GENERAL BANK AND TRUST COMPANY, PETITIONER, VS. CENTRAL BANK OF THE PHILIPPINES AND ARNULFO B. AURELLANO IN HIS CAPACITY AS LIQUIDATOR OF GENERAL BANK AND TRUST COMPANY, RESPOND...

G.R. NO. 152551. June 15, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Under consideration is this petition for review under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals (CA) in CA-G.R. CV No. 39939, to wit:

> - Decision dated December 6, 1999,[1] reversing the Decision dated December 2, 1992 of the Regional Trial Court of Manila, Branch 37, in Special Proceedings (SP Proc.) No. 107812 entitled "Petition for Assistance in the Liquidation of General Bank & Trust Company, Central Bank of the Philippines and Arnulfo B. Aurellano, in his capacity as Liquidator of General Bank & Trust Company, Petitioners"; and2. Resolution dated March 12, 2002,[2] denying petitioner's motion for reconsideration.

The material facts, as stated in the appealed CA decision are, as follows:

> - From December 3 to 14, 1976, General Bank and Trust Company (Genbank) incurred overdrafts in its current account with the Central Bank [CB], starting from P478,000 on December 3, 1976 and increasing daily to reach P54.9 million on December 14, 1976. These daily overdrawings were covered up to the next banking day by check deposits, thru "daycall" borrowings, obtained from various commercial banks (7-page Aide Memoire, Exh. H).
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> - A verification of the accounts showed that the overdrawings of Genbank ... were due to the all-out financial support it extended to Filcapital Development Corporation (a related interest of the Yujuico Family Group and the directors and officers of Genbank) to meet maturing obligations. On December 14, 1976, Filcapital overdraft balance with Genbank totaled P55.8 million, in violation of existing CB regulations which was financed by overdrawings of P54.9 million from CB [Id.].
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> - The matter of overdraft accommodations to Filcapital had been the subject of several memoranda and letters of the Department of Commercial and Savings Bank [DCSB] to Genbank, the same being in violation of Section 23, R.A. 337 ... (maximum loan limit); of Section 83, R.A. 337, as amended (requiring written Board approval); and of Memorandum To All Banks dated November 15, 1976 (prohibiting Temporary Overdrawings) [Id.].
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> - On December 14, 1976, the [CB] required Genbank to stop its unsound banking practice of incurring daily overdrawings. On December 15, 1976, Genbank returned Filcapital checks aggregating P28.7 million and sold to the [CB] government securities aggregating P49 million under a repurchase agreement, in order to cover its overdraft with the [CB]. The return of the Filcapital checks to the different collecting banks precipitated a run on the bank starting on December 16, 1976 which necessitated the release by the [CB] Governor of an initial emergency advance of P16 million [Id.].

- In his letter dated December 17, 1976 [Exh. H-1], Dr. Clarencio Yujuico, Chairman of the Board and President of Genbank, reported that the bank was experiencing heavy withdrawals and its liquidity position had continuously deteriorated and will inevitably be needing immediate [CB] support. He urgently requested that Genbank be allowed to draw cash of P20 million to be spread out to its branch offices. Since it was expected that the drawdowns on deposits and deposit substitutes would continue which would necessitate further [CB] advances, and considering that the collateral submitted was insufficient, coupled with the need to give a new image to the bank, it was decided that as a condition to further [CB] advances, the stockholders of Genbank owning at least two-thirds (2/3) of the outstanding capital should execute irrevocable proxies in favor of Land Bank [Id..].

As a measure calculated to restore the liquidity of and confidence in Genbank, Dr. Yujuico ... informed the [CB] Governor of the agreement of the principal officers and stockholders and the approval by the Genbank Board of Directors with respect to the guidelines under which Land Bank ... was invited to participate in the equity of the bank, some salient points of which were as follows: (a) Land Bank will acquire two-thirds interest in the bank; xxx [Id.; tsn, Dec. 7, 1990, pp. 41-42].

- On December 20, 1976, the Monetary Board in its Resolution No. 2553 [Exh. H-4] decided to grant Genbank an emergency loan under Section 90 of the Central Bank Charter in an amount not exceeding P150 million and to ratify the action taken by the Governor on December 20, 1976 in releasing an emergency advance of P165 million to Genbank. It also designated Arnulfo B. Aurellano, Assistant to the Governor, to act as Comptroller [Id., tsn, December 7, 1960, pp. 23-24].

- On December 23, 1976, the President of Genbank executed a Deed of Assignment [Exh. H-5] of the general assets of the Bank in favor of the [CB]. As of that date, [CB] emergency advances to Genbank amounted to P116 million ... which were not sufficiently collateralized by Genbank [Id.].

- On December 27, 1976, the [CB] Governor invited the Board of Directors of Genbank to a meeting ... to discuss the affairs of the Bank with particular reference to the loans to directors, officers, stockholders and related interests (DOSRI). The Board was informed of the magnitude of DOSRI loans which as of that date totalled P172.3 million ... or 59.4% thereof was classified as doubtful and P0.505 million as uncollectible. P158.1 million or 91.7% of DOSRI accounts was unsecured while only 8% was secured [Id.].

