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THIRD DIVISION

[G.R. No. 138598. June 29, 2001]

ASSET PRIVATIZATION TRUST, *petitioner, vs.* **SANDIGANBAYAN (5TH DIVISION) and ROSARIO M. B. OLIVARES,** *respondents.*

SYNOPSIS

Philippine Journalists, Inc (PJI) obtained loans and credit accommodation from the Development Bank of the Philippines (DBP) evidenced by written agreements. The proceeds of the loans were to be used in the purchase of publishing equipment and machinery, which were used as collaterals to secure the loans. PJI, under the control and management of its private shareholders, failed to regularly pay the monthly amortization on the loans. Thereafter, the delinquent account of PJI was transferred to the Asset Privatization Trust (APT). Subsequently, the Presidential Commission on Good Government (PCGG) sequestered all the shares of stock of PJI's private shareholders as said shares were allegedly ill-gotten wealth of Benjamin "Kokoy" Romualdez. APT adopted a "Direct Debt Buy Out" (DDBO) settlement scheme wherein the direct-debt-buy-out price as of October 31, 1989 was ₱78,551,405.93. PJI made partial payments of its loans. Respondent Olivares, a stockholder of PJI, filed with the Sandiganbayan a Motion praying that the PJI management be ordered to withdraw from the cash assets on time deposits the amount of ₱86,333,031.50 to pay in full the PJI account at APT and that thereafter APT be ordered to execute a release of the chattel mortgage and the cancellation of the assignment of the 67 percent voting rights executed by PJI in favor of DBP/APT. Hence, this petition by APT, contending that the Sandiganbayan has no jurisdiction over its person, and that the court ignored the loan documents between APT and PJI and using the so-called "DDBO" price as its basis in arriving at its ruling.

The Supreme Court ruled that although APT was not a party to the complaints, it nonetheless became a party to the particular incident subject of this case. APT never questioned the court's jurisdiction over its person and in fact admitted that it participated in the proceedings before the Sandiganbayan. The court totally

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ignored the existence of the loan contracts between PJI and DEP/APT and instead came up with its own computation of PJI's obligations to DBP/APT. The Sandiganbayan made a manifest mistake when it baselessly concluded that the DDBO price of P78,551,405.93 was the amount of PJI's actual obligation to DBP/APT as of October 31, 1989. Such DDBO price cannot be considered the obligation of PJI because the price was not computed on the basis of the loan contracts but on the basis of a possible sale, the terms and conditions of which were yet to be discussed.

SYLLABUS

1. **REMEDIAL LAW; COURTS; JURISDICTION; LACK OF JURISDICTION OVER PERSON OF DEFENDANT MAY BE WAIVED EITHER EXPRESSLY OR IMPLIEDLY.—** In *La Naval Drug Corporation v. Court of Appeals,* the Court taught that "lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise he shall be deemed to have submitted himself to that jurisdiction."

2. **ID.; EVIDENCE; SUPREME COURT IS NOT A TRIER OF FACTS AND FACTUAL FINDINGS OF SANDIGANBAYAN ARE CONCLUSIVE UPON SUPREME COURT; EXCEPTIONS.—** Although the computation of PJI's outstanding loan obligation to APT may, in a sense, be regarded as factual in nature, this consideration is not a bar to a review by this Court. True, the "Supreme Court is not a trier of facts and the factual findings of the Sandiganbayan are conclusive upon the Supreme Court. [But there are exceptions to this rule, some of which are as follows:] (1) where the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts, and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence of record." A cursory examination of the records of this case will show that the Sandiganbayan's factual computations fall under exceptions (2) and (4) and are therefore not conclusive on this Court. In quite

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another sense, this computation can be termed "legal" and not factual, because it is based on a wrong legal premise — that the obligation of PJI should be computed on the basis of the DDBO price.

3. ID.; ID.; ADMISSIBILITY; DOCUMENTS ARE INADMISSIBLE AND OF NO PROBATIVE VALUE IF THEIR ORIGIN AND AUTHENTICITY ARE UNCERTAIN.— Unquestionably, the loan obligation of PJI is interest-bearing. The rate of interest under the loan contracts is 3 percent *above the borrowing rate of DBP.* The interest rate of 12 percent used by the Sandiganbayan appeared only in private respondent's affidavit, which was submitted to the court *a quo.* An examination of this affidavit, however, readily shows that the rate of interest was unilaterally arrived at by private respondent herself through self-serving assumptions and conjectures, based on unsigned documents. Incidentally, these documents, which were also given weight and consideration by the Sandiganbayan in its computation, are inadmissible and of no probative value, as their origin and authenticity are uncertain.

4. COMMERCIAL LAW; PRIVATE CORPORATIONS; CORPORATION CODE; SECTION 31 THEREOF PROVIDES THAT GUILTY DIRECTORS OR OFFICERS ARE THE ONES WHO SHOULD BE LIABLE FOR DAMAGES SUFFERED BY THE CORPORATION.— In any event, if PJI suffered damage (liability for payment of additional interests and penalties) due to the alleged negligence of its officers and directors — the PCGG nominees — it is not correct to shift that damage (loss of income from being prevented to collect additional interests and penalties) to the creditor, DBP/APT. There is no law authorizing such shifting of damage. Section 31 of the Corporation Code provides that the guilty directors or officers are the ones who should be liable for the damages, if any, suffered by the corporation.

5. CONSTITUTIONAL LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); WHEN PCGG OR ANY OF ITS MEMBERS MAY BE HELD CIVILLY LIABLE.— If Respondent Olivares really believes that the PCGG nominees mismanaged PJI, then her remedy is to proceed against the nominees themselves, instead of manufacturing excuses to evade payment of PJI's validly contracted obligations. "In *Chavez v. Sandiganbayan*, this Court ruled that the PCGG or any of its members may be held

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civilly liable if they did not act in good faith and within the scope of their authority in the performance of their official duties."

6. **POLITICAL LAW; PUBLIC OFFICERS; GOVERNMENT SHOULD NOT BE MADE TO SUFFER FOR ALLEGED NEGLIGENCE OR MALFEASANCE OF OFFICERS WHO HAVE ACTED BEYOND SCOPE OF THEIR AUTHORITY.—** More important, even assuming *arguendo* that the PCGG nominees were negligent, such negligence, not having been committed by the government, cannot be allowed to prejudice the latter. As this Court stated in *Commissioner of Internal Revenue v. Proctor & Gamble Philippine Manufacturing Corporation*, "[t]he errors of [government] officers should never be allowed to jeopardize the government's financial position." In other words, the government should not be made to suffer for the alleged negligence or malfeasance of officers who have acted beyond the scope of their authority.

7. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; PARTIES BOUND BY TERMS OF THEIR CONTRACT, WHICH IS THE LAW BETWEEN THEM.—** The one-sidedness of the anti-graft Court's ruling becomes even more evident when considered in the light of the existing loan contracts. In those contracts, PJI expressly agreed, among other things, to the rate of interest to be charged on its credit accommodations. It also obligated itself to pay penalties and additional interest in case it failed to pay the principal obligations after a specified period of time. Since its obligations under the contracts have not been terminated by any of the valid modes of extinguishing obligations, the fulfillment thereof should clearly be upheld. It is basic that parties are bound by the terms of their contract, which is the law between them. Clearly, the Sandiganbayan cannot override the provisions of the contracts between PJI and DBP/APT.

8. **ID.; ID.; OBLIGATIONS; IF ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN CONTRACTING PARTIES AND SHOULD BE COMPLIED WITH IN GOOD FAITH.—** The Sandiganbayan's ruling, which decreed the nonpayment of the penalties and the additional interest and the use of a 12 percent interest rate, constituted an evasion of the terms and conditions of the valid and existing contracts. Such willful, unjustifiable and legally untenable evasion should not be countenanced; it goes against the provision of the law, which states

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that "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."

9. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; WITH RESPECT TO PETITIONER IN CASE AT BAR, QUESTIONED RESOLUTION WAS A FINAL DISPOSITION, WHICH MAY ALREADY BE THE SUBJECT OF A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.—** A cursory examination of the assailed Resolution's *fallo* readily shows that such Resolution is a final, not merely an interlocutory, order insofar as APT is concerned. The anti-graft court having completely disposed of the entire matter concerning APT, there was nothing more to be done in that regard. Clearly therefore, *with respect to APT*, the questioned Resolution was a final disposition, which may already be the subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court.

SANDOVAL-GUTIERREZ, *J.*, dissenting opinion:

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; ONLY A JUDGMENT OR FINAL ORDER OR RESOLUTION CAN BE SUBJECT OF APPEAL UNDER RULE 45, RULES OF COURT.—** Firstly, the mode of appeal resorted to by petitioner APT is improper and legally impermissible. APT denominated its petition as an "appeal by *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure." It is mandated in Section 1 of said Rule 45 that the appeal to this Court can be made only when the challenged act is a "*judgment* or *final* order or resolution." It is elementary that a judgment, order or resolution is *final* in nature if it *completely disposes of the merits of the entire case, such that there is nothing more for the court to do in the case after its issuance.*

2. **ID.; ID.; ID.; INTERLOCUTORY ACTS NOT APPEALABLE; CASE AT BAR.—** What is assailed in the present petition is the Resolution of the Sandiganbayan determining the loan obligation of PJI with APT after ruling that it has jurisdiction over the said incident. This is only an incident in Civil Case No. 0035 pending before the Sandiganbayan. The complaint in the said civil case instituted by the Republic of the Philippines (represented by the PCGG) against Benjamin "Kokoy" Romualdez, *et al.* is for "reconveyance, reversion, accounting, restitution and damages," wherein the Republic claims that certain properties (including the PJI) held by the agents and dummies of Benjamin Romualdez are

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actually owned by him as part of his ill-gotten wealth. Whether or not the stockholders of PJI are really dummies of Benjamin Romualdez, and whether or not their respective shareholdings are beneficially owned by Romualdez, are matters which the Republic has yet to prove and establish in Civil Case No. 0035. Clearly, then, the assailed Resolutions of respondent Sandiganbayan are merely interlocutory acts, *the merits of the main complaint in the civil case not having been resolved as yet.*

