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FIRST DIVISION

[G.R. NO. 158261, December 18, 2006]

IN RE: PETITION FOR ASSISTANCE IN THE LIQUIDATION OF THE RURAL BANK OF BOKOD (BENGUET), INC., PHILIPPINE DEPOSIT INSURANCE CORPORATION, PETITIONER, VS. BUREAU OF INTERNAL REVENUE, RESPONDENT

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the revised Rules of Court, praying that this Court set aside the Orders, dated 17 January 2003[2] and 13 May 2003,[3] of the Regional Trial Court (RTC) of La Trinidad, Benguet, sitting as the Liquidation Court of the closed Rural Bank of Bokod (Benguet), Inc. (RBBI), in Spec. Proc. No. 91-SP-0060.

There is no dispute as to the antecedent facts of the case, recounted as follows:

In 1986, a special examination of RBBI was conducted by the Supervision and Examination Sector (SES) Department III of what is now the *Bangko Sentral ng Pilipinas* (BSP),[4] wherein various loan irregularities were uncovered. In a letter, dated 20 May 1986, the SES Department III required the RBBI management to infuse fresh capital into the bank, within 30 days from date of the advice, and to correct all the exceptions noted. However, up to the termination of the subsequent general examination conducted by the SES Department III, no concrete action was taken by the RBBI management. In view of the irregularities noted and the insolvent condition of RBBI, the members of the RBBI Board of Directors were called for a conference at the BSP on 4 August 1986. Only one RBBI Director, a certain Mr. Wakit, attended the conference, and the examination findings and related recommendations were discussed with him. In a letter, dated 4 August 1986, receipt of which was acknowledged by Mr. Wakit, the SES Department III warned the RBBI Board of Directors that, unless substantial remedial measures are taken to rehabilitate the bank, it will recommend that the bank be placed under receivership. In a subsequent letter, dated 17 November 1986, a copy of which was sent to every member of the RBBI Board of Directors via registered mail, the SES Department III reiterated its warning that it would recommend the closure of the bank, unless the needed fresh capital was immediately infused. Despite these notices, the SES Department III received no word from RBBI or from any of its Directors as of 28 November 1986.[5]

In a meeting held on 9 January 1987, the Monetary Board of the BSP decided to take the following action –

> Rural Bank of Bokod (Benguet), Inc. – Report on its examination as of June 16, 1986, its placement under receivership
>
> ACTION TAKEN
>
> Finding to be true the statements of the Special Assistant to the Governor and Head, Supervision and Examination Sector (SES) Department III, in her memorandum dated 28 November 1986 submitting a report on the general examination of the Rural Bank of Bokod (Benguet), Inc. as of 16 June 1986, that the financial condition of the rural bank is one of insolvency and its continuance in business would involve further losses to its depositors and creditors, x x x
>
> x x x x
>
> [T]he Board decided as follows:
>
> > a. To forbid the bank to do business in the Philippines and place its assets and affairs under receivership in accordance with Section 29 of R.A. No. 265, as amended.
> >
> > b. To designate the Special Assistant to the Governor and Head, SES Department III, as Receiver of the bank;
> >
> > c. To refer the cases of irregularities/frauds to the Office of Special Investigation for further investigation and possible filing of appropriate charges against the following present/former officers and employees of the bank:
> >
> > x x x x
> >
> > d. To include the names of the above-mentioned present and former officers and employees of the bank in the list of persons barred from employment in any financial institution under the supervision of the Central Bank without prior clearance from the Central Bank.[6]

A memorandum and report, dated 28 August 1990, were submitted by the Director of the SES Department III concluding that the RBBI remained in insolvent financial condition and it can no longer safely resume business with the depositors, creditors, and the general public. On 7 September 1990, the Monetary Board, after determining and confirming the said memorandum and report, ordered the liquidation of the bank and designated the

Director of the SES Department III as liquidator.[7]

On 10 April 1991, the designated BSP liquidator of RBBI caused the filing with the RTC of a Petition for Assistance in the Liquidation of RBBI, docketed as Spec. Proc. No. 91-SP-0060.[8] Subsequently, on 2 June 1992, the Monetary Board transferred to herein petitioner Philippine Deposit Insurance Corporation (PDIC) the receivership/liquidation of RBBI.[9]

