Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **AUGUST 16, 2022**, *which reads as follows:*

"**G.R. No. 242962** ***(Celso G. Regencia and Voltaire I. Rovira vs. Conal Holdings Corporation, Mapalad Power Corporation, Tirso G. Santillan, Jr., Lawrence Ll. Cruz, Henry C. Dy, Ruderic C. Marzo, Providencio A. Abragan, Jr., Frederic W. Siao, Marlene L. Young, Moises G. Dalisay, Jr., Ariel P. Anghay, Michelle E. Sweet, Bayani C. Areola, Roy L. Openiano, Jose L. Zalsos, Bernard Pacana, and Uriel G. Borja).*** — Before the Court is 'an appeal by way of Petition for Review on *Certiorari* in accordance with Section 1[,] Rule XII on Judicial Review of the 2009 Revised Rules of Procedure of the Commission on Audit.'[1] The petition assails Decision No. 2012-146[2] dated September 21, 2012 and Decision No. 2018-182[3] dated January 29, 2018 of the Commission on Audit *(COA)*, for having been allegedly rendered in grave or brazen abuse of discretion amounting to lack of jurisdiction, when it approved the request of respondent Lawrence Ll. Cruz *(Cruz)*, then Mayor of Iligan City, for the negotiated sale of the Iligan Diesel Power Plant 1 *(IDPP-1)* and Iligan Diesel Power Plant 2 *(IDPP-2)* to respondent Conal Holdings Corporation *(CHC)* for an amount not less than ₱386,911,780.44.

Petitioners Celso G. Regencia *(Regencia)* and Voltaire I. Rovira *(Rovira*; collectively, *petitioners)* were, at the time of the filing of the instant petition, the incumbent Mayor and City Legal Officer of Iligan City, respectively.

Named respondents in this petition are: Cruz; CHC; Tirso G. Santillan, Jr. *(Santillan)*, Chief Executive Officer *(CEO)*, CHC; Mapalad Power Corporation *(MPC)*; Henry C. Dy *(Dy)*, former Vice-Mayor, Iligan City; Ruderic C. Marzo *(Marzo)*, Marlene L. Young *(Young)*, Moises G. Dalisay, Jr. *(Dalisay)*, Ariel P. Anghay *(Anghay)*, Michelle E. Sweet

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[1] *Rollo*, p. 11.
[2] Id. at 53-68, signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.
[3] Id. at 39-51, signed by Chairperson Michael G. Aguinaldo and Commissioner Isabel D. Agito, with Commissioner Jose A. Fabia inhibiting.

(Sweet), Bayani C. Areola *(Areola)*, Simplicio N. Larrazabal III *(Larrazabal)*,[4] Chonilo O. Ruiz *(Ruiz)*,[5] Jose L. Zalsos *(Zalsos)*,[6] Riza P. Magaro *(Magaro)*,[7] Providencio A. Abragan, Jr. *(Abragan)*, Roy L. Openiano *(Openiano)*, and Bernard Y. Pacana *(Pacana)*, Councilors, Iligan City; Frederic W. Siao *(Siao)*, former Councilor, Iligan City, later Representative, Lone District of Iligan City; and Uriel G. Borja *(Borja)*,[8] representative, Borja/Atayde Group of Companies (collectively, *respondents)*.

Antecedents

At the crux of the controversy are the two bunker-fired diesel power plants, IDPP-1 and IDPP-2, located in *Sitio* Mapalad, *Barangay* Dalipuga, Iligan City. The power plants were constructed during the power crisis in the 1990s through two build, operate, and transfer agreements *(BOT Agreements)* between the National Power Corporation *(NPC)* and Alsons International, Inc. *(AII)*, an affiliate of CHC. Northern Mindanao Power Corporation *(NMPC)*, a subsidiary of AII, built and operated the two stations: IDPP-1, with an actual capacity of 58 megawatts *(MW)*, and IDPP-2, with an actual capacity of 40 MW. The BOT Agreements covered a 10-year period from June 29, 1992 to June 30, 2002, for IDPP-1, and a 12-year period from November 19, 1992 to November 20, 2004, for IDPP-2. At the end of the cooperation period, the power plants, including machineries/equipment and buildings, would be transferred to the NPC.[9]

During the cooperation period, the City Government of Iligan *(CGI)* issued notices of assessment of real property taxes *(RPT)* against NMPC for IDPP-1 and IDPP-2. In accordance with the terms of the BOT Agreements, NMPC forwarded the said notices of assessment to NPC, and NPC paid the assessed RPT until sometime in 2003.[10]

On August 1, 2003, NMPC transferred IDPP-1 to NPC. As for IDPP-2, the records do not show the actual date of its transfer, but NPC was considered its owner as of November 20, 2004, the transfer date stated in the second BOT Agreement. From the time of their transfers, the power plants were operated by NPC and the Power Sector Assets and Liabilities Management Corporation *(PSALM)*. PSALM was involved because it took over the ownership of all existing generation assets, liabilities, Independent Power Producer contracts, real estate, and all other disposable assets of NPC upon the enactment of the Electric Power Industry Reform Act *(EPIRA)* on June 8, 2001.[11]

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[4] Id. at 12; named respondent in the body of the petition but was not included in the title.
[5] Id.; named respondent in the body of the petition but was not included in the title.
[6] Id. at 10; named respondent in the title but not identified in the body of the petition.
[7] Id. at 3; named respondent in petitioners' motion for extension of time but not identified in the body of the petition.
[8] Id. at 10; named respondent in the title but not identified in the body of the petition.
[9] Id. at 40 and 53-54.
[10] Id. at 40.
[11] Id. at 40-41.

After all the foregoing developments, CGI sought to collect from NPC delinquent RPT on the two power plants. NPC filed a tax protest with the City Treasurer of Iligan on November 11, 2003, contesting the RPT assessment of CGI on the ground that NPC is exempt from RPT under Section 234(c) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 *(LGC)*. On December 9, 2003, the city treasurer denied the tax protest of NPC reasoning that the power plants are not owned by NPC but by NMPC, a private entity. NPC filed an appeal with the Local Board of Assessment Appeals *(LBAA)* on March 8, 2004, docketed as LBAA Case No. 2004-01. In its Decision dated June 2, 2004, the LBAA denied the appeal of NPC. Consequently, NPC elevated on appeal the said LBAA decision to the Central Board of Assessment Appeals *(CBAA)*, where it was docketed as CBAA Case No. M-23.[12]

While CBAA Case No. M-23 was still pending before the CBAA, the City Treasurer of Iligan issued warrants of levy on the real properties of IDPP-1 and IDPP-2 *(IDPP properties)* on April 2, 2007 to cover the RPT delinquencies of the said power plants for the third quarter of calendar year *(CY)* 2003 up to the first quarter of CY 2007, totaling ₱350,101,622.53,[13] as computed below:

Property and Tax Declaration	Market Value	Assessed Value	Tax Due	Penalty	Total RPT delinquency (Tax Due + Penalty)
- **Machinery/ Equipment** (Tax Dec. No.)					
02-009-00069	₱1,219,843,127.37	₱ 975,874,500.00	₱ 82,339,410.94	₱ 38,754,416.09	₱121,093,827.03
02-009-03702	1,466,440,236.07	1,173,152,190.00	98,984,716.05	46,588,806.36	145,573,522.41
- **Buildings** (Tax Dec. No.)					
02-009-00065	2,114,627.65	1,192,650.00	101,106.94	47,363.13	148,470.07
02-009-00066	1,062,195.10	435,500.00	36,919.51	17,294.83	54,214.34
02-009-00067	128,520,921.95	84,309,720.00	7,621,598.68	3,651,158.90	11,272,757.58
02-009-00068	125,390,659.75	82,912,270.00	7,495,269.24	3,628,448.22	11,123,717.46
02-009-00070	256,600.00	69,280.00	5,873.22	2,751.27	8,624.49
02-009-00071	411,480.00	129,620.00	10,936.69	5,147.54	16,084.23
02-009-00072	685,887,625.95	449,942,280.00	40,494,805.20	19,690,599.01	60,185,404.21
02-009-00073	7,475,024.40	4,597,140.00	389,722.53	182,563.91	572,286.44
02-009-03531	1,032,804.90	423,450.00	35,898.01	16,816.26	52,714.27
Total	₱3,638,435,303.14	₱2,773,038,600.00	₱237,516,257.01	₱112,585,365.52	**₱350,101,622.53**[14]