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*, THE PROPER REMEDY TO ASSAIL THE JURISDICTION OF THE SANDIGANBAYAN.—** Considering further that the petitioner is assailing *mainly* the *jurisdiction* of the Sandiganbayan on the subject incident, the proper mode of appeal by petitioner should have been a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

4. **ID.; CRIMINAL PROCEDURE; JURISDICTION; SANDIGANBAYAN; HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER CASES INVOLVING SEQUESTERED PROPERTIES AND ILL-GOTTEN WEALTH; CASE AT BAR.—** On the issue of jurisdiction, the Sandiganbayan, in its questioned Resolutions, cited Supreme Court rulings holding that in cases where properties, funds, moneys, and assets are sequestered by the PCGG on the claim by the Republic of the Philippines that they are ill-gotten wealth, the jurisdiction of the Sandiganbayan over them is original and exclusive. The Sandiganbayan has original jurisdiction over Civil Case No. 0035 because it involves sequestered properties and alleged ill-gotten wealth, specifically PJI's properties and assets sequestered by the PCGG. In fact, in the case of *PJI* and *Jaime A. Cura vs. The Sandiganbayan and Rosario M.B. Olivares* (G.R. No. 106209), this Court, in an *en banc* Resolution dated October 8, 1993, held that PJI is a "sequestered corporation" and is "under provisional takeover" by the PCGG. That jurisdiction vested in the Sandiganbayan over Civil Case No. 0035 and all its incidents continue until the said court renders judgment on all the issues therein, including the incident subject of this petition.

5. **ID.; EVIDENCE; FINDINGS OF THE SANDIGANBAYAN, GENERALLY CONCLUSIVE.—** *Finally,* petitioner APT questions the accuracy in the computation of the outstanding loan obligation of PJI with APT, including interest, as determined by respondent Sandiganbayan in its assailed Resolutions. Suffice it to

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say that this issue is *factual* in nature which this Court is not bound to review since it is not a trier of facts. It is basic that the findings of the Sandiganbayan on factual issues are generally conclusive upon the Supreme Court, in the absence of a showing that matters of substance have been ignored or disregarded which would be sufficient to arrive at a conclusion different from that which was made by the said respondent Sandiganbayan.

6. **CIVIL LAW; OBLIGATIONS; FINANCIAL INSTITUTIONS BOUND TO STATE THE ACTUAL VALUE OF THE ACCOUNT OR ASSET BEING TRANSFERRED TO ANOTHER GOVERNMENT AGENCY; CASE AT BAR.—** Anent this issue, the Sandiganbayan correctly ruled that the amount of ₱58,850,000.00 "stated in Proclamation 50 and 50-A to be the transfer value of the PJI Account, should actually represent the real value of the loan obligation at the time of the transfer. DBP cannot, and should not, be expected to undervalue any loan obligation being thus transferred as there can be no valid reason for DBP to undervalue any such amount. On the contrary, DBP, or any financial institution for that matter, is duty bound to state the actual value of the account or asset being transferred, considering that such amount represents the total government exposure on the unpaid account and which could be the basis of any future valuation for the sale or transfer thereof."

7. **ID.; ID.; OFFER; ACCEPTANCE OF OFFER TO NEGOTIATE PRECLUDES ANOTHER OFFER AND BARGAINING FOR A HIGHER PRICE.—** Being an offer, the DDBO was a maximum price which would have gone lower if the Board chaired by Mr. Enrique M. Joaquin had decided to enter into the negotiations. A lender or creditor does not make an offer and then bargain for a higher price once the borrower accepts the offer to negotiate. In the ordinary course of business, a lender would be willing to go lower, never higher, if the borrowing corporations decide to liquidate their obligations. More so under the circumstances of this case.

8. **ID.; ID.; REPUBLIC ACT NO. 7181; PRIVATIZATION; PRICE OF ASSETS TO BE REVERTED BACK TO PREVIOUS OWNERS SHOULD NOT BE LESS THAN THE ORIGINAL PURCHASE PRICE.—** It should also be noted that Republic Act No. 7181 imposes as the only condition for the return of firms such as PJI to its owners that the price should not be less than the original purchase price.

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9. ID.; ID.; IMPOSITION OF PENALTIES, INTERESTS AND SURCHARGES FOR DELAYED PAYMENTS, NOT JUSTIFIED; CASE AT BAR.— In its assignment of errors, APT states that the respondent court erred in imposing only the regular rate of interest. It argues that penalties and surcharges should also be imposed. The respondent Sandiganbayan's ruling on this issue is significant because it emphasized the unfairness of fiscal agents or government-installed managers bringing a viable and profitable business to ruin and harm while allowing unpaid interest to multiply or accumulate. Under these circumstances, penalties, interests and surcharges are not justified. It is also unfair to state that the rate of 12% used is based on respondent Rosario Olivares' self-serving assumptions and unsigned documents. The computations were made by APT itself and have never been denied. Respondent Olivares also alleged in her affidavit that she went to see then APT Executive Trustee Ramon Garcia sometime in 1988 *who* informed her that 12 percent would be charged on the accounts transferred to APT. This allegation may be self-serving but it is not denied by APT. The DDBO price of ₱78,551,405.93 confirms the 12% rate of interests but belies the ₱122,736,358.48 of additional interests and penalty charges which APT now imposes to prevent the rightful return of the unsequestered properties to their owners. The unreasonable and unjustified mode of accounting asserted by APT is most blatant in its imposition of interests and penalties. After charging regular interests in the amount of ₱25,422,204.50, APT inflicts penalty charges of ₱30,675,679.76 and additional interest of ₱92,060,678.62 for delayed payments. APT justifies its charges by stating that it should not be penalized for the mismanagement of PJI by PCGG. The PJI Board composed of PCGG appointees did not pay installments on the loan inspite of there being ample funds for the purpose. For the failure to pay on time by government-nominated officers, and the diversion of funds to questionable time deposits and other disbursements, APT now claims that it is not its fault that PJI under the PCGG defaulted in the payment of obligations. The unfairness of the APT imposition is patent and clear. The attempts to distance APT from PCGG are misplaced. So are the efforts to render irrelevant the acts of PCGG-APT managers in the computations.

10. ID.; ID.; SEQUESTRATION; DISTINCTION BETWEEN THE RELATIONSHIPS OF ORDINARY BUSINESS BORROWERS AND LENDERS FROM THOSE BETWEEN SEQUESTERED FIRMS AND GOVERNMENT FINANCING INSTITUTIONS.— In interpreting the loans, payments, and

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accounts involved in this case, it should be borne in mind that there is a significant distinction between the relationships of ordinary business borrowers and lenders from those between sequestered firms and government financing institutions. The lender is a government institution. The sequestered borrower is under the control of fiscal agents of the PCGG, another government agency. It is not unusual for members of the board of the lender institution *to be also* the directors and policy makers of the sequestered borrower. In PJI's case, however, DBP and later its successor-in-interest, APT, left the full control and management thereof to PCGG-designated representatives.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jessica D.F. Fernandez for private respondent.

DECISION

PANGANIBAN, *J.*:

Law and logic require that a contract be used as basis and foundation for the accurate determination of the extent and the amount of obligations arising therefrom. In the determination of these obligations, the Sandiganbayan — in the present case — cannot override the valid and existing provisions embodied in the loan documents by supplanting them with extraneous matters, which the parties have not mutually agreed upon.

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to nullify the January 25, 1994[1] and the May 6, 1999[2] Resolutions of the Sandiganbayan in Civil Case No. 0035. The earlier Resolution disposed as follows:

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[1] This Resolution was dated January 24, 1993, but promulgated, without any explanation only a year later, on January 25, 1994. It was penned by Justice Romeo M. Escareal and concurred in by Justices Augusto M. Amores and Narciso T. Atienza.

[2] This Resolution, dated July 24, 1998, denying APT's February 16, 1994 Motion for Reconsideration, was promulgated only on May 6, 1999 – more than

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"WHEREFORE, it is hereby adjudged that the loan obligation of the Philippine Journalists, Inc. (PJI) to Asset Privatization Trust (APT) as of October 30, 1992 was in the total amount of ₱106,821,912.06, to which the total amount of ₱120,666,237.00, admitted to have been assigned by PJI to APT, should be applied. APT is hereby ordered to return the overpayment of ₱13,844,324.94 to PJI and to execute a Deed of Release of the Chattel Mortgage executed by PJI in favor of DBP within thirty (30) days from receipt hereof. The Deed of Assignment of Voting Shares, dated June 17, 1977, and the Supplement to the Deed of Assignment, dated January 16, 1979, are hereby cancelled and declared of no further legal force or effect.

SO ORDERED."

The latter Resolution denied petitioner's motion for reconsideration.

The Facts

From September 15, 1976 to March 31, 1981, Philippine Journalists, Inc. (PJI) obtained various U.S. dollar-denominated loans and credit accommodation from the Development Bank of the Philippines (DBP). Several written agreements,[3] embodying the manner of payment and other terms and conditions of the loans and credit accommodation, were accordingly entered into by PJI and DBP. The proceeds were purportedly used to purchase publishing equipment and machinery, including a Harris N-1650 web offset press and a high-speed saddle stitch binder. These very same pieces of equipment were used as collateral to secure the loans. In addition, 67 percent of the total capital stock of PJI was ceded to DBP, under certain conditions spelled out in deeds of assignment.[4]

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five years from the promulgation of the main Resolution and the filing of the Motion for Reconsideration. Penned by Justice Minita V. Chico-Nazario with the concurrence of Justices Narciso S. Nario, Catalino R. Castañeda, Jr. and Alfredo L. Legaspi; and the dissent of Justice Anacleto D. Badoy, Jr.

[3] Annexes "C", "F" and "I" of the Petition; *rollo*, pp. 109-115, 130-132 & 143-144.

[4] Annexes "E" and "H"; *rollo*, pp. 125-126, 140-141.

