

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS THRU THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, REPRESENTED BY ATTY. ORLANDO L. SALVADOR, PETITIONER, VS. HON. AN...

G.R. No. 148269. November 22, 2010

Ponente: BRION, J.

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BRION, J.:

This is a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Court seeking the reversal of the Ombudsman's Resolution[1] dated October 16, 2000, dismissing the criminal complaint (docketed as OMB-0-97-1138, entitled Salvador v. Tabasondra, et al.) against private respondents Ulpiano Tabasondra, Enrique M. Herbosa, P.O. Domingo, Zosimo C. Malabanan, Arsenio S. Lopez, Romeo V. Reyes, Nilo Roa, Heradeo Guballa, Florita T. Shotwell, Benigno del Rio, Juan F. Trivino, Salvador B. Zamora II, and John Does[2] for violation of Section 3(e) and (g) of Republic Act No. (RA) 3019 (otherwise known as the Anti-Graft and Corrupt Practices Act). Petitioner Presidential Ad Hoc Fact-Finding Committee on Behest Loans also prays that we reverse the Order,[3] dated February 27, 2001, of the Ombudsman denying petitioner's Motion for Reconsideration of November 24, 2000.

The petitioner is a government agency created under Administrative Order No. (AO) 13 on October 8, 1992 by then President Fidel V. Ramos. It was tasked to inventory all behest loans, determine the parties involved and recommend the appropriate actions that should be taken.[4] Under the law, behest loans entail both civil and criminal liabilities. President Ramos later issued Memorandum Order No. (MO) 61, dated November 9, 1992, expanding the functions of the Committee to include the inventory and review of all non-performing loans, whether behest or non-behest. The memorandum also provided the following criteria for determining a behest loan:

- It is undercollateralized (sic).
- The borrower corporation is undercapitalized.
- Direct or indirect endorsement by high government officials like presence of marginal notes.
- Stockholders, officers or agents of the borrower corporation are identified as cronies.
- Deviation of use of loan proceeds from the purpose intended.
- Use of corporate layering.
- Non-feasibility of the project for which financing is being sought.
- Extra-ordinary speed in which the loan release was made.

Pursuant to its mandate under AO 13 and MO 61, the petitioner investigated a loan guarantee agreement between

Coco-Complex Philippines, Inc. (CCPI), a domestic corporation in the business of manufacturing oil, and the National Investment Development Corporation (NIDC), the investment subsidiary of the Philippine National Bank (PNB)[5] The CCPI sought to have NIDC guarantee a loan payable to Fried Krupp of Germany for the turn-key purchase of an oil mill. On January 17, 1968, the NIDC issued Board Resolution No. 26 approving a guarantee agreement in favor of CCPI for the amount of DM7.4M plus interest at the annual rate of 6 1/4 %, or a total amount of P9,277,080.00. On March 12, 1969, the parties signed the Guaranty Agreement.[6] As of March 31, 1992, the Statement of Deficiency Claim disclosed that CCPI had an outstanding obligation of P205,889,545.76.

The petitioner, through Atty. Orlando Salvador, filed a Sworn Statement,[7] dated June 5, 1997, before the Ombudsman against Ulpiano Tabasondra, Enrique M. Herbosa, Zosimo C. Malabanan, P.O. Domingo, and/or all officers and members of the Board of Directors of the Development Bank of the Philippines (DBP),[8] Makati City; and Arsenio S. Lopez, Romeo V. Reyes, Nilo Roa, Heradeo Guballa, Benigno del Rio, Juan Triviño, and/or all officers and stockholders of CCPI. The petitioner alleged that the processing of the original loan was attended with haste considering that the CCPI was incorporated on July 12, 1967, and the Letter of Guarantee was approved in principle by the NIDC Board of Directors as early as September 20, 1967. It also claimed that the loan was without sufficient collateral at the time the loan guarantee was approved. CCPI's existing assets of P495,300.00 and assets to be acquired (turn-key cost of coconut mill) amounting to P6,986,031.00 had an aggregate sum of P7,481,331.00. Nevertheless, the NIDC considered this sufficient collateral for a loan of P9,277,080.00. The petitioner also pointed out that the loan was undercapitalized since at the time the NIDC granted the loan guarantee, the paid-up capital was only P2,111,000.00.