PDIC then filed, on 11 September 2002, a Motion for Approval of Project of Distribution[10] of the assets of RBBI, in accordance with Section 31, in relation to Section 30, of Republic Act No. 7653, otherwise known as the New Central Bank Act. During the hearing held on 17 January 2003, the respondent Bureau of Internal Revenue (BIR), through Atty. Justo Reginaldo, manifested that PDIC should secure a tax clearance certificate from the appropriate BIR Regional Office, pursuant to Section 52(C) of Republic Act No. 8424, or the Tax Code of 1997, before it could proceed with the dissolution of RBBI. On even date, the RTC issued one of the assailed Orders,[11] directing PDIC to comply with Section 52(C) of the Tax Code of 1997 within 30 days from receipt of a copy of the said order. Pending compliance therewith, the RTC held in abeyance the Motion for Approval of Project of Distribution. On 13 May 2003, the second assailed Order[12] was issued, in which the RTC, in resolving the Motion for Reconsideration filed by PDIC, ruled as follows –

O R D E R

> Submitted for resolution is petitioner's motion for reconsideration of the order of this court dated January 17, 2003 holding in abeyance the motion for approval of the project of distribution pending their compliance with a tax clearance from the Bureau of Internal Revenue.
>
> Petitioner in their motion state that Section 52-C of Republic Act 8424 does not cover closed banking institutions like the Rural Bank of Bokod as the law that covers liquidation of closed banks is Section 30 of Republic Act No. 7653 otherwise known as the new Central Bank Law.
>
> Commenting on the motion for reconsideration the Bureau of Internal Revenue states that the only logic why the Bureau is requesting for a tax clearance is to determine how much taxes, if there be any, is due the government.
>
> The court believes and so holds that petitioner should still secure the necessary tax clearance in order for it to be cleared of all its tax liabilities as regardless of what law covers the liquidation of closed banks, still these banks are subject to payment of taxes mandated by law. Also in its motion for approval of the project of distribution, paragraph 2, item 2.2 states that there are unremitted withholding taxes in the amount of P8,767.32.

> This shows that indeed there are still taxes to be paid. In order therefore that all taxes due the government should be paid, petitioner should secure a tax clearance from the Bureau of Internal Revenue.
>
> Wherefore, based on the foregoing premises, the motion for reconsideration filed by petitioner is hereby DENIED for lack of merit.[13]

Hence, PDIC filed the present Petition for Review on *Certiorari*, under Rule 45 of the revised Rules of Court, raising pure questions of law. It made a lone assignment of error, alleging that –

> THE COURT A QUO ERRED IN APPLYING THE PROVISION OF SECTION 52-C OF REPUBLIC ACT NO. 8424 DIRECTING THE SUBMISSION OF TAX CLEARANCE FOR CORPORATIONS CONTEMPLATING DISSOLUTION ON A BANK ORDERED CLOSED AND PLACED UNDER RECEIVERSHIP AND, THEREAFTER, UNDER LIQUIDATION, BY THE MONETARY BOARD PURSUANT TO SECTION 30 OF REPUBLIC ACT NO. 7653.[14]

PDIC argues that the closure of banks under Section 30 of the New Central Bank Act is summary in nature and procurement of tax clearance as required under Section 52(C) of the Tax Code of 1997 is not a condition precedent thereto; that under Section 30, in relation to Section 31, of the New Central Bank Act, asset distribution of a closed bank requires only the approval of the liquidation court; and that the BIR is not without recourse since, subject to the applicable provisions of the Tax Code of 1997, it may therefore assess the closed RBBI for tax liabilities, if any.

In its Comment, the BIR countered with the following arguments: that the present Petition for Review on *Certiorari* under Rule 45 of the revised Rules of Court is not the proper remedy to question the Order, dated 17 January 2003, of the RTC because said order is interlocutory and cannot be the subject of an appeal; that Section 52(C) of the Tax Code of 1997 applies to all corporations, including banks ordered closed by the Monetary Board pursuant to Section 30 of the New Central Bank Act; that the RTC may order the PDIC to obtain a tax clearance before proceeding to rule on the Motion for Approval of Project of Distribution of the assets of RBBI; and that the present controversy should not have been elevated to this Court since the parties are both government agencies who should have administratively settled the dispute.