The notice of sale of the levied IDPP properties through a public auction held on April 25, 2007 was published in the *Mindanao Scoop* on April 8 and 15, 2007. Since no bidders participated in the scheduled

[12] Id. at 16 and 54.
[13] Id. at 54.
[14] Id. at 55.

auction, CGI bought the IDPP properties in accordance with Sec. 263 of the LGC.[15]

CGI decided in 2008 to dispose of the IDPP properties since it did not have the needed technical personnel to operate the power plants and so that the proceeds from the sale thereof could accrue to the coffers of the city government. It published the notice of the resale-auction of the said properties, set on October 10, 2008, in the *Gold Star Daily* on September 11 and 18, 2008, as well as in the *Philippine Daily Inquirer* on September 19 and 24, 2008.[16]

Meanwhile, on October 8, 2008, NPC filed with the Regional Trial Court of Iligan City, Branch 3 *(RTC)*, a Petition to Declare the Nullity of the April 25, 2007 Auction Sale (with Prayer for Issuance of Temporary Restraining Order [*TRO*]/Injunction), docketed as Civil Case No. 7212. In the same petition, NPC also sought to enjoin the resale-auction. However, the RTC did not issue any TRO or writ of injunction.[17]

The resale-auction took place as scheduled on October 10, 2008, in which only CHC participated. Thus, CGI declared a failure of bidding and proceeded to negotiate the sale of the IDPP properties with CHC.[18]

During the negotiations held on November 10, 2008, CHC offered the purchase price of ₱275,000,000.00 for the IDPP properties, with the condition that NPC would waive its rights over them. NPC also offered to redeem the IDPP properties for the amount of ₱90,000,000.00. The *Sangguniang Panlungsod (SP)* of Iligan City, through SP Resolution No. 09-96[19] dated February 17, 2009, resolved to further negotiate the sale. CHC, thereafter, raised its offer to ₱300,000,000.00.[20]

In a compromise agreement executed on June 29, 2010, NPC and PSALM unconditionally and irrevocably relinquished all their rights, title, interests, and claims over the IDPP properties in favor of CGI and recognized the latter's ownership of the same as of April 25, 2007. CGI acknowledged that the relinquishment fully satisfied and extinguished any and all RPT liabilities over the IDPP properties, including but not limited to, all interests, penalties, and incidental expenses, which had accrued prior to the execution of the compromise agreement.[21]

To ratify their agreement, NPC, PSALM, and CGI filed a joint motion to approve and render judgment based on the compromise agreement in Civil Case No. 7212 and CBAA Case No. M-23 pending before the RTC

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[15] Id. at 41 and 55.
[16] Id. at 55 and 163.
[17] Id. at 16 and 55.
[18] Id.
[19] Id. at 168-169.
[20] Id. at 55-56.
[21] Id. at 56.

and the CBAA, respectively. The RTC dismissed the petition to annul the auction sale, while the CBAA approved the compromise agreement in an Order dated May 23, 2011.[22]

In the meantime, through SP Resolution No. 10-551[23] dated September 6, 2010, the SP of Iligan City consented to the negotiated sale of the IDPP properties to CHC for the purchase price of ₱300,000,000.00 and authorized Cruz, as City Mayor, to enter into and sign a memorandum of agreement *(MOA)* with CHC, subject to, among other conditions, (a) the approval of the sale by the COA, and (b) the approval of the Compromise Agreement dated June 29, 2010 executed between NPC and PSALM, on one hand, and CGI, on the other, by the RTC in Civil Case No. 7212.[24]

Based on the foregoing SP Resolution No. 10-551, CGI, represented by Cruz as City Mayor, entered into a MOA[25] with CHC, represented by Santillan as CEO, on December 3, 2010. The MOA embodied the intention of CGI to sell, and of CHC to purchase, the IDPP properties for ₱300,000,000.00. Cruz then submitted the MOA to the COA for approval.[26]

Pending approval by the COA of the negotiated sale of the IDPP properties to CHC, the Deputy Ombudsman for Mindanao, through his 1st Indorsement dated May 30, 2011, referred to the COA Legal Services Sector a request by an anonymous complainant for investigation of officials of Iligan City, NPC, PSALM, and CHC. According to the anonymous complainant, there were irregularities in the Compromise Agreement dated June 29, 2010 executed by NPC, PSALM, and CGI, particularly, in the determination of reasonableness of the ₱300,000,000.00 purchase price of the IDPP properties considering that their sound value in 2003 was at least ₱1,500,000,000.00.[27]

To address the issue regarding the reasonableness of the purchase price for the IDPP properties, CGI opened the sale thereof to a Swiss Challenge, whereby any prospective buyer could offer a higher price than that offered by CHC under the MOA, and CHC could exercise the option of matching the price offered by the prospective buyer. The SP of Iligan City approved the terms of reference *(TOR)* for the Swiss Challenge Process in SP Resolution No. 11-588[28] dated July 4, 2011 and published the same in the *Daily Tribune* on July 23 and 30, 2011.[29]

There were two bidders that submitted letters of intent to join the bidding, namely: Renew Eco Co. Ltd. & Ritco Royal Industrial Tech Corp.,

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[22] Id. at 42 and 56.
[23] Id. at 170-175.
[24] Id. at 56.
[25] Id. at 176-182.
[26] Id. at 53 and 56-57.
[27] Id. at 57.
[28] Id. at 185-206.
[29] Id. at 57.

and the Borja/Atayde Group. However, these two bidders did not submit their bids on the scheduled deadline on November 28, 2011 in protest against some portions of the TOR that allegedly grossly favored CHC. The conduct and results of the Swiss Challenge were recounted in SP Resolution No. 11-1111 dated December 5, 2011.[30]

On December 12, 2011, the SP of Iligan City enacted SP Resolution No. 11-1134[31] awarding the IDPP properties to CHC and/or its assignee-subsidiary, MPC, for the purchase price of ₱300,000,000.00. It also authorized Cruz, then City Mayor, to issue the corresponding notice of award and then to submit said award to the COA for review and approval, in accordance with Secs. 379 and 380 of the LGC. Cruz accordingly issued the Notice of Award on January 12, 2012 to CHC through Santillan.[32]

Prior to the biddings, CGI did not have its own appraisal of the IDPP properties. It was only in January 2012 that CGI contracted a group of real estate appraisers to prepare an appraisal report of the said properties. As per said appraisal report, the total market value and forced sale value of the IDPP properties were appraised at ₱310,168,000.00 and ₱134,158,000.00, respectively, as of January 25, 2012.[33]

On March 26, 2012, Borja, representative of the Borja/Atayde Group, as a concerned citizen and taxpayer, submitted a letter to the COA vehemently opposing the request of CGI for approval of the sale of the IDPP properties. He attached to his letter a series of correspondence showing the willingness of the Borja/Atayde Group and Iligan Light Co. to participate in the Swiss Challenge and to offer a bid of ₱500,000,000.00, which was ₱200,000,000.00 more than the offer of CHC. However, Borja averred that they did not formalize their bid because of their unanswered grievances on the unfair provisions of the TOR, for which reason they were disqualified by CGI.[34]

COA Decision No. 2012-146

In its September 21, 2012 Decision, the COA approved the sale of the IDPP properties to CHC, subject to certain conditions. To arrive at its decision, the COA made a determination of the following matters: (a) the ownership of the IDPP properties; (b) the reasonableness of the sale price; and (c) the propriety of the terms and conditions of the MOA dated December 3, 2010 between CGI and CHC.[35]

As to the ownership of the IDPP properties, the COA traced it from NMPC to NPC/PSALM based on the BOT Agreements and the EPIRA. It

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[30] Id. at 57-58.
[31] Id. at 207-209.
[32] Id. at 58.
[33] Id.
[34] Id.
[35] Id. at 66-67.

