

BY: Edgic
TIME: 3:14

Republic of the Philippines
Supreme Court
Manila

EN BANC

**SMALL
CORPORATION,**

BUSINESS

G.R. No. 251178

Petitioner,

Present:

- versus -

**COMMISSION ON AUDIT
(COA), COA CHAIRPERSON
MICHAEL G. AGUINALDO,
COA CLUSTER 2-CORPORATE
GOVERNMENT SECTOR
DIRECTOR MARY S.
ADELINO,**

Respondents.

**GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER
INTING,
ZALAMEDA,
M. LOPEZ,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
J. LOPEZ, JJ.**

Promulgated:

April 27, 2021

X-----*Perlas-Bernabe*-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court are the Decision² No. 2017-494 dated December 29, 2017 and the Resolution³ dated September 27, 2018 of the Commission on Audit (COA) which upheld the disallowances of the salary

¹ *Rollo*, pp. 3-31.

² *Id.* at 34-42. Signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.

³ See Notice of Resolution in COA CP Case No. 2015-417; *id.* at 43.

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increases granted by petitioner Small Business Corporation (SBC) to its various personnel during the period from September 1, 2012 to September 30, 2014 in the aggregate amount of ₱4,489,002.09.

The Facts

On June 1, 2009, acting pursuant to Republic Act No. (RA) 6977,⁴ as amended,⁵ the Board of Directors of SBC (SBC-BOD), a government financial institution (GFI),⁶ issued Board Resolution No. 1610⁷ approving the revision of its organizational structure,⁸ staffing pattern,⁹ qualification standards,¹⁰ and salary structure,¹¹ viz.:

BOARD RESOLUTION NO. 1610, SERIES OF 2009

APPROVAL OF REVISED ORGANIZATIONAL STRUCTURE, STAFFING PATTERN, QUALIFICATION STANDARDS, AND SALARY STRUCTURE

“RESOLVED: That in view of the incorporation of the changes as instructed by the Board and as favorably recommended by Management, **the Revised Organizational Structure (Annex “A”), Revised Staffing Pattern (Annex “B”), and Revised Qualification Standards (Annex “C”)** be, as it is hereby approved.

⁴ Entitled “AN ACT TO PROMOTE, DEVELOP AND ASSIST SMALL AND MEDIUM SCALE ENTERPRISES THROUGH THE CREATION OF A SMALL AND MEDIUM ENTERPRISE DEVELOPMENT (SMED) COUNCIL, AND THE RATIONALIZATION OF GOVERNMENT ASSISTANCE PROGRAMS AND AGENCIES CONCERNED WITH THE DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES, AND FOR OTHER PURPOSES,” approved on January 24, 1991.

⁵ See Section 11-A (f) of RA 6977, as amended by RA 8289 (approved on May 6, 1997) and RA 9501 (approved on May 23, 2008), which reads:

SEC. 11-A. *Composition of the Board of Directors and its Powers.* – The SB Corporation corporate powers shall be vested on a Board of Directors composed of eleven (11) members which shall include the following:

x x x x

The Board of Directors shall have, among others, the following specific power and authorities:

x x x x

f) **Notwithstanding the provisions of Republic Act No. 6758** and Compensation Circular No. 10, Series of 1989 issued by the Department of Budget and Management, **the Board shall have the authority to provide for the organizational structure and staffing pattern of SB Corporation and to extend to the employees and personnel thereof salaries, allowances and fringe benefits similar to those extended to and currently enjoyed by employees and personnel of other government financial institution.** (Emphases supplied)

⁶ SBC, also known as “Small Business Guarantee and Finance Corporation,” is a **government financial institution** created under RA 6977, as amended by RA 8289 and RA 9501. It offers a wide range of financial services for small and medium enterprises engaged in manufacturing, processing, agribusiness (except crop level production) and services (except trading). These financial services include guarantee, direct and indirect lending, financial leasing, secondary mortgage, venture capital operations, and the issuance of debt instruments. (See *SBC v. COA*, 819 Phil. 233, 238 [2017].)

⁷ See Board Resolution No. 1610, series of 2009, otherwise known as the “Approval of Revised Organizational Structure, Staffing Pattern, Qualification Standards, and Salary Structure,” approved on June 1, 2009; *rollo*, pp. 44-62.

⁸ See *id.* at 47-51.

⁹ See *id.* at 52-58.

¹⁰ See *id.* at 59-61.

¹¹ See *id.* at 62.