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From 1979 to February 1986, the PJI, under the control and management of its private shareholders, failed to regularly pay the monthly amortization on the loans granted by DBP.[5]

After President Corazon C. Aquino took over the reins of government in 1986, Administrative Order No. 14 was issued. Pursuant thereto, DBP transferred the delinquent PJI account in favor of the government through the Committee on Privatization (COP), which then turned it over in trust to the Asset Privatization Trust (APT), herein petitioner.

Subsequently, on February 19, 1987 and April 28, 1987, the Presidential Commission on Good Government (PCGG) sequestered all the shares of stock of PJI's private shareholders, on the ground that these shares allegedly constituted ill-gotten wealth of Benjamin "Kokoy" Romualdez.

Meantime, as part of its efforts to dispose of the many assets — including the PJI account — transferred to it, APT adopted a "Direct Debt Buy Out (DDBO)" settlement scheme. Pursuant thereto, APT Associate Trustee Jose C. Sison wrote the following letter[6] to PJI:

"Ref. No. PJI03-01
November 27, 1989

PHILIPPINE JOURNALISTS, INC.
The Journal Bldg., Railroad St.,
Between 19th and 20th Sts.
Port Area, Manila

Attention: Mr. Enrique M. Joaquin
Chairman of the Board

Gentlemen:

This is to acknowledge receipt of your letter dated 18 November 1989.

Based on the amount of obligation of Philippine Journalists, Inc. transferred to the Asset Privatization Trust (APT), please be informed that the direct-debt-buy-out (DDBO) price as of 31 October 1989 is ₱78,551,405.93.

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[5] Schedule of payments, *rollo*, p. 445.

[6] *Rollo*, p. 362.

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We would gladly discuss the details of said amount together with the terms and conditions of a DDBO settlement with you at your convenience.

Very truly yours,

Sgd.
JOSE C. SISON
Associate Executive Trustee"

As will be explained later, this letter was not acted upon by PJI. No DDBO settlement was reached by the parties. Neither was such scheme for PJI approved by the Committee on Privatization, as required by law.

Under the management of PCGG nominees, PJI made partial payments of its loans. As of October 31, 1992, the payments, which totaled ₱98,952,699.12, left a balance of ₱216,801,156.41 computed in accordance with the loan documents, detailed as follows:[7]

I.	Unmatured obligations	₱ 0.0
II.	Arrearages:	
	a. Principal past due	₱ 62,450,835.91
	b. Advances	6,191,757.62
	c. Regular interest	25,422,204.50
	d. Additional interest	92,060,678.62
	e. Penalty charges	30,675,679.76
	Total balance still due	₱216,801,156.41

On or about March 23, 1992, Respondent Olivares, as stockholder of PJI, filed with the Sandiganbayan a Motion[8] praying "that the PCGG-APT controlled management of PJI be now ordered to withdraw from the cash assets on time deposit the amount of ₱86,333,031.50 to pay in full the PJI account at APT [and] that upon request of such payment, APT be ordered to execute a release of the chattel mortgage and the cancellation of the assignment of the 67 percent voting rights executed by PJI in favor of DBP/APT."

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[7] Annex "T" of Petition; *rollo*, p. 363. See also Assailed Resolution, p. 6; *rollo*, p. 67.

[8] Annex U, Petition; *rollo*, pp. 364-378.

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The Sandiganbayan subsequently set the incident for hearing "to settle once and for all the issue concerning the actual amount of PJI's financial accountability to APT." At the hearing, the parties agreed to submit affidavits and supporting documents, subject to additional direct and cross-examination of the affiants.[9] Upon resumption of the hearing at a later date, counsel for APT moved to be allowed to cross-examine the affiants who executed affidavits in support of the Olivares Motion. The Sandiganbayan, however, just declared the incident submitted for resolution, without prejudice to its determination of the imperative necessity of requiring cross-examination of the affiants. It subsequently rendered the assailed Resolutions.

Ruling of the Sandiganbayan

The Sandiganbayan disregarded the computation submitted by PJI and its chairman of the board, Enrique M. Joaquin. This computation, which was based on the loan contracts executed between PJI and DBP, detailed the arrearages of PJI in the total amount of ₱216,801,156.41 as of October 31, 1992.

Instead, the Sandiganbayan made its own computation using as basis the direct debt buy out price of ₱78,551,405.93, which it unilaterally considered as the amount of PJI's obligation to APT as of 31 October 1989. To this amount it added 12 percent annual interest computed up to October 30, 1992. It charged "only the regular rate of interest because there is no factual and legal basis for APT to charge additional interest and surcharges from October 30, 1989 considering that, *firstly,* at the time said account was transferred to APT, the stockholders of PJI have been deprived of the management of the corporation as it was completely taken over by PCGG even after the sequestration on the shares of the other stockholders had been automatically lifted (as ruled by the Supreme Court in G.R. No. 92376), with the connivance and/or inaction of DBP/APT; *secondly,* during the time said corporation was under the control of PCGG nominees and appointees, there were reported mismanagement and/or massive dissipation of funds of the corporation which were verified by audit reports of COA and of an independent auditor, Carlos Valdes and Company, which have not

[9] Resolution, p. 2; *rollo*, p. 63.

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been refuted by APT; and *thirdly,* APT is not a lending institution which should be charging more than the legal rate of interest for accounts transferred to it."

It further ruled as follows:

"No penalties, surcharges or additional interest should be added from October 30, 1989 on the PJI loan stated to be in the amount of ₱78,551,405.93 inasmuch as the failure to pay said amount at that time was due to the premeditated inaction and/or deliberate refusal to pay by the PCGG-appointed managers, even if there was, admittedly, substantial cash earned by the corporation but which they had, instead, placed in *money market placements, purchase of useless equipment and payment of big salaries and allowances* to themselves. Penalties, surcharges or additional interest are forms of damages payable by one who had incurred in delay in the performance of its obligation. However, if such delay is due to an unforeseen event or an occurrence which could render it impossible for the debtor to fulfill his obligation in a normal manner, the debtor should not be responsible for any damage caused by such delay.

In this case, any delay in the payment after PCGG took over the corporation, which was even before October 1989, cannot be attributable to the corporation itself or to any of its stockholders. PJI should not, therefore, be charged such penalties, surcharges and additional interest for the inaction and mismanagement of the PCGG-appointed officers and directors."

Hence, this Petition by APT.

Issues

Petitioner interposes the following issues for the resolution of the Court:

"I

Respondent Sandiganbayan acted without jurisdiction in resolving the present incident involving the obligation of PJI to DBP/APT arising from the loan documents executed by PJI in favor of DBP, despite the fact that it is not related or incidental to the ill-gotten wealth case, Civil Case No. 0035.

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"II.

Assuming that respondent Sandiganbayan has jurisdiction, it seriously erred in disregarding the loan documents which have not been superseded by any legal act or mutual agreement, and in utilizing the unapproved direct-debt-buy-out price of the PJI account, as basis for determination of the actual obligation of PJI to APT.

"III

Assuming that respondent Sandiganbayan has jurisdiction, it seriously erred in holding that no interest, penalties and surcharges should be imposed on the loan from October 31, 1989 and that only the regular rate of interest should be imposed on the loans from October 30, 1989.

"IV

The Resolutions promulgated on January 25, 1994 and May 6, 1999 of Respondent Sandiganbayan contravene Sec. 4 (B), Proclamation No. 50 which provides for APT's mandate of "generating the maximum cash recovery for the national government."

Simply stated, the issues may be summed up into two: (1) Did the Sandiganbayan have jurisdiction over APT? (2) Did the Sandiganbayan commit reversible error in ignoring the loan documents between APT and PJI and in using the so-called "DDBO" price as its basis in arriving at its ruling?

The Court's Ruling

The Petition[10] is meritorious insofar as the second and main issue is concerned.

Preliminary Issue:
Sandiganbayan Has Jurisdiction Over APT

APT contends that the Sandiganbayan has no jurisdiction over it, because it was not a party in the original and amended Complaints in Civil Case No. 0035. Although, admittedly, APT was not a party to the complaints, it nonetheless became a party to the particular incident, subject of this present case. Since it voluntarily entered

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[10] This case was deemed submitted for resolution upon receipt by the Court on December 23, 1999 of petitioner's Reply to private respondent's August 5, 1999 Comment.

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its appearance and actively participated in the proceedings with respect to such incident, even without being summoned, the Sandiganbayan acquired jurisdiction over it.

In *La Naval Drug Corporation v. Court of Appeals*,[11] the Court taught that "lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise he shall be deemed to have submitted himself to that jurisdiction."

In the present case, APT never questioned the court's jurisdiction over its person before the Sandiganbayan. The issue it halfheartedly raised before the court *a quo* pertained to jurisdiction over the subject matter of PJI's loans. It in fact admitted that it participated in the proceedings before the Sandiganbayan to protect its interests.

APT is now estopped from questioning the Sandiganbayan's jurisdiction over its person.

Main Issue:
SB Resolutions Are Judicially Unconscionable, Bereft of Legal Basis and Grossly Disadvantageous to the Government

The assailed Sandiganbayan Resolutions are judicially unconscionable, bereft of legal basis and grossly disadvantageous to the government.

The anti-graft court totally ignored the existence of the loan contracts between PJI and DBP/APT. These contracts had specified the terms and conditions of the borrowing, the rate of interest, and the additional interests and penalties due in case of default. The anti-graft court came up, instead, with its own computation of PJI's obligations to DBP/APT, using as sole basis the "direct debt buy out (DDBO) price," together with an interest rate of 12 percent. It

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[11] 236 SCRA 78, 86, August 31, 1994, per Vitug, *J.*

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then peremptorily concluded that PJI had overpaid APT in the amount of ₱13,844,324.94.

The Sandiganbayan's Computation Has No Legal Basis

Although the computation of PJI's outstanding loan obligation to APT may, in a sense, be regarded as factual in nature, this consideration is not a bar to a review by this Court. True, the "Supreme Court is not a trier of facts and the factual findings of the Sandiganbayan are conclusive upon the Supreme Court. [But there are exceptions to this rule, some of which are as follows:] (1) where the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts, and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence of record."[12] A cursory examination of the records of this case will show that the Sandiganbayan's factual computations fall under exceptions (2) and (4) and are therefore not conclusive on this Court. In quite another sense, this computation can be termed "legal" and not factual, because it is based on a wrong legal premise — that the obligation of PJI should be computed on the basis of the DDBO price.