The petitioner further relayed in its Complaint that the NIDC granted CCPI an additional loan, restructuring and equity conversion of outstanding obligations, without sufficient collateral and adequate capital to ensure CCPI's viability and its ability to repay its loans. On November 25, 1970, the NIDC issued Board Resolution No. 361 which restructured CCPI's loan and increased it to DM12.2M, inclusive of interest.[9] It also alleged that the NIDC board issued, on December 2, 1970, Board Resolution No. 373, allowing the conversion of P7.07M out of a total P17.95M advances into CCPI common stocks. Soon thereafter, on June 9, 1971, the NIDC approved Board Resolution No. 183, permitting a further conversion of P14.2M of CCPI's advances into equity.[10] The petitioner also alleged that the NIDC agreed to guarantee CCPI's P4.5M credit line with PNB, through Board Resolution No. 40, dated February 10, 1972. And on February 10, 1972, the NIDC issued Board Resolution No. 48, granting CCPI a guarantee loan of \$750,000.00.[11]

On September 5, 1997, the Office of the Ombudsman issued the Resolution dismissing the Complaint on the ground of prescription of the offense.[12] However, we reversed this ruling in G.R. No. 130140,[13] where we held that the crime had not yet prescribed and ordered the Ombudsman to conduct a preliminary investigation.

On February 16, 2000, petitioner filed a Manifestation and Request for Issuance of Subpoena Duces Tecumu[14] due to previous difficulties in obtaining records from the PNB. It specifically sought from the PNB the names of the NIDC directors who issued particular NIDC Board Resolutions, the specific dates they were issued, and the amount of money involved.[15] However, the Ombudsman failed to act on this request.

On October 16, 2000, the Ombudsman promulgated a resolution dismissing the complaint for the failure of the petitioner to furnish the names of the NIDC officials who should be indicted. Instead, the respondents named in the complaint appeared to be DBP officers and board members who should not be implicated since the loan did not even pass through the DBP.[16]

On November 24, 2000, the petitioner filed a Motion for Reconsideration (With Motion for Leave to Admit

Amended Complaint).[17] In the Amended Complaint,[18] the petitioner identified respondents Tabasondra, Herbosa, Domingo and Malabanan as officers and/or Board Members of PNB/NIDC, not the DBP; the mistake made in the original complaint was a mere typographical error. The officers and/or stockholders of CCPI - Shotwell, Roa, Zamora, Trivino, Lopez, Reyes, Guballa, and del Rio - were also included as respondents. However, the petitioner clarified that other individuals may still be included as respondents. The petitioner repeated its allegation that the loan granted to CCPI was under-collateralized, while CCPI was undercapitalized; these findings were reflected in a Memorandum[19] (dated January 17, 1968) submitted by NIDC Vice President Mario Consing to its Board of Directors. It added that the Executive Summary and the documents attached in the original complaint were made an integral part of the Amended Complaint.

In the assailed Order[20] of February 27, 2001, the Ombudsman denied the Motion for Reconsideration for lack of merit. He noted that there were no other documents attached to the Amended Complaint to prove that the respondents were liable for the acts complained of. He stated that the petitioner failed to provide copies of the resolution that the PNB/NIDC officials allegedly processed and approved. Thus, he considered the motion as a mere scrap of paper.