This Court finds that there are only two primary issues for the resolution of the Petition at bar, one being procedural, and the other substantive. The procedural issue involves the question of whether the Petition for Review on *Certiorari* under Rule 45 of the revised Rules of Court is the proper remedy from the assailed Orders of the RTC. The substantive issue deals with the determination of whether a bank ordered closed and placed under receivership by the Monetary Board of the BSP still needs to secure a tax clearance certificate from the BIR before the liquidation court approves the project of distribution of

the assets of the bank.

I

This Court shall first proceed with the procedural issue on the appropriateness of the remedy taken by PDIC from the assailed RTC Orders.

The differences between an appeal by *certiorari* under Rule 45[15] of the revised Rules of Court and an original action for certiorari under Rule 65[16] of the same Rules have been laid down by this Court in the case of *Atty. Paa v. Court of Appeals,*[17] to wit –

a. In appeal by *certiorari,* the petition is based on questions of law which the appellant desires the appellate court to resolve. In certiorari as an original action, the petition raises the issue as to whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.

b. *Certiorari,* as a mode of appeal, involves the review of the judgment, award or final order on the merits. The original action for *certiorari* may be directed against an interlocutory order of the court prior to appeal from the judgment or where there is no appeal or any other plain, speedy or adequate remedy.

c. Appeal by *certiorari* must be made within the reglementary period for appeal. An original action for certiorari may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed.

d. Appeal by *certiorari* stays the judgment, award or order appealed from. An original action for *certiorari,* unless a writ of preliminary injunction or a temporary restraining order shall have been issued, does not stay the challenged proceeding.

e. In appeal by *certiorari,* the petitioner and respondent are the original parties to the action, and the lower court or quasi-judicial agency is not to be impleaded. In certiorari as an original action, the parties are the aggrieved party against the lower court or quasi-judicial agency and the prevailing parties, who thereby respectively become the petitioner and respondents.

f. In certiorari for purposes of appeal, the prior filing of a motion for reconsideration is not required (Sec. 1, Rule 45); while in *certiorari* as an original action, a motion for reconsideration is a condition precedent (V*illa-Rey Transit vs. Bello,* L-18957, April 23, 1963), subject to certain exceptions.

g. In appeal by *certiorari,* the appellate court is in the exercise of its appellate jurisdiction and power of review, while in *certiorari* as an original action, the higher court exercises original jurisdiction under its power of control and supervision over the proccedings of lower courts.

Guided by the foregoing distinctions, this Court, in perusing the assailed RTC Orders, dated 17 January 2003 and 13 May 2003, reaches the conclusion that these are merely interlocutory in nature and are not the proper subjects of an appeal by *certiorari* under Rule 45 of the revised Rules of Court.

This Court has repeatedly and uniformly held that a judgment or order may be appealed only when it is final, meaning that it completely disposes of the case and definitively adjudicates the respective rights of the parties, leaving thereafter no substantial proceeding to be had in connection with the case except the proper execution of the judgment or order. Conversely, an interlocutory order or judgment is not appealable for it does not decide the action with finality and leaves substantial proceedings still to be had.[18]

The RTC Orders presently questioned before this Court has not disposed of the case nor has it adjudicated definitively the rights of the parties in Spec. Proc. No. 91-SP-0060. They only held in abeyance the approval of the Project of Distribution of the assets of RBBI until PDIC, as liquidator, acquires a tax clearance from the BIR. Indubitably, there are still substantial proceedings to be had after PDIC presents the required tax clearance to the trial court, since the Project of Distribution of assets still has to be finalized and approved.

PDIC avers that the RTC Orders of 17 January 2003 and 13 May 2003 are final because, as this Court pronounced in the case of *Pacific Banking Corporation Employees' Organization (PaBCEO) v. Court of Appeals,*[19] an order of the liquidation court allowing or disallowing a claim is a final order and may be the subject of an appeal. It further asserts that the legal issue of whether RBBI should secure a tax clearance is a "disputed claim," which was already allowed by the RTC in its assailed Orders, thus, making the latter final.