concluded that by August 1, 2003 and on or about November 20, 2004, the ownership of IDPP-1 and IDPP-2, respectively, had already vested in NPC/PSALM. Since NPC/PSALM had become owners of the subject properties as of the said dates, the RPT assessment on the said properties issued by CGI for the third quarter of CY 2003 until the first quarter of CY 2007 was erroneous. During the period of the alleged tax delinquency, no tax could be assessed against NPC/PSALM, who became the actual operator of the power plants after the cooperation periods stated in the BOT Agreements had lapsed. NPC, a government-owned and controlled corporation engaged in the generation and transmission of electric power, is exempt from payment of RPT.[36] Nonetheless, the COA expressed willingness to defer to a judicial determination on the issue of ownership of the IDPP properties, thus:

> But while the Commission strongly believes that ownership over the Properties belongs to NPC/PSALM during the period taxes were assessed against them which was after the cooperation period under the BOT Agreements, in the exercise of prudence, this Commission may yield to a judicial determination of ownership over the Properties. This is to give CGI, NPC, PSALM, and any other interested party, the opportunity to fully ventilate their individual claims and establish their lawful rights over the Properties in dispute.[37]

The COA next upheld CGI resorting to a negotiated sale of the IDPP properties with CHC after the unsuccessful conduct of two biddings, *i.e.*, the auction sale on October 10, 2008, in which only CHC participated; and the Swiss Challenge on November 28, 2011, in which none of the purportedly interested parties actually submitted their bids. The COA referred to Sec. 180, Rule 24 of COA Circular No. 92-386[38] dated October 20, 1992, which states that '[w]hen public auction is impracticable, negotiated sale may be resorted to at such price as determined by the Committee on Awards.'[39]

However, the COA noted that CGI did not conduct its own appraisal of the IDPP properties as required under Sec. 170,[40] Rule 22 of COA Circular No. 92-386. The schedule of RPT delinquency and warrants of levy issued by CGI in April 2007 showed that the total market value of the IDPP properties was ₱3,638,435,303.14, their assessed value was ₱2,773,038,600.00, and the total delinquency tax due was ₱350,101,622.53. The COA observed that the purchase price of ₱300,000,000.00 offered by CHC was far lower by 92% than the market value, and 89% than the assessed value of the IDPP properties.[41]

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[36] Id. at 60.
[37] Id. at 61.
[38] Rules and Regulations on Supply and Property Management in the Local Governments.
[39] *Rollo*, p. 61.
[40] Section 170. *Appraisal of Property by the Committee on Awards.* — Upon receipt of the Inventory, Inspection and Appraisal form, the Committee on Awards shall appraise the supplies or property recommended by the provincial, city or municipal auditor to be disposed of which appraisal shall be considered as the floor price in the public auction to be conducted for the purpose under the supervision of said Committee.
[41] *Rollo*, pp. 61-62.

The COA conducted its own appraisal of the IDPP properties in 2012 through the engineers of the COA-Technical Services Office *(TSO)*. The COA-TSO submitted its Appraisal Reports dated March 26, 2012 and April 24, 2012 in which it determined the total appraised value of the IDPP properties to be ₱386,911,780.44, consisting of the fixed assets, building, machinery, and equipment, which amounted to ₱385,097,780.44, plus Generator Set No. 12 and its accessories, valued at ₱1,814,000.00. The COA acknowledged that the appraised value of ₱385,097,780.44 for the fixed assets, building, machinery, and equipment of the two power plants per the COA-TSO 2012 Appraisal Reports was much lower than the Market Value of ₱3,468,133,500.00 indicated in the 2003 Tax Declarations of CGI for the same properties, but it pointed out that its appraisal was undertaken in 2012, eight years after the turnover dates, using the Cost Approach Method. The Cost Approach Method estimates the reproduction or replacement cost of the properties, less their estimated depreciation and obsolescence. The COA additionally explained that Generator Set No. 12, located in General Santos City, was already beyond repair and considered junk, and was appraised at ₱1,814,000.00 after actual canvass of three junk shops. The COA then declared that the present values of the IDPP properties would be determined based on their appraised values in the COA-TSO 2012 Appraisal Reports since these were the most recent.[42]

Consequently, the COA concluded that the purchase price for the IDPP properties should not be lower than their total appraised value of ₱386,911,780.44, as stated in the COA-TSO 2012 Appraisal Reports. Moreover, it ordered CHC, as buyer, to bear the cost of expenses to return Generator Set No. 12 to Iligan City.[43]

Lastly, the COA made the following observations and recommendations on the terms and conditions of the MOA dated December 3, 2010:

> As to the terms and conditions of the MOA, the following are the observations/comments and recommendations of this Commission, for incorporation in the Deed of Sale:
>
> 1. Section 2.1 of Article II of the MOA shall make clear that the sale price of P386,911,780.44 covers only those properties/equipment listed in the Annexes A, B and C attached to this Decision. Annexes A and B are covered by the COA-TSO Appraisal Review Report dated March 26, 2012 and Annex C is covered by the COA-TSO Appraisal Review Report dated April 24, 2012.
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> 2. The following changes to Section 2.2 of Article II of the MOA shall be made:
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> a. The phrase 'or such later date as may be agreed upon by the Parties in writing (the 'Closing Date')' shall be deleted;

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[42] Id. at 62-64.
[43] Id. at 64.

b. Payment of taxes and fees shall be borne by CHC;
c. The cost of expenses in moving the Generator Set No. 12 back to Iligan City shall be borne by the buyer CHC; and
d. There shall be no decrease in the purchase price recommended by this Commission.

In effect, said Section shall be amended to read as follows:

In consideration of the purchase price in accordance with the Total Appraised Value of P386,911,780.44 based on COA-TSO Appraisal Reports dated March 26, 2012 and April 24, 2012, and the fulfillment of the terms and conditions contained in this Agreement, the City of Iligan agrees to sell, transfer and convey to CHC all of its rights, title, and interests in and to the Power Plant, free and clear of any and all liens and encumbrances whatsoever, and CHC agrees to pay the Purchase Price, seven days after obtaining ERC approval of at least one Power Sales Agreement or forty-five business days from execution of this Agreement, whichever comes first. The payment of taxes, fees, and charges pertaining to this sale shall be solely borne by the buyer (CHC). CGI shall not be liable for any charges, fees or lien resulting from the sale of the Properties. It is also understood that any material change in the physical conditions or quantity of the Power Plant prior to the execution of the Deed of Sale shall be borne by CHC. No warranties or any guarantee CGI should be liable, and it is understood that the sale is conditioned on 'AS IS WHERE IS BASIS.'

3. Section 3.1 a(iii) shall include the case pending before the CBAA.

4. Section 4.1 (b), (c), and (d) shall be amended to read as follows:

4.1 (b) subject to the fulfillment of the conditions set forth in Section 4.1 (a) hereof, CHC shall cause the payment of the entire Purchase Price (pursuant to Section 2.2) to an escrow account upon signing of the Deed of Sale;

4.1 (c) the City of Iligan shall deliver the original of the tax declarations to CHC covering the Power Plant subject of the Deed of Sale located in Dalipuga, Iligan City. No other properties shall be included than the properties/equipment listed/covered by the COA-TSO Appraisal Reports, dated March 26, 2012 and April 24, 2012; and

4.1 (d) the City of Iligan shall turn over the complete and absolute possession and control of the Power Plant to CHC without prejudice to the rights of CGI provided under our existing laws and regulations. The properties/equipment subject of the sale shall not be transferred to any other location than its present site except Generator Set No. 12 and its accessories which are located in General Santos City which shall be returned to Iligan City. The Cost of moving it back to Iligan City shall be solely at the expense of the buyer, CHC.

