

## FIRST DIVISION

[ G.R. No. 125198, March 03, 1997 ]

**MSCI-NACUSIP LOCAL CHAPTER, PETITIONER, VS. NATIONAL  
WAGES AND PRODUCTIVITY COMMISSION AND MONOMER  
SUGAR CENTRAL, INC., RESPONDENTS.**

### D E C I S I O N

**HERMOSISIMA, JR., J.:**

This is a petition for *certiorari* questioning the February 1, 1995 Decision of public respondent National Wages and Productivity Commission (Commission, for brevity) in NWPC Case No. E-93-007 which reversed on appeal the August 17, 1993 Decision of the Regional Tripartite Wages and Productivity Board VI (Board, for brevity) denying the application for exemption of private respondent Monomer Sugar Central, Inc. (MSCI, for brevity) from Wage Order No. RO VI-01 issued by the Board.

The relevant antecedents are undisputed.

On January 11, 1990, Asturias Sugar Central, Inc. (ASCI, for brevity), executed a Memorandum of Agreement with Monomer Trading Industries, Inc. (MTII, for brevity), whereby MTII shall acquire the assets of ASCI by way of a Deed of Assignment provided that an entirely new organization in place of MTII shall be organized, which new corporation shall be the assignee of the assets of ASCI.

By virtue of this Agreement, a new corporation was organized and incorporated on February 15, 1990 under the corporate name Monomer Sugar Central, Inc. or MSCI, the private respondent herein.

On January 16, 1991, MSCI applied for exemption from the coverage of Wage Order No. RO VI-01 issued by the Board on the ground that it is a distressed employer. In support thereto, MSCI submitted its audited financial statements and income tax returns duly stamped "received" by the Bureau of Internal Revenue (BIR) and the Securities and Exchange Commission (SEC) for the period beginning February 15, 1990 and ending August 31, 1990, including the quarterly financial statements and income tax returns for the two quarters ending November 30, 1990 and February 28, 1991.

The petitioner herein MSCI-NACUSIP Local Chapter (Union, for brevity), in opposition, maintained that MSCI is not distressed; that respondent applicant has not complied with the requirements for exemption; and that the financial statements submitted by MSCI do not reflect the true and valid financial status of the company, and that the paid-up capital would have been higher than P5 million and thus impairment would have been lower than 25% had the pre-organization agreement between ASCI and MTII been complied with.

The Board conducted hearings on the application, during which the applicant was required to submit additional documents such as its Articles of Incorporation, Memorandum of Agreement between ASCI and MTII, SEC registration, including the schedules of its long-term liabilities, income and expenses, production reports and mill share, among others.

On August 17, 1993, the Board denied MSCI's application for exemption based on the finding that the applicant's losses of P3,400,738.00 for the period February 15, 1990 to August 31, 1990 constitute an impairment of only 5.25% of its paid-up capital of P64,688,528.00, can not be said to be sufficient to meet the required 25% in order to qualify for the exemption, as provided in NWPC Guidelines No. 01, Series of 1992 entitled "REVISED GUIDELINES ON EXEMPTION FROM COMPLIANCE WITH THE PRESCRIBED WAGE/COST OF LIVING ALLOWANCE INCREASES GRANTED BY THE REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARDS:"

"SECTION 3. CRITERIA FOR EXEMPTION —

The following criteria shall be used to determine whether the applicant-establishment is qualified for exemption:

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xxx

xxx

3. For Distressed Establishments:

a. In the case of a stock corporation, partnership, single proprietorship, non-stock, non-profit organization or cooperative engaged in a business activity or charging fees for its services —

*a.1 When accumulated losses for the last 2 full accounting periods and interim period, if any, immediately preceding the effectivity of the Order have impaired by at least 25 percent the:*

— Paid-up capital at the end of the last full accounting period preceding the effectivity of the Order, in the case of corporations:

— Total invested capital at the beginning of the last full accounting period preceding the effectivity of the Order in the case of partnerships and single proprietorships.

xxx

xxx

xxx"

The motion for reconsideration, filed by MSCI on September 20, 1993, was denied by the Board on October 12, 1993.

A timely appeal was brought before the public respondent Commission. In its decision dated February 1, 1995, the Commission reversed and set aside the foregoing orders of the Board, and granted MSCI's application for exemption from Wage