In any event, the Sandiganbayan made a manifest mistake when, from the above-quoted November 27, 1989 letter of APT Trustee Jose C. Sison to PJI Chairman Enrique Joaquin it baselessly and erroneously concluded that the DDBO price of ₱78,551,405.93 stated therein was the amount of PJI's actual obligation to DBP/APT as of October 31, 1989.

Although the letter designated the amount of ₱78,551,405.93 as the DDBO price, it did not say that this amount was, in fact, PJI's obligation to APT. Moreover, the letter merely offered to "discuss the details of said amount together with the terms and conditions of a DDBO settlement x x x."

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[12] *Tecson v. Sandiganbayan*, 318 SCRA 80, November 16, 1999, per Quisumbing, *J.*

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Such DDBO price cannot be considered as the obligation of PJI, because that price was not computed on the basis of the loan contracts, which constituted the governing law between it and DBP/APT with respect to the former's loan obligations. Rather, the price was computed on the basis of a possible sale, the terms and conditions of which were yet to be discussed. The "DDBO price" was merely a part of a possible DDBO settlement. It was merely a preliminary amount computed for the purpose of disposing of non-performing assets.

Since the letter further states that the terms and conditions of a DDBO settlement at the DDBO price were still to be discussed, it is clear that such settlement was not yet a definite, final and binding matter between APT and PJI. For it to be so, two things were necessary.

One, since the DDBO price was merely a part of a possible debt settlement, PJI and APT needed to discuss and agree on the "terms and conditions" referred to in the Sison letter.

Two, even assuming the presence of circumstances justifying the disposition of the PJI account through a negotiated DDBO sale, the COP — as required under Proclamation No. 50 — had to approve of the settlement and of PJI as the buyer.[13]

From the records, it is very clear that neither of these two requirements were satisfied. In the very Motion which initiated this case, private respondent openly stated that "Mr. Joaquin ignored the offer in the letter of Atty. Sison to 'discuss the details of the said amount together with the terms and conditions of [the] DDBO

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[13] "Sec. 12. Powers.- The Trust shall, in the discharge of its responsibilities, have the following powers:

"x x x x x x x x x

"(2) *Subject to its having received the prior written approval of the Committee to sell such asset at a price and on terms of payment and to a party disclosed to the Committee,* to sell each asset referred to it by the Committee to such party and on such terms as in its discretion are in the best interest of the National Government, and for such purpose to execute and deliver, on behalf and in the name of the National Government, such deeds of sale, contracts and other instruments as may be necessary or appropriate to convey title to such assets." (Italics ours)

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x x x.'"[14] Sison sent to PJI a followup letter[15] dated January 11, 1990, stating "that the APT Board has set *31 March 1990* as the deadline for the implementation of DDBOs. *As such, we would like to find out from you if PJI is still interested in this mode of settlement.*"

PJI, however, did not meet the deadline. As stressed by private respondent herself in her own Motion, it was only on *November 21, 1991*, way past the deadline, that the PJI stockholders made an offer of "payment in full settlement of the said obligation under [the] direct debt buy out scheme [in] the amount of *₱60 Million.*"[16] But, understandably, "this offered payment was ignored by APT,"[17] because the acceptance of the offer of a DDBO settlement had already lapsed at this time. Furthermore, APT's offer was for the DDBO price of ₱78,551,405.93; yet, the PJI stockholders made a counteroffer of ₱60 million only. Since APT ignored their counteroffer, as private respondent herself stated, it becomes all the more clear that no agreement on a DDBO settlement was perfected between APT and PJI.

Equally important, the necessary COP approval of the disposition of PJI's loan to PJI as buyer, at the DDBO price and other "terms and conditions," was not obtained or even sought.

Obviously and clearly, the use of the DDBO price can be made only in connection with the DDBO mode of settlement. Outside the latter, the former would be misplaced, irrelevant and immaterial.

Unquestionably, no DDBO settlement was perfected between PJI and APT. Hence, the Sandiganbayan's use of the DDBO price in the computation of PJI's actual obligation was completely bereft of basis. At this point, only the original loan documents bind the parties.

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[14] Paragraph 5 of Motion; *rollo*, p. 366.

[15] Annex B-1 of Motion; *rollo*, p. 374. (Italics ours.)

[16] November 21, 1991, attached as Annex "J" of private respondent's affidavit; rollo, p. 482. (Italics ours.)

[17] Paragraph 7 of Motion; *rollo*, p. 366.

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The Sandiganbayan, in its disposition, not only considered the obligations of PJI fully paid. It even over-extended itself when it ordered the APT "to return the overpayment of ₱13,844,324.94 to PJI."

If, indeed, PJI "overpaid" DPB/APT, why did it become necessary for the latter to offer a DDBO settlement to the former? Why did private respondent still counteroffer P60 million (which APT ignored)? If she believed, as she so strongly argues now, that PJI overpaid APT, why did she not even mention this claim in 1991 when she made her counteroffer?

Interest Rate on PJI's Obligations Was Not Justified

The Sandiganbayan computed interest at the rate of 12 percent per annum on the amount of ₱78,551,405.93. The use of this interest rate is not supported by the law or by substantial evidence; in fact, it is contrary to the law and to the evidence on record.

Unquestionably, the loan obligation of PJI is interest-bearing. The rate of interest under the loan contracts is 3 percent *above the borrowing rate of DBP*. The interest rate of 12 percent used by the Sandiganbayan appeared only in private respondent's affidavit,[18] which was submitted to the court *a quo*. An examination of this affidavit, however, readily shows that the rate of interest was unilaterally arrived at by private respondent herself through self-serving assumptions and conjectures, based on unsigned documents.[19] Incidentally, these documents, which were also given weight and consideration by the Sandiganbayan in its computation, are inadmissible and of no probative value, as their origin and authenticity are uncertain.[20]

Even assuming *arguendo* that the 12 percent interest rate was acceded to by APT, it must be noted that this rate pertained to the

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[18] Annex CG-I, Petition; *rollo*, pp. 453-461.

[19] *Rollo*, pp. 465, 467.

[20] *Esperanza Borillo v. CA*, 209 SCRA 130, May 21, 1992; *Bernardo Jimenez v. NLRC*, 256 SCRA 84, April 2, 1996; *Virgilio Callanta v. NLRC*, 225 SCRA 526, August 20, 1993.

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DDBO price computation, NEVER to the actual obligation of PJI. It is worth repeating here that since the DDBO settlement never came into fruition, the DDBO price could not be used; neither could the 12 percent interest be employed in computing the actual obligation of PJI.

Considering that the evidence on record shows the existence of loan contracts duly executed by PJI, and that the interests based on those loan contracts appear on record, the Sandiganbayan should have used these amounts of interest, instead of an assumed base and an assumed rate. Furthermore, the use of the legal rate of interest in this instance is not justified, since there is a stipulated rate of interest in the loan contracts.

The fact that APT is not a lending institution is an insufficient justification for barring it from requiring the payment of interests, additional interests and penalties, all in accordance with the stipulations in the loan contracts. The loan accounts of PJI with DBP, the lending institution, were assigned to APT. As assignee, APT merely stepped into the shoes of DBP; thus, whatever the latter could do or charge under the loan contracts, the former also could. This is not disputed.

Penalties and Additional Interests Were Disregarded

The Sandiganbayan considered the PCGG takeover as an unforeseen event, which rendered impossible the fulfillment of PJI's obligation in a normal manner. It attributed solely to PCGG the delay in the payment after the takeover. It therefore held that, because the PCGG nominees had allegedly mismanaged PJI, then PJI did not have to fulfill its contractually assumed obligation to pay penalties and additional interests.

PJI was, however, already in delay long before the allegedly unforeseen event of its takeover by PCGG. It started paying monthly amortizations only in August 1986. Thus, the subsequent occurrence of an event — assuming *arguendo* that it was fortuitous — cannot exempt[21] it from fulfilling its contractual obligation of paying penalties and additional interests.

[21] See Art. 1170, Civil Code.

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Furthermore, it should be made clear that the debtor of DBP/APT is the *corporation* PJI, *not* the private stockholders. When the PCGG nominees took over the PJI management, the PJI, not its stockholders, remained the debtor. Thus, the fact that it became impossible for the private stockholders, particularly private respondent, to act upon PJI's obligation has nothing to do with and should not affect the creditor DBP/APT. The private stockholders are not the debtors of DBP/APT. That it was allegedly impossible for the former to effect payment of the loan of PJI does not mean that it was also impossible for the latter to fulfill its loan obligations. The impossibility of PJI's fulfillment of its obligation not having been established, the consequent obligation to pay penalties and additional interests cannot be deemed extinguished, contrary to the finding of the Sandiganbayan.

Not Government, But Negligent Officials, Could Be Liable

In any event, if PJI suffered damage (liability for payment of additional interests and penalties) due to the alleged negligence of its officers and directors — the PCGG nominees — it is not correct to shift that damage (loss of income from being prevented to collect additional interests and penalties) to the creditor, DBP/APT. There is no law authorizing such shifting of damage. What the law clearly provides is that the guilty directors or officers are the ones who should be liable for the damages, if any, suffered by the corporation. Section 31 of the Corporation Code states:

"Sec. 31. Liability of directors, trustees or officers.-Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are *guilty of gross negligence or bad faith in directing the affairs of the corporation* or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees *shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.*" (Italics supplied)

Moreover, this Court cannot, in the present case, rule that the PCGG nominees mismanaged PJI and neglected their duty of paying PJI's loan obligations. The PCGG *nominees* are not parties to this case; hence, they have not been heard. Elementary due process

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bars any faultfinding or finger pointing in their direction at this time.