- At the said meeting, the Governor indicated that Genbank should immediately take the following [indispensable] steps: (a) clean [DOSRI] loans ... should be collected or collateralized; (b) pending formal execution of the collateral instruments, the borrower must undertake to execute the required mortgage and other security instruments; and (c) before full collateralization, the affected director, officer or stockholder shall assume joint and several liability with the borrower (related interest) for the payment of the loan or credit accommodation. xxx [Id, Exh. H-7], xxx..

- Since the compliance with the directives in his letter dated December 27, 1976 had been incomplete, the [CB] Governor stressed ... to the Genbank Board of Directors that the undertaking to collateralize the loans concerned and the sureties are merely steps to be taken prior to the full collateralization of the accounts concerned, the more important thing being the actual collateralization which must be done immediately [Id., Exh. H-9].

- As of year-end 1976, emergency advances totalled P154.521 million .... In view of the continuous drawdowns, [CB] advances reached P170.227 million on January 5, 1977 exceeding the level of P150 million previously approved. The Monetary Board in its Resolution No. 90 dated January 7, 1977 [Exh. H-8] ... authorized Management to extend continued support to Genbank to meet further drawdowns on its deposits and deposit substitutes [Id.].

- On January 10, 1977, at a meeting of the Board of Directors ..., seven nominees of Land Bank were elected members of the Board, namely .... The four others ... came from the old Board. This was done to carry out the

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understanding that Land Bank shall participate in the management of Genbank. xxx (Id., Exh. H-10].

At said meeting, Dr. Yujuico advised that the controlling stockholders were negotiating for the sale of their stockholdings and requested that he be retained as President to give him personality and leverage during the negotiations, ... [Id., Exh. H-10; Exh. H-11].

- In an office Order No. 12 dated January 14, 1977 [Exh. H-12], the [CB] Governor created a Special Committee ... to act as observers and advisers in the negotiations for the proposed purchase of the outstanding shares of Genbank or all its assets and assumption of all its liabilities [tsn, Dec. 7, 1990, pp. 34-36]. All the prospective buyers were requested by the Committee to submit formal written offers to the sellers. Five (5) written offers were received from the following:

a. Philippine Bank of Communications
b. Paramount Finance Corporation
c. Willy Co/Lucio Tan, et al.
d. Gotianun Group/Family Savings Bank
e. Morris Carpo Group

[Id.; p. 4, Exh. E]

- At various dates from January 26 to February 7, 1977, the Committee convoked meetings ... with all the [interested] groups ... primarily to advise them that the [CB] emergency advances must be amply protected and that the sellers' group must submit the final results of their negotiations on or before February 10, 1977, the deadline set by the Governor and agreed to by Dr. Yujuico and his colleagues in the old Board of Genbank [Id.; Tsn., December 7, 1990, pp. 57-58].

- By January 31, 1997, [CB] emergency advances to Genbank had increased ...to P272.465 million... [Id.].

In his report dated February 10, 1977, on the operations of Genbank for the month of January, 1977, the [CB] Comptroller reported that the deposits and deposit substitutes decreased by P22.328 million and P125.128 million, respectively. xxx [Id.; Exh. H-15].

- On February 10, 1977, the deadline set for completion of the negotiations for the sale of Genbank shares, the representatives of the sellers... group reported (Exh. H-16) that the offer of the ... Lucio Tan group, Paramount Finance Corporation and PB Communications were to be presented to the shareholders with their recommendations [Id.].

- The Special Committee submitted its report on the evaluation of the offers to buy Genbank shares indicating that the Lucio Tan offer was the most advantageous insofar as the [CB] is concerned because it offered the best collateral for the [CB] advances [Id.]. Acting on said report, the Monetary Board, in its Resolution No. 449 dated February 25, 1977 [Exh. H-17], authorized the sellers' group to discuss further with the Lucio Tan group the price of the shares, and prescribed the minimum conditions for the approval of any sale of the controlling shares of Genbank. The representatives of the sellers' group were duly advised of the resolution ... [Exh. H-18].

- By February 28, 1977, [CB] advances to Genbank totaled P300.961 million ... which showed an increase of P28.496 million compared to January 31, 1977 [Id.].

In the report of the [CB] Comptroller dated March 11, 1977 [Exh. H-19] on the operations of the bank for February 1977, it was reported that the decrease in deposits and deposit substitutes for the month was P5.124 million and P35.694 million, respectively. The loan portfolio of which 57% was in past due status or in litigation, was reduced by P19.822 million.

It was also reported that from December 31, 1976 to February 28, 1977, the reduction on [DOSRI] loans ... amounted to P6.918 million only, from P172.354 million to P165.436 million. Of this amount P127.494 million or 77% belonged to the Yujuico group; .... Of the loans of the Yujuico group, P126.608 million or

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99.3% was unsecured or uncollateralized. Furthermore, of the Yujuico loans, 88.4% was in past due status [Id.].

- The Monetary Board, in its Resolution No. 502 dated March 4, 1977 [Exh. H-21], ...decided to instruct the Yujuico negotiators to inform all prospective sellers and buyers of the additional valuation reserves required to be booked in view of the pertinence of such information to the ongoing negotiations. The Chairman of the Genbank Board was duly advised of the said Resolution of the Monetary Board in a letter ... dated March 7, 1977 [Exh. H-22].

- The Lucio Tan group and the sellers' representatives continued their negotiations on March 4 to 5, 1977 but could not reach an agreement, ... In view of the non-acceptance by the sellers' group of the offer of the Lucio Tan group, the Governor informed the representatives of the sellers' group that they may consider the offer of Paramount Finance Corporation and at the same time conveyed the conditions for [CB] approval of the sale [Id.].

