dated June 25, 2001, directed all heads of GOCCs to *immediately suspend* the grant of any salary increases and new or increased benefits *to all senior level positions, including members of the board*, which are not in accordance with the Salary Standardization Law (SSL). Section 3 of the same Memorandum Order further states that "[a]ny increase in salary or compensation of GOCCs/GFIs that are not in accordance with the SSL shall be subject to the *approval* of the President."

AO No. 103 is an additional limitation to the power of the PNCC Board to approve the gratuity benefits in question. Specifically, paragraphs (b) and (c) of Section 3,[106] AO No. 103 suspended the

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[104] *PCSO v. Pulido-Tan*, 785 Phil. 266, 275–276 (2016).

[105] OP Memorandum No. 20 (2001), sec. 1, states:

> NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order and direct all heads of GOCCs, GFIs and subsidiaries exempt from or not following the SSL to:
>
> Section 1. Immediately suspend the grant of any salary increases and new or increased benefits such as, but not limited to, allowances; incentives; reimbursement of expenses; intelligence, confidential or discretionary funds; extraordinary expenses, and such other benefits not in accordance with those granted under SSL. This suspension shall cover senior officer level positions, including Members of the Board of Directors or Trustees.

[106] SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

> . . . .
>
> (b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement

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grant of new or additional gratuity benefits to both *full-time and non full-time* officials of PNCC, including members of the Board, subject only to certain exceptions that are not applicable to the payees of the gratuity benefits in issue.

As mentioned by the COA, the gratuity benefits to PNCC's directors were likewise proscribed by items 2.0 to 2.3[107] of DBM Circular Letter No. 2002-2 which state that board members of government agencies, including GOCCs such as PNCC, are non-salaried officials and are therefore *not* entitled to retirement benefits unless expressly provided by law.

The Court notes that several of the gratuity recipients were *directors* of PNCC at the time of receipt of the gratuity benefits. As correctly pointed out by the COA, Section 5.09 of the PNCC By-Laws dictates that directors of PNCC are entitled *only* to compensation of PHP 1,000.00 for attendance at any meeting of

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(CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance;

(c) For other non full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans; and (ii) in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (₱20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (₱20,000.00) per month.

[107] 2.0 To clarify and address issues/requests concerning the same, the following compensation policies are hereby reiterated:

2.1. [Personnel Economic Relief Allowance (PERA)], [Additional Compensation (ADCOM)], [Year-End Bonus (YEB)] and retirement benefits, are personnel benefits granted in addition to salaries. As fringe benefits, those shall be paid only when the basic salary is also paid.

2.2. Members of the Board of Directors of agencies are not salaried officials of the government.

2.3. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law.

the Board for each day of session. The only time that the Board may fix additional compensation and other remuneration for a director is when the latter has been "designated to perform executive functions or any special service to the Corporation[.]"

Even assuming that additional compensation may be given to PNCC's directors, the grant of gratuity benefits from 2007 to 2010 was still subject to the net income requirement under Section 30[108] of the Corporation Code then in effect which states that "[i]n no case shall the total yearly compensation of directors, *as such directors*, exceed ten (10%) percent of the *net income* before income tax of the corporation during the preceding year."

Pertinently, in *Gonzaga v. COA*,[109] the Court held that bonuses granted by a non-chartered GOCC to its directors constitute compensation that must comply with Section 30 of the Corporation Code, *i.e.*, the grant of additional compensation to a director *requires the presence of a net income in the previous year*. The same principle must be applied to the gratuity benefits in issue because they are additional compensation given to the payees in consideration of the services that they have rendered to PNCC.

Significantly, the gratuity benefits in issue were disallowed for being excessive and unreasonable considering the "status of the business operation of [PNCC] incurring losses since CY 2003 to 2006[.]"[110] Petitioners have not sufficiently established that this

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[108] CORP. CODE (1980), sec. 30 provides:

SECTION 30. *Compensation of Directors*. — In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as such directors, except for reasonable *per diems*: *Provided*, however, that any such compensation (other than *per diems*) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year.

[109] G.R. No. 244816, June 29, 2021.

[110] *Rollo*, p. 74.