This Court is unconvinced. The foregoing arguments of PDIC result from a strained interpretation of law and jurisprudence, and are raised in an apparent attempt to justify a very obvious *faux pas* on its part. While it is true that in liquidation proceedings, the settlement of disputed or contentious claims may require a full-dress hearing and the resolution of legal issues,[20] it does not follow that all legal issues resolved in the course of the liquidation proceedings would automatically be tantamount to an allowance or disallowance of a disputed or contentious claim. In Spec. Proc. No. 91-SP-0060 pending before the RTC, there can be no doubt that the claim of the BIR against RBBI consists of the unpaid tax liabilities of the latter. The BIR contends that it could only determine the existence and correct amount of the tax liabilities of RBBI if PDIC, as liquidator of the bank, secures a tax clearance from the appropriate BIR Regional Office. The acquirement of a tax clearance is not the claim of the BIR against RBBI, it is only the means by which to ascertain such claim. Whatever tax liabilities the BIR may claim against RBBI can still be disputed before the RTC by the PDIC, as liquidator of the bank, whether as to the

existence or computation of the said tax liabilities, and it is the ruling of the RTC on such matters that may constitute a final order which definitively settles the claim of the BIR. The mere grant by the RTC of the motion requiring PDIC, as liquidator of RBBI, to secure a tax clearance, does not yet constitute an adjudication of the claim of the BIR. Hence, the assailed RTC Orders, dated 17 January 2003 and 13 May 2003, are clearly interlocutory in nature.

As a general rule, an interlocutory order is not appealable until after the rendition of the judgment on the merits, given that a contrary rule would delay the administration of justice and unduly burden the courts. This Court, however, has also held that an original action for *certiorari* under Rule 65 of the revised Rules of Court is an appropriate remedy to assail an interlocutory order when (1) the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion, and (2) the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.[21] Thus, despite this Court's finding that PDIC, as the liquidator of RBBI, availed itself of the wrong remedy by filing an appeal by certiorari under Rule 45 of the revised Rules of Court, We shall adopt a positive and pragmatic approach, and, instead of dismissing the instant Petition outright, it shall treat the same as an original action for *certiorari* under Rule 65 of the same Rules, in consideration of the crucial issues and substantial arguments already presented by the concerned parties before this Court.[22]

II

Having disposed of the procedural issue, this Court now addresses the substantive issue of whether RBBI, as represented by its liquidator, PDIC, still needs to secure a tax clearance from the BIR before the RTC could approve the Project of Distribution of the assets of RBBI.

The BIR anchors its position that a tax clearance is necessary on Section 52(C) of the Tax Code of 1997, which provides –

> SEC. 52. **Corporation Returns. –**
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> x x x x
>
> (C) *Return of Corporation Contemplating Dissolution or Reorganization*. – Every corporation shall, within thirty days (30) after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

To implement the foregoing provision, the BIR still relies on the regulations it jointly issued with the Securities and Exchange Commission (SEC) in 1985, when the Tax Code of 1977 was still in effect and a similar provision could be found in Section 46(C) thereof. The full text of the regulations is reproduced below –

BIR-SEC REGULATIONS NO. 1

SUBJECT: Regulations to Implement the Provisions of Executive Order No. 1026, Amending Section 46(c) of the National Internal Revenue Code of 1977, as amended, Requiring Dissolving Corporations to File Information Returns and Secure Tax Clearance from the Commissioner of Internal Revenue, and Providing Adequate Penalties for Violations Thereof.

TO: All Internal Revenue Officers and Others Concerned.

Pursuant to the provisions of Section 277, in relation to Section 4 of the National Revenue Code of 1977, as amended, the following regulations are hereby promulgated.

Section 1. *Scope*. – These regulations shall govern the procedure for the issuance of tax clearance certificates to dissolving corporations. This shall include corporations intending to dissolve or liquidate the whole or any part of its capital stocks, as well as, corporations which have been notified of possible involuntary dissolution by the Securities and Exchange Commission.

Section 2. *Requirements in case of dissolution.* – a) Every Corporation shall, within thirty (30) days after

- the adoption by the corporation of a resolution or plan for the dissolution of the corporation, or for the liquidation of the whole or any part of its capital stock, or

- the receipt of an order of suspension by the Securities and Exchange Commission in case of involuntary dissolution,

file their income tax returns covering the income earned by them from the beginning of the taxable year up to date of such dissolution.

In addition thereto, they shall submit within the same period and verified under

oath, the following documents:

1. a copy of the articles of incorporation and by-laws;
2. a copy of the resolution authorizing dissolution; and
3. balance sheet as of the date of dissolution and a profit and loss statement covering the period from the beginning of the taxable year to the date of dissolution.

b) The Securities and Exchange Commission whenever it issues an order of involuntary dissolution or suspension of the primary franchise or certificate of registration of a corporation, shall at the same time furnish the Commissioner of Internal Revenue a copy of such order.