- On the matter of collateralization of the [DOSRI] loans ..., the Governor on March 10, 1977 wrote individually nine (9) members of the Yujuico family calling attention to his ... directive to collateralize their loans and requested them to give the matter their immediate and serious attention [Id.; Exh. H-25].

- The sellers' representatives, in a letter dated March 14, 1977 [Exh. H-26], submitted an Agreement to Buy and Sell Genbank shares between them and Paramount Finance Corporation. ... The Special Committee reported [Exh. H-27] that since it is unlikely that Paramount will be able to comply with the [CB] requirements and at the same time be in a position to inject fresh funds to make the bank viable, the Committee felt that the [CB] should explore alternative courses of action.

In a letter dated March 20, 1977 [Exh. H-28], Paramount advised that collateralizing the emergency advances with standby letters credit would be too heavy a financial burden for the bank to bear, the hold-out on the concessional loan of their foreign partner met with resistance from the investor as being unusual and onerous on them, and the proxies to be held by Land Bank was difficult to explain to prospective investors.

The Governor replied on March 22,1977 [Exh.H-29] advising that it is not the interest of the [CB] to accept a proposal which offers a security inferior to that offered by another interested buyer, ...

- Central Bank advances as of March 22, 1977 totaled P305.918 million ... [Id.].

- On March 23, 1977, the Governor together with other [CB] officials and Genbank directors, had a meeting with Messrs. Clarencio Yujuico, [and seven others] ..., stockholders of Genbank who ...represented stockholders owning at least two-thirds (2/3) of the outstanding shares. They were given copies of the aide-memoire for the meeting [Exh. H-30] which outlined developments regarding Genbank particularly the [DOSRI] loans, the negotiations for the sale of Genbank shares, (the Lucio Tan Group was willing to comply with all the conditions of the [CB] for the approval of the sale but could meet the price of the selling group; the Paramount Finance Group could not comply with all the conditions prescribed ... to secure [CB] advances and the interest of Genbank creditors and depositors, but this group and the selling group could agree on the price), and the valuation reserves and resulting net worth of the bank after valuation reserve was less than P20 per share. The stockholders were advised by the Governor that public interest required that the [CB] should not continuously extend further credit assistance to Genbank and that a rehabilitation program instead be immediately implemented [tsn, Dec. 7, 1990, pp. 58-59]. Genbank stockholders were told to submit before 10:00 a.m., Friday, March 25, 1977, either of the following:

a)

firm commitment to purchase the controlling shares of Genbank by a private group or to undertake a merger with another bank, which is willing and capable to comply with all the conditions of the [CB] conveyed previously to representatives of the controlling stockholders and whose price is acceptable to sellers.

b)

a written decision of the stockholders owning at least two-thirds (2/3) of the outstanding shares to reduce the par value and a commitment of the Land Bank or a private group to put up the additional equity and a commitment to comply with the conditions prescribed by the [CB].

- As there was no compliance with either of said requirements, and finding the report of Director [Antonio Castro], Department of Commercial and Savings Banks [DCSB] that Genbank was insolvent within the meaning of Section 29 of R.A. 265 (Central Bank Act), as amended, and that Genbank's continuance in business would involve losses to its depositors and creditors ... - to be true, the Monetary Board adopted Resolution No. 675 on March 25, 1977 [Exh. I-1] forbidding Genbank to do business in the Philippines and designating Arnulfo B. Aurellano as receiver.

In a letter dated March 25, 1977, Governor Licaros informed the Genbank Board of Directors of such actionï¿½.

- On March 26, 1977, a Bid Committee met with representatives of the four interested groups ..., and informed them that the [CB] would accept bids for the acquisition of all the assets and assumption of all the liabilities of Genbank, subject to certain conditions. The deadline for submission of sealed bids was 7:00 p.m., March 28, 1977 [Exh. E-2].

As of the said deadline, the only bid received was that of the Lucio Tan group. It advised that it was prepared to acquire the assets and assumed all the liabilities of Genbank subject to the terms and conditions enumerated in the letter [Exh. E-2; Exh. E-2-a].

- Pursuant to the Memorandum of the Director, [DCSB], dated March 28, 1977 ... stating that -

"As of March 24, 1977, the Bank's liquid assets of P28 million, together with collections from its loan portfolio, will not be enough to meet expected further withdrawal of deposits and deposit substitutes of P235.4 million. The Bank's operation may be expected to result into losses of at least P2.9 million per month and these loans will dissipate the Bank's remaining capital accounts of P10.9 million. The Bank therefore may not be permitted to resume business with safety to its depositors, creditors, and the general public"

and recommending certain actions, the Monetary Board adopted Resolution No. 677 on March 29, 1977 [Exh. I-2] determining and confirming that Genbank was insolvent and could not resume business with safety to its depositors, creditors and general public, and ordering the liquidation of Genbank, the designation of Arnulfo B. Aurellano as Liquidator and the approval of a liquidation plan whereby all the assets of Genbank should be purchased by the Lucio Tan Group which should also assume all the liabilities under certain terms and conditions.

- In his letters dated March 29, 1977 to the Genbank stockholders and Dr. Yujuico ..., Governor Licaros informed them that the Monetary Board had ordered the liquidation of Genbank [Exhs. I-15 and I-15-a].