RESOLVED, FURTHER: That the **proposed Salary Structure** as recommended by the Consultant and Management **unless otherwise recommended modified by the DTI Secretary** be, as it is hereby approved.” (Emphases supplied)

In compliance with administrative regulations,¹² SBC then sought the confirmation of its revised salary structure from former Department of Trade and Industry (DTI) Secretary Peter B. Favila who approved the same on February 8, 2010.¹³

On September 8, 2010, then-President Benigno S. Aquino III issued Executive Order (EO) No. 7 imposing a “[m]oratorium on increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives[,] and other benefits” of government owned and controlled corporations (GOCCs) and GFIs, viz.:

SECTION 9. *Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits.* – **Moratorium on increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits**, except salary adjustments pursuant to Executive Order No. [811] dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010 are hereby imposed **until specifically authorized by the President.** (Emphases and underscoring supplied)

The moratorium notwithstanding, on October 28, 2011, the SBC-BOD issued Board Resolution No. 1863¹⁴ approving the guidelines and procedure for the administration of SBC’s revised salary structure,¹⁵ which included the grant of step increments to qualified employees based on merit and length of service as assessed by a Performance Evaluation Review Committee (PERC), viz.:

¹² See Section 6 (f) (f.2), Rule 10 of DTI Administrative Order No. 09-08, entitled “RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT NO. 6977, AS AMENDED BY REPUBLIC ACT NO. 8289, AND FURTHER AMENDED BY REPUBLIC ACT NO. 9501 OTHERWISE KNOWN AS THE AMENDED ‘MAGNA CARTA FOR MICRO, SMALL AND MEDIUM ENTERPRISES,’” approved on August 20, 2008, which reads:

SECTION 6. *Powers and Authorities of the Board.* – The Board of Directors shall have, among others, the following specific powers and authorities:

x x x x

f) notwithstanding the provisions of RA 6758 and Compensation Circular No. 10, series of 1989 issued by the DBM, the Board shall have the authority to provide for the organizational structure and staffing pattern of SB Corporation and to extend to the employees and personnel thereof salaries, allowances, and fringe benefits similar to those extended to and currently enjoyed by employees and personnel of other government financial institutions.

x x x x

f.2. The salaries, allowances, and fringe benefits to be extended to the employees and personnel of SB Corporation shall be based on a survey of the salaries, allowances, and fringe benefits of other government financial institutions which SB Corporation shall conduct, **subject to the review of the DTI Secretary before presentation to the Board for approval.** (Emphasis and underscoring supplied)

¹³ See Memorandum of Confirmation of the DTI Secretary’s Approval of the SBC Salary Structure dated February 8, 2010; *rollo*, pp. 63-64.

¹⁴ See Board Resolution No. 1863, series of 2011, otherwise known as the “Guidelines and Procedures on the Administration of SBC’s Salary Structure,” approved on October 28, 2011; *rollo*, p. 65.

¹⁵ See Office Order No. 003, Series of 2012, with the subject: “Guidelines and Procedures on the Administration of SBC Salary Structure.” *id.* at 66-85.

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BOARD RESOLUTION NO. 1863, SERIES OF 2011

**GUIDELINES AND PROCEDURE ON THE ADMINISTRATION
OF SBC'S SALARY STRUCTURE**

“RESOLVED: That as favorably endorsed by the Corporate Governance Committee, the **Guidelines and Procedures on the Administration of SB Corporation's Salary Structure**, the details of which are contained in the memo for the Board dated 19 October 2011 which is attached as Annex “A” and made an integral part hereof be, as it is **hereby approved.**”

x x x x

Step Increment

15. Definition. Step increment is a lateral **adjustment of an employee's basic salary from one salary step to the next higher salary step.**

16. Types of step increment. Step increment may be granted on the basis of merit or length of service.

16.1 **Merit.** Step increment based on merit (otherwise known as “**merit increase**”) shall be given annually to deserving employees based on their individual performance and contribution to unit and corporate performance. The determination of officers and employees entitled to merit increase shall be based on the performance calibration as provided under Item 11 of this Office Order.

16.2 **Length of Service.** A **1-step increment** shall be given to employees for every three (3) years of continuous satisfactory service in their present positions: *Provided*, that only those who have not received merit increase for the last 3 years shall be entitled to step increment based on length of service.¹⁶ (Emphases and underscoring supplied)

Accordingly, upon the PERC's recommendation, salary increases for qualified SBC personnel in the aggregate amount of **₱4,489,002.09** were approved and correspondingly paid on various dates within the period from September 1, 2012 to September 30, 2014.¹⁷

Meanwhile, on June 25, 2014, SBC wrote a letter¹⁸ to the Governance Commission for GOCCs¹⁹ (GCG) requesting the confirmation of its payment of salary increases for the year 2013. The request, however, was denied by

¹⁶ Id. at 69.

¹⁷ See id. at 36-37.

¹⁸ Not attached to the *rollo*.