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finding was attended with grave abuse of discretion; to the contrary, it was even recognized in *Radstock*, where the Court determined that for the years 2005 and 2006, PNCC *"has incurred negative gross margin of [PHP] 84.531 Million and [PHP] 80.180 Million, respectively, and net losses that had accumulated in a deficit of [PHP] 14.823 Billion as of 31 December 2006."*[111] Furthermore, when the parties in *Radstock* were being heard by the Court on January 13, 2009, PNCC admitted that its *net worth* at that time was at least *negative six billion pesos*.[112]

In fine, petitioners failed to show that the gratuity benefits paid to PNCC's directors and senior officers from 2007 to 2010 complied with the foregoing law and regulations. Absent any law or DBM issuance authorizing the grant of the gratuity benefits in question, the resulting disbursement and receipt thereof are *illegal*.[113] Perforce, the COA's disallowance of the payment of the said gratuity benefits must be affirmed.

Liabilities of petitioners for the return of the disallowed amounts.

With the propriety of the disallowance of the gratuity benefits in issue now settled, the Court proceeds to rule on the liability of petitioners to return the disallowed amount.

The Rules on Return on the liability of public officers and employees involved in the disbursement and receipt of public funds that were disallowed by the COA has been set out in *Madera*, as further qualified by *Torreta v. COA*,[114] *Abellanosa v. Commission on Audit*,[115] and *Cagayan de Oro Water District v. COA*,[116] viz.:

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[111] *Strategic Alliance Dev't Corp. v. Radstock Securities Limited*, 622 Phil. 431, 479 (2009).

[112] *Id.*

[113] *See Phil. Health Insurance Corp. v. Commission on Audit*, 888 Phil. 733, 748 (2020).

[114] 889 Phil. 1119 (2020).

[115] 890 Phil. 413 (2020).

[116] G.R. No. 213789, April 27, 2021.

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1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.[117]

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

    a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.[118]

    b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed below, excludes amounts excused under the following Sections 2c and 2d.[119]

    c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts received were genuinely given in consideration of services rendered.[120]

        [c.1. To be considered as an amount that was "genuinely given in consideration of services rendered," the following requisites must concur: (i) The personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and (ii) The personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.[121]

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[117] *Madera v. Commission on Audit*, 882 Phil. 744, 817 (2020).

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Abellanosa v. Commission on Audit*, 890 Phil. 413, 430 (2020).

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c.2. The benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* are limited to compensation authorized by law including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (*e.g.*, honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers.[122]

c.3. In other cases involving disbursement of public funds for government contracts that have been disallowed by the COA (*e.g.*, supply or trade contracts,[123] service contracts,[124] engagement agreements for professional services,[125] design and construction agreements,[126] or lease agreements,[127] among others) the civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis].[128]

d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case-to-case basis.[129]

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[122] *Id.* at 431.

[123] *Torreta v. COA*, 889 Phil. 1119, 1160 (2020); *Bodo v. COA*, G.R. No. 228607, October 5, 2021.

[124] *Metro Laundry Services v. The Commission Proper*, G.R. No. 252411 (Resolution), February 15, 2022.

[125] *Alejandrino v. COA*, 866 Phil. 188, 203 (2019); *Ricalde v. COA*, G.R. No. 253724 (Resolution), February 15, 2022.

[126] *Puentevella v. COA*, G.R. No. 254077, August 2, 2022; *Eslao v. COA*, 273 Phil. 97, 98, 106 (1991); *Melchor v. COA*, 277 Phil. 801, 806, 815 (1991); *EPG Construction Co. v. Vigilar*, 407 Phil. 53, 57, 63–64 (2001).

[127] *RG Cabrera Corp., Inc. v. DPWH*, G.R. No. 231015, January 26, 2021.

[128] *Torreta v. COA*, 889 Phil. 1119, 1160 (2020).

[129] *Madera v. Commission on Audit*, 882 Phil. 744, 817–818 (2020).

[d.1. Civil liability under 2d may be excused only in highly exceptional circumstances. There must be a *bona fide* instance which strongly impels the Court to prevent a clear inequity arising from a directive to return.[130]

d.2. Recipients must prove with substantial evidence (1) the nature and purpose of disallowed allowances and benefits, and (2) the existence and truthfulness of its factual basis. Recipients of disallowed allowances and benefits proved to be granted for legitimate humanitarian and compelling grounds shall be excused from making a refund due to equity and social justice considerations.[131]

d.3. The Court shall consider the lapse of time between the receipt of the allowances and benefits, and the issuance of the notice of disallowance or any similar notice indicating its possible illegality or irregularity. Absent any circumstances the Court may deem sufficient, the lapse of three (3) years without any such notice shall be sufficient to excuse recipients from making a refund.[132]

d.4. However, the three (3)-year period rule shall not apply in favor of persons found to have actively participated in fraudulent transactions, *i.e.*, those found culpable in Special Audits or Fraud Audits conducted by the COA].[133]

Applying the Rules on Return, the Court agrees with the COA Proper that petitioners are civilly liable to return the disallowed amounts in ND No. 11-002-(2007-2010).