- On May 9,1977, the Liquidator ...; Allied Banking Corporation ...; and the individual members of the Lucio Tan - Willy Co group executed a Memorandum of Agreement [Exh. I-26] in implementation of Monetary Board Resolution No. 677 dated March 27, 1977 (sic) [Exh. I-2], whereby the Liquidator sold and transferred to Allied Bank all the assets of Genbank and Allied Bank assumed all the liabilities of Genbank, subject to certain terms and conditions, among which were:

(a) payment by Allied Bank to the Liquidator of an initial amount of P500,000.00;

(b) xxx;

(c) payment to the [CB] of its emergency advances to Genbank in the amount of P310 million within a period of two (2) years from date of opening for business of Allied Bank, with 12% interest per annum;

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> (d) no deferment in the payment by Allied Bank of deposits and deposit substitutes in Genbank; and
>
> (e) xxx money market placements by the Lucio Tan - Willy Co group in an amount not less than P100 million which placements shall remain with Allied Bank from the opening and commencement of operations until normalization of operations as determined by the [CB], so that during said period, Allied Bank shall have fresh funds of at least P200 million to meet any withdrawal contingencies.

- Acting on the letter dated June 9, 1977 of Lucio Tan, ... to Governor Licaros [Exh. I-4-a], the Monetary Board, in its Resolution No. 1214 dated June 17, 1977 [Exh. I-4], decided as follows:

> - To authorize the Allied Banking Corporation (ABC) to increase its paid-up capital from P100 million to P200 million, ...;
>
> - To approve the deletion of Paragraph H, Page 5 of the [MOA] dated May 9, 1977 which requires the Lucio Tan and Willy Co group to make money market placements in ABC ...; and
>
> - xxx.

- Pursuant to the recommendation of Arnulfo B. Aurellano ... the Monetary Board, in its Resolution No. 1245 dated July 1, 1977 [Exh. I-5], decided to amend par. F, page 5 of the [MOA]dated May 9, 1977, so as:

> - To dispense with the requirement that Allied Bank and Lucio Tan group submit a standby irrevocable letter of credit to secure the emergency advances assumed by Allied Bank, subject to the following conditions:
>
> xxx xxx xxx
>
> - To extend from two (2) years to five years the period of payment of the balance of the emergency advances assumed by Allied Bank, to be paid in twenty (20) equal quarterly installments beginning October 15, 1977, with interest at twelve percent (12%) per annum and said balance to be secured by the mortgages mentioned above.

- Allied Bank was able to comply with all the conditions laid down in Resolution No. 1245. It paid to the [CB] P100 million of the total emergency advances on July 15, 1977 [Exh. K; Exh. P], and effected full payment of [CB] emergency advances on November 28, 1980 [Exh. L], causing the discharge and release of the mortgages on the real and personal properties which served as security for the payment of said advances [Exhs. L-1, L-2, and L-3]. (Appellants' Brief, pp. 11-34)

On April 1, 1977, [CB and Arnulfo B. Aurellano, as Genbank Liquadator] initiated Sp. Proc. No. 107812 before the then Court of First Instance (CFI) of Manila, Branch IV, pursuant to Section 29, RA 265, as amended.

On May 5, 1982, appellees Worldwide Insurance & Surety Company ..., Midland Insurance Corporation ..., and Standard Insurance Co., Inc. ... filed a motion for intervention in Sp. Proc. No. 107812. Said motion alleged that the closure and liquidation of [Genbank] ... were done arbitrarily and in bad faith. On May 7, 1982, the court a quo issued an order approving the intervention.

About a couple of years later, appellee Genbank joined the intervention .... Said intervention was approved by the Court a quo in its Order dated March 15, 1984.

Subsequently, [CB et al., as petitioners before the CFI), instead of presenting evidence to support their petition in Sp. Proc. No. 107892, questioned the court a quo's jurisdiction to determine the validity of the liquidation of Genbank before this Court [CA], by way of a Petition for Certiorari and Prohibition with Preliminary Injunction and Restraining Order docketed as CA G.R. SP No. 03180. However, said petition became moot and academic when the court a quo rendered a Decision dated April 24, 1984, a day before it was served a copy of the [TRO] dated April 24, 1984, and when [CB et al.] appealed said decision to this Court [CA] [which] disposed of said

appeal in favor of appellees-[intervenors]. However, upon [CB's] motion for reconsideration, the Court [CA] reconsidered said decision in its Resolution dated July 19, 1986, and remanded the case to the court of origin for the reception of appellants' evidence. (Underlining in the original; Words in bracket and underscoring added.)