5. Section 5.4, Assignment, of Article V shall be amended to read as follows:

> CHC cannot assign or transfer its right over the Properties that would prejudice the full production and supply of electricity, subject to existing rules and regulations. Neither shall it be allowed to convert or to transform the Properties other than that for its present purpose. CHC shall not delegate to any other person the whole or any part of its obligations or duties under this Agreement.
>
> As a result of the last sentence above, CGI SP Resolution No. 11-1134 dated December 12, 2011, awarding the IDPP-1 and IDPP-2 to CHC and/or its assignee-subsidiary, the Mapalad Power Corporation shall be amended accordingly. The Properties shall be awarded exclusively to CHC and there shall be no other affiliate or assignee-subsidiary that would possess rights which are exclusively granted to CHC.[44]

The COA summed up its ruling as follows:

> **WHEREFORE**, in view of the foregoing, this Commission **APPROVES** the herein request to dispose of the IDPP-1 and IDPP-2 Properties subject to the following conditions:
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> 1. The proceeds of the sale shall be deposited to an escrow account pending judicial determination of the ownership over the IDPP Properties;
>
> 2. The selling price shall not be lower than the COA-TSO appraised value of P386,911,780.44 covering the list of properties/equipment contained in Annexes A and B of COA-TSO Appraisal Report dated March 26, 2012, and Annex C of COA-TSO Appraisal Report dated April 24, 2012; and
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> 3. The observations/comments and recommendations of this Commission on the MOA as indicated in the discussion portion of this Decision shall be incorporated therein and considered in the preparation of the Deed of Sale.[45]

Motions for reconsideration of COA Decision No. 2012-146 were separately filed by Cruz, Santillan, Borja, and petitioners, together with other concerned citizens[46] of Iligan City, and Engineer Nestor Degoma *(Engr. Degoma)*, President, Lanao Power Consumers Federation.

While the motions for reconsideration were pending before the COA, CGI entered into several agreements with CHC on February 27, 2013 to conform with COA Decision No. 2012-146, particularly: an amended and restated MOA, a deed of sale covering the IDPP properties, and an escrow agreement. About three months thereafter, MPC already began operating the power plants.[47]

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[44] *Rollo*, pp. 65-66.
[45] Id. at 66-67.
[46] Id. at 76; namely, Atty. Leo Zaragosa, Alejandro A. Yanez, Jose Maria L. Boza, Immanuel A. Cabili, Jack Dasmarinas, Severo Eduardo Yap, Dra. Belinda Lim, Atty. Emmanuel C. Salibay, and Atty. Demosthenes Plando.
[47] Id. at 23-24.

COA Decision No. 2018-182

On January 29, 2018, the COA issued a resolution, docketed as Decision No. 2018-182, in which it addressed each of the issues raised in the different motions for reconsideration, to wit:

a. Cruz challenged the conditions laid down in COA Decision No. 2012-146 for being unfavorable to CGI, one of which was the requirement that proceeds of the sale be deposited in an escrow account pending judicial determination of ownership of the power plants. The COA though noted that in a letter dated March 18, 2013, Cruz, then still City Mayor of Iligan City, submitted to the COA a copy of the escrow agreement between CGI and CHC, rendering said issue moot.[48]

b. Both Cruz and Santillan asserted that CHC, as an investment holding company, has no corporate authority to operate a power plant, so that it needs a subsidiary or an affiliate to function as its operating arm. Based on said respondents' assertion, the COA granted their request to allow CHC to transfer its rights over the IDPP properties to MPC provided that: the latter is technically and financially capable of operating and maintaining the power plants; such assignment and transfer shall not prejudice the full production and supply of electricity; and neither CHC nor MPC shall convert or transform the power plants other than for their present purpose.[49]

c. The COA denied Santillan's appeal for 10% discount on the purchase price of the IDPP properties fixed by the COA. The COA-TSO already considered in its appraisal the cost of securing the IDPP properties, the losses due to the deterioration and obsolescence of said properties, and the damage from the exposure of the properties while they had been left idle. Additionally, if the purchase price is discounted by 10%, it would reduce the price to ₱348,220,602.40. Such would be insufficient to cover the assessed RPT delinquency of ₱350,101,622.53.[50]

d. The COA similarly rejected Santillan's alternative prayer for a five-year deferred/installment payment of the amount of ₱86,911,780.44, which was the difference between the purchase price of ₱386,911,780.44 fixed by the COA and the ₱300,000,000.00 agreed upon by CGI and CHC. The COA found that Santillan failed to justify the need for such deferment or installment of payment. It also stressed that CGI was already deprived of income when NPC failed to timely pay the RPT on the IDPP properties, and such income could have already redounded to the benefit of the city and its constituents. The COA opined that to defer the payment of a portion of the purchase price for the IDPP properties would only prolong the deprivation of CGI's income.[51]

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[48] Id. at 42-43 and 46.
[49] Id. at 43 and 47.
[50] Id. at 47.
[51] Id.

e. Borja and Engr. Degoma both contended that the purchase price set by the COA for the IDPP properties was too low or grossly inadequate. The COA explained that its functions in approving the negotiated sale between CGI and CHC were to protect the government's interest and to determine if the price agreed upon by CGI and CHC was reasonable. Its approval should not be misinterpreted as to dictate the purchase price of the IDPP properties since CGI was not precluded from negotiating with the buyer for an amount higher than the floor price set by the COA. The COA adjudged that Borja and Engr. Degoma were unable to substantiate their contention that the valuation for the IDPP properties should be much higher. It stated that CGI conducted a Swiss Challenge, whereby any prospective buyer could have offered a price higher than the ₱300,000,000.00 offer of CHC. The Borja/Atayde Group failed to submit its bid in accordance with the TOR because its offer of ₱500,000,000.00 was conditional and was not accompanied by the required bid bond. Hence, the supposed bid amount of the Borja/Atayde Group could not be used as basis for the valuation of the IDPP properties. Similarly, if the value of the IDPP properties was truly between ₱1,600,000,000.00 and ₱3,340,000,000.00 as alleged by Engr. Degoma, then bids in such amounts should have been made during the Swiss Challenge.[52]

f. Petitioners and the other concerned citizens of Iligan City argued that the sale of the IDPP properties should not be allowed since the power plants were still needed by Iligan City and its residents; and that the purchase price for the IDPP properties was grossly disadvantageous, inflicted undue damage to the city, and granted undeserved benefits to CHC. The COA dismissed such arguments for being unsubstantiated and without legal basis, and were similar to those raised by Borja, which the COA had already passed upon.[53]

The COA ultimately ruled:

> **WHEREFORE**, premises considered, the Motions for Reconsideration are hereby **RESOLVED** as follows:
>
> 1. The Motion for Reconsideration of Mayor Lawrence Ll. Cruz is **PARTLY GRANTED**. Accordingly, his request to allow Conal Holding Company to transfer its rights and obligation to Mapalad Power Corporation is **GRANTED**. However, his request to remove the condition set forth in Commission on Audit (COA) Decision No. 2012-146 requiring escrow deposit of the proceeds of the sale is **DISMISSED** for being moot.
>
> 2. The Motion for Reconsideration of Mr. Tirso G. Santillan is **PARTLY GRANTED**. Accordingly, his request to allow Conal Holding Company to transfer its rights and obligation to Mapalad Power Corporation is **GRANTED**. However, his requests for a ten percent (10%) reduction of the selling price

[52] Id. at 48.
[53] Id. at 45 and 48.

and deferred/installment payment of the amount P86,911,780.44 for a period of five years are both **DENIED**; and

3. The Motions for Reconsideration of Colonel Celso Regencia, et al., Engr. Nestor Degoma, and Mr. Uriel G. Borja, praying that COA Decision No. 2012-146 be set aside on the ground of inadequacy of the selling price are all **DENIED WITH FINALITY**.[54]

Issues

Petitioners filed the present Petition[55] on December 3, 2018, averring that the COA committed grave abuse of discretion amounting to lack of jurisdiction in the following instances:

I

THE COMMISSION ON AUDIT ('COA') IN APPROVING THE SALE OF THE ELECTRIC POWER PLANTS DELIBERATELY SUPPRESSED RESPONDENTS' GROSS AND PATENT VIOLATION OF SECTIONS 379 AND 380 OF THE LOCAL GOVERNMENT CODE (RA 7160) x x x as

(a) The sale of IDPP 1 and 2 violated Section 379 of RA 7160 which prohibits the disposition of the electric plants badly needed by the City of Iligan x x x; [and]

(b) The said conveyance likewise violated Sec. 380 of RA 7160 as it did not bear, during its execution, the approval of the Commission on Audit required in Sec. 380 of RA 7160 x x x[.]