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[130] *Abellanosa v. Commission on Audit*, 890 Phil. 413, 432–433 (2020).

[131] *Cagayan de Oro Water District v. COA*, G.R. No. 213789, April 27, 2021.

[132] *Id.*

[133] *Id.*

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i. Civil Liability of the approving officers, i.e., Aguilar, Defensor, and Cuejilo, Jr.

Petitioners Aguilar, Defensor, and Cuejilo, Jr. were found liable by the COA as approving officers *and* as payees. However, they insist that they cannot be made liable to return the disallowed amounts because they supposedly acted with due diligence and relied on *Pabion* and *Cuenca* in approving the gratuity benefits to PNCC's directors and senior officers.[134]

The Court is not persuaded.

In disallowance cases, approving and/or certifying officers, as public officials, are presumed to have regularly performed their duties, provided that there are no clear *indicia* of bad faith, showing *patent disregard of their responsibilities*.[135] This is consistent with Section 38(1) of EO 292, which provides that "[a] public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of *bad faith*, malice or gross negligence." Bad faith does not simply connote bad judgment or negligence; instead, it refers to "a breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud, including a dishonest purpose or some moral obliquity and conscious doing of a wrong."[136]

In the case, the Court rules that Aguilar, Defensor, and Cuejilo, Jr., as approving officers, are *solidarily liable* to return the disallowed disbursements for having acted with bad faith and in patent disregard of their responsibilities to PNCC.

As high-ranking officers of PNCC, petitioners Aguilar, Defensor, and Cuejilo, Jr., are expected to be knowledgeable about the laws, rules, regulations, and policies concerning PNCC.[137] They

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[134] *Rollo*, pp. 296–298.

[135] *National Transmission Corp. v. COA*, 889 Phil. 1170, 1185–1186 (2020).

[136] *Id.* at 1188.

[137] *Torreta v. COA*, 889 Phil. 1119, 1141 (2020); *The Officers and Employees of Iloilo Provincial Government v. Commission on Audit*, G.R. No. 218383, January 5, 2021.

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ought to have known the requirements under the relevant laws and regulations before the gratuity benefits may be granted.[138]

Here, the Court finds merit in the argument that the approving officers may have mistakenly relied upon *Pabion* and *Cuenca* in considering PNCC as a private corporation. Yet, even with that mistaken notion, petitioners should have known that the Corporation Code was applicable to PNCC. Necessarily, they should have ensured compliance with the requirements of Section 30 of the Corporation Code in approving the gratuity benefits to the directors of PNCC. However, as discussed above, petitioners failed to show that they observed Section 30 of the Corporation Code when the gratuity benefits in question were granted.

Moreover, the directors and members of the Board had a fiduciary duty to the stockholders of PNCC.[139] This duty included the responsibility to preserve the assets of PNCC,[140] and to avoid situations resulting in the waste, dissipation, or misapplication of corporate property.[141] They were also tasked to read and examine corporate records on the financial status and business transactions of PNCC.[142]

Therefore, the PNCC Board should have been circumspect in approving payment of the gratuity benefits to PNCC's directors *and* senior officers. They should have assessed the capacity of PNCC to expose itself to further obligations *vis-à-vis* PNCC's financial condition,[143] more so when the gratuity benefits are *in addition* to retirement benefits.

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[138] *Power Sector Assets and Liabilities Management Corp. v. COA*, G.R. No. 218310, November 16, 2021.

[139] *Strategic Alliance Dev't. Corp. v. Radstock Securities Limited*, 622 Phil. 431, 496–497 (2009).

[140] *Virata v. Wee*, 813 Phil. 252, 328 (2017).

[141] *Gokongwei, Jr. v. Securities and Exchange Commission*, 178 Phil. 266, 312–313 (1979).

[142] *People v. Concepcion*, 43 Phil. 728, 747 (1922).