On November 5, 1992, the trial court rendered a decision,[3] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered against the Petitioners [CB et al.] and in favor of Intervenors as follows:
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> First: That the closure of Genbank under Monetary Board Resolution No. 675, March 25, 1977 (Petitioners' Exh. I-1) and the adoption of the Lucio Tan Group as the liquidation plan of Genbank under Monetary Board Resolution No. 677, March 29, 1977 (Intervenor's Exh. 1-2) are hereby annulled and set aside as being plainly arbitrary and made in bad faith as provided under Section 29, RA No. 265, as amended.
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> Second: That Petitioner [CB] is hereby ordered and directed to restore the license and authorization of Genbank to operate and conduct business as a commercial bank and trust corporation and to restore Genbank's banking network of Head Office, 23 branches and 1 extension office.
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> Third: That Petitioner [CB] is hereby ordered and directed to pay Intervenor Genbank the amount of P103,984,477.55 representing Genbank's capital account which was the excess of Genbank's assets over this liabilities as shown in the Consolidated Statement of Condition of Genbank as of March 25, 1977 (Petitioners' Exh. I-26-A) plus damages by way of unrealized earnings at 5% interest per annum of said amount of P103,984,477.55 starting from May 7, 1982 ... until fully paid; and
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> Fourth: That Petitioner [CB] is likewise ordered and directed to pay Intervenor Genbank costs of the suit in accordance with the Rules of Court.
>
> SO ORDERED.

Therefrom, herein respondents CB and the Liquidator-designate appealed to the CA where their recourse was docketed as CA G.R. CV No. 39939.

On December 6, 1999, the appellate court rendered judgment setting aside the decision of the trial court.[4] With the denial of its motion for reconsideration by the same court in its resolution of March 12, 2002, petitioner is now with us via the present recourse, submitting that the CA erred when -

> - It ruled that Petitioner Bank was insolvent thus paving the way for its closure and eventual liquidation.
>
> - It ruled that the property rights of Petitioner Bank was not trampled upon despite the fact that respondent Central Bank maliciously and arbitrarily and in bad faith ordered its closure on March 25, 1977 and its liquidation and bidding three (3) days later on March 28, 1977 which is tantamount to denial of due process and equal protection clause of the Constitution.
>
> - It failed to apply Sec. 29 of R.A. 265 which laid down the procedure to be followed for insolvency cases of banking institutions.

The petition has no merit.

The three (3) assigned errors ultimately boil down to the issue of whether or not respondent CB violated any existing procedural or substantive law when its Monetary Board (MB) issued Resolution No. 675 dated March 25, 1977 ordering the closure of Genbank, and eventually MB Resolution No. 677 dated March 29, 1977, adopting the Lucio Tan Group's bid as liquidation plan of petitioner Genbank, or otherwise committed grave abuse of discretion which will justify reversal of the assailed MB resolutions.

At the outset, it bears to stress that the underlying governing law, Republic Act (RA) 265[5], underwent several

amendments. Among the amendatory laws are Presidential Decree (PD) Nos. 1007 and 1937 which took effect in September 1976 and June 1984, respectively.

Petitioner Genbank claims that it was not insolvent when Resolution No. 675 was issued on March 25, 1977, its assets at that time standing at P599,743,639.00, while its total liabilities only amounted to P586,640,450.00, thus having surplus assets over liabilities in the amount of P13,103,189.00. Plodding on, it insists that the definition of insolvency in Section 29 of RA 265, as amended by PD 1937, should have been made the tipping factor for determining on whether or not the declaration made by respondent CB, acting through the Monetary Board, that petitioner Genbank is insolvent constitutes grave abuse of discretion. In support of its contention of not being insolvent during the period material, petitioner Genbank cites Central Bank of the Philippines vs. Court of Appeals[6] and Banco Filipino Savings & Mortgage Bank vs. The Monetary Board[7].

Respondent CB, however, retorted that the above-cited cases do not apply, albeit, there, the Court struck down as null and void the closure of what CB then considered as insolvent banks, referring to Banco Filipino Savings & Mortgage Bank and Triumph Savings Bank, despite their respective total assets being more than their total liabilities. As respondent CB argued, the closure of Banco Filipino and Triumph Savings Bank on January 25, 1985 and May 31, 1985, respectively, were effected under the aegis of Section 29 of RA 265, as amended by PD 1007, after it was further amended by PD 1937 in June 1984. Under the latter amendment, a banking institution is deemed insolvent when " [its] realizable assets ... as determined by the Central Bank are insufficient to meet its liabilities." Thus, this Court ruled that there was no valid basis for the closure of both banks on the ground of insolvency, the total assets of either bank exceeding as it were their respective liabilities.

Unlike the cases referred to above, however, Genbank was ordered closed by the CB on March 25, 1977, when "insolvency" was defined under Section 29 of RA 265, as amended on September 22, 1976 by PD 1007, where and when the insolvency concept carried a slightly different but contextually significant connotation. As thus then defined, insolvency was understood to mean as "the inability of a banking institution to pay its liabilities as they fall due in the ordinary course of business." Respondent CB found Genbank undoubtedly incapable to generate liquid funds by itself in order to meet drawdowns on its deposits and deposit substitutes and to pay for other maturing obligations, as well as advances from the Central Bank. Respondent CB, therefore, concluded that Genbank was insolvent under the obtaining definition of said term, with the CA eventually sustaining the posture of respondent CB.

After a review of all the arguments of the parties in the light of the laws and jurisprudence applicable thereto, this Court finds no reversible error committed by the Court of Appeals when it sustained the validity of the MB resolutions resolving the issue of insolvency against petitioner Genbank.

It cannot be overemphasized that Resolution No. 675 prohibiting Genbank to do business in the Philippines and designating Arnulfo B. Aurellano as receiver was issued in March 1977, when the definition of the term "insolvency" under the last paragraph of Section 29, of RA 265, as amended by PD No. 1007, was as follows:

> Sec. 29. Proceedings upon insolvency. - x x x.
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> x x x x x x x x x
>
> Insolvency, under this Act, shall be understood to mean the inability of a banking institution to pay its liabilities as they fall due in the usual and ordinary course of business, provided, however, that this shall not include the inability to pay of an otherwise non-insolvent bank caused by extraordinary demands induced by financial panic commonly evidenced by a run on the bank in the banking community. (Emphasis supplied.)