II

RESPONDENT COA [DISREGARDED] ITS OWN (AND OTHER GOVERNMENT OFFICES') APPRAISED VALUE OF ABOUT P2,000,000,000.00 OF THE 108 MEGAWATT POWER PLANT IN GOOD CONDITION BY APPROVING ITS SALE FOR ONLY PhP386,911.780.44 x x x[.]

a. COA's 2007 'Annual Audit Report' set the value of the electric plants at PhP2,028,111,514.70 x x x[;]

b. The National Power Corporation in its 'Result of Operation January to December 2008' assessed the electric plants at PhP1,959,427,000.00 x x x[; and]

c. The market value of the electric plant was P3,468,175,155.72 per Tax Dec. Nos. 02-009-00065 to 02-009-00073, 02-009-03531 and 02-009-03702 of the City of Iligan x x x.[56] (Underscoring in the original; emphases omitted)

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[54] Id. at 48-49.
[55] Id. at 10-38.
[56] Id. at 10.

Petitioners pray for judgment: (a) declaring Decision No. 2012-146, dated September 21, 2012, and Decision No. 2018-182, dated January 29, 2018, of the COA null and void for having been promulgated without jurisdiction or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction; (b) holding the sale of the IDPP properties to CHC null and void for being violative of Secs. 379 and 380 of the LGC and City Ordinance No. 08-84; (c) declaring CGI as the lawful owner, free from all liens and encumbrances, of the power plants, their appurtenances, support facilities, and accessories; (d) requiring CHC, its representatives, agents, or successors-in-interest to turnover and relinquish the physical possession of the power plants, their appurtenances, support facilities, and accessories, and to account for all of the income it derived from the operations of the same; and (e) directing CHC, their representatives, agents, or successors-in-interest to return, deliver, and properly store in the IDPP storage tanks 1,300,000 liters of diesel fuel and/or pay for the current cost when delivery or payment is made.[57]

In a Resolution[58] dated April 10, 2019, the Court required respondents to file their comments.

Accordingly, the following respondents filed their Comments: (a) Cruz, Dy, Marzo, Young, Dalisay, Anghay, Sweet, Areola, Larrazabal, Ruiz, Zalsos, Magaro, Abragan, Openiano, Pacana, and Siao *(Cruz, et al.)*, the elected officials of Iligan City (*i.e.*, Mayor, Vice-Mayor, and Councilors or SP Members) who participated in and/or approved the sale of the IDPP properties to CHC;[59] (b) CHC and Santillan;[60] and (c) the COA, through the Office of the Solicitor General.[61]

The Court's Ruling

Based on the pleadings submitted by the parties, the Court resolves to dismiss the instant petition.

The present petition is treated as a petition for certiorari.

The Court, time and again, has distinguished between a special civil action for *certiorari* under Rule 65 and an appeal by *certiorari* under Rule 45 of the Revised Rules of Court, thus:

> This Court has consistently elaborated on the difference between Rule 45 and 65 petitions. A petition for review on *certiorari* under Rule 45 is an ordinary appeal. It is a continuation of the case from the CA,

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[57] Id. at 34-35.
[58] Id. at 87-89.
[59] Id. at 130-161.
[60] Id. at 411-437.
[61] Id. at 555-581.

> Sandiganbayan, RTC, or other courts. The petition must only raise questions of law which must be distinctly set forth and discussed.
>
> A petition for *certiorari* under Rule 65 is an original action. It seeks to correct errors of jurisdiction. An error of jurisdiction is one in which the act complained of was issued by the court, officer, or quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack of or in excess of jurisdiction. The purpose of the remedy of *certiorari* is to annul void proceedings; prevent unlawful and oppressive exercise of legal authority; and provide for a fair and orderly administration of justice.
>
> Applying the foregoing, errors in the appreciation of evidence may only be reviewed by appeal and not by *certiorari* because they do not involve any jurisdictional ground. Likewise, errors of law do not involve jurisdiction and may only be corrected by ordinary appeal.[62]

These two remedies are not interchangeable. One cannot be a substitute for the other.

Under Sec. 2, Rule 64 of the Revised Rules of Court, '[a] judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.'

The Court, in *Reblora v. Armed Forces of the Philippines*,[63] stressed that decisions and resolutions of the COA may be reviewed by this Court only *via* a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Revised Rules of Court:

> This Court can very well dismiss the instant petition on account of it being the wrong remedy. Decisions and resolutions of the COA are reviewable by this Court, not *via* an appeal by *certiorari* under Rule 45, as is the present petition, but thru a special civil action of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court. Section 2 of Rule 64, which implements the mandate of Section 7 of Article IX-A of the Constitution is clear on this:
>
> > Section 2. *Mode of Review*. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.
>
> The distinction between an appeal under Rule 45 and a special civil action under Rule 64 in relation to Rule 65 could not be anymore overstated in remedial law — the most profound of which, arguably, is the difference of one to the other with respect to the permissible scope of inquiry in each. Indeed, by restricting the review of judgments or resolutions of the COA only thru a special civil action for *certiorari* before this Court, the Constitution and the Rules of Court precisely limits the

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[62] *Agrarian Reform Beneficiaries Association v. Nicolas*, 588 Phil. 827, 837-838 (2008).
[63] 711 Phil. 401 (2013).

> permissible scope of inquiry in such cases only to errors of jurisdiction or grave abuse of discretion. Hence, unless tainted with grave abuse of discretion, simple errors of judgment committed by the COA cannot be reviewed — even by this Court.[64]

Herein petitioners referred to their petition as a '**an appeal by way of Petition for Review on *Certiorari*** in accordance with Section 1[,] Rule XII on Judicial Review of the 2009 Revised Rules of Procedure of the Commission on Audit.'[65]

If the petition at bar is a petition for review on *certiorari*, the Court can very well dismiss it outright for being the wrong remedy. However, it is apparent, after a perusal of the petition, that petitioners intend it to be a petition for *certiorari* and has only mislabeled the same in the 'Statement of the Case' portion of their petition. In the title, on the first page of the petition, they denominated it as a 'Petition for *Certiorari*.'[66] Also, petitioners aver that their petition is filed 'in accordance with Section 1[,] Rule XII on Judicial Review of the 2009 Revised Rules of Procedure of the Commission on Audit.' Said provision of the COA Rules, quoted below, refers to a 'Petition for *Certiorari*' as the proper remedy for the judicial review of a decision, order, or resolution of the Commission, which is consistent with Rule 64 of the Revised Rules of Court:

> RULE XII
> JUDICIAL REVIEW
>
> Section 1. *Petition for Certiorari.* – Any decision, order or resolution of the Commission **may be brought to the Supreme Court on *certiorari*** by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.
>
> When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency. (Emphasis supplied)

Last, and most importantly, petitioners clearly and repeatedly allege in their petition that the COA committed grave abuse of discretion by approving the sale by CGI of the IDPP properties to CHC in COA Decision No. 2012-146, dated September 21, 2012, and Decision No. 2018-182, dated January 29, 2018.

For the foregoing reasons, the Court treats the instant petition as a petition for *certiorari*.

There is no grave abuse of discretion on the part of the COA in approving the sale of

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[64] Id. at 408-409.
[65] *Rollo*, p. 11.
[66] Id. at 10.

the IDPP properties between CGI and CHC.

In its review of the petition at bar, the Court is guided accordingly by the following pronouncements in *Fernandez v. Commission on Audit*:[67]

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. The burden lies on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.
>
> In this case, the Court finds no grave abuse of discretion on the part of the COA in issuing the questioned NDs. The oft-repeated rule is that findings of administrative agencies are accorded not only respect but also finality when the decision or order is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.

Based on the aforequoted definition of grave abuse of discretion, petitioners herein failed to discharge their burden of establishing the same on the part of the COA so as to justify the issuance of a writ of *certiorari* in their favor. The assailed COA decisions approving the sale of the IDPP properties by CGI to CHC and MPC are based on cogent factual and legal grounds and were, thus, rendered within the bounds of its jurisdiction.

Foremost among petitioners' arguments is that the COA deliberately suppressed respondents' violation of Secs. 379 and 380 of the LGC, which read:

> Section 379. *Property Disposal.* – When property of any local government unit has become unserviceable for any cause or is no longer needed, it shall, upon application of the officer accountable therefor, be inspected and appraised by the provincial, city or municipal auditor, as the case may be, or his duly authorized representative or that of the Commission on Audit and, if found valueless or unusable, shall be destroyed in the presence of the inspecting officer.
>
> If found valuable, the same shall be sold at public auction to the highest bidder under the supervision of the Committee on Awards and in the presence of the provincial, city or municipal auditor or his duly authorized representative. Notice of the public auction shall be posted in at least three (3) publicly accessible and conspicuous places, and if the acquisition cost exceeds One hundred thousand pesos (P100,000.00) in the case of provinces and cities, and Fifty thousand pesos (P50,000.00) in the case of municipalities, notice of auction shall be published at least two (2)

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[67] G.R. No. 205389, November 19, 2019, 925 SCRA 515, 529-530.