[143] *See Strategic Alliance Dev't. Corp. v. Radstock Securities Limited*, 622 Phil. 431, 478–479, 492–493 (2009); *Gonzaga v. COA*, G.R. No. 244816, June 29, 2021; *Virata v. Wee*, 813 Phil. 252, 342–343 (2017).

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Indeed, as a form of bonus, the gratuity benefits were *entirely dependent on the profits*, if any, realized by PNCC from its operations.[144] The grant of the gratuity benefits despite the negative net worth of PNCC at the time material to the case constitutes bad faith[145] on the part of Aguilar, Defensor, and Cuejilo, Jr., as approving officers.

It also does not escape the attention of the Court that Aguilar, Defensor, and Cuejilo, Jr. are not simply approving officers; they were also Board Members *and payees* of the disallowed gratuity benefits. Moreover, the Board approved the Retirement Fund through Resolution No. BD-031-2007 dated April 25, 2007,[146] *a mere six (6) days* before the franchise of PNCC expired on May 1, 2007, and in anticipation of the looming turn over of the business operations of PNCC to private entities.[147]

As Board Members at that time, Aguilar, Defensor, and Cuejilo, Jr., had the power of control over PNCC's properties.[148] It thus appears that they approved the gratuity pay *for their own benefit* while they were still holding positions in the Board, *knowing* that they were about to turn over PNCC's operations for privatization. Plainly, within that short span of time when they still held power, they took advantage of their position in PNCC to enrich themselves with property that should have accrued to the corporation. By utilizing their strategic position in the corporation to their own preferment, the approving officers clearly acted in bad faith and in breach of their fiduciary duty to PNCC to maximize the profits of the corporation and to avoid conflicts of interest with the corporation.[149]

In fine, the records bear that Aguilar, Defensor, and Cuejilo, Jr. acted with bad faith in managing the affairs of PNCC and patently

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[144] *See Traders Royal Bank v. NLRC*, 267 Phil. 321, 324 (1990).

[145] *Gonzaga v. COA*, G.R. No. 244816, June 29, 2021.

[146] *Rollo*, pp. 46–47, COA Resolution No. 2020-479.

[147] *Id.* at 8–9, Petition; *id.* at 297, Reply.

[148] *Total Office Products and Services (TOPROS), Inc. v. Chang, Jr.*, G.R. Nos. 200070-71, December 7, 2021.

[149] *Id.*, *citing Prime White Cement Corp. v. IAC*, 292-A Phil. 198 (1993).

disregarded their fiduciary duties to the corporation. Accordingly, they must be held solidarily liable for the return of the disallowed disbursements in ND No. 11-002-(2007-2010).

ii. Civil Liability of the payees or gratuity recipients.

The Court likewise affirms the COA's findings as to the payees.

In accordance with the Rules on Return, petitioners, as payees, are liable to return the sums of money that they received.

It was settled in *Madera* that payees are required to return the disallowed amounts that they received on the principle of unjust enrichment or *solutio indebiti* espoused in Article 2154[150] of the Civil Code.[151] Thus, payees who receive undue payment, *regardless of good faith*, are liable for the return of the amounts that they received.[152]

Consequently, petitioners' defense of good faith must fail.

Neither may the exceptions under Rule 2c of the Rules on Return apply to petitioners. The benefits that the Court may allow payees to retain as an exception under Rule 2c are limited to *compensation authorized by law*.[153] As earlier discussed, the gratuity benefits in question are contrary to Section 6, PD 1597 and issuances related thereto. Moreover, petitioners failed to prove that they observed Section 30 of the Corporation Code.

The exception to the payees' civil liability under Rule 2d is likewise inapplicable. The Petition is not supported by substantial evidence which may support the conclusion that petitioners, as

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[150] Civil Code (1949), art. 2154 provides that "[i]f something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

[151] *Phil. Health Insurance Corp. v. Commission on Audit*, 888 Phil. 733, 749–750 (2020).

[152] *Madera v. Commission on Audit*, 882 Phil. 744, 808 (2020); *Lumauan v. COA*, 892 Phil. 183, 195 (2020); *National Transmission Corp. v. COA*, 889 Phil. 1170, 1190–1191 (2020).

[153] *Abellanosa v. Commission on Audit*, 890 Phil. 413, 441–442 (2020).

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payees, need not return the disallowed amounts for compelling humanitarian reasons.