And by the terms of the same Section 29 of RA 265, as amended by PD No. 1007, Resolution No. 675 is deemed

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final and executory, to wit:

> The provisions of any law to the contrary notwithstanding, the actions of the Monetary Board under this Section and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by the court only if there is convincing proof that the action is plainly arbitrary and made in bad faith. No restraining order or injunction shall be issued by the court enjoining the Central Bank from implementing its actions under this section and the second paragraph of Section 34 of this Act, unless there is convincing proof that the action of the Monetary Board is plainly arbitrary and made in bad faith and the petitioner or plaintiff files with the clerk of court or judge of the court in which the action is pending a bond executed in favor of the Central Bank, in an amount to be fixed by the court. xxx.. (Emphasis supplied.)

The burden thus rests upon petitioner Genbank to prove the mala fides of the Monetary Board in issuing Resolution No. 675. The present petition cites no concrete proof to convincingly show that the pertinent findings and recommendation of Antonio Castro, then Director of CB's DCSB whence Resolution No. 675 emanated were factually infirm. The Castro report stated thus:

> Summary Comments
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> - As of Feb. 28, 1977, the Bank's liquid assets amounted to P33.5 million only. On the other hand, total deposit and deposit substitutes which had to be paid amounted to P269.563 million. Total advances from the CB amounted to P300.961 million, of which P252.365 million (unsecured overdrawing) is payable on demand. Considering the poor quality of the Bank's loan portfolio, the bank cannot expect to generate enough funds out of these loans to meet payment of said obligations. In view hereof, the bank is insolvent within the meaning of Sec. 29, R.A. 265, as amended.
>
> - As of February 28, 1977, the Bank's capital accounts after adjustment for provision for bad debts and interest on OD and CB and penalties for reserve deficiencies amounted to P14.1 million only which amount would be eaten up completely within a period of less than five (5) months considering the average monthly operating loss of P2.868 million. In view of this, the Bank's continuance in business would involve losses to its depositors and creditors.
>
> Recommendation
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> In view of the foregoing, it is recommended that in accordance with the provisions of Sec. 29, R.A. 265, as amended, the General Bank and Trust Co. be forbidden to do business in the Philippines considering that it is insolvent and its continued operation would involve probable loss to its depositors and creditors and that a receiver be designated to take charge immediately of the Bank's assets and liabilities.

Instead of directly controverting the factual basis of the MB resolutions, petitioner Genbank would simply insist on owning more realizable assets than liabilities and ergo essentially solvent per the definition of "insolvency" under the PD 1937 amendment which, to stress, took effect only in 1984. To a redundant point, the PD 1937 amendment defines "insolvency" as follows:

> Insolvency, under this Act shall be understood to mean that the realizable assets of a bank or a non-bank financial intermediary performing quasi-banking functions as determined by the Central Bank are insufficient to meet its liabilities.

Petitioner's recourse of insisting on the meaning of insolvency other than the current definition thereof is, at the minimum, a recognition, plain and simple, that under the applicable definition of the term "insolvency" under the last paragraph of Section 29, of RA 265, as amended in 1976 by PD No. 1007, the Monetary Board could not have erred in ruling that petitioner Genbank was indeed insolvent, justifying its closure under the same Section 29, of RA 265, as amended. Petitioner Genbank cannot plausibly be allowed to adopt a statutory definition of

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"insolvency" which was not set forth in the law when Resolution No. 675 was issued. The Monetary Board's action could not have run counter to a legal provision inexistent at the time when it issued the resolution in question.

Perhaps realizing the flaw in its argument, petitioner Genbank now cites the definition of insolvency under PD No. 1007 but this time faulting the CA for allegedly truncating the same by glossing over the proviso portion which contextually excluded from the coverage of the term "insolvency" "the inability to pay of an otherwise non-insolvent bank caused by extraordinary demands induced by financial panic commonly evidenced by a run on the bank in the banking community." While conceding that it was then not in a position to generate funds by itself in order to meet drawdowns on its deposits and deposit substitutes and to pay for other maturing obligations, as well as its advances from the Central Bank, petitioner Genbank nonetheless argues that it did not fall within the concept of insolvency contemplated in the amendatory PD No. 1007 since what it was then experiencing was a liquidity problem attributed to a bank run.

The Court is still unconvinced.

The aforementioned proviso thus relied upon by petitioner Genbank excludes from the definition of insolvency, "the inability to pay of an otherwise non-insolvent bank caused by extraordinary demands induced by financial panic commonly evidenced by a run on the bank in the banking community." As it were, the applicability of that proviso presupposes that the struggling bank, Genbank in this case, should, in the first place be "an otherwise non-insolvent bank" and the existence of a bank run is the sole and exclusive cause of its inability to pay its obligations. In other words, the existence of a bank run is not, without more, a saving grace for any bank, absolutely preventing the CB or the Monetary Board from ordering its closure due to insolvency. If the bank is not "non-insolvent" in contemplation of the definition under Section 29 of RA 265, as amended by PD No. 1007, because it cannot pay its liabilities as they fall due in the ordinary course of business, the presence or absence of a bank run is of no determinative moment on the issue of the justifiability of an order of closure. The CB had, as it were, ample basis other than the bank run to consider petitioner Genbank insolvent. Upon the issuance of an order of closure, which by express provision of law is final and executory, the burden of proving non-insolvency is upon the bank which challenges the validity of such closure.