If Respondent Olivares really believes that the PCGG nominees mismanaged PJI, then her remedy is to proceed against the nominees themselves, instead of manufacturing excuses to evade payment of PJI's validly contracted obligations. "In *Chavez v. Sandiganbayan*, this Court ruled that the PCGG or any of its members may be held civilly liable if they did not act in good faith and within the scope of their authority in the performance of their official duties."[22]

More important, even assuming *arguendo* that the PCGG nominees were negligent, such negligence, not having been committed by the government, cannot be allowed to prejudice the latter. As this Court stated in *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*,[23] "[t]he errors of [government] officers should never be allowed to jeopardize the government's financial position." In other words, the government should not be made to suffer for the alleged negligence or malfeasance of officers who have acted beyond the scope of their authority.

Loan Contracts Are Still Binding

The one-sidedness of the anti-graft Court's ruling becomes even more evident when considered in the light of the existing loan contracts. In those contracts, PJI expressly agreed, among other things, to the rate of interest to be charged on its credit accommodations. It also obligated itself to pay penalties and additional interest in case it failed to pay the principal obligations after a specified period of time.[24] Since its obligations under the

[22] *Republic of the Philippines v. Sandiganbayan*, G.R. No. 142476, March 20, 2001, per Sandoval-Gutierrez, *J.*

[23] 160 SCRA 560, 565, April 15, 1988, per Paras, *J.*

[24] *See,* for example, Promissory Note dated October 12, 1978, which states that in case of default in payment of any installment, if in arrears for more than sixty days: i. additional interest based on basic loan interest rate on total past due amortizations, irrespective of age, plus ii. Penalty charge of 36% p.a. from the date amount became liable to this charge compounded monthly on the entire amount overdue [become due]. *Rollo,* p. 131.

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contracts have not been terminated by any of the valid modes of extinguishing obligations,[25] the fulfillment thereof should clearly be upheld. It is basic that parties are bound by the terms of their contract, which is the law between them.[26] Clearly, the Sandiganbayan cannot override the provisions of the contracts between PJI and DBP/APT.

As put forth by Sandiganbayan Justice Anacleto D. Badoy in his Dissent,[27] the Sandiganbayan should have computed PJI's obligation to DBP/APT strictly "in accordance with the terms and conditions of the loan documents" executed by PJI, in the absence of any showing "that such loan documents have been amended, super[s]eded or abrogated by some other act or document executed by competent authorities or by mutual agreement of the parties acting within the scope of their legal powers and rights."

[25] Art. 1231 of the Civil Code provides that "[o]bligations are extinguished:

1. By payment or performance;
2. By the loss of the thing due;
3. By the condonation or remission of the debt;
4. By the confusion or merger of the rights of creditor and debtor;
5. By compensation;
6. By novation.

Other causes of extinguishment of obligations, x x x, [are] annulment, rescission, fulfillment of a resolutory condition, and prescription. x x x."

In addition, "[d]*eath* extinguishes obligations which are of a purely personal character, apart from its extinctive effect in some contracts, such as partnership and agency. *Renunciation* by the creditor, *compromise,* fulfillment of *resolutory conditions* and arrival of *resolutory periods, rescission and nullity* of contracts, and *mutual dissent,* are also means of extinguishing obligations. In some contracts (partnership and agency) extinction may be produced by the *will of one of the parties;* the same effect is produced in the same contracts by the *change in civil status* of those who make them. Finally, although with the resulting limitations and difficulties of proof, obligations may be extinguished by the happening of *unforeseen events."* (Tolentino, *Civil Code of the Philippines,* Vol. IV, 1991 ed. p. 271). (Italics in the original.)

[26] *Santiago Jr. v. Civil Service Commission*, 178 SCRA 733, October 27, 1989; *Escano v. Court of Appeals*, 100 SCRA 197, September 25, 1980.

[27] *Rollo*, pp. 95-103.

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The Sandiganbayan's ruling, which decreed the nonpayment of the penalties and the additional interest and the use of a 12 percent interest rate, constituted an evasion of the terms and conditions of the valid and existing contracts. Such willful, unjustifiable and legally untenable evasion should not be countenanced; it goes against the provision of the law, which states that "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."[28]

Petition for Review Is the Proper Remedy

In connection with Mme. Justice Angelina Sandoval-Gutierrez' submission on the propriety of the mode of appeal, it must be stressed that, unlike private respondent, Petitioner APT was not a party to the original case filed in the Sandiganbayan for "reconveyance, reversion, accounting, restitution and damages." APT became a party only when private respondent impleaded it in her Motion dated March 23, 1992.

A cursory examination of the assailed Resolution's *fallo* readily shows that such Resolution is a final, not merely an interlocutory, order insofar as APT is concerned. The anti-graft court having completely disposed of the entire matter concerning APT, there was nothing more to be done in that regard. Clearly therefore, *with respect to APT,* the questioned Resolution was a final disposition, which may already be the subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court.[29]

WHEREFORE, the Petition is *GRANTED* and the assailed Resolutions are *NULLIFIED* and *SET ASIDE.* No pronouncement as to costs.

Vitug, and *Gonzaga-Reyes, JJ.*, concur.

Sandoval-Gutierrez, J., see dissenting opinion.

*Melo (Chairman), J., j*oins the dissenting opinion of *J.* Sandoval-Gutierrez.

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[28] Art. 1159, Civil Code.

[29] *Bairan v. Tan Siu Lay*, 18 SCRA 1235, December 28, 1966, cited in *Nepomuceno v. Salazar*, 173 SCRA 366, May 15, 1989.

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SANDOVAL-GUTIERREZ, *J.;dissenting opinion:*

I regret, I can not join the majority in their ruling.

The petition should be DENIED.

Firstly, the mode of appeal resorted to by petitioner APT is improper and legally impermissible. APT denominated its petition as an "appeal by *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure." It is mandated in Section 1 of said Rule 45 that the appeal to this Court can be made only when the challenged act is a "*judgment* or *final* order or resolution." It is elementary that a judgment, order or resolution is *final* in nature if it *completely disposes of the merits of the entire case, such that there is nothing more for the court to do in the case after its issuance.*

What is assailed in the present petition is the Resolution of the Sandiganbayan determining the loan obligation of PJI with APT after ruling that it has jurisdiction over the said incident. This is only an incident in Civil Case No. 0035 pending before the Sandiganbayan. The complaint in the said civil case instituted by the Republic of the Philippines (represented by the PCGG) against Benjamin "Kokoy" Romualdez, *et al.* is for "reconveyance, reversion, accounting, restitution and damages," wherein the Republic claims that certain properties (including the PJI) held by the agents and dummies of Benjamin Romualdez are actually owned by him as part of his ill-gotten wealth. Whether or not the stockholders of PJI are really dummies of Benjamin Romualdez, and whether or not their respective shareholdings are beneficially owned by Romualdez, are matters which the Republic has yet to prove and establish in Civil Case No. 0035. Clearly, then, the assailed Resolutions of respondent Sandiganbayan are merely interlocutory acts, *the merits of the main complaint in the civil case not having been resolved as yet.*

Considering further that the petitioner is assailing *mainly* the *jurisdiction* of the Sandiganbayan on the subject incident, the proper mode of appeal by petitioner should have been a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

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Secondly, even if we treat this petition as one for *certiorari,* still the same must fail.

On the issue of jurisdiction, the Sandiganbayan, in its questioned Resolutions, cited Supreme Court rulings[1] holding that in cases where properties, funds, moneys, and assets are sequestered by the PCGG on the claim by the Republic of the Philippines that they are ill-gotten wealth, the jurisdiction of the Sandiganbayan over them is original and exclusive.

The Sandiganbayan has original jurisdiction over Civil Case No. 0035 because it involves sequestered properties and alleged ill-gotten wealth, specifically PJI's properties and assets sequestered by the PCGG. In fact, in the case of *PJI and Jaime A. Cura vs. The Sandiganbayan and Rosario M.B. Olivares* (G.R. No. 106209), this Court, in an *en banc* Resolution dated October 8, 1993, held that PJI is a "sequestered corporation" and is "under provisional takeover" by the PCGG. That jurisdiction vested in the Sandiganbayan over Civil Case No. 0035 and all its incidents continue until the said court renders judgment on all the issues therein, including the incident subject of this petition.

As early as 1988, in the leading case of *Presidential Commission on Good Government vs. Pena,*[2] the Supreme Court, through then Chief Justice Claudio Teehankee, ruled:

"On the issue of jurisdiction squarely raised, as above indicated, the Court sustains petitioner's stand and holds that Regional Trial Courts and the Court of Appeals for that matter have no jurisdiction over the Presidential Commission on Good Government in the exercise of its powers under the applicable Executive Orders and Article XVIII, Section 26 of the Constitution and, therefore, may not interfere with and restrain or set aside the orders and actions of the Commission. Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, *all cases of the Commission regarding 'the Funds, Moneys, Assets, and Properties Illegally Acquired or misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez, their Close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees,*

[1] *PCGG vs. Pena*, 159 SCRA 556 (1988); *Soriano III vs. Yuzon*, 164 SCRA 227 (1988).

[2] *Supra.*

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whether civil or criminal, are lodged within the exclusive and original jurisdiction of the Sandiganbayan and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction subject to review on *certiorari* exclusively by the Supreme Court."

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"The law and the courts frown upon split jurisdiction and the resultant multiplicity of actions. To paraphrase the leading case of *Rheem of the Phil. Inc. vs. Ferrer, et al.,* to draw a tenuous jurisdiction line is to undermine stability in litigations. A piecemeal resort to one court and another gives rise to multiplicity of suits. To force the parties to shuttle from one court to another to secure full determination of their suit is a situation gravely prejudicial to the administration of justice. The time lost, the effort wasted, the anxiety augmented, additional expenses incurred, the irreparable injury to the public interest are considerations which weigh heavily against split jurisdiction."

This ruling in *Peña* has been consistently followed in all cases involving sequestered properties and alleged ill-gotten wealth.[3] It has not been modified or repealed.

