

## EN BANC

[ G.R. No. 230628, October 03, 2017 ]

### SMALL BUSINESS CORPORATION, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

#### DECISION

##### VELASCO JR., J.:

For resolution of the Court is the Petition for *Certiorari* filed by petitioner Small Business Corporation (SB Corp.) dated April 7, 2017, pursuant to Rule 64, Section 1 in relation to Rule 65, Section 1 of the Rules of Civil Procedure. Petitioner assails the Decision of the Commission on Audit (COA) En Banc dated February 16, 2007,<sup>[1]</sup> which sustained the validity of Notice of Disallowance (ND) No. 14-001-401000-(13) dated August 27, 2014, disallowing the payment of merit increase to five officers of petitioner, amounting to a total of P759,042.41.

#### Factual Background

Petitioner SB Corp. is a government-owned and controlled corporation (GOCC) created under Republic Act (RA) No. 6977,<sup>[2]</sup> as amended by RA No. 8289. 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.<sup>[3]</sup> On May 23, 2008, RA No. 9501, the *Magna Carta for Micro, Small and Medium Enterprises (MSMEs)*, was enacted. Section 14 of the said law provides:

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, staffing pattern of SB Corporation and 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.

On June 1, 2009, the Board of Directors (BOD) of SB Corp. passed Board Resolution (BR) No. 1610, Series of 2009,<sup>[4]</sup> approving its Revised Organizational Structure, Staffing Pattern, Qualification Standards and Salary Structure, pursuant to Sec. 11-A(f) of RA 6977.

Meanwhile, President Benigno S. Aquino III issued Executive Order (EO) No.7 on September 8, 2010, which provides a moratorium on increases in salaries, allowances, and other benefits of GOCC officers and employees:

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.

Soon after EO No.7, on June 6, 2011, RA No. 10149<sup>[5]</sup> was enacted, creating the Governance Commission for GOCCs (GCG), the central advisory, monitoring, and oversight body with the authority to formulate, implement, and coordinate policies concerning GOCCs.<sup>[6]</sup>

On October 28, 2011, SB Corp.'s BOD approved BR No. 1863, Series of 2011<sup>[7]</sup> setting the guidelines and procedures on the implementation of SB Corp.'s revised salary structure. This sets the guidelines and rules on the implementation of BR No. 1610.<sup>[8]</sup> Among those guidelines set forth in BR No. 1863 is the grant of step increment to qualified employees, which carries with it the corresponding adjustment to the qualified employee's basic salary. The pertinent provisions read:

**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.<sup>[9]</sup>

On April 12, 2013, SB Corp. granted and paid merit increases to five officers occupying Job Level 6, namely: Charles Albert G. Belgica, Rowena G. Betia, Dida M. Delute, Evelyn P. Felias, and Victor M. Hernandez. On June 25, 2014, the President and CEO of SB Corp. wrote the GCG requesting confirmation to proceed with the grant of merit increase. The pertinent portions of the letter read:

This is to inform and request confirmation to proceed with Small Business Corporation's merit increase Program for 2013 based on 2012 performance. We look up to GCG as the proper authority to confirm our request prior to implementation which we intend to effect by July 15, 2014. The Corporation has in-placed guidelines and procedures in the administration of the Corporation's salary structure duly approved by its

Board of Directors.

Your granting of our merit increase is without prejudice to all future requests to the Commission of the same nature. The merit increase is consistent with the program of other GFIs namely, Land Bank of the Philippines and Development Bank of the Philippines, which sit in our Board, and GSIS[,] to name a few.<sup>[10]</sup>

On July 8, 2014, the GCG denied the request with finality. The GCG cited Sec. 9 of EO No. 7, and pointed out that the moratorium provided thereunder is still in effect. It also noted that there is no rationale to recommending the approval of SB Corp.'s merit increase, which is apart from the Compensation and Position Classification System (CPCS).<sup>[11]</sup>

Thus, on August 27, 2014, the State Auditor, again citing Sec. 9 of EO No. 7, issued ND No. 14-001-401000-(13), disallowing the merit increase given to the five officers. The State Auditor reasoned:

We have examined and evaluated the payment of Merit Increase to five [SB Corp.] Officers for the period September 1, 2012 to March 31, 2013 totaling P257,560 under DV No. 1029457 dated April 11, 2013 paid [through] Land Bank of the Philippines Debit Advice (LDA) No. 2013-04044 dated April 12, 2013 is disallowed in audit in accordance with Governance Commission for Government Owned and/or Controlled Corporations (GCG) Memorandum dated July 8, 2014 which denied with finality [SB Corp.'s] two requests for confirmation to proceed with its merit increase program x x x.

x x x x

x x x In addition, payments [through] payroll of the said merit increase from April 1, 2013 to August 31, 2014 including adjustment to other benefits due to the increase in rates totaling P501,482.41 (gross) are also disallowed. The total disallowance of the said merit increase from September 1, 2012 to August 31, 2014 amounted to P759,042.41 (Annex A). Discontinuance of the merit adjustments to concerned personnel on the next payroll period is hereby advised.