> times within a reasonable period in a newspaper of general circulation in the locality.
>
> Section 380. *Negotiated Sale of Property.* – Property no longer needed may also be disposed of at a private sale at such price as may be determined by the Committee on Awards, subject to the approval of the Commission on Audit or its duly authorized representative when the acquisition or transfer cost of the property exceeds Fifty thousand pesos (P50,000.00) in the case of provinces and cities, and Twenty-five thousand (P25,000.00) in the case of municipalities and barangays.
>
> In case of real property, the disposal shall be subject to the approval of the Commission on Audit regardless of the value or cost involved.

Petitioners point out that a local government unit *(LGU)* may dispose of property, whether by public bidding or negotiated sale, under Secs. 379 or 380 of the LGC, respectively, only when said property has become unserviceable or is no longer needed. They assert that in the years 2010-2011, there was a severe drought in Mindanao due to the El Niño phenomenon, which resulted in electric power shortages; thus, there was a pressing need for the power plants. Yet, CGI proceeded with the public bidding and, with the failure thereof, the negotiated sale of the IDPP properties, in violation of Secs. 379 and 380 of the LGC.

Petitioners' reliance on Secs. 379 and 380 of the LGC is misplaced. As respondents point out, said provisions can be found under Title VI, Book II[68] of the LGC on 'Property and Supply Management in the Local Government Units.' Sec. 355 of the LGC describes the scope of Title VI as governing 'the **procurement, care, utilization, custody, and disposal of supplies**, as defined herein, by local government units and the other aspects of **supply management** at the local levels.' The term 'supplies,' in turn, is defined under Sec. 357(c) of the LGC as follows:

> Section 357. *Definition of Terms.* – When used in this Title, the term –
>
> x x x x
>
> (c) 'Supplies' includes everything, except real property, which may be needed in the transaction of public business or in the pursuit of any undertaking, project, or activity, whether in the nature of equipment, furniture, stationary materials for construction or personal property of any sort, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related services[.]

Sec. 356 lays down the general rule in procurement or disposal under Title VI of the LGC to which Secs. 379 and 380 adhere:

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[68] Local Taxation and Fiscal Matters.

> Section 356. *General Rule in Procurement or Disposal.* – Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive public bidding. Supplies which have become unserviceable or **no longer needed** shall be sold, whenever applicable, at public auction, subject to applicable rules and regulations. (Emphasis supplied)

Indeed, Secs. 379 and 380 of the LGC refer to 'property' in general, which is undefined under Title VI and may either be personal or real property. However, such 'property' must still be understood within the stipulated scope of Title VI, *i.e.*, property which may be needed by the LGU in the transaction of public business or pursuit of any undertaking, project, or activity. Hence, the need to determine first whether the property is unserviceable or no longer needed by the LGU before it can be disposed.

The IDPP properties do not fall under the foregoing definition of 'property.' They were not procured by CGI under Title VI of the LGC because they were needed in public business transactions or in pursuit of a local government undertaking, project, or activity. Rather, they were levied upon pursuant to the provisions of Title II, Book II on Real Property Taxation, when its previous owner, NPC, was unable to pay the RPT assessed thereon.

The provisions relevant to this case can be found under Chapter VI, Title II, Book II of the LGC which particularly governs Collection of Real Property Tax, reproduced hereunder for reference:

> Section 256. *Remedies for the Collection of Real Property Tax.* – For the collection of the basic real property tax and any other tax levied under this Title, the local government unit concerned may avail of the remedies by administrative action thru levy on real property or by judicial action.
>
> x x x x
>
> Section 258. *Levy on Real Property.* – After the expiration of the time required to pay the basic real property tax or any other tax levied under this Title, real property subject to such tax may be levied upon through the issuance of a warrant on or before, or simultaneously with, the institution of the civil action for the collection of the delinquent tax. The provincial or city treasurer, or a treasurer of a municipality within the Metropolitan Manila Area, as the case may be, when issuing a warrant of levy shall prepare a duly authenticated certificate showing the name of the delinquent owner of the property or person having legal interest therein, the description of the property, the amount of the tax due and the interest thereon. The warrant shall operate with the force of a legal execution throughout the province, city or a municipality within the Metropolitan Manila Area. The warrant shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property. At the same time, written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or

municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively.

The levying officer shall submit a report on the levy to the *sanggunian* concerned within ten (10) days after receipt of the warrant by the owner of the property or person having legal interest therein.

x x x x

Section 260. *Advertisement and Sale.* – Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. The advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expenses of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold. At any time before the date fixed for the sale, the owner of the real property or person having legal interest therein may stay the proceedings by paying the delinquent tax, the interest due thereon and the expenses of sale. The sale shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as specified in the notice of the sale.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the *sanggunian* concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: *Provided, however*, That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein.

The local treasurer may, by ordinance duly approved, advance an amount sufficient to defray the costs of collection through the remedies provided for in this Title, including the expenses of advertisement and sale.

x x x x

Section 263. *Purchase of Property by the Local Government Units for Want of Bidder.* – In case there is no bidder for the real property advertised for sale as provided herein, or if the highest bid is for an amount insufficient to pay the real property tax and the related interest and costs of sale the local treasurer conducting the sale shall purchase the property in behalf of the local government unit concerned to satisfy the claim and within two (2) days thereafter shall make a report of his proceedings which shall be reflected upon the records of his office. It

> shall be the duty of the Registrar of Deeds concerned upon registration with his office of any such declaration of forfeiture to transfer the title of the forfeited property to the local government unit concerned without the necessity of an order from a competent court.
>
> Within one (1) year from the date of such forfeiture, the taxpayer or any of his representative, may redeem the property by paying to the local treasurer the full amount of the real property tax and the related interest and the costs of sale. If the property is not redeemed as provided herein, the ownership thereof shall be vested on the local government unit concerned.
>
> Section 264. *Resale of Real Estate Taken for Taxes, Fees, or Charges.* – The *sanggunian* concerned may, by ordinance duly approved, and upon notice of not less than twenty (20) days, sell and dispose of the real property acquired under the preceding section at public auction. The proceeds of the sale shall accrue to the general fund of the local government unit concerned.

To recall, due to the nonpayment by NPC of the RPT delinquency on the IDPP properties from the third quarter of CY 2003 to the first quarter of CY 2007, CGI issued warrants of levy against said properties on April 2, 2007. When there was no bidder for the IDPP properties during the public auction sale on April 25, 2007, they were purchased by CGI as provided under Sec. 263 of the LGC. In 2008, CGI decided to resell the IDPP properties also in accordance with Sec. 264 of the LGC. During the resale-auction held on October 10, 2008, only CHC participated as bidder and a failure of bidding was declared. As a result, CGI proceeded with a negotiated sale with CHC. There being questions as to the reasonableness of the purchase price for the IDPP properties, CGI opened a Swiss Challenge for the same, but no party submitted any bid by the November 28, 2011 deadline. Hence, CGI finalized the sale of the IDPP properties with CHC.

Significantly, Sec. 264 of the LGC does not require, for the resale of real property, a determination or declaration that said property is already unserviceable or no longer needed by the LGU. The only prerequisites for the resale are: (a) that the one-year period for the previous owner-taxpayer to redeem the property had already lapsed; (b) that the resale is duly approved by the *Sanggunian* through an ordinance; and (c) notice of not less than 20 days of the resale-auction.

But then, even though it was not necessary, the SP of Iligan City stated the justifications for authorizing the resale of the IDPP properties in SP Resolution No. 08-581[69] dated September 1, 2008 and SP Resolution No. 08-611[70] dated September 8, 2008, both of which – worthy of note – were authored by Rovira himself as SP Member, to wit:

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[69] *Rollo*, pp. 162-163.
[70] Id. at 164-165.