This is not the first instance where a case involving the PJI has been raised to the Supreme Court. The following decisions may be cited:

(a) *Olaguer v. Regional Trial Court and Olivares* (170 SCRA 478 [1989]). The Supreme Court ruled that the question of whether or not it is the PCGG-installed group of Olaguer or the Olivares group which should

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[3] *PCGG vs. Peña*, 159 SCRA 556; *Soriano III vs. Yuson*, 164 SCRA 228, *Republic and Campos, Jr. vs. Sandiganbayan, et al.*, 173 SCRA 72; *Republic, et al. vs. Sandiganbayan, et al.*, G.R. No. 90046, January 11, 1990; *Republic (PCGG) vs. Sandiganbayan and Cojuangco, Jr.*, G.R. Nos. 88809 and 88858, July 10, 1991, 199 SCRA 39; *Republic of the Philippines vs. Sandiganbayan, et al.*, G.R. Nos. 90667 and 91665; November 5, 1991; *Africa vs. PCGG, et al.*, G.R. No. 83831; *PCGG, et al. vs. Sandiganbayan, et al.*, G.R. No. 85594; *Republic (PCGG) vs. Sandiganbayan, et al.*, G.R. No. 85597; *Villanueva vs. Sandiganbayan, et al.*, G.R. No. 85621, January 9, 1992; *Republic (PCGG) vs. Sandiganbayan and Panlilio*, G.R. No. 89425, February 25, 1992; *Manila Electric Company vs. Sandiganbayan, et al.*, G.R. No. 102355, May 31, 1994; *First Phil. Holdings Corp. vs. Sandiganbayan, et al.*, G.R. No. 88345, February 1, 1996; *Republic vs. Sandiganbayan, et al.*

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sit on the PJI Board is exclusively for the Sandiganbayan and not the Regional Trial Court.

(b) *Republic vs. Sandiganbayan and Olivares* (250 SCRA 530 [1991]). The Supreme Court affirmed the lifting of sequestration over the shares of the eight stockholders involved in the instant petition. The Court also affirmed the Sandiganbayan Resolution that PCGG may no longer vote the shares of the eight stockholders.

(c) *Philippine Journalists, Inc. vs. Sandiganbayan and Olivares* (G.R. No. 106209, October 5, 1993). The Supreme Court ruled that PJI was not only sequestered but it was also placed under a provisional PCGG takeover.

(d) *Asset Privatization Trust vs. Sandiganbayan and Olivares* (G.R. No. 108552, October 2, 2000). The Supreme Court sustained the legality of the PCGG-installed Board over the Olivares Board which also tried to hold a board meeting. The Court affirmed the Sandiganbayan jurisdiction over Civil Case No. 0035 when it ordered the case remanded to the Sandiganbayan and directed it to conduct further proceedings with all deliberate dispatch and complete them within six (6) months from notice of the decision.

Significantly, in all these PJI cases and, in fact, in all sequestration cases and all incidents thereof, the Government has never questioned the jurisdiction of the Sandiganbayan.

Thirdly, on the extent of government involvement in the financing of PJI, it is unfair to conclude that because DBP guaranteed two loans for two pieces of equipment, the government totally financed the acquisition and operation of PJI, with no risk or capital on the part of respondent Olivares and her group. Records show that from the very start the shareholders had to put up an equity of US$349,000.00.[4]

The PJI newspaper business was in full operation in 1976 and the acquisition of better equipment was only for expansion purposes.

As earlier stated, PJI publishes five (5) newspapers including a widely read Tabloid in Taglish, a *Tagalog "Taliba"* and Women's Journal. The loans covered only a web-offset press and a stitch binder. These two pieces of equipment, by themselves, do not make a newspaper chain. Equally important as printing are the editorial,

[4] Annexes "C", "D" and "E", Petition, *Rollo*, pp. 109-115; 116-124; 125-129.

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news-gathering, production, sales and circulation, distribution, and advertising departments. Any newspaper conglomerate will need vehicles, pre-press equipment, photo equipment, buildings, etc. The shareholders' assets including the offset press and stitch binder plus after-acquired assets were covered by the mortgage or pledge.

Respondent Olivares and other shareholders not only put at risk their PJI assets, but also lost total control over them when PCGG sequestered their company.

There were only two loans obtained by PJI: one for the purchase of a printing press, and another for one stitch binder. As earlier stated, the promissory note dated March 31, 1981 in the amount of US$1,385,064.96 *refers* to the US$1,745,000.00 Mellon Bank loan of September 15, 1976. The promissory note for US$121,456.08 dated October 12, 1978 *refers* to the September 13, 1978 loan for US$124,140.00. Thus, the total government exposure after DBP took over the Mellon Bank loan was US$1,869,140.00.

It is also not correct to say that the Olivares management group did not pay monthly amortizations. On March 31, 1981, when the promissory note covering the US$1,745,000.00 loan was made, it was only for US$1,385,064.96. The difference between the two amounts represents payments made on the loan. Payments also included the interests. A reduced amount evidencing amortization payments is also found in the promissory note covering the loan for the purchase of the saddle stitch binder.

There is no evidence that the credit accommodations were special or generous. The Mellon Bank loan could not possibly violate the internationally-approved or going rates at the time. The government would not expose itself to a foreign loan except on the most favorable terms available.

As stated and explained by respondent Sandiganbayan, the disinclination to pay amortizations was displayed by the PCGG-APT management. In fact, the government-installed managers opposed the payments sought through the courts.[5]

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[5] *Supra*, footnotes Nos. 19 and 20.

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It is but natural that the records show no evidence that respondent Olivares and her group ever mismanaged or diverted PJI resources. Their investments were their own personal funds. This cannot be said of the PCGG-APT management which never risked a centavo of their own funds. Respondent Sandiganbayan's findings show non-payment of amortizations by PCGG-APT managers even as huge time deposits were being made plus purchase of useless *equipment,* big salaries and allowances, etc. In fact, respondent Olivares had to file on March 24, 1992 a "Motion To Allow PJI To Pay In Full APT Loan Out Of Cash Assets In Time Deposits" to protect the company from its PCGG-APT managements.[6] This was opposed by the latter.

Finally, petitioner APT questions the accuracy in the computation of the outstanding loan obligation of PJI with APT, including interest, as determined by respondent Sandiganbayan in its assailed Resolutions. Suffice it to say that this issue is *factual* in nature which this Court is not bound to review since it is not a trier of facts. It is basic that the findings of the Sandiganbayan on factual issues are generally conclusive upon the Supreme Court, in the absence of a showing that matters of substance have been ignored or disregarded which would be sufficient to arrive at a conclusion different from that which was made by the said respondent Sandiganbayan.

Petitioner APT claims that based on the loan documents between PJI and DBP, the total obligation of PJI to APT amounted to ₱216,801,156.41 as of October 31, 1992.

On the other hand, private respondent contends that the determination of the actual obligation of PJI to APT should be based on:

1. The transfer value of the account of PJI when it was transferred by DBP to APT in June, 1986 which was ₱58,850,000.00 under Proclamation Nos. 50 and 50-A;[7] and

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[6] Comment filed on August 6, 1999; p.3.

[7] Annex "CC-1" of the Petition, including Exhibits "A", "A-1", "A-2", and "A-3", *Rollo*, pp. 453-464.

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2. The letter of APT Assistant Executive Trustee Jose C. Sison to PJI dated November 27, 1989 wherein it clearly appears that the amount of obligation of PJI as of October 31, 1989 was ₱78,551,405.93.[8]

Anent this issue, the Sandiganbayan correctly ruled that the amount of ₱58,850,000.00 "stated in Proclamation 50 and 50-A to be the transfer value of the PJI Account, should actually represent the real value of the loan obligation at the time of the transfer. DBP cannot, and should not, be expected to undervalue any loan obligation being thus transferred as there can be no valid reason for DBP to undervalue any such amount. On the contrary, DBP, or any financial institution for that matter, is duty bound to state the actual value of the account or asset being transferred, considering that such amount represents the total government exposure on the unpaid account and which could be the basis of any future valuation for the sale or transfer thereof."[9]

Mr. Jose C. Sison's letter dated November 27, 1989, referred to above, reads as follows:

"Ref. No. PJI103-01
November 27, 1989

PHILIPPINE JOURNALISTS, INC.
The Journal Bldg., Railroad St.
Between 19th and 20th Sts.
Port Area, Manila

Attention: Mr. Enrique M. Joaquin
Chairman of the Board

Gentlemen:

This is to acknowledge receipt of your letter dated 18 November 1989.

Based on the amount of obligation of Philippine Journalists, Inc. transferred to the Asset Privatization Trust (APT), please be informed that the direct-debt-buy-out (DDBO) price as of 31 October 1989 is ₱78,551,405.93.

We would gladly discuss the details of said amount together with the terms and conditions of a DDBO settlement with you at your convenience.

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[8] Exhibit "C" attached to Annex "CC-1" of the Petition, *ibid.*, p. 466.

[9] Assailed Resolution dated January 25, 1994, *Rollo,* p. 76.

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Very truly yours,

(SGD.) JOSE C. SISON
Associate Executive Trustee"[10]

The above-quoted letter was followed by another letter of Jose C. Sison to PJI dated January 11, 1990[11] quoted as follows:

"January 11, 1990

PHILIPPINE JOURNALISTS, INC.
The Journal Bldg., Railroad St.
Between 19th & 29th Sts.
Port Area, Manila

Attention: Mr. Enrique M. Joaquin
Chairman of the Board

Gentlemen:

This is to follow up our letter dated 27 November 1989 with regards the implementation of a direct-debt-buy-out (DDBO) as full settlement of the account of Philippine Journalists, Inc. (PJI) with the Asset Privatization Trust (APT).

Please be informed that *the APT Board has set 31 March 1990 as the deadline for the implementation of DDBO's.* As such, we would like to find out from you if PJI is still interested in this mode of settlement. Otherwise, APT shall pursue the necessary legal action to protect its interest.

We shall appreciate your preferential attention on the matter.

Very truly yours,

ASSET PRIVATIZATION TRUST

(SGD.) JOSE C. SISON
Associate Executive Trustee"

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[10] *Rollo*, p. 466.

[11] Exhibit "B-1" of Annex "U" of the Petition, *ibid.*, p. 374.