Section 3. *Tax clearance certificate.* – a) Within thirty (30) days from receipt of the documents mentioned in the preceding Section, the Commissioner of Internal Revenue, or his duly authorized representative, shall issue the corresponding tax clearance certificate (BIR Form No. 17.61) for the corporation which will be dissolved.

b) The Securities and Exchange Commission shall issue the final order of dissolution only after a certificate of tax clearance has been submitted by the dissolving corporation: Provided, that in case of involuntary dissolution, the Securities and Exchange Commission may nevertheless proceed with the dissolution if thirty (30) days after receipt of the suspension order no tax clearance has yet been issued.

Section 4. *Penalty*. – Failure to render the return and secure the certificate of tax clearance as above-mentioned shall subject the officer(s) of the corporation required by law to file the return under Section 46(a) of the National Internal Revenue Code of 1977, as amended, to a fine of not less than P5,000.00 or imprisonment of not less than two (2) years, and shall make them liable for all outstanding or unpaid tax liabilities of the dissolving corporation.

Section 5. *Effectivity.* – These regulations shall apply to all corporate dissolution taking place on or after May 14, 1985.

Section 6. *Repealing Clause.* – All revenue regulations, orders and circulars which are inconsistent herewith are hereby modified accordingly.

The afore-quoted Tax Code provision and regulations refer to a voluntary dissolution and/or liquidation of a corporation through its adoption of a resolution or plan to that effect, or an involuntary dissolution of a corporation by order of the SEC. They make no reference at all to a situation similar to the one at bar in which a banking corporation is ordered closed and placed under receivership by the BSP and its assets judicially liquidated. Now, the determining question is, whether Section 52(C) of the Tax Code of 1997 and BIR-SEC Regulations No. 1 could be made to apply to the present case.

This Court rules in the negative.

First, Section 52(C) of the Tax Code of 1997 and the BIR-SEC Regulations No. 1 regulate the relations only as between the SEC and the BIR, making a certificate of tax clearance a prior requirement before the SEC could approve the dissolution of a corporation. In Spec. Proc. No. 91-SP-0060 pending before the RTC, RBBI was placed under receivership and ordered liquidated by the BSP, not the SEC; and the SEC is not even a party in the said case, although the BIR is. This Court cannot find any basis to extend the SEC requirements for dissolution of a corporation to the liquidation proceedings of RBBI before the RTC when the SEC is not even involved therein.

It is conceded that the SEC has the authority to order the dissolution of a corporation pursuant to Section 121 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines, which reads –

> Sec. 121. *Involuntary dissolution.* – A corporation may be dissolved by the Securities and Exchange Commission upon filing of a verified complaint and after proper notice and hearing on the grounds provided by existing laws, rules and regulations.

The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail – *generalia specialibus non derogant*.[23]

The liquidation of RBBI is undertaken according to Sections 30 of the New Central Bank Act, *viz* –

> Sec. 30. *Proceedings in Receivership and Liquidation.* - Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:
>
> (a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
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> (b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or
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> (c) cannot continue in business without involving probable losses to its depositors or creditors; or
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> (d) has wilfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board

may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designated as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition that it may be permitted to resume business with safety to its depositors and creditors and the general public: *Provided,* That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

(1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

(2) convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under

> receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.
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> The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.
>
> The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

Section 30 of the New Central Bank Act lays down the proceedings for receivership and liquidation of a bank. The said provision is silent as regards the securing of a tax clearance from the BIR. The omission, nonetheless, cannot compel this Court to apply by analogy the tax clearance requirement of the SEC, as stated in Section 52(C) of the Tax Code of 1997 and BIR-SEC Regulations No. 1, since, again, the dissolution of a corporation by the SEC is a totally different proceeding from the receivership and liquidation of a bank by the BSP. This Court cannot simply replace any reference by Section 52(C) of the Tax Code of 1997 and the provisions of the BIR-SEC Regulations No. 1 to the "SEC" with the "BSP." To do so would be to read into the law and the regulations something that is simply not there, and would be tantamount to judicial legislation.

It should be noted that there are substantial differences in the procedure for involuntary dissolution and liquidation of a corporation under the Corporation Code, and that of a banking corporation under the New Central Bank Act, so that the requirements in one cannot simply be imposed in the other.