SP Resolution No. 08-581

> **WHEREAS**, as the City Government of Iligan does not have the needed number of technical personnel to [*sic*] a power plant, hence there is an urgent need for the City Government to sell the property so that the proceeds thereof could accrue to the coffers of the City Government, the Special Education Fund and the barangays[.][71]

SP Resolution No. 08-611

> **WHEREAS**, the technical consultants as well as the authorities of the City of Iligan after a thorough study found that the City of Iligan is not in the position to operate the diesel electric generating units of NMPC as it has no contract for the supply of power with the National Power Corporation, the equipment is on the land of a third party and is not owned by NMPC or the City of Iligan, and the City does not have the funds for the start up and operation costs of the diesel plants and they therefore recommended that the same be sold by the City of Iligan.[72]

It is, therefore, evident that the IDPP properties would have been useless in the hands of CGI as it had no capacity to operate the same; while the resale of the said properties would undoubtedly benefit the City of Iligan since proceeds thereof would accrue to the funds of the city.

Second, petitioners contend that the parties should have waited for the resolution by the COA of the motions for reconsideration of Decision No. 2012-146 before proceeding with the sale of the IDPP properties in 2013. Thus, they aver that the sale, without the COA approval, was in violation of Sec. 380 of the LGC.

The Court is not persuaded.

As already discussed herein, Sec. 380 of the LGC is not applicable to the resale by CGI of properties taken for nonpayment of RPT. But even assuming said provision may be made applicable to the subject sale, the Court is unable to hold that respondents violated the same. To reiterate, Sec. 380 mandates that negotiated sales of real property 'shall be subject to the approval of the Commission on Audit regardless of the value or cost involved.'

CGI itself, in its MOA with CHC regarding the sale of the IDPP properties, voluntarily undertook to deliver documentary proof of the approval of said sale by the COA.[73] Pursuant to this obligation, Cruz submitted the MOA, executed between CGI and CHC on December 3, 2010, to the COA for approval. When the sale was submitted to a Swiss Challenge but no other party submitted any bid by the deadline, Cruz, as authorized by the SP of Iligan City,[74] issued on January 12, 2012 a Notice of Award for the

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[71] Id. at 163.
[72] Id. at 164.
[73] SP Resolution No. 10-551, id. at 173.
[74] SP Resolution No. 11-1134, id. at 208.

IDPP properties in favor of CHC and again forwarded and submitted the same to the COA for review and approval.

Despite the objections of several parties, including herein petitioners and Borja, the COA issued its Decision No. 2012-146 approving the sale, but setting the purchase price for the IDPP properties at not lower than their COA-TSO appraised value of ₱386,911,780.44. Several parties filed their respective motions for reconsideration of COA Decision No. 2012-146, and while these were pending, Cruz, as authorized by the SP of Iligan City, proceeded with the sale of the IDPP properties by executing, on February 27, 2013, an amended and restated MOA, a deed of sale, and an escrow agreement with CHC, in conformity with said COA decision. By May 2013, MPC was already in possession of the IDPP properties and had begun the operations of the power plants. The COA issued its Decision No. 2018-182 on January 29, 2018, upholding its approval of the sale, partially granting the motions for reconsideration of Cruz and Santillan, and denying the motions for reconsideration of other parties.

As can be gleaned from the preceding recount of events, when CGI and respondents CHC and MPC perfected and consummated the sale of IDPP properties in 2013, the sale had already been initially approved by the COA in Decision No. 2012-146. In perfecting the sale, the parties therein, already adopted or conformed with the terms and conditions set forth in Decision No. 2012-146. The COA, acting on the motions for reconsideration of various parties, subsequently affirmed its approval of the sale through COA Decision No. 2018-182.

Sec. 380 of the LGC requires that the sale of real property shall be subject to the approval of the COA, but is silent on whether such approval shall be secured before or after the sale. Even the rules and regulations implementing Sec. 380 of the LGC, in effect at the time of the sale in question, were silent on when such COA approval should have been obtained. COA Circular No. 92-386 dated October 20, 1992, otherwise known as the Rules and Regulations on Supply and Property Management, provided:

> Section 197. *Disposal of Real Property and Improvements.* — Real estate and their improvements owned by the local government units may be sold to other government or private entity under sealed bids or by negotiation if sealed bid has failed as defined herein at a price to be determined by the Committee on Awards. The contract of conveyance shall be executed by the local chief executive in behalf of the local government unit concerned in accordance with the formalities required by law on the matter and shall be approved by the local [*sanggunian*]. The disposal **shall also be subject to the approval of the Commission on Audit** regardless of the value of the property to be disposed.
>
> Expenses relative to the registration and transfer of ownership from the local government to the vendee shall be borne by the vendee. (Emphasis supplied)

It was only with the issuance of COA Circular No. 2017-003 on October 25, 2017 that the COA approval was explicitly mandated prior to the perfection of the sale, thus:

> Section 197. *Disposal of Real Property and Improvements.* – Real estate and their improvements owned by the local government units may be sold to other government or private entity under sealed bids, or by negotiation if sealed bid has failed as defined herein at a price to be determined by the Committee on Awards. The contract of conveyance shall be executed by the local chief executive in behalf of the local government unit concerned in accordance with the formalities required by law on the matter and shall be approved by the local [*sanggunian*]. **The disposal shall also be subject to the approval of the Commission on Audit in case the disposal is through negotiation regardless of the value of the property to be disposed. The request for approval shall be made prior to the perfection of the contract of sale through negotiation.**
>
> Expenses relative to the registration and transfer of ownership from the local government unit to the vendee shall be borne by the vendee. (Emphasis supplied)

In COA Circular No. 2019-003 dated June 25, 2019, which provided guidelines for the implementation of COA Circular No. 2017-003 dated October 25, 2017, it was further clarified that:

> 1. The request of Local Government Units (LGUs) for approval of the negotiated sale/disposal of real property and their improvements shall be made prior to the perfection of the contract of sale. **The request shall be made upon the LGU's determination of the necessity of disposal and of the selling price, but before the acceptance of the buyer.** This is to avoid any consequences arising from a contract already perfected but still subject to the approval of the Commission. (Emphasis supplied)

Ultimately, the unrefuted facts are that the sale of the IDPP properties by CGI to CHC was indeed submitted to and eventually approved by the COA in its Decision No. 2012-146 and Decision No. 2018-182. Without clear mandate or guidelines at the time of the sale as to the timing of such COA approval, the parties to the sale cannot be said to have acted in a manner so contrary to Sec. 380 of the LGC as to invalidate the sale. Concomitantly, the COA cannot be said to have committed any grave abuse of discretion in not striking down the sale on such basis.

Third, petitioners assert that the COA disregarded the appraised values of the IDPP properties which were much higher than the approved purchase price for the same, *viz.*:

> a. COA's 2007 'Annual Audit Report' set the value of the electric plants at PhP 2,028,111,514.70 x x x[.]

b. The National Power Corporation in its 'Result of Operation January to December 2008' assessed the electric plant at PhP 1,959,427,000.00 x x x[.]

c. The value of the electric plant was P3,468,175,155.72 per Tax Dec Nos. 02-009-00065 to 02-009-00073; 02-009-03531 and 02-009-03702 of Iligan City x x x[.][75]

In the instant case, the COA conducted its own appraisal of the IDPP properties in 2012 and reported its findings in its Decision No. 2012-146 as follows:

> The COA Appraised Value is based on the Appraisal Reports dated March 26, 2012 and April 24, 2012 of the engineers of the COA-Technical Services Office (TSO), who appraised/evaluated the 108 MW IDPP (Machineries/Equipment and Building). The two Appraisal Reports indicate the following:
>
> 1. That the Total Appraised Value of the Fixed Assets, Building, Machinery and Equipment, is P386,911,780.44, broken down as follows:

Properties	Appraised Value	Reference
IDPP-1	P231,146,376.13	Annex A - 3 pages of COA Appraisal Report dated March 26, 2012
IDPP-2	153,951,404.31	Annex B - 2 pages of COA Appraisal Report dated March 26, 2012
Sub Total	P385,097,780.44	
Generator Set No. 12 and its Accessories	1,814,000.00	Annex C - 5 pages of COA Appraisal Report dated April 24, 2012
TOTAL	**P386,911,780.44**	

> 2. That the Cost Approach Method was used, rather than the Rate of Return Approach Method in the computation of the appraised value of the Properties, as the former was deemed to be the most appropriate under the circumstances; and
>
> 3. That the facilities outside the Power Plant premises and the land where the Power Plant is presently situated were not included in the appraisal, except Generator Set No. 12, and its accessories, that was located in General Santos City and was separately covered by the Appraisal Report dated April 24, 2012 of COA-TSO.
>
> The letter dated March 8, 2012 of Froilan A. Tampinco, President, NPC alleged that per their records on file, the market value of [IDPP-1] and [IDPP-2] Properties as of turnover dates (2003 and 2004) was at P3,356,658,482.00. Per verification, this market value was based on the amount/value stated in the Tax Declaration of the Properties by the CGI, which should have been P3,468,133,500.00 per Tax Declaration Summary

[75] *Rollo*, p. 30.

provided by NPC. Hence, it should be taken into account that the market value was considered at the time the Properties were still fully functional and operational during the years 2003 and 2004 (turnover dates of the Properties to NPC).