On June 7, 2001, the petitioner filed this Petition for Certiorari which assails the assailed Resolution and Order on the following grounds:

I

THE HONORABLE OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN ISSUING HIS SAID RESOLUTION AND ORDER PROMULGATED ON NOVEMBER 13, 2000 (sic) AND MARCH 23, 2001 (sic) RESPECTIVELY. MORE PARTICULARLY, HE GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT "APART FROM THE FOREGOING ENUMERATION, NO OTHER DOCUMENT WAS ATTACHED TO THE SAME TO PROVE THE ALLEGATION THAT INDEED THE SAID RESPONDENTS WERE LIABLE FOR THE ACTS COMPLAINED OF."

II

THE ALLEGED INSUFFICIENCY OF EVIDENCE WAS DUE TO THE OMBUDSMAN'S GROSS NEGLIGENCE IN THE PERFORMANCE OF HIS DUTIES, SPECIFICALLY HIS FAILURE TO ISSUE SUBPOENA DUCES TECUM AS REQUESTED BY PETITIONER.[21]

Ruling of the Court

We find the petition meritorious.

Ordinarily, the Court does not interfere with the Ombudsman's determination of the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion, or if the action is done in a manner contrary to the dictates of the Constitution, law or jurisprudence.[22] In these exceptional cases, the Ombudsman's action becomes subject to judicial review.

The Ombudsman, in dismissing a complaint - whether for want of palpable merit or after the conduct of a preliminary investigation[23] - carries the duty of explaining the basis for his action; he must determine that the complainant had failed to establish probable cause.

The probable cause that a complainant has to establish need not be based on clear and convincing evidence of guilt or evidence of guilt beyond reasonable doubt. It simply implies probability of guilt and requires more than a bare suspicion but less than evidence that would justify a conviction. A finding of probable cause need only rest on evidence showing that more likely than not, a crime has been committed and was committed by the suspects.[24]

Given this quantum of evidence, we find that the Ombudsman gravely abused his discretion when he immediately dismissed the Amended Complaint for being insufficient. We find it particularly unsettling that the Ombudsman dismissively set aside the petitioner's voluminous exhibits with only one paragraph, and failed to discuss whether the questioned transactions bore the characteristics of a behest loan[25] and whether the respondents - those whose names were identified and those who were identified merely as directors and officers of the entities involved - were probably guilty of violating Section 3(e) and (g) of RA 3019. Lastly, the elements of the offenses charged should have been examined and discussed, before a conclusion regarding the existence or non-existence of probable cause is arrived at.

In the present case, the Ombudsman dismissed the Amended Complaint because he considered fatal the petitioner's failure to provide copies of the resolutions duly approved by the officers and directors of the PNB and the NIDC, showing that they were responsible for the processing and the eventual approval of the questioned loan. In its own words -

Apart from the aforementioned enumeration no other document was attached to the same to prove the allegation that indeed the said respondents were liable for the acts complained of. There were no copies of the resolution duly approved by said officials of the PNB/NIDC showing that they were responsible for the processing and eventual approval of the questioned loan. To our mind, the enumerations, standing alone, is (sic) not sufficient to establish sufficient basis to proceed with the conduct of preliminary investigation against said respondents. In other words, this motion is no more than a mere scrap of paper.[26]

In his Comment,[27] the Ombudsman added that instead of burdening the Office of the Ombudsman with the issuance of the subpoena duces tecum, the petitioner should have asked the Presidential Commission on Good Government (PCGG) to subpoena the required documents, i.e., the relevant board resolutions, as it was charged with the investigation of graft and corruption cases and it was empowered to issue subpoenas under Section 3 of Executive Order (EO) No. 1.

The questioned transactions bear the characteristics of behest loans.

We find that despite the petitioner's failure to attach the relevant board resolutions in this case, the records provide ample support to the petitioner's claim that the officers and directors of the PNB and the NIDC had approved, in favor of CCPI, a loan that qualifies with at least three criteria of behest loans - (1) the borrower was undercapitalized; (2) the loan accommodation was under-collateralized; and (3) the NIDC Board of Directors approved the loan accommodation with extraordinary haste.

There is prima facie proof that CCPI was undercapitalized when it applied for and was granted the loan guarantee.

Under MO 61, one of the criteria for determining a behest loan is an undercapitalized borrower corporation. Undercapitalization is the financial condition of a firm that does not have capital to carry on its business. Related to this concept is that of thin capitalization - the financial condition of a firm that has a high ratio of liabilities to capital.[28]

The Guaranty Agreement between CCPI and the NIDC, which was attached to the Amended Complaint, clearly shows that (1) the amount of the loan guarantee was P9,277,080.00 and (2) the amount of the paid-in capital at the time CCPI applied for the loan was P400,000.00.[29]

The Guaranty Agreement sought to address the wide discrepancy between the amount of the loan guarantee and

CCPI's paid-in capital by adding the provision, included among the "Borrower's Covenants," that requires CCPI to pay in cash P1.7M as paid-in capital before the agreement is signed, and to pay cash installments of P600,000.00, P400,000.00 and P500,000.00 on the 9th, 12th, and 18th month after the signing of the agreement; these sums are over and above the paid-in capital of P400,000.00.[30] Under the terms of the agreement, the paid-in capital, even after the cash installments were made, would still be less than half of the amount of the loan accommodation applied for.

Nevertheless, CCPI failed to comply with the lenient terms of the agreement. The NIDC Credit Investigation Report, dated August 14, 1970, stated that CCPI refused to show its stock and transfer book and books of account, and its paid-up capital as of December 31, 1969, or nine months after the parties signed the agreement, was only P2,111,000.[31] This means that the P600,000.00 installment due on the 9th' month after March 12, 1969 had not been complied with.

The NIDC's unexplained response to violations of these terms further proves the behest character of the loan. Under the agreement, CCPI could have been considered as having defaulted, and the obligations of CCPI would have been immediately due and payable as early as 1970.[32] Instead of taking the appropriate legal action to protect NIDC's interests, its directors issued Board Resolution No. 361 on November 25, 1970, which restructured CCPI's loan and increased it to DM12.2M, inclusive of interest.[33] This further increased the already irregular debt to equity ratio. There was no reason for NIDC to be confident that CCPI would be able to pay its obligations; NIDC had to advance the payment of the first amortization of DM600,000.00 to the supplier of the equipment on June 1, 1970.[34] It should also be noted that in 1970, the project, which should have started operations in April 1969, was not even operational.[35] It was only on May 10, 1978 that the NIDC directors issued Board Resolution No. 64 which approved the management's recommendation to institute legal action against CCPI.[36] And in 1981, when CCPI's liability to the NIDC had ballooned to P69,492,000.00, respondent Tabasondra, the Acting Senior Vice President and General Manager of NIDC, belatedly recommended the foreclosure of CCPI's insufficient collateral.[37]

There is prima facie evidence that the loan guarantee was under-collateralized.

Before the parties signed the agreement, NIDC's Board of Directors had already been informed of the insufficiency of CCPI's collateral. The Memorandum,[38] dated January 17, 1968, of NIDC Vice President Mario Consing, addressed to the Board of Directors, valued the assets allegedly used as collateral at P9.4M, the purported acquisition value of the assets. Even Consing characterized the valuation of the assets as "liberal,"[39] for what should have been used in this case was the appraisal value of the assets, instead of the market value or the acquisition value. As the appraised value is only 80% of the acquisition value, the assets were overstated by at least 25%. Nevertheless, he found the overvalued collateral of P9.4M to be insufficient and recommended that additional collateral of real estate worth P5.2M be raised to fully secure NIDC's P9.3M exposure. The pertinent part of his Memorandum reads:

Based on the more liberal interpretation of NIDC's valuation policy (normally, the loan value is based on the appraised value which is equivalent to 80% of the market value or acquisition cost; in this case, however, the market value was used as the base for computing loan value), the above properties would have an approximate loan value of only P5.1M, covering roughly 55% of the client's guarantee application. Additional collaterals with a market value of at least P5.3 million (in the form of real estate) should be offered in order to fully secure NIDC's exposure of P9.3 million.[40]

However, the records do not show that CCPI complied with the additional real estate collateral required. The

NIDC Credit Investigation Report, dated August 14, 1970, identified the collateral as a first mortgage on two parcels of land with a total appraised value of P495,300.00, and a first mortgage on all assets to be acquired.[41] The same report valued CCPI's fixed assets (including land) at P9,139,069.83.[42] Thus, even if we assume that all of CCPI's fixed assets, as of the end of 1969, were used as collateral,[43] the amount of the loan accommodation would still be higher than the total value of the collateral. This clearly shows that the loan was under-collateralized.

By issuing Board Resolution No. 361 on November 25, 1970, which restructured CCPI's loan and increased it to DM12.2M, the NIDC directors only increased the risk exposure of PNB, and necessarily of the government, when it should have never even approved a loan accommodation with insufficient collateral.

The loan accommodation was approved with extraordinary speed.

The NIDC Board of Directors approved the loan accommodation on January 17, 1968 (through Board Resolution No. 26), the same date Vice President Mario Consing had submitted his report to the board, stating that CCPI had insufficient collateral and capital. This clearly shows that the NIDC officers prematurely approved the loan accommodation, contrary to acceptable lending practices, as it was done before they were assured that the company, whose loan they resolved to guarantee, could reasonably be expected to meet its obligations. Matters were made worse when CCPI failed to comply with the capital and collateral requirements even after the parties signed their agreement; again, the board prematurely approved the restructuring that increased CCPI's loan accommodation and provided a longer period to comply with its obligations.

The petitioner's expertise in identifying behest loans should be given due respect.

The petitioner's allegation that the questioned transactions fall under "behest loans" should not be lightly dismissed. It is worth mentioning that in our 2008 and 2009 decisions also entitled *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[44] we found it proper to accord the petitioner's findings with healthy respect, as they were precisely formed to determine the existence of behest loans. On account of its special knowledge in the field of banking, it is in a position to determine whether standard banking practices were followed in the approval of a loan, including the adequacy of the security for a given loan or similar transaction.

The petitioner's failure to name the PNB/NIDC directors involved should not result in the outright dismissal of the amended complaint.

The Ombudsman dismissed the Amended Complaint because the petitioner failed to provide copies of the board resolutions that would show that the respondents were the officers and directors of PNB/NIDC who approved the questioned transactions. We find this position untenable.

Section 6 of RA 1300, the PNB charter, provides that the business affairs and the property of the PNB shall be managed and preserved by the Board of Directors. The Board of Directors consists of the bank president, one vice-president, and five members who shall be elected. From this, we may reasonably infer that the grant of the loan accommodation in CCPI's favor was accomplished through the approval of the PNB/NIDC Board of Directors.

Ideally, the petitioner should have obtained copies of the board resolutions, approving the questioned transactions, to determine who voted favorably on these acts; this would enable petitioner to name the proper respondents.

However, the Ombudsman did not act on its motion for the issuance of a subpoena duces tecum. Given this situation, the petitioner was able to identify some of the respondents by name and the others were merely denominated as John Does,[45] in accordance with Section 7, Rule 110 of the Rules of Court:

SEC. 7. Name of the accused. - The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.

If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record.

Thus, even if the Ombudsman found that the Amended Complaint against the named NIDC officers should be dismissed, the complaint against the unnamed NIDC officers remains valid. We further note that none of the named respondents denied being PNB/NIDC board members during the relevant period, or approximately from 1967 to 1970. Moreover, respondents Domingo and Herbosa, who filed their Comments,[46] failed to deny that they were NIDC officers during this period or that they had not assented to the questioned transactions; they merely stated that their names had not appeared in any of the petitioner's exhibits pertaining to those dates. Nor should we overlook the case against the CCPI directors who were all named in the Amended Complaint.

In his Comment, the Ombudsman justified his failure to issue a subpoena duces tecum by stating that the PCGG should have issued the subpoena, as it was empowered to do so under Section 3(e) of EO No. 1, dated February 28, 1986.[47] We find this argument flimsy.

The PCGG's power to issue a subpoena under EO No. 1 is pursuant to its power to investigate cases of graft and corruption. In this case the complaint was referred to the Ombudsman, not the PCGG, for preliminary investigation. Under Section 15(1) of RA 6770, the Ombudsman is empowered to investigate and prosecute offenses involving public officers and employees. In *Cojuangco, Jr. v. Presidential Commission on Good Government*,[48] we emphasized that the Ombudsman has the primary jurisdiction over cases involving public officers and employees, even as we recognized the PCGG's concurrent jurisdiction. Nothing in EO No. 1 would have prevented the Ombudsman from exercising his powers under Section 15(8) of RA 6770 to "[a]dminister oaths, issue subpoena x x x including the power to examine and have access to bank accounts and records," especially since the complaint was filed before him.

Even assuming that his position is correct, the Ombudsman should have immediately denied the petitioner's motion to issue a subpoena duces tecum. He should have informed the petitioner that he was not issuing the subpoena as it was the PCGG which should issue the subpoena, and thus giving the petitioner an opportunity to act on the matter. Instead, the Ombudsman did not act on the motion, only to issue a resolution dismissing the Amended Complaint for its failure to produce the documents that were the subject of the subpoena. By acting in this manner, he went against his mandate, decreed under Section 13 of RA 6770, to "act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people."

The elements of violations under
Section 3, paragraphs (e) and (g) of
RA 3019 were sufficiently alleged
in the amended complaint.

In the Amended Complaint, the petitioner sought to charge the respondents with violation of Section 3(e) and (g)

of RA 3019, which reads:

Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with the public officers; (2) that said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) that such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[49]

On the other hand, the elements of the offense in Section 3(g) are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government.[50]

It was properly alleged in the Amended Complaint that the respondent officers and directors of PNB/NIDC, a government-owned and controlled corporation, in conspiracy with the respondent directors and officers of CCPI, granted CCPI a loan accommodation that bore the characteristics of behest loans. The government suffered injury when the loan, which ballooned to over P205M, remained unpaid. The terms of the loan accommodation were manifestly disadvantageous to the government that the NIDC directors' assent to this transaction could only be attended by gross inexcusable negligence, if not evident bad faith or manifest partiality. Moreover, these allegations were properly supported by the records.

Thus, the Ombudsman should not have immediately denied the motion for reconsideration, but should have proceeded with the preliminary investigation, by requiring the respondents to file their comments, and resolved the case based on the evidence.

WHEREFORE, the petition is GRANTED. The Ombudsman's Resolution dated October 16, 2000 and Order dated February 27, 2001 in OMB-0-97-1138 are hereby REVERSED and SET ASIDE. The Ombudsman is ordered (1) to conduct with utmost dispatch a preliminary investigation based on the Amended Complaint; (2) to immediately issue the required subpoena for the production of Board Resolution Nos. 26 and 361, dated January 17, 1968 and November 25, 1970, and other relevant documents; and (3) to promptly evaluate the arguments of all the parties after having heard them. No costs.

SO ORDERED

Carpio Morales, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] Rollo, pp. 34-39.

[2] Id. at 1132. Respondents Domingo, Lopez, Guballa, del Rio, Roa, Trivino, Romeo Reyes, and Conrado Reyes have reportedly died.

[3] Id. at 42-44.

[4] Presidential Ad Hoc Fact-Finding Committee on Behest Loam v. Tabasondra, G.R. Nos. 133756 and 133757, July 4, 2008, 557 SCRA 31, 34.

[5] Rollo, p. 675.

[6] Id. at 217-225 and 18-20.