Under the Corporation Code, the SEC may dissolve a corporation, upon the filing of a ***verified complaint*** and after proper ***notice and hearing***, on grounds provided by existing laws, rules, and regulations.[24] Upon receipt by the corporation of the ***order of suspension*** from the SEC, it is required to notify and submit a copy of the said order, together with its final tax return, to the BIR. The SEC is also required to furnish the BIR a copy of its order of suspension. The BIR is supposed to issue a ***tax clearance*** to the corporation within 30 days from receipt of the foregoing documentary requirements. The SEC shall issue the ***final order of dissolution*** only after the corporation has submitted its tax clearance; or in case of involuntary dissolution, the SEC may proceed with the dissolution after 30 days from receipt by the BIR of the documentary requirements without a tax clearance having

been issued.[25] The corporation is allowed to continue as a body corporate for ***three years*** after its dissolution, for the purpose of prosecuting and defending suits by or against it, to settle and close its affairs, and to dispose of and convey its property and distribute its assets, but not for the purpose of continuing its business. The corporation may undertake its own liquidation, or at any time during the said three years, it ***may convey*** all of its property ***to trustees*** for the benefit of its stockholders, members, creditors, and other persons in interest.[26]

In contrast, the Monetary Board may ***summarily*** and ***without need for prior hearing,*** forbid the banking corporation from doing business in the Philippines, for causes enumerated in Section 30 of the New Central Bank Act; and ***appoint*** the PDIC as receiver of the bank. PDIC shall ***immediately*** gather and take charge of all the assets and liabilities of the closed bank and administer the same for the benefit of its creditors. The summary nature of the procedure for the involuntary closure of a bank is especially stressed in Section 30 of the New Central Bank Act, which explicitly states that the actions of the Monetary Board under the said Section or Section 29 shall be final and executory, and may not be restrained or set aside by the court except on a Petition for Certiorari filed by the stockholders of record of the bank representing a majority of the capital stock. PDIC, as the appointed receiver, shall ***file ex parte*** with the proper ***RTC***, and without requirement of prior notice or any other action, a ***petition for assistance in the liquidation*** of the bank. The bank is not given the option to undertake its own liquidation.

Second, the alleged purpose of the BIR in requiring the liquidator PDIC to secure a tax clearance is to enable it to determine the tax liabilities of the closed bank. It raised the point that since the PDIC, as receiver and liquidator, failed to file the final return of RBBI for the year its operations were stopped, the BIR had no way of determining whether the bank still had outstanding tax liabilities.

To our mind, what the BIR should have requested from the RTC, and what was within the discretion of the RTC to grant, is not an order for PDIC, as liquidator of RBBI, to secure a tax clearance; but, rather, for it to submit the final return of RBBI. The first paragraph of Section 30(C) of the Tax Code of 1997, read in conjunction with Section 54 of the same Code, clearly imposes upon PDIC, as the receiver and liquidator of RBBI, the duty to file such a return. The pertinent provisions are reproduced below for reference –

> SEC. 52. **Corporation Returns.** –
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> x x x x
>
> (C) *Return of Corporation Contemplating Dissolution or Reorganization*. – Every corporation shall, within thirty days (30) after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the

> Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.
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> x x x x
>
> SEC. 54. *Returns of receivers, Trustees in Bankruptcy or Assignees.* – In cases wherein receivers, trustees in bankruptcy or assignees are operating the property or business of a corporation, subject to the tax imposed by this Title, such receivers, trustees or assignees shall make returns of net income as and for such corporation, in the same manner and form as such an organization is hereinbefore required to make returns, and any tax due on the income as returned by receivers, trustees or assignees shall be assessed and collected in the same manner as if assessed directly against the organizations of whose businesses or properties they have custody or control.

Section 54 of the Tax Code of 1997 imposes a general duty on all receivers, trustees in bankruptcy, and assignees, who operate and preserve the assets of a corporation, regardless of the circumstances or the law by which they came to hold their positions, to file the necessary returns on behalf of the corporation under their care.

The filing by PDIC of a final tax return, on behalf of RBBI, should already address the supposed concern of the BIR and would already enable the latter to determine if RBBI still had outstanding tax liabilities.

The unreasonableness and impossibility of requiring a tax clearance before the approval by the RTC of the Project of Distribution of the assets of the RBBI becomes apparent when the timeline of the proceedings is considered.