This Commission noted that the COA-TSO Appraisal Report dated March 26, 2012 reflected an Appraised Value of P385,097,780.44 which is very much lower than its Market Value of P3,468,133,500.00 indicated in the 2003 Tax Declaration. **The big difference is attributed to the depreciation, obsolescence and other factors that have set in considering the eight (8) years that have elapsed from time of Tax Declaration to COA Appraisal date. The appraisal was undertaken on February 29, 2012 or approximately eight (8) years after the turnover dates and this Appraised Value was arrived at based on Cost Approach Method of appraisal which is the most applicable considering the circumstances and condition of the Properties. The Cost Approach Method considers the cost to reproduce or replace in new condition the assets appraised in accordance with current prices for similar assets, taking into account the allowance for accrued depreciation, obsolescence arising from condition, utility, age, wear and tear or past and present maintenance policy and rebuilding history.**

Further, COA-TSO did not use the other methods for valuation of properties such as the Income Approach since the **plant was not operational** at the time of inspection and therefore, **not generating any income**, or the Market Data Approach due to scarcity of market data in regard to recent sales of power plants.

As to the **Generator Set No. 12** located in General Santos City, the COA-TSO Appraisal Report dated April 24, 2012 shows its Appraised Value at P1,814,000.00. **The appraisal was based on the actual canvass on three (3) junk shops located in the city considering that the items being evaluated disclosed that these are beyond economic repair and considered junk.** Such amount shall be added to the Properties appraised under COA-TSO Appraisal Report dated March 26, 2012.

This Commission, therefore, considers that the COA-TSO Appraised Values shall be the basis for the disposal of the Properties because these are the recent Appraised Values computed based on the 2012 COA Appraisals that were conducted to determine the present value of the Properties.[76] (Emphases supplied)

Taking into consideration the appraisal report of its own TSO, the COA concluded that the purchase price for the IDPP properties should not be lower than the appraised value of ₱386,911,780.44. It reasoned that:

As shown in the foregoing, the selling price of P300,000,000.00 is below the evaluation/appraised values determined by the COA-TSO, under its Appraisal Review Reports dated March 26, 2012 and April 24, 2012, which are P385,097,780.44 and P1,814,000.00, respectively, or a total of P386,911,780.44. There is a price difference of P86,911,780.44 equivalent to twenty-nine percent (29%) of the selling price. It must be

[76] *Rollo*, pp. 62-64.

> emphasized also that the appraised Properties under Appraisal Report dated March 26, 2012 do not include the missing Generator Set No. 12 and its accessories which is covered by Appraisal Report dated April 24, 2012 indicating the appraised value of the missing Generator Set No. 12 and its accessories.
>
> Hence, this Commission holds that the selling price of the Properties should not be less than the COA appraised value of P386,911,780.44 as detailed in Annexes A, B, and C of this Decision and forming as integral part hereof. Annexes A and B are the Appraisal Report dated March 26, 2012 while Annex C is the Appraisal Report dated April 24, 2012. Moreover, the cost of expenses to return the Generator Set No. 12 to Iligan City shall be borne by the buyer CHC.[77]

The COA had comprehensively discussed in its assailed decisions the bases for its valuation of the IDPP properties. Its own COA-TSO, composed of engineers, conducted an appraisal of the IDPP properties in 2012, closest to the date of the actual sale and turnover of said properties to CHC and MPC in 2013. It used the Cost Approach Method which took into consideration the depreciation and obsolescence of the IDPP properties.

In contrast, petitioners merely insist on the appraised values of the IDPP properties determined years before, *i.e.*, 2003, 2007, and 2008. The Court is not swayed. Petitioners were unable to explain why the appraised value of the IDPP properties determined several years prior should take precedence over the appraised value of the same properties ascertained in 2012, just a year before the sale was actually perfected and consummated in 2013. Neither were they able to refute the effectiveness of the Cost Approach Method adopted by the COA-TSO in its appraisal of the IDPP properties in 2012, which accounted for the depreciation and obsolescence of the IDPP properties.

Petitioners additionally cited the higher purchase prices paid in recent sales of a coal-fired power plant in South Cotabato and a second-hand generator set in Iligan City. The Court, however, gives no evidentiary weight to these purchase price comparisons absent a detailed showing that the properties in those sales are the same or at least closely similar to the IDPP properties subject of the case at bar, in terms of brand, make, capacity, operating conditions, *etc.*

Petitioners have utterly failed to provide the Court with any reason to invalidate or set aside the appraised value of the IDPP properties used as basis by the COA in its assailed decisions for determining the reasonable or appropriate purchase price for said properties. It must be borne in mind that the COA has been vested, under Sec. 2, Article IX-D of the 1987 Constitution, with the exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or

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[77] Id. at 64.

unconscionable expenditures or uses of government funds and properties. It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the COA, not only on the basis of the doctrine of separation of powers, but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect, but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion,[78] such as in the present case.

Lastly, petitioners allege that the sale had been grossly disadvantageous to Iligan City because hidden unwarranted benefits were accorded to CHC. They allege that CGI did not actually receive the full amount of the purchase price from CHC because the latter was allowed to charge the following against the said purchase price:

Stated Sales Price		P 386,911,780.44
LESS		
(a) Cost of the [1,300,000] liters of diesel in the fuel tanks	P 61,685,000.00	
(b) Reimbursement of electric power	16,000,000.00	
(c) Capital Gains Tax – 6% of the purchase price or	23,214,706.82	
(d) Documentary Stamp Tax –1.5% purchase price	5,803,676.70	
	P 106,703,383.52	P 106,703,383.52
Actual amount for Iligan City		P 280,208,396.92[79]

Other than their bare allegations, though, petitioners did not submit any evidence to substantiate their claim that the aforementioned amounts were indeed charged against the purchase price of the IDPP properties.

Respondents Cruz, *et al.*, for their part, countered with official receipts showing that CGI received the entire amount of the agreed purchase price for the IDPP properties, as approved by the COA, *viz.*:

OR No.	Amount
a) OR No. 4960823	₱ 288,220,602.40
b) OR No. 5215651	₱ 39,242,529.52
c) OR No. 4092217	₱ 60,000,000.00

[78] *Delos Santos v. Commission on Audit*, 716 Phil. 322, 332-333 (2013).
[79] *Rollo*, p. 33.

TOTAL	₱ 387,463,131.92[80]

Moreover, respondents Cruz, *et al.* also explained that the diesel in the fuel tanks were not included in the sale and remained in the ownership of NPC for the simple reason that said main fuel tank was not among the IDPP properties levied upon and foreclosed by CGI as it was constructed within Lugait, Misamis Oriental, and not within Iligan City.

There being no clear showing of arbitrariness or grave abuse of discretion by the COA in this case, then the Court has no reason to set aside the assailed COA decisions.

WHEREFORE, the Court hereby **RESOLVES** to **DISMISS** the instant petition for the absence of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Commission on Audit in rendering its Decision No. 2012-146 dated September 21, 2012, and Decision No. 2018-182 dated January 29, 2018. Lopez, M., J., on leave. Singh, J., on leave but left her vote." (38)

By authority of the Court:

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

[80] Id. at 157.

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