The Court is aware that in *Cagayan de Oro Water District*, the Court held that "[a]bsent any circumstances the Court may deem sufficient, the lapse of three (3) years without any such notice shall be sufficient to excuse recipients from making a refund."[154] As further explained below, the exceptions to return in *Cagayan de Oro Water District* find no application in the present case.

It must be stressed that ND No. 11-002-(2007-2010) covering the gratuity benefits paid from 2007 to 2010 was issued on *July 8, 2011*. Thus, for the payments from 2008 to 2010, the ND was issued within the *period of 3 years* from the time that the payees received the gratuity benefits in question.

Moreover, the lapse-of-time exception was applied in *Cagayan de Oro Water District* in favor of *rank-and-file employees*. In that case, the Court recognized that for rank-and-file employees, it would be especially inequitable to require them to return the disallowed amounts because, in the meantime, they may have already spent such amounts that they received in good faith.[155] Further, the payees in *Cagayan de Oro Water District* were mere *passive* recipients, and it was not established that they were *put on notice of the illegality or irregularity of the benefits* involved.[156] These peculiar circumstances are not present in the case at bar.

As discussed above, Aguilar, Defensor, and Cuejilo, Jr. are liable as approving officers. They are not mere *passive* recipients. Their active participation in the grant of the gratuity benefits in issue precludes the application of the three-year period under Rule 2d of the Rules on Return.

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[154] *Cagayan de Oro Water District v. COA*, G.R. No. 213789, April 27, 2021.

[155] *See Paguio v. Commission on Audit*, G.R. No. 242644, October 18, 2022, *citing Cagayan de Oro City Water District v. COA*, G.R. No. 213789, April 27, 2021.

[156] *Cagayan de Oro City Water District v. COA*, G.R. No. 213789, April 27, 2021; *Paguio v. COA*, G.R. No. 242644, October 18, 2022; *National Housing Authority v. COA*, G.R. Nos. 239936 & 252584, June 21, 2022.

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As to the other petitioners and gratuity recipients, namely, Parulan, Lusung, Vilar, Hernandez, Macasaet, and Cu, they were *members or former Board members* at the time that they received the disallowed gratuity benefits.[157] Thus, it cannot be said that they were deprived of notice of the possible illegality or irregularity in the disallowed transaction. To repeat, directors and high-ranking officers of the corporation are expected to *know* the laws and regulations concerning PNCC.[158] Their fiduciary duty[159] also requires them to *preserve* the assets of PNCC,[160] to review corporate records on the financial condition of PNCC,[161] and to assess the financial capability of the corporation to pay out the gratuity benefits in issue.[162]

In the case, the gratuity benefits were approved and paid out notwithstanding the clear requirements of Section 30 of the Corporation Code and the fact that PNCC has been suffering losses as late as 2009. Plainly, there were obvious warning signs that should have cautioned petitioners on the illegality of the gratuity benefits in issue, given that they were members or former members of the PNCC Board at the time relevant to the case.

In sum, the COA did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the gratuity benefits granted directors and officers during the years 2007 to 2010 and finding petitioners solidarily liable for the disallowed amount of PHP 90,784,975.21.

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[157] *Rollo*, pp. 78–79.

[158] *Torreta v. COA*, 889 Phil. 1119, 1141 (2020); *The Officers and Employees of Iloilo Provincial Government v. COA*, G.R. No. 218383, January 5, 2021; *Power Sector Assets and Liabilities Management Corp. v. COA*, G.R. No. 218310, November 16, 2021.

[159] *Strategic Alliance Dev't Corp. v. Radstock Securities Limited*, 622 Phil. 431, 476–477 (2009).

[160] *Virata v. Wee*, 813 Phil. 252, 342 (2017).

[161] *People v. Concepcion*, 43 Phil. 728, 747 (1922).

[162] *Strategic Alliance Dev't Corp. v. Radstock Securities Limited*, 622 Phil. 431, 478–479, 492–493 (2009).

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ACCORDINGLY, the instant Petition is **DISMISSED**. The Commission on Audit Resolution No. 2020-479 dated January 31, 2020 is **AFFIRMED**.

SO ORDERED.

Gesmundo, C.J., Leonen, Caguioa, Hernando, Lazaro-Javier, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and *Singh, JJ.*, concur.

APPEARANCES OF COUNSEL

Parulan Soncuya & Trinidad Law Offices for petitioners.
The Solicitor General for respondent.