The BIR can only issue a certificate of tax clearance when the taxpayer had completely paid off his tax liabilities. The certificate of tax clearance attests that the taxpayer no longer has any outstanding tax obligations to the Government.

Should the BIR find that RBBI still had outstanding tax liabilities, PDIC will not be able to pay the same because the Project of Distribution of the assets of RBBI remains unapproved by the RTC; and, if RBBI still had outstanding tax liabilities, the BIR will not issue a tax clearance; but, without the tax clearance, the Project of Distribution of assets, which allocates the payment for the tax liabilities, will not be approved by the RTC. It will be a chicken-and-egg dilemma.

The Government, in this case, cannot generally claim preference of credit, and receive payment ahead of the other creditors of RBBI. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241(1) of the Civil Code, or immovable property, under Article 2242(1) of the same Code. However, with reference to the other real and personal property of the debtor,

sometimes referred to as "free property," the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242(1) of the Civil Code, will come only in ninth place in the order of preference.[27]

Thus, the recourse of the BIR, after assessing the final return and examining all other pertinent documents of RBBI, and making a determination of the latter's outstanding tax liabilities, is to present its claim, on behalf of the National Government, before the RTC during the liquidation proceedings. The BIR is expected to prove and substantiate its claim, in the same manner as the other creditors. It is only after the RTC allows the claim of the BIR, together with the claims of the other creditors, can a Project for Distribution of the assets of RBBI be finalized and approved. PDIC, then, as liquidator, may proceed with the disposition of the assets of RBBI and pay the latter's financial obligations, including its outstanding tax liabilities. And, finally, only after such payment, can the BIR issue a certificate of tax clearance in the name of RBBI.

Third, the evident void in current statutes and regulations as to the relations among the BIR, as tax collector of the National Government; the BSP, as regulator of the banks; and the PDIC, as the receiver and liquidator of banks ordered closed by the BSP, is not for this Court to fill in. It is up to the legislature to address the matter through appropriate legislation, and to the executive to provide the regulations for its implementation.

It is for these reasons that the RTC committed grave abuse of discretion, and committed patent error, in ordering the PDIC, as the liquidator of RBBI, to first secure a tax clearance from the appropriate BIR Regional Office, and holding in abeyance the approval of the Project of Distribution of the assets of the RBBI by virtue thereof.

Although this Court rules in favor of PDIC, in the sense that a tax clearance is not a prerequisite to the approval of the Project of Distribution of the assets of RBBI, it cannot uphold its argument that the Spec. Proc. No. 91-SP-0060 is summary in nature.

Section 30(d) of the New Central Bank Act gives the Monetary Board of the BSP the power to, summarily and without need for prior hearing, ***forbid*** a bank or quasi-bank from doing business in the Philippines and designating the PDIC as receiver of the banking institution. It bears to emphasize that: (1) the power is granted to the Monetary Board of the BSP; and (2) what is summary in nature is the power of the Monetary Board of the BSP to forbid or stop a bank or quasi-bank from doing further business.

Once liquidation proceedings are instituted before the appropriate trial court, and the trial court assumes jurisdiction over the Petition, then the proceedings take a different character. Spec. Proc. No. 91-SP-0600 is the liquidation proceedings initiated by the PDIC before the RTC. Liquidation proceedings have been described in detail in the case of *Pacific Banking Corporation Employees' Organization (PaBCEO) v. Court of Appeals,*[28] to wit –

> [A] liquidation proceeding resembles the proceeding for the settlement of estate of deceased persons under Rules 73 to 91 of the Rules of Court. The two have a

common purpose: the determination of all the assets and the payment of all the debts and liabilities of the insolvent corporation or the estate. The Liquidator and the administrator or executor are both charged with the assets for the benefit of the claimants. In both instances, the liability of the corporation and the estate is not disputed. ***The court's concern is with the declaration of creditors and their rights and the determination of their order of payment***

x x x x

A liquidation proceeding is a single proceeding which consists of a number of cases properly classified as "claims." It is basically a two-phased proceeding. The ***first phase*** is concerned with the approval and disapproval of claims. Upon the approval of the petition seeking the assistance of the proper court in the liquidation of a closed entity, all money claims against the bank are required to be filed with the liquidation court. This phase may end with the declaration by the liquidation court that the claim is not proper or without basis. On the other hand, it may also end with the liquidation court allowing the claim. In the latter case, the claim shall be classified whether it is ordinary or preferred, and thereafter included Liquidator. In either case, the order allowing or disallowing a particular claim is final order, and may be appealed by the party aggrieved thereby.