For sure, this issue of whether or not petitioner Genbank's inability to pay may be solely and exclusively attributable to the bank run necessarily requires passing upon and evaluating the evidence presented during the trial. It should be made perfectly clear, however, that the Court's jurisdiction in appellate proceedings under Rule 45 of the Rules of Court is, as a rule, limited to reviewing only errors of law, it not being a trier of facts. And it is a settled doctrine that findings of fact of the CA are basically binding and not be disturbed except for very compelling reasons, such as when: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact of the CA are contrary to those of the trial court; (6) said findings of fact are conclusions without citation of specific evidence on which they are based; (7) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[8] The Court finds no cogent reason to take exception from the general rule.

Even then, a review of the pleadings on record shows no signs that the CA erred in not finding that the Monetary Board violated any substantial or procedural law when it issued the two assailed resolutions. Moreover, the CA cannot also be faulted in sustaining the MB resolutions, or, to be precise, in not finding arbitrariness and capriciousness in the closure of petitioner bank. For, as the CA aptly explained:

> - Even before the Genbank President requested for emergency advances, the [CB] gave P16 million on December 16, 1976. After the request was made on December 17, 1976, additional emergency was extended to

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> Genbank. In MB Resolution No. 90 dated January 7, 1977 [Exh. H-8], the [CB] decided to "extend continued support to Genbank to meet further drawdowns on its deposits and deposit substitutes." These advances reached P272.467 million in January 31, 1977 [Exh. H-15], ... and P302.095,746.28 on March 25, 1977 [Exh. I-26-a]. The graph [Exh. E-1] shows steep upward climb in the amount of advances from December 17, 1976 up to March 25, 1977.
>
> - Aside from the emergency advances given to Genbank, the [CB] encouraged and assisted the controlling stockholders in negotiating with various groups that could put in new funds to help restore Genbank to full health. This indicates the [CB] earnest desire to find a solution to Genbank's difficulties.
>
> - Aside from the [CB] and Genbank, there is a third party involved here. This is one vital aspect that distinguishes this case from all other liquidation cases handled by the [CB] [tsn., Feb. 15, 1991, p. 33]. What does this mean? Since a third party has assumed all liabilities of Genbank, payment of deposits and other obligations of the bank has been guaranteed. If this had been ordinary bank liquidation where there is no assumption of liabilities by a third party, the depositors and creditors could not have retrieved the full face value of their deposits and credits. But here, all depositors and creditors have actually been paid in full by Allied Bank.[9] (Words in bracket added.)

Now, as regards the supposed denial of its right to due process, petitioner Genbank relies on the following chain of events:

1. March 23, 1977:

> x x x the Governor together with other Central Bank officials and Genbank directors, had a meeting with Messrs. Clarencio Yujuico, [et al.], stockholders of Genbank who, according to the Corporate Secretary, represented stockholders owning at least two-thirds (2/3) of the outstanding shares. They were given copies of the aide-memoire for the meeting (Exh. H-30) which outlined developments regarding Genbank particularly the [DOSRI]loans ..., the negotiations for the sale of Genbank shares, (the Lucio Tan Group was willing to comply with all the conditions of the [CB] for the approval of the sale but could not meet the price of the selling group; the Paramount Finance Group could not comply with all the [CB] conditions prescribed ... to secure [CB] advances and the interest of Genbank creditors and depositors, but this group and the selling group could agree on the price), and the valuation reserves and resulting net worth of the bank after valuation reserve was less than P20 per share. The stockholders were advised by the Governor that public interest required that the [CB] should not continuously extend further credit assistance to Genbank and that a rehabilitation program instead be immediately implemented [tsn, Dec. 7, 1990, pp. 58-59]. Genbank stockholders were told to submit before 10:00 a.m., Friday, March 25, 1977, either of the following:
> a) firm commitment to purchase the controlling shares of Genbank by a private group or to undertake a merger with another bank, which is willing and capable to comply with all the conditions of the [CB] conveyed previously to representatives of the controlling stockholders and whose price is acceptable to sellers
>
> b) a written decision of the stockholders owning at least two-thirds (2/3) of the outstanding shares to reduce the par value and a commitment of the Land Bank or a private group to put up the additional equity and a commitment to comply with the conditions prescribed by the [CB].

2. March 25, 1977:

> As there was no compliance with either of said requirements, and finding the report of the Director, Department of Commercial and Savings Banks that Genbank was insolvent within the meaning of Section 29 of R.A. 265 (Central Bank Act), as amended, and that Genbank's continuance in business would involve losses to its depositors and creditors (as recited in his Memorandum dated March 24, 1977, Exh. D), - to be true, the Monetary Board adopted Resolution No. 675 on March 25, 1977 [Exh. I-1] forbidding Genbank to do business in the Philippines and designating Arnulfo B. Aurellano as receiver.
> xxx xxx xxx.