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There can be no question that the ₱78,551,405.93 DDBO price represents the obligation of PJI. It was APT which arrived at this price. As earlier stated, the COP on October 3, 1988 approved the APT formula. It was APT and not PJI which extended the offer. It was APT which gave the deadline of March 31, 1990 to PJI.

Being an offer, the DDBO was a maximum price which would have gone lower if the Board chaired by Mr. Enrique M. Joaquin had decided to enter into the negotiations. A lender or creditor does not make an offer and then bargain for a higher price once the borrower accepts the offer to negotiate. In the ordinary course of business, a lender would be willing to go lower, never higher, if the borrowing corporations decide to liquidate their obligations. More so under the circumstances of this case.

It should also be noted that Republic Act No. 7181 imposes as the only condition for the return of firms such as PJI to its owners that the price should not be less than the original purchase price.[12] The said law provides in part:

"Sec. 2. The following conditions shall be adhered to in Privatization:

x x x

b). Assets for disposal shall not revert to previous owners who after final judgment by the proper agency or a court of law have been found to have mismanaged or diverted the resources of the assets which resulted in loss and bankruptcy: *Provided, That if assets are to be reverted back to the previous owners, the price shall not be less than the original transfer price.*" (Italics supplied)

The condition imposed by Republic Act No. 7181 is satisfied in this case.

We uphold the conclusion of the Sandiganbayan that PJI's loan obligation as of October 31, 1989 amounted to ₱78,551,405.93. As stated by the Sandiganbayan, the same "is based on the amount of obligation of Philippine Journalists, Inc. which was transferred to the Asset Privatization Trust. Thus, while it was denominated as DDBO price, said amount was actually arrived at on the basis of the actual amount of the obligation of PJI transferred to APT and,

[12] Respondent's Affidavit, Annex "CC-1", Petition, *ibid.*, pp. 453-461.

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therefore, represents the actual amount of the PJI obligation at that time."[13]

Under the circumstances of this case and the applicable law, scant consideration may be accorded to APT's claim that the DDBO price of ₱78,551,405.93 mentioned in the above-quoted letters was unauthorized by the Committee on Privatization (COP) and was without the approval of the Board of Trustees of APT. This authority/approval is, in fact, readily discerned from the above-quoted follow-up letter of Jose C. Sison to PJI wherein the APT Board had set on March 31, 1990 the deadline for the implementation of the direct-debt-buy-out (DDBO) scheme and offering the full settlement of PJI's account at the DDBO price stated in the above-quoted November 27, 1989 letter.

Regarding the November 21, 1991 PJI stockholders' offer of "payment in full settlement of (PJI's loan) obligation under (the) direct-debt-buy-out scheme (in) the amount of P60 Million," this is explained by the stockholders as correct because "PJI had been paying P1 Million a month amortization x x x, which payments were considered as deposits on account of the loan," for a total of ₱36 Million.[14]

The PCGG-APT management of PJI had ignored the deadline for negotiations. It appears that the PCGG-APT management was not interested in returning PJI to Olivares and its other owners. And as earlier stated, the owners had to protect their interests even as they were willing to meet the DDBO offer of APT.

APT, therefore, cannot now deny that the total obligation of PJI to APT as of October 31, 1989 was ₱78,551,405.93. We likewise sustain the Sandiganbayan's conclusion that after inputing the regular interest at the rate of 12% per annum from October 31, 1989 up to October 30, 1992 amounting to ₱28,278,506.12, PJI's total obligation to APT amounted to ₱106,821,912.06 as of October 30, 1992. Considering that PJI had made a total payment of ₱120,666,337.00 there is an overpayment of ₱13,844,324.94.

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[13] Assailed Resolution dated January 25, 1994, *Rollo*, pp. 77-78.

[14] Annexes "J" and "J-1" of Affidavit, Annex "CC-1", *ibid.*, pp. 482-486.

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Quoted hereunder is the detailed computation made by the Sandiganbayan in its assailed Resolution of January 25, 1994:

"From the other documentary evidence submitted by defendant-movant (Olivares) (Exhibit B-Olivares), which was not disputed by APT as it came from APT itself, it appears that the net amount of ₱78,551,405.93 stated in the APT letter to Enrique Joaquin was arrived at after deducting all payments admitted to have been made to APT up to June 1989 in the amount of ₱21,697,229.57, plus the interest earned therefrom in the amount of ₱7,254,713.65, or the total amount of *₱28,951,943.25.*

From the amount of ₱78,551,405.93 stated as the amount of the obligation as of *October 31, 1989*, regular interest at the rate of 12% should be added from that date and inasmuch as the PCGG-appointed Chairman was supposed to make payment on the same from that date but failed to do so, APT will then earn interest in the amount of ₱9,426,168.71 a year. Such interests should be charged only up to October 30, 1992, because it was only then that, through defendant-movant's assiduous prompting, substantial amounts were transferred by the PJI management to APT. Although it would appear from Annex 2 of the Affidavit of Imelda Pilas (pp. 13,966-13,967, Vol. 23, Record) of APT that only ₱98,652,699.12 had been transferred to APT as of October 30, 1992, the Manifestation of Enrique Joaquin, dated October 12, 1992, clearly stated in addition to the ₱60 Million subject of the Deed of Assignment of December 5, 1991 an additional amount of ₱60,666,237.00 had been remitted to APT, thus bringing the total remittances from December 1991 up to the date of such Manifestation to be ₱120,666,237.00. Applying these payments to the total obligation of PJI up to October 30, 1992, which as above-stated amounts to ₱106,821,12.06 (₱78,551,405.93 plus interest of ₱28,278,506.13) there is an overpayment of ₱13,844,324.94, which the Court had already ruled in the Resolution of December 1, 1992 should be returned to PJI."[15]

The record shows that the failure to fully settle the loan obligation which amounted to ₱78,551,405.93 as of October 31, 1989 was due to the deliberate refusal of the PCGG-appointed managers to pay, despite the fact that the PJI had sufficient cash to settle the entire obligation. The Special Audit Report on PJI for the period 1987 to 1992,[16] shows that in 1990, the deadline set by APT to

[15] *Rollo*, pp. 78-80.

[16] P. 13 of Annex "CC-2", Petition.

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settle the ₱78,551,405.93 obligation of PJI, the latter had funds placed in short-term investments amounting to ₱62 million; that the PCGG nominees received compensation and benefits from 1987 to 1989 amounting to ₱13.498 million; and that a Web Offset Printing Press Horizon 2000, which turned out to be useless, was purchased for ₱32.5 million. All these amounts totaled to ₱107,998,000.00 which, needless to state, was more than sufficient to pay PJI's obligation of ₱78,551,405.93 in 1990.

The Sandiganbayan confirmed the payment of the regular rate of interest on the total obligation of ₱78,551,405.93 as of October 31, 1989. In its assignment of errors, APT states that the respondent court erred in imposing only the regular rate of interest. It argues that penalties and surcharges should also be imposed. The respondent Sandiganbayan's ruling on this issue is significant because it emphasized the unfairness of fiscal agents or government-installed managers bringing a viable and profitable business to ruin and harm while allowing unpaid interest to multiply or accumulate. Under these circumstances, penalties, interests and surcharges are not justified.

It is also unfair to state that the rate of 12% used is based on respondent Rosario Olivares' self-serving assumptions and unsigned documents. The computations were made by APT itself and have never been denied. Respondent Olivares also alleged in her affidavit that she went to see then APT Executive Trustee Ramon Garcia sometime in 1988 who informed her that 12 percent would be charged on the accounts transferred to APT. This allegation may be self-serving but it is not denied by APT.

The DDBO price of ₱78,551,405.93 confirms the 12% rate of interests but belies the ₱122,736,358.48 of additional interests and penalty charges which APT now imposes to prevent the rightful return of the unsequestered properties to their owners.

The unreasonable and unjustified mode of accounting asserted by APT is most blatant in its imposition of interests and penalties. After charging regular interests in the amount of ₱25,422,204.50, APT inflicts penalty charges of ₱30,675,679.76 and additional interest of ₱92,060,678.62 for delayed payments.

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APT justifies its charges by stating that it should not be penalized for the mismanagement of PJI by PCGG. The PJI Board composed of PCGG appointees did not pay installments on the loan inspite of there being ample funds for the purpose. For the failure to pay on time by government-nominated officers, and the diversion of funds to questionable time deposits and other disbursements, APT now claims that it is not its fault that PJI under the PCGG defaulted in the payment of obligations. The unfairness of the APT imposition is patent and clear. The attempts to distance APT from PCGG are misplaced. So are the efforts to render irrelevant the acts of PCGG-APT managers in the computations.

PCGG is a party to this case. Civil Case No. 0035 in the Sandiganbayan, from which the present petition originated, is a PCGG case. The PJI assets, including the shares of private stockholders, were totally sequestered by PCGG. This case would not exist without PCGG and its control of PJI. Respondent Olivares filed the motion to direct the management of PJI to pay the loans out of time deposits. The PCGG cannot escape the consequences of its misdeeds by simply having its assets transferred to another institution and, then, wash its hands of untoward consequences. It cannot, thru the transferee, impose penalties and additional charges caused by its own mismanagement.

In the precedent-setting decision in *Filipinas Marble Corporation vs. Intermediate Appellate Court,*[17] the DBP-imposed management on *Filipinas Marble* brought the corporation to ruin. It then used a law, P.D. 385, to contest a court injunction or restraining order against foreclosure on the corporate assets. This was long before PCGG came into existence.

The similarities with the situation in this case are striking. This Court held in *Filipinas Marble Corporation*[18] that:

"The government, however, is bound by basic principles of fairness and decency under the due process clause of the Bill of Rights. P.D. 385 was never meant to protect officials of government lending institutions who take over the management of a borrower corporation, lead that

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[17] 142 SCRA 180 (1986).

[18] *Ibid.*, pp. 188-189.

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corporation to bankruptcy through mismanagement or misappropriation of its funds, and who, after ruining it, use the mandatory provisions of the decree to avoid the consequences of their misdeeds.