¹⁹ The GCG was created under RA 10149, otherwise known as the “GOCC GOVERNANCE ACT OF 2011,” (approved on June 6, 2011) to act as the central advisory, monitoring, and oversight body that is attached to the Office of the President with authority to formulate, implement and coordinate policies relative to GOCCs. Among its powers and functions is to conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent but allow GOCCs to be financially sound and sustainable. (See *Philippine Charity Sweepstakes Office v. Pulido-Tan*, 785 Phil. 266, 278-279 [2016]; and *GSIS Family Bank Employees Union v. Villanueva*, G.R. No. 210773, January 23, 2019, 891 SCRA 206, 226-227.)

the latter in a Memorandum²⁰ dated July 8, 2014 on account of the continued effectivity of the moratorium imposed by Section 9 of EO No. 7.²¹

Subsequently, on various dates in October 2014, the Audit Team Leader and Supervising Auditor of the COA issued a total of **six (6) notices of disallowance**²² (subject disallowances) against the payment of the aforementioned salary increases for violation of EO No. 7, summarized by the COA as follows:²³

ND No./Date	Particulars	Amount
14-002-401000-(12) October 9, 2014	Merit increase and adjustment of other benefits due to increase in salary rates of 43 SBC personnel from September 1, 2012 to September 30, 2014.	₱2,483,863.24
14-003-401000-(12) October 9, 2014	Salary differential due to step increment and adjustment of other benefits due to increase in salary rates of 4 SBC personnel from September 1, 2012 to September 30, 2014.	180,660.00
14-004-401000-(13) October 10, 2014	Salary differential due to step increment and other benefits due to the increase in salary rates of 3 SBC officials from March 15, 2013 to September 30, 2014.	450,166.64
14-005-401000-(13) October 10, 2014	Salary differential due to step increment and adjustment of other benefits due to the increase in salary rates of 26 SBC personnel from March 15, 2013 to September 30, 2014.	723,336.63
14-006-401000-(13) October 13, 2014	Salary differential due to step increment and adjustment of other benefits due to the increase in salary rates of 7 SBC senior officers from March 15, 2013 to September 30, 2014.	562,055.58
14-007-401000-(13) October 14, 2014	Salary differential due to step increment and adjustment of other benefits due to the increase in salary rates of 3 SBC regional office personnel from March 15, 2013 to September 30, 2014.	88,920.00
	Total	₱4,489,002.09

²⁰ Not attached to the *rollo*.

²¹ See *rollo*, p. 37.

²² See: (1) Notice of Disallowance (ND) No. 14-002-401000-(12) dated October 9, 2014 (id. at 87-96); (2) ND No. 14-003-401000-(12) dated October 9, 2014 (id. at 97-100); (3) ND No. 14-004-401000-(13) dated October 10, 2014 (id. at 101-102); (4) ND No. 14-005-401000-(13) dated October 10, 2014 (id. at 103-107); (5) ND No. 14-006-401000-(13) dated October 13, 2014 (id. at 108-111); and (6) ND No. 14-007-401000-(13) dated October 14, 2014 (id. at 112-115).

²³ Id. at 34-38 and 145-147.

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The persons held liable by the COA under the subject disallowances were the **approving and certifying officers** as well as the **payee-recipients** of the disallowed amounts. These include: (a) SBC President and Chief Operating Officer Benel P. Lagua and SBC Strategy, Policy and Communications Office Head Melvin E. Abanto, as approving officers;²⁴ (b) Controllership Group Head Alfredo S. Dimaculangan, as certifying officer;²⁵ and (c) various SBC personnel, as payee-recipients.²⁶

Aggrieved, SBC appealed²⁷ to the Office of the Cluster Director of the COA's Corporate Government Sector (COA Cluster Director), arguing that the grants of salary increases were lawful since they were paid pursuant to its revised salary structure, which was duly approved by the DTI Secretary prior to the issuance of EO No. 7. In this regard, it claimed that EO No. 7 had been retroactively applied to the undue prejudice of the vested rights of the payees.²⁸

The Ruling of the COA Cluster Director

In the Decision²⁹ No. 2015-007 dated May 18, 2015, the COA Cluster Director **affirmed** the subject disallowances.³⁰ It held that the payment of salary increases contravened the clear directives of EO No. 7, and although the same were granted pursuant to a revised salary structure approved by the DTI Secretary, such approval was still subject to the President's ultimate authority pursuant to his executive power of control, as well as Congressional Joint Resolution (JR) No. 4,³¹ Section 59 of RA 9970,³² and

²⁴ See *id.* at 88, 98, 104, 109, and 113.

²⁵ See *id.*

²⁶ See *id.* As the last page of ND No. 14-004-401000-(13) was not attached to the *rollo*, the respective identities of the approving/certifying officers held liable thereunder cannot be ascertained.

²⁷ See Appeal Memorandum dated February 27, 2015; *id.* at 116-144.

²⁸ See *id.* at 37-38. See also *id.* at 147-148.

²⁹ *Id.* at 145-152. Penned by Cluster Director Mary S. Adelino.

³⁰ *Id.* at 151.

³¹ Entitled "JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES," approved on June 17, 2009.