The following persons have been determined to be liable for the transactions:

Name	Position/Designation	Nature of Participation in the Transaction
1. Mr. Melvin E. Abanto	Head, SPCO	For approving the payment
2. Ms. Heide M. Vega	Department Manager II, CG	For signing for Mr. Alfredo S. Dimaculangan, Head, CG certifying for the availability of funds and certifying that expenses

		are necessary and lawful
3. Mr. Alfredo S. Dimaculangan	Head, CG	For authorizing Ms. Heide M. Vega to sign on his behalf
4. [SB Corp.] Officers	Payee	Receipt of payment

Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowances not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under Section 48 and 51 of Presidential Decree (PD) No. 1445.<sup>[12]</sup>

### **The Ruling of the COA Cluster Director**

Aggrieved, petitioner appealed ND No. 14-001-401000-(13) to the Office of the Cluster Director, Cluster II - Social Security Services and Housing. In its Decision<sup>[13]</sup> dated April 29, 2015, however, the Cluster Director denied the appeal, and upheld the validity of the ND. The Cluster Director ruled that SB Corp. is estopped from questioning the applicability of EO No. 7 because they asked for authorization from the GCG for the implementation of the merit increase. This, according to the Cluster Director, is an acknowledgment of GCG's authority over the implementation of the merit increase. Otherwise, petitioner would not have thought of the need to ask GCG for endorsement if there was no need for it. Hence, the Cluster Director dispositively held:

WHEREFORE, foregoing premises considered, the appeal for the Notice of Disallowance to be reversed and set aside and subject merit increase be allowed in audit is hereby denied. This Office affirmed the Notice of Disallowance No. 14-001-401-000-(13) dated August 27, 2014.<sup>[14]</sup>

### **The Ruling of the COA En Banc**

Undaunted, petitioner elevated the matter to the COA En Banc via a Petition for Review. In the presently assailed COA Decision dated February 16, 2017, however, the COA En Banc denied the Petition for Review, and upheld the validity of the ND. The COA En Banc first observed that, despite the provision in the petitioner's charter exempting it from the coverage of the Salary Standardization Law and authorizing the BOD to fix the organizational and compensation structures of its officers and employees, this does not give SB Corp. an absolute financial independence.<sup>[15]</sup> The COA En Banc then went on to rule that Sec. 9 of EO No. 7 applied to the petitioner's grant of merit increases to the five officers, because EO No.7 was already in effect when the merit increases were granted.

Moreover, the COA En Banc noted the June 25, 2014 letter of petitioner to the GCG, and held that the letter is tantamount to petitioner's recognition not only of GCG's jurisdiction over it but also an acknowledgment that petitioner has no authority to solely grant the merit increase. Hence, the COA En Banc held:

**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. Accordingly, Commission on Audit Corporate Government Sector Cluster 2 Decision No. 2015005 dated April 29, 2015 sustaining

Notice of Disallowance No. 14-001-401000-(13) dated August 27, 2014 on the payment of merit increase to five officers of Small Business Corporation for the period of September 1, 2012 to August 31, 2014, in the total amount of P759,042.41, is **AFFIRMED**.<sup>[16]</sup>

Hence, the present Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court.

In its Comment dated September 8, 2017, respondent COA, through the Office of the Solicitor General, argues that petitioner is estopped from denying GCG's authority over it, and from questioning the applicability of EO No. 7 to the merit increases subject of the present controversy. Respondent cites the letter dated June 25, 2014 to GCG, which, to the COA, is a clear indication that petitioner sought approval of GCG to implement the merit increases.<sup>[17]</sup> Moreover, respondent contends that there was no retroactive application of EO No. 7 because the June 1, 2009 staffing pattern did not yet grant or implement the questioned merit increases but merely revised the organizational structure, staffing pattern, qualification standards, and salary structure of petitioner. The moratorium imposed by EO No. 7 was only applied to the merit increases granted on April 12, 2013.<sup>[18]</sup>

### **The Issues**

Petitioner posits the following issues in the present Petition:

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE BOARD OF DIRECTORS OF SB CORPORATION DID NOT HAVE THE AUTHORITY TO GRANT A MERIT INCREASE TO ITS EMPLOYEES

RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO CONSIDER THAT EXECUTIVE ORDER NO. 7 HAS ONLY PROSPECTIVE APPLICATION BECAUSE A RETROACTIVE APPLICATION WOULD IMPAIR VESTED AS WELL AS CONTRACTUAL RIGHTS

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THAT THE CLEAR INTENT OF EXECUTIVE ORDER NO. 7 IN RELATION TO SEC. 11 OF [RA] NO. 10149 IS THAT IT MUST BE APPLIED PROSPECTIVELY

PETITIONER WAS AUTHORIZED TO IMPLEMENT THE SUBJECT MERIT INCREASES PURSUANT TO ITS APPROVED SALARY STRUCTURE AND THE SAID MERIT INCREASES HAD ALREADY BEEN APPROVED BY THE CIVIL SERVICE COMMISSION AND THE SECRETARY OF TRADE AND INDUSTRY [AS] AN ALTER EGO OF THE PRESIDENT<sup>[19]</sup>

In fine, the petition posits that the grant of merit increases to the five officers is not in contravention of the moratorium established in EO No. 7, and that the COA En Banc committed grave abuse of discretion in disallowing the said merit increases.

### **The Court's Ruling**

The petition lacks merit. Hence, it must be dismissed.