"The designated officers of the government financing institution cannot simply walk away and then state that since the loans were obtained in the corporation's name, then P.D. 385 must be peremptorily applied and that there is no way the borrower corporation can prevent the automatic foreclosure of the mortgage on its properties once the arrearages reach twenty percent (20%) of the total obligation no matter who was responsible.

"In the case at bar, the respondents try to impress upon this Court that the $5,000,000.00 loan was actually granted and released to the petitioner corporation and whatever the composition of the management which received the loan is of no moment because this management was acting in behalf of the corporation. The respondents also argue that since the loan was extended to the corporation, the releases had to be made to the then officers of that borrower corporation.

"Precisely, what the petitioner is trying to point out is that the DBP and Bancom people who managed Filipinas Marble misspent the proceeds of the loan by taking advantage of the positions that they were occupying in the corporation which resulted in the latter's devastation instead of its rehabilitation. The petitioner does not question the authority under which the loan was delivered but stresses that it is precisely this authority which enabled the DBP and Bancom people to loan thereby defeating its very purpose, that is, to develop the projects of the corporation. Therefore, it is as if the loan was never delivered to it and thus, there was failure on the part of the respondent DBP to deliver the consideration for which the mortgage and the assignment of deed were executed."

In the present case, the Sandiganbayan again aptly stated in its assailed Resolution of January 25, 1994:

"The Court had also ruled to charge, on the stated amount of the obligation of ₱78,551,405.93, as of October 31, 1989 only the regular rate of interest because there is no factual and legal basis for APT to charge additional interest and surcharges from October 30, 1989 considering that, *firstly,* at the time said account was transferred to APT, the stockholders of PJI have been deprived of the management of the corporation as it was completely taken over by PCGG even after the sequestration on the shares of the stockholders had been automatically lifted (as ruled by the Supreme Court in G.R. No. 92376), with the

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connivance and/or inaction of DBP/APT; *secondly*, during the time said corporation was under the control of PCGG nominees and appointees, there were reported mismanagement and/or massive dissipation of funds of the corporation which were verified by audit reports of COA and of an independent auditor, Carlos Valdes and company, which have not been refuted by APT; and *thirdly*, APT is not a lending institution which should be charging more than the legal rate of interest for accounts transferred to it.

"No penalties, surcharges or additional interest should be added from October 31, 1989 on the PJI loan stated to be in the amount of ₱78,551,405.93 inasmuch as the failure to pay said amount at that time was due to the premeditated inaction and/or deliberate refusal to pay by the PCGG-appointed managers, even if there was, admittedly, substantial cash earned by the corporation but which they had, instead, placed in *money market placements, purchase of useless equipment and payment of big salaries and allowances to themselves.* Penalties, surcharges or additional interest are forms of damages payable by one who had incurred in delay in the performance of its obligation (Article 1170 Civil Code). However, if such delay is due to an unforeseen event or an occurrence which could render it impossible for the debt to fulfill his obligation in a normal manner, the debtor should not be responsible for any damage caused by such delay (Article 1174, *ibid., Victorias Planters Association, Inc., et al. vs. Victorias Milling Co., Inc.,* 97 Phil. 318; *Crame Sy Panco vs. Gonzaga*, 10 Phil. 646; *Austria vs. Court of Appeals*, 39 SCRA 527).

"In this case, any delay in the payment after PCGG took over the corporation, which was even before October 1989, cannot be attributable to the corporation itself or to any of its stockholders. PJI should not, therefore, be charged such penalties, surcharges and additional interest for the inaction and mismanagement of the PCGG-appointed officers and directors. It has not been denied by APT that in 1988, the then PCGG-appointed Chairman Eduardo Olaguer bought a Horizon Press, an equipment which was not necessary and was not in fact used, valued at ₱32,000,000.00 (Exhibit H-Olivares). Likewise admitted by the then PCGG-appointed Chairman Enrique Joaquin is that PJI had ₱26,830,000.00 in *money market placements* in October 1989 and which could have been used to pay the obligation then, but which he failed and refused to do so and even the P1-Million monthly amortization was not paid from July 1989 up to December 1990. Clearly established by the COA report is the fact that, during Olaguer's incumbency as Chairman, there was a production loss of ₱8,476,000.00 and other losses from exchange deals (Exhibit G-Olivares), aside from the report of the

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independent auditor that PCGG-appointed directors and officers had given themselves large allowances to which they are not entitled and which should have been used to pay the obligation to APT (Exhibits L, L-1 and L-2-Olivares).

"Neither DBP nor APT should penalize PJI for the inaction or refusal of then PCGG-appointed managers to pay the loan from 1989 up to the present. When the PCGG-appointed directors led by Olaguer stopped the monthly payments from January 1988 and when the new set of PCGG-appointed directors led by Enrique Joaquin continued to fail to make such monthly payments, APT merely folded its arms and even sided with the PCGG group.

"Enrique Joaquin, as the PCGG-appointed Chairman of PJI, should not also take the side of APT as he was appointed to co-serve and protect the interests of PJI and prevent its assets from being dissipated. If APT in its letter of October 30, 1989 had admitted that the account of PJI was only *₱78,551,405.93*, why should Joaquin insist that the account is actually *₱201,188,812.63* as of December 31, 1991? When he was appointed to PJI, it was to protect its interests and not that of APT.

"In the final analysis, we have no alternative but to accept the proposition of defendant-movant Olivares, based on the documentary evidence submitted, that APT will not suffer any loss. For the amount of *₱58,850,000.00* transferred to it in June 1989, it will be paid a total of *₱135,773,855.31* (₱106,821,912.06 + ₱28,951,943.25 paid between June 1986 up to June 1989), which is about three times the transfer value and will, therefore, more than substantially comply with the provision of Section 2 of Republic Act 7181 which provides as a condition for the return of the assets required by APT from previous owners that *the price to be paid shall not be less than the original transfer price.*"[19]

In interpreting the loans, payments, and accounts involved in this case, it should be borne in mind that there is a significant distinction between the relationships of ordinary business borrowers and lenders from those between sequestered firms and government financing institutions. The lender is a government institution. The sequestered borrower is under the control of fiscal agents of the PCGG, another government agency. It is not unusual for members of the board of the lender institution to *be also the* directors and policy makers of the sequestered borrower. In PJI's case, however,

[19] *Rollo*, pp. 80-84.

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DBP and later its successor-in-interest, APT, left the full control and management thereof to PCGG-designated representatives.

Nonetheless, respondent Sandiganbayan carefully assessed said accounts prepared under sequestration and came out with its computations in the questioned resolution. There is no reversible error nor grave abuse of discretion on this matter.

The correctness of the *Sandiganbayan's* action stating its reliance on documentary evidence from APT itself, is explained in the assailed Resolution of January 25, 1994 *as follows:*

"Considering the contradictory nature of the claims of defendant-movant, on the one hand, and respondents APT and Enrique Joaquin, on the other hand, as to the actual amount of the loan obligation of PJI to DBP/APT, *the Court must have to rely for legal basis and support in the determination of the correct amount of said loan from documentary evidence which are not disputed or questioned by the parties.* For instance, there is no dispute that the transfer value of the account of PJI when it was transferred by DBP to APT in June 1986 was ₱58,850,000.00 as appearing in the Annex to Proclamation 50 creating APT (Exhibits A and A-1-Olivares) and in the letter of DBP to defendant-movant (Exhibit A-3-Olivares).

"While APT and Joaquin claimed that said transfer amount of ₱58,850,000.00 does not represent the actual amount of the loan obligation as it should be based on the loan documents executed between PJI and DBP, *we are of the considered opinion that said amount as stated in Proclamation 50 and 50-A to be the transfer value of the PJI account, should actually represent the real value of the loan obligation at the time of the transfer.* DBP can not, and should not, be expected to undervalue any loan obligation being thus transferred as there can be no valid reason for DBP to undervalue any such account. On the contrary, DBP, or any other financial institution for that matter, is duty bound to state the actual value of the account or asset being transferred, considering that such amount represents the total government exposure on the unpaid account and which could be the basis of any future valuation for the sale or transfer thereof. *Quite obvious is the rationale for the requirement that in the sale or transfer of such account or asset, the consideration should not be less than the transfer value to avoid any loss or prejudice to the government.*

"Using the said actual value of the obligation as basis, APT wrote PJI through Enrique Joaquin, who was then PCGG-appointed Chairman of the Board of PJI, that *based on the amount of obligation of PJI transferred*

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to APT, the direct-debt-buy-out (hereinafter referred to DDBO, for brevity) price of the PJI account as of 31 October 1989 was ₱78,551,405.93 (Exhibits C and C-2-Olivares). Hence, the Court is justified in using said document as the basis for the determination of the actual obligation of PJI to APT since the authenticity of this document is not disputed by APT nor by Enrique Joaquin. Moreover, it is admitted that it had been sent by APT to, and received by, Enrique Joaquin."[20]

Unquestionably, the records support the findings of the Sandiganbayan. The detailed computation and analysis indicated in the challenged Resolution promulgated on January 25, 1994 sustain the ruling it rendered.

WHEREFORE, *I vote to deny the petition.*

Gutierrez, J., dissents.

EN BANC

[G. R. No. 144542. June 29, 2001]

FRANCISCO DELA PEÑA and TRANQUILINO BENIGNO, *petitioners, vs.* **THE SANDIGANBAYAN, FOURTH DIVISION, THE SPECIAL PROSECUTOR and COMMISSION ON AUDIT, REGION XI,** *respondents.*

SYNOPSIS

On 3 July 1992, the result of the audit conducted by the Special Audit Team of the Commission on Audit on the operations of a fishing vessel under the management of the Davao del Norte School of Fisheries, Panabo, Davao del Norte was referred to the Office of the Ombudsman for Mindanao. On 14 August 1992, Graft Investigation Officer (GIO) Marie Dinah Tolentino issued an order requiring herein petitioners Francisco Dela Pena and Tranquilino Benigno and three other respondents to file their respective counter-affidavits. After seeking for an extension of time to file their counter-

[20] *Ibid.*