³² Section 59 of RA 9970 entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND TEN, AND FOR OTHER PURPOSES," approved on January 1, 2010, reads:

Section 59. *Special Compensation and Other Benefits.* – GOCCs, including GFIs, who are exempt from, or are legally enjoying special compensation and other benefits which are subject to those authorized under R.A. No. 6758, as amended, shall be governed by such special laws: **PROVIDED, That they shall observe the policies, parameters, and guidelines governing position classification, salary rates, categories and rates of allowances, benefits, and incentives prescribed by the President;** **PROVIDED, FURTHER, That they shall submit their existing compensation and position classification systems and their implementation status to the DBM;** **PROVIDED, FURTHERMORE, That any grant of or increase in salaries, allowances, and other fringe benefits shall be subject to the approval by the President upon favorable recommendation of the DBM;** **PROVIDED, FINALLY, That they shall not be entitled to benefits accruing to government employees covered by R.A. No. 6758, as amended, if they are already receiving similar or equivalent benefits under their own compensation scheme.** (Emphases and underscoring supplied)

Section 56³³ of RA 10147.³⁴

Dissatisfied, SBC elevated the matter to the COA proper *via* a petition for review.³⁵

The Ruling of the COA Proper

In a Decision³⁶ dated December 29, 2017, the COA Proper **affirmed** the ruling of the COA Cluster Director.³⁷ **It held that the disbursements violated the imposed moratorium**, finding that the disputed salary increases were **implemented, approved, and granted during the effectivity of EO No. 7**. It pointed out that EO No. 7 was issued in accordance with Section 6³⁸ of Presidential Decree (PD) No. 1597 and Section 9³⁹ of Congressional JR No. 4.⁴⁰

³³ Section 56 of RA 10147 entitled "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND ELEVEN, AND FOR OTHER PURPOSES," approved on December 27, 2010, reads:

Section 56. *Special Compensation and Other Benefits*. – GOCCs, including GFIs, who are exempt from, or are legally enjoying special compensation and other benefits which are superior to those authorized under R.A. No. 6758, as amended, shall be governed by such special laws: PROVIDED, That they shall observe the policies, parameters, and guidelines governing position classification, salary rates, categories and rates of allowances, benefits, and incentives prescribed by the President: PROVIDED, FURTHER, That they shall submit their existing compensation and position classification systems and their implementation status to the DBM: PROVIDED, FURTHERMORE, That any grant of or increase in salaries, allowances, and other fringe benefits shall be subject to the approval by the President upon favorable recommendation of the DBM: PROVIDED, FINALLY, That they shall not be entitled to benefits accruing to government employees covered by R.A. No. 6758, as amended, if they are already receiving similar or equivalent benefits under their own compensation scheme. (Emphases and underscoring supplied)

³⁴ See *rollo*, pp. 149-151.

³⁵ Dated June 2, 2015. *Id.* at 153-181.

³⁶ *Id.* at 34-42.

³⁷ *Id.* at 41.

³⁸ Section 6 of PD No. 1597 entitled "FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT" (June 11, 1978), reads:

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

³⁹ Section 9 of Congressional JR No. 4 reads:

(9) Exempt Entities – Government agencies which by specific provision/s of laws are authorized to have their own compensation and position classification system shall not be entitled to the salary adjustments provided herein. Exempt entities shall be governed by their respective Compensation and Position Classification

Systems: *Provided*, That such entities shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President: *Provided, further*, That any increase in the existing salary rates as well as the grant of new allowances, benefits and incentives, or an increase in the rates thereof shall be subject to the approval by the President, upon recommendation of the DBM: *Provided, finally*, That exempt entities which still follow the salary rates for positions covered by Republic Act No. 6758, as amended, are entitled to the salary adjustments due to the implementation of this Joint

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Undaunted, petitioner moved for reconsideration,⁴¹ which was denied in a Resolution⁴² dated September 27, 2018. Hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the COA gravely abused its discretion in affirming the subject disallowances of salary increases granted by SBC to various personnel during the period from September 1, 2012 to September 30, 2014.

SBC argues that the grants of the disputed salary increases were valid because: (a) they were paid pursuant to its revised salary structure which was approved prior to the issuance of EO No. 7; (b) it is empowered by RA 6977, as amended, to fix the salaries of its personnel; and (c) even assuming that the payment of salary increases were properly disallowed, the approving and certifying officers, as well as the respective recipients thereof, cannot be held civilly liable since the amounts were paid and received in good faith.⁴³

The Court's Ruling

The petition is without merit.

I.

The COA is constitutionally endowed with enough latitude to determine, prevent, and disallow the illegal, irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. The exercise of this audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.⁴⁴

Corollary thereto, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. It is only when the COA has clearly acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court may intervene to correct its decisions or resolutions.⁴⁵

In this case, the Court finds that the COA did not commit any grave

Resolution, until such time that they have implemented their own compensation and position classification system. (Emphases and underscoring supplied)

⁴⁰ See *rollo*, pp. 39-41.

⁴¹ See motion for reconsideration dated March 28, 2018; *id.* at 182-192.

⁴² *Id.* at 43.

⁴³ See *id.* at 12-26.

⁴⁴ See *Delos Santos v. Commission on Audit*, 716 Phil. 322, 332 (2013).

⁴⁵ See *Miralles v. Commission on Audit*, 818 Phil. 380, 389 (2017).

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abuse of discretion in affirming the propriety of the subject disallowances relative to the salary increases of the SBC personnel pursuant to its revised salary structure providing for step increments.

As the COA correctly ruled, the disputed salary increases were illegally disbursed in violation of the moratorium imposed under EO No. 7, Section 9 of which reads:

SECTION 9. *Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits.* – **Moratorium on increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits, except salary adjustments pursuant to Executive Order No. 811 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010 are hereby imposed until specifically authorized by the President.** (Emphases and underscoring supplied)

As explained in its whereas clauses, the moratorium was intended “to strengthen the supervision over the compensation levels of GOCCs and GFIs, in order to control the grant of excessive salaries, allowances, incentives[,] and other benefits.”⁴⁶

At this juncture, it should be clarified that although SBC’s revised salary structure was approved on February 8, 2010, which was prior to the issuance of EO No. 7 on September 8, 2010, the implementation of the same commenced only on October 28, 2011 when SBC issued procedural rules and guidelines for its administration. Moreover, the recipients of the salary increases were only determined much later upon the recommendation of the PERC and the increases themselves were only approved and actually granted between the period of September 1, 2012 to September 30, 2014. Thus, the COA properly observed that the disallowed salary increases still fall within the ambit of the executive order **since they were only implemented, approved, and actually granted during its effectivity.**

At any rate, there is nothing in EO No. 7 which exempts previous revisions of a GOCC/GFI’s salary structure from the increase moratorium. As worded, the only exception appears to be salary adjustments pursuant to EO No. 811⁴⁷ and EO No. 900,⁴⁸ which was not, however, shown to obtain in this case.

II.

Further, it should be borne in mind that notwithstanding prior laws enabling certain GOCCs/GFIs to fix their own salary schemes (as in the case

⁴⁶ See whereas clauses of Executive Order No. 7.

⁴⁷ Entitled “ADOPTING THE FIRST TRANCHE OF THE MODIFIED SALARY SCHEDULE OF CIVILIAN PERSONNEL AND BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AS WELL AS THE MODIFIED POSITION CLASSIFICATION SYSTEM PURSUANT TO SENATE AND HOUSE OF REPRESENTATIVES JOINT RESOLUTION No. 4, S. 2009,” approved on June 17, 2009.

⁴⁸ Entitled “IMPLEMENTATION OF THE SECOND TRANCHE OF THE MODIFIED SALARY SCHEDULE FOR CIVILIAN PERSONNEL AND BASE PAY SCHEDULE FOR MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT,” approved on June 23, 2010.

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of SBC), such power is still subject to the standards laid down by applicable laws,⁴⁹ which, among others, grants the President the ultimate authority to approve salary increases of GOCCs/GFIs exempt from the salary standardization law.⁵⁰ Under RA 10149,⁵¹ the GCG, which is attached to the Office of the President,⁵² is authorized⁵³ to fix the compensation frameworks of all GOCCs (including GFIs⁵⁴), as a rule, in order “to prevent or deter the granting of unconscionable and excessive remuneration packages.”⁵⁵ As held in *Galicto v. Aquino III*:⁵⁶

With the enactment of the GOCC Governance Act of 2011, the **President is now authorized to fix the compensation framework of GOCCs and GFIs.**

x x x x

As may be gleaned from these provisions, **the new law amended R.A. No. 7875 and other laws that enabled certain GOCCs and GFIs to fix their own compensation frameworks**; the law now authorizes the President to fix the compensation and position classification system for all GOCCs and GFIs, as well as other entities covered by the law. x x x

x x x x

This is the present situation here. **Congress, [through] R.A. No. 10149, has expressly empowered the President to establish the compensation systems of GOCCs and GFIs.** x x x⁵⁷ (Emphases and underscoring supplied)

Thus, the authority granted to the SBC-BOD by RA 6977, as amended, to fix its own salary structure, remains subject to the provisions of RA 10149. In fact, as the COA aptly noted, SBC itself even recognized the GCG’s authority over its compensation framework, as evinced by its own letter dated June 25, 2014 to the latter requesting confirmation of its grant of

⁴⁹ Such as the pertinent provisions of Presidential Decree (PD) No. 985, as amended, PD No. 1597, the Annual General Appropriations Act, and, at present, RA 10149. (See *Philippine Health Insurance Corp. v. COA*, 801 Phil. 427 [2016].)

⁵⁰ See Section 59 of RA 9970 and Section 56 of RA 10147.

⁵¹ Otherwise known as the “GOCC GOVERNANCE ACT OF 2011,” approved on June 6, 2011.

⁵² Section 5 of RA 10149 reads:

SEC. 5. *Creation of the Governance Commission for Government-Owned or -Controlled Corporations.* – There is hereby created a central advisory, monitoring, and oversight body with authority- to formulate, implement and coordinate policies to be known as the Governance Commission for Government-Owned or -Controlled Corporations; hereinafter referred to as the GCG, **which shall be attached to the Office of the President.** x x x.