The ***second phase*** involves the approval by the Court of the distribution plan prepared by the duly appointed liquidator. The distribution plan specifies in detail the total amount available for distribution to creditors whose claim were earlier allowed. The Order finally disposes of the issue of how much property is available for disposal. Moreover, it ushers in the final phase of the liquidation proceeding - payment of all allowed claims in accordance with the order of legal priority and the approved distribution plan.

x x x x

A liquidation proceeding is commenced by the filing of a single petition by the Solicitor General with a court of competent jurisdiction entitled, "Petition for Assistance in the Liquidation of e.g., Pacific Banking Corporation." ***All claims*** against the insolvent are required to be filed with the liquidation court. Although the claims are ***litigated*** in the same proceeding, the treatment is individual. Each claim is heard separately. And the Order issued relative to a particular claim applies only to said claim, leaving the other claims unaffected, as each claim is considered separate and distinct from the others. x x x [Emphases supplied.]

Irrefragably, liquidation proceedings cannot be summary in nature. It requires the holding of hearings and presentation of evidence of the parties concerned, *i.e.*, creditors who must prove and substantiate their claims, and the liquidator disputing the same. It also allows for

multiple appeals, so that each creditor may appeal a final order rendered against its claim. Hence, liquidation proceedings may very well be highly-contested and drawn-out, because, at the end of it all, all claims against the corporation undergoing litigation must be settled definitively and its assets properly disposed off.

WHEREFORE, in view of the foregoing, this Court rules as follows –

(a) The instant Petition is **GRANTED** and the Orders, dated 17 January 2003 and 13 May 2003, of the RTC, sitting as the Liquidation Court of the closed RBBI, in Spec. Proc. No. 91-SP-0060, are **NULLIFIED** and **SET ASIDE** for having been rendered with grave abuse of discretion;

(b) The PDIC, as liquidator, is **ORDERED** to submit to the BIR the final tax return of RBBI, in accordance with the first paragraph of Section 52(C), in connection with Section 54, of the Tax Code of 1997; and

(c) The RTC is **ORDERED** to resume the liquidation proceedings in Spec. Proc. No. 91-SP-0060 in order to determine all the claims of the creditors, including that of the National Government, as determined and presented by the BIR; and, pursuant to such determination, and guided accordingly by the provisions of the Civil Code on preference of credit, to review and approve the Project of Distribution of the assets of RBBI.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

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* Retired as of 7 December 2006.

[1] *Rollo,* pp. 16-36.

[2] Penned by Presiding Judge Marybelle L. Demot Mariñas, id. at 38-39.

[3] Id. at 41.

[4] Formerly referred to as the Central Bank of the Philippines, prior to Republic Act No. 7653.

[5] *Rollo,* pp. 53, 56.

[6] *Rollo,* pp. 53-57.

[7] Records, vol. 1, pp. 26-28.

[8] Id. at 1-8.

[9] *Rollo,* p. 58.

[10] Records, pp. 186-201.

[11] *Rollo,* pp. 38-39.

[12] Id. at 41.

[13] Id.

[14] Id. at 23-24.

[15] Section 1, Rule 45 of the revised Rules of Court reads –

> SECTION 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[16] Section, Rule 65 of the revised Rules of Court provides –

> SECTION 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[17] 347 Phil. 122, 136-137 (1997).

[18] *People v. Doriquez,* 133 Phil. 295, 299 (1968).

[19] 312 Phil. 578 (1995).

[20] *Hernandez v. Rural Bank of Lucena,* G.R. No. L-29791, 10 January 1978, 81 SCRA 75, 88.

[21] *J.L. Bernardo Construction v. Court of Appeals,* 381 Phil. 25, 36 (2000).

[22] See *People v. Doriquez,* supra note 15 at 301.

[23] *Laureano v. Court of Appeals,* 381 Phil. 403, 411-412 (2000).

[24] CORPORATION CODE, Section 121.

[25] BIR-SEC Regulations No. 1, Sections 2 and 3.

[26] CORPORATION CODE, Section 122.

[27] *Republic v. Peralta,* G.R. No. L-56568, 20 May 1987, 150 SCRA 37, 46-47.

[28] Supra note 16 at 593-594.