[7] Id. at 395-399.

[8] The petitioner's error in writing DBP instead of NIDC and PNB would later be corrected in its Amended Complaint.

[9] Rollo, p. 98.

[10] Id. at 182 and 198. The records show that these equity conversions, covered by Board Resolution Nos. 373 and 183, were between the NIDC and Coco Chemical Philippines, Inc, not CCPI. Coco Chemical Philippines, Inc. is in the business of manufacturing plasticizer, crude oil, copra meal pellets and refined oil. These transactions were later omitted in the Amended Complaint.

[11] Id. at 198. The records show that the loan guarantees covered by Board Resolution Nos. 40 and 48 were between the NIDC and Coco Chemical Philippines, Inc, not CCPI. These transactions were later omitted in the Amended Complaint.

[12] Id. at 373.

[13] 375 Phil. 697(1999).

[14] Rollo, pp. 58-60.

[15] Id. at 60. The petitioner listed the board resolutions and sought the PNB to provide it with copies thereof so as to identify the directors who approved them.

NIDC BR No.

Date

Amount

No. 26

1-17-68

DM7.4 million

No. 361

11-25-70

DM4.8 million

No. 373

12-02-70

P7.07 million

No. 183

06-09-71

P14.2 million

No. 40

02-10-72

P4.5 million

No. 48

02-10-72

\$750,000

[16] Id. at 34-39.

[17] Id. at 45-46.

[18] Id. at 47-49.

[19] Id. at 123-144.

[20] Id. at 42-44.

[21] Id. at 23 and 26.

[22] The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 136225, April 23, 2008, 552 SCRA 513, 524; The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 135703, April 15, 2009, 585 SCRA 18, 31.

[23] Sections 2 and 4, Rule II of AO 7 of the Office of the Ombudsman, otherwise known as the Rules of Procedure of the Office of the Ombudsman.

[24] Supra note 22, at 528.

[25] See Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 135687, July 24, 2007, 528 SCRA 9, 23-25. In this cited case, we considered the Ombudsman's failure to discuss the behest nature of the questioned loan transactions as a gross omission that would justify the review and modification of his determination that the complaint should be dismissed.

[26] Rollo, p.43.

[27] Id. at 674- 686.

[28] Black's Law Dictionary, 8th edition.

[29] Rollo, pp. 217 and 222.

[30] Id. at 222.

[31] Id. at 109-110.

[32] Id. at 224. The default provision of the Agreement reads:

Events of Default

That any one or more of the following shall constitute an event of default, viz:

(i) Failure to pay any accrued interest on the guaranteed amount and/or the guaranty fee within a period of two (2) months.

(ii) Failure to pay any two (2) installments on the guaranteed principal.

(iii) Default in the observance of any provision under the section hereof entitled "Borrower's Covenants."

x x x x

When any of the events of default enumerated above has happened, occurred and/or is continuing, the NIDC may, at its exclusive option, by notice in writing to the BORROWER, declare the principal and/or any accrued interest on all outstanding promissory notes evidencing the loan or the amount subject of an NIDC guaranty to be immediately due and payable.

[33] Id. at 98.

[34] Id. at 107.

[35] Id. at 200.

[36] Id. at 159.

[37] Id. at 159-161.

[38] Id. at 123-144.

[39] Id. at 125.

[40] Ibid.

[41] Id at 107.

[42] Id. at 110. The term "fixed assets" is composed of land and improvements, machinery and equipment, transportation equipment and office equipment.

[43] Id. The only remaining assets reported in its balance sheet were current assets and organizational expenses, and these cannot be considered as collateral.

[44] Supra note 22, at 527; supra note 22, at 34.

[45] Id. at 51.

[46] Id. at 692-695 and 742-759.

[47] Id. at 683.

[48] G.R Nos. 92319-20, October 20, 1990, 190 SCRA 226, 241-242.

[49] Supra note 22, at

[50] Ibid.

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