⁵³ See Sections 8 and 9 of RA 10149.

⁵⁴ Section 4 of RA 10149 reads:

SEC. 4. *Coverage.* – This Act shall be applicable to all GOCCs, GICPs/GCEs, and **government financial institutions**, including their subsidiaries, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions x x x.

⁵⁵ See Section 2 (f) of RA 10149.

⁵⁶ 683 Phil. 141 (2012). See also *GSIS Family Bank Employees Union v. Villanueva*, G.R. No. 210773, January 23, 2019; *Philippine Charity Sweepstakes Office v. Pulido-Tan*, supra 19; *SBC v. COA*, supra note 6.

⁵⁷ *Id.* at 176-177.

salary increases.

Besides, it is well to note that the issue of the propriety of the subject disallowances had already been conclusively settled in the related case of *SBC v. COA*,⁵⁸ docketed as **G.R. No. 230628** (*October 2017 SBC Case*), which also involved the same issue between the same parties in the case at bar. In the said case, the Court, through a Decision dated October 3, 2017, affirmed Notice of Disallowance (ND) No. 14-001-401000-(13) dated August 27, 2014 issued by the COA against salary increases authorized and paid by SBC to various personnel pursuant to its revised salary structure during the period from September 1, 2012 to August 31, 2014 for being violative of the moratorium imposed by EO No. 7. In so ruling, the Court declared that “[i]t is the **date of the actual giving of the increased salary rate** that is material insofar as determining whether the moratorium imposed by EO No. 7 is applicable or not[.]” **“irrespective of when the GOCC’s/GFI’s salary structure was approved[.]”** viz.:

EO No. 7 was issued on September 8, 2010. **The merit increases, meanwhile, were granted only on April 12, 2013, and were applied to salaries earned from the period September 1, 2012 to August 31, 2014. During this period, the moratorium established in EO No. 7 was already in effect since September 8, 2010.**

A plain reading of the wording in Sec. 9 of EO No. 7 would reveal that the clear directive is to halt the grant of additional salaries and allowances to employees and officers of GOCCs. x x x

x x x x

[SBC] argues that, as applied to the grant of merit increases to the five officers, COA gave EO No. 7 retroactive effect. [SBC] argues that its salary structure had been in existence since June 1, 2009, well before the imposition of the moratorium. x x x

x x x x

What [SBC] does not dispute, however, is that **it was only on April 12, 2013 that it actually granted merit increases to the five officers involved in the present case. At that time, EO No. 7 was already in effect. The moratorium on the grant of increased salary rates was already in full force and effect.**

x x x x

There is no question that EO No. 7 does not provide for any retroactive application. However, [SBC’s] interpretation of which acts are prohibited by the moratorium runs contrary to the plain wording of EO No. 7 when it imposed the moratorium on “increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits.” **The E.O. did not prohibit merely the grant of increased salary rates in corporate salary structures; it also intended to halt the actual giving of increased salary rates.**

⁵⁸ Supra note 6.

x x x x

The issue of retroactivity, as posited by the [SBC], is not actually one of retroactive application, but an issue of which particular acts are prohibited. **The Court holds that the moratorium is imposed on the actual grant of increased salary rates, allowances, incentives, and other benefits, regardless of the date of approval of the salary structure, irrespective of when the GOCC's/GFI's salary structure was approved.** There is no merit, therefore, in [SBC's] argument that COA effectively gave EO No. 7 retroactive effect. **It is the date of the actual giving of the increased salary rate that is material insofar as determining whether the moratorium imposed by EO No. 7 is applicable or not.**⁵⁹ (Emphases and underscoring supplied)

With the issue regarding the propriety of the disallowances already settled, the Court now examines the civil liability of the individuals directed to return the amounts pursuant to prevailing jurisprudence. Notably, while the principle of conclusiveness of judgment⁶⁰ applies anent the issue of the subject disallowance's propriety, considering that (a) the present case and the *October 2017 SBC Case* stemmed from disbursements made pursuant to the same issuance⁶¹ (i.e., the implementing guidelines approved under Board Resolution No. 1863), and (b) as between them, there are substantially identical parties (i.e., SBC personnel on the one hand and the COA on the other) and issues raised (i.e., the propriety of the grant of salary increases notwithstanding the issuance of EO No. 7), the **separate issue on civil liability** must still be determined if only to account for the different factual peculiarities attending the individual participation of the persons to be held civilly liable herein in accordance with existing case law on the subject.⁶²

III.

The prevailing jurisprudence on the civil liability of persons made to return disallowed personnel incentives and benefits is *Madera v. COA*⁶³ (*Madera*). In *Madera*, the prescribed Rules on Return are as follows:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

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

⁵⁹ Id. at 251-253.

⁶⁰ Under the principle of *res judicata* in the form of conclusiveness of judgment, "any right, fact, or matter in issue, directly adjudicated on the merits in a previous action by a competent court or necessarily involved in its determination, is conclusively settled by the judgment in such court and cannot again be litigated between [identical or substantially the same] parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same." (*Presidential Anti-Graft Commission v. Pleyto*, 661 Phil. 643, 652-653 [2011]. See also *Heirs of Deleste v. Land Bank of the Phils.*, 666 Phil. 350, 388 [2011].)

⁶¹ See Office Order No. 003, Series of 2012, with the subject: "Guidelines and Procedures on the Administration of SBC Salary Structure;" id. at 66-85.

⁶² See *Wycoco v. Aquino*, G.R. Nos. 237874 and 239036, February 16, 2021.

⁶³ G.R. No. 244128, September 8, 2020.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount, which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
 - c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
 - d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.⁶⁴

Based on the *Madera* Rules on Return, the public officers ordinarily held liable under disallowance cases involving personnel incentives and benefits are classified as either (1) an approving/authorizing officer or (2) a payee-recipient. Their civil liabilities to return are correspondingly governed by distinct legal nuances under two basic frameworks of law.⁶⁵

To expound, when a public officer is to be held civilly liable in his or her capacity as an approving/authorizing officer, the liability is to be viewed from the public accountability framework of the Administrative Code. This is because the civil liability is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure.⁶⁶

Approving/certifying officers of the disallowed amounts are not automatically held liable for their return. Consistent with Section 38 (1),⁶⁷ Chapter 9, Book I of the Administrative Code of 1987, a clear showing of bad faith, malice, or gross negligence must first be established in order to hold them civilly liable as public officers for the illegal disbursements of public funds. Absent such clear showing, they are presumed to be in good faith, and therefore, not civilly liable in their official capacities.

⁶⁴ See *id.*

⁶⁵ *Abellanosa v. Commission on Audit*, G.R. No. 185806, November 17, 2020.

⁶⁶ See *id.*

⁶⁷ Section 38 (1), Chapter 9, Book I of EO No. 292 entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987,'" (July 25, 1987), reads:

Section 38. *Liability of Superior Officers.* — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

Once the existence of bad faith, malice, or gross negligence as contemplated is clearly established, the liability of approving/certifying officers to return the disallowed amounts based on an unlawful expenditure is **solidary**. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code of 1987:

Section 43. *Liability for Illegal Expenditures.* – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of **said provisions** shall be illegal and **every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable** to the Government for the **full amount so paid or received.** (Emphases and underscoring supplied)

On the other hand, when a public officer is to be held civilly liable not in his or her capacity as an approving/certifying officer but merely as a **payee-recipient** of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of *solutio indebiti* under a purely civil law framework.

In this relation, case law illumines that when the civil obligation is sourced from *solutio indebiti*, **good faith is inconsequential.**⁶⁸ Accordingly, previous rulings absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, pursuant to the promulgation of *Madera*, have now been abandoned. Thus, as it stands, **the general rule is that recipients, regardless of their good faith, are civilly liable to return the disallowed amounts they had individually received on the basis of *solutio indebiti*.**

This notwithstanding, the Court in *Madera* also recognized certain exceptions to the general rule on return. Bearing in mind its underlying premise, which is “the ancient principle that no one shall enrich himself unjustly at the expense of another,”⁶⁹ *solutio indebiti* finds no application where recipients were not unjustly enriched⁷⁰ at the expense of the government. Under the *Madera* Rules on Return, the exceptions pertain to disallowed personnel incentives and benefits which are either: (1) **genuinely given in consideration of services rendered (Rule 2c of the *Madera* Rules)**; or (2) excused by the Court to be returned on the basis of **undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis (Rule 2d of the**

⁶⁸ Good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is “‘forced’ by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment.” (See *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 [1993].)

⁶⁹ *Ramie Textiles, Inc. v. Mathoy, Sr.*, 178 Phil. 482, 487 (1979).

⁷⁰ See *Power Commercial and Industrial Corp. v. Court of Appeals*, 340 Phil. 705 (1997).

Madera Rules).

As a supplement to *Madera*, the Court, in the later case of *Abellanosa v. COA*⁷¹ (*Abellanosa*), clarified the proper conditions for the application of the foregoing exceptions so as to prevent their indiscriminate and loose invocation to the prejudice of the government. As discerned by the Court:

[T]hese refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of the *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

Specifically, in order to qualify under the Rule 2c exception (*i.e.*, **genuinely given in consideration of services rendered**), the following requisites must concur:

- (a) the personnel incentive or benefit has **proper basis in law** but is only disallowed due to **irregularities that are merely procedural in nature**; and
- (b) the personnel incentive or benefit must have a **clear, direct, and reasonable connection** to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.⁷² (Emphases supplied)

The first requisite makes clear that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws.⁷³ Thus, amounts excused under the Rule 2c exception should be understood to be limited to disbursements **adequately supported by factual and legal basis, but were nonetheless validly disallowed by the COA on account of procedural infirmities.**

Aside from having proper basis in law, the disallowed incentive or benefit, to qualify under the Rule 2c exception, must also have a **clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions.** As discussed in *Abellanosa*, for a benefit or incentive to be considered as "genuinely given," not only does it need to have an ostensible statutory/legal cover, but there must also be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions.

Distinct from Rule 2c, Rule 2d of the *Madera* Rules on Return

⁷¹ G.R. No. 185806, November 17, 2020.

⁷² See *id.*

⁷³ See Concurring Opinion of Justice Caguioa in *Abellanosa v. COA*, *id.*

provides for another exception to excuse return, namely, **disallowed amounts excused by the Court to be returned on the basis of undue prejudice, social justice considerations, and other bona fide exceptions as may be determined on a case-to-case basis.** While Rule 2d is couched in broader language as compared to Rule 2c, *Abellanosa* elucidates that the exception may only be invoked in *bona fide instances where the Court is strongly impelled to prevent a clear inequity arising from a directive to return.* Therefore, it is only in highly exceptional circumstances, after taking into account all relevant factors (such as the nature and purpose of the disbursement and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.

Notably, the application of Rules 2c and/or 2d in a particular case has a direct bearing on the civil liability of the erring approving/certifying officers under Section 38, in relation to Section 43, of the Administrative Code. In *Madera*, the Court explained that when recipients are excused to return disallowed amounts for the reason that they were genuinely given in consideration of services rendered, or for some other bona fide exception determined by the Court on a case to case basis, the erring approving/certifying officers' solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount).⁷⁴ The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the government, and thus, reduces the total amount to be returned to the extent corresponding to such exclusions.

In this case, the Court finds that the approving and certifying officers of the disallowed salary increases clearly acted with gross negligence in authorizing or taking part in the authorization of their illegal disbursements. As earlier explained, Section 9 of EO No. 7 clearly imposed a moratorium against "*increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits*" of GOCC/GFI personnel. Further, the provision makes no exception as to salary increases stemming from a prior reorganization of a GOCC/GFI's salary structure. Therefore, the approving/certifying officers identified under the subject disallowances cannot be said to have acted in good faith when, despite the effectivity of EO No. 7, they still proceeded to implement, approve, and grant the disallowed amounts. Hence, pursuant to Sections 38 and 43 of the Administrative Code of 1987, they are **solidarily liable** for the return of the disallowed amounts in accordance with and as respectively indicated under each notice of disallowance.

Meanwhile, anent the liability of the payee-recipients, the Court finds no reason to excuse their return of the disallowed amounts under the above-

⁷⁴ See *Madera v. COA*, supra note 63.

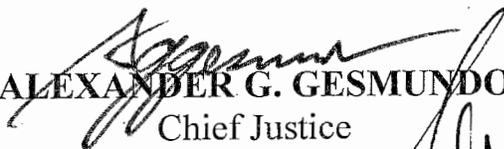
discussed exceptions of the *Madera* rules. For one, since the disbursements lack proper basis in law and were not disallowed based on mere procedural infirmities, the salary increases cannot be excused as amounts genuinely given in consideration of services rendered under Rule 2c of the *Madera* rules. Neither do the records of the case furnish any clear equitable basis justifying the payees' retention of the amounts on exceptional considerations of undue prejudice, social justice, or other *bona fide* grounds. Thus, following the general rule on return, each of the payee-recipients, regardless of their good faith, are **individually liable** for the return of the amounts they respectively received on the basis of *solutio indebiti*.

WHEREFORE, the petition is **DISMISSED**. The Decision No. 2017-494 dated December 29, 2017 and the Resolution dated September 27, 2018 rendered by the Commission on Audit are hereby **AFFIRMED**. Pursuant to prevailing jurisprudence, the approving and certifying officers identified in Notice of Disallowance Nos. 14-002-401000-(12), 14-003-401000-(12), 14-004-401000-(13), 14-005-401000-(13), 14-006-401000-(13), and 14-007-401000-(13) are held solidarily liable for the return of the disallowed amounts in accordance with and as respectively indicated under each notice of disallowance. Meanwhile, the payee-recipients are held individually liable for the return of the disallowed amounts they respectively received.

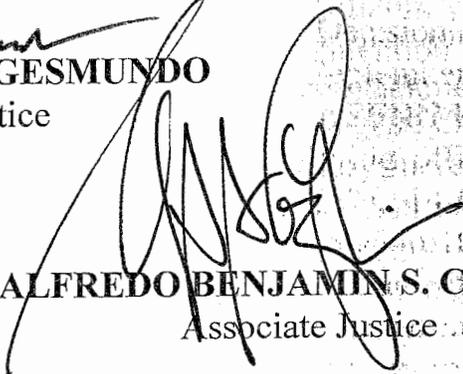
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

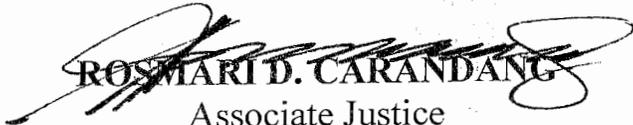
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