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3. March 26, 1977:

> On March 26, 1977, a Bid Committee met with representatives of the four interested groups ... and informed them that the [CB] would accept bids for the acquisition of all the assets and assumption of all the liabilities of Genbank, subject to certain conditions. The deadline for submission of sealed bids was 7:00 p.m., March 28, 1977 [Exh. E-2].

5. March 29, 1977:

> As of the said deadline [March 28, 1977], the only bid received was that of the Lucio Tan group. It advised that it was prepared to acquire the assets and assumed all the liabilities of Genbank subject to the terms and conditions enumerated in the letter [Exh. E-2; Exh. E-2-a].
>
> Pursuant to the Memorandum of the Director, Department of Commercial and Savings Banks, dated March 28, 1977 [Exh. E] stating that -"As of March 24, 1977, the Bank's liquid assets of P28 million, together with collections from its loan portfolio, will not be enough to meet expected further withdrawal of deposits and deposit substitute of P235.4 million. The Bank's operation may be expected to result into losses of at least P2.9 million per month and these loans will dissipate the Bank's remaining capital accounts of P10.9 million. The Bank therefore may not be permitted to resume business with safety to its depositors, creditors, and the general public"

and recommending certain actions, the Monetary Board adopted Resolution No. 677 on March 29, 1977 [Exh. I-2] determining and confirming that Genbank was insolvent and could not resume business with safety to its depositors, creditors and general public, and ordering the liquidation of Genbank, the designation of Arnulfo B. Aurellano as Liquidator and the approval of a liquidation plan whereby all the assets of Genbank should be purchased by the Lucio Tan Group which should also assume all the liabilities under certain terms and conditions.

In his letters dated March 29, 1977 to the Genbank stockholders and Dr. Yujuico (received by the addressees on April 1, 1977), Governor Licaros informed them that the Monetary Board had ordered the liquidation of Genbank [Exhs. I-15 and I-15-a].

In short, petitioner Genbank would claim that in a span of just two (2) days from the time it called a meeting with the board of directors of Genbank on March 23, 1977, or on March 25, 1977, the Monetary Board issued the resolution finding petitioner Genbank insolvent and prohibiting it from further conducting business; and only another four (4) days thereafter, or on March 29, 1977, it ordered its liquidation, thereby denying sufficient time for petitioner Genbank to comply with its directives.

We are not persuaded.

It must be stressed that petitioner Genbank's financial predicament did not crop up overnight, nor is it a product of a single financial indiscretion, so to speak. The root of its problem and eventual downfall is traceable to unsound banking practices employed by management. Mentioned in this regard may be made of the all-out financial support given to Filcapital Development Corporation (a related interest of the Yujuico Family Group and directors and officers of Genbank) and the standing practice of extending DOSRI loans which, at one point, reached a peak of P172.3 million or 26% of the total loan portfolio of P666.78 million. Of the final figure, 59.4% thereof was classified as doubtful and P0.505 million as uncollectible. And 91.7% of such DOSRI accounts were unsecured leaving only 8% thereof secured. All these unsound practices occurred way before their resulting crippling effects became manifest sometime in December 1976, further leading the bank to resort to other unsound banking practices, like incurring daily overdrafts. These problems, as earlier narrated in the assailed CA decision, were taken up by the then CB Governor with the Board of Directors of Genbank in a meeting held on December 27, 1976. Thus, when the crucial March 23, 1977 meeting was held, there can be no doubt that petitioner Genbank

was totally aware of the predicament it has gotten itself into and the conditions which the CB had imposed to address the situation for the protection of the depositors and the banking public. It is not as if CB sprang a surprise on petitioner Genbank when Resolution 675 was issued on March 25, 1977 declaring Genbank insolvent. Petitioner Genbankï¿½s posture that it was given only two (2) days to remedy the situation is specious at best.

Finally, as to petitioner Genbank's lament about the Monetary Board acting, under the premises, in bad faith or committing grave abuse of discretion in approving the liquidation plan of the Lucio Tan Group, suffice it to restate what the CA wrote in this regard:

> Indeed, that the Genbank, Now Allied Bank, was able to resume normal banking operations immediately on June 2, 1977, thereafter meeting all the demands for deposit withdrawals and paying off all CB emergency advances to Genbank (Exh. K, L, and P), is a strong indication that the Central Bank performed its duty to maintain public confidence in the banking system, x x x.

Absent, in sum, of compelling proof to becloud the bona fides of the decision of the Central Bank to close and order the liquidation of Genbank pursuant to Monetary Board Resolution Nos. 675 and 677, the Court, as the CA before it, loathes to interfere with what basically is the exercise by the Central Bank of its mandate as administrator of the banking system.

WHEREFORE, the petition is hereby DISMISSED for lack of merit, with costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.
Puno, (Chairperson), J., no part.

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[1] Penned by former Associate Justice Artemio G. Tuquero with the late Associate Justice Eubulo G. Verzola and Associate Justice Elvi John S. Asuncion, concurring; Rollo, pp. 34-62.[2] Id. at 64-66.[3] Id. at 113 et seq.[4] Note #1, supra.[5] The Central Bank Act.[6] G.R. No. 7618_, March 30, 1993, 220 SCRA 536.[7] G.R. Nos. 70054 and 68878, December 11, 1991, 204 SCRA 767.[8] Danan vs. Court of Appeals, G.R. No. 132759, October 25, 2005.[9] Decision, pp. 27-28; Rollo, pp. 60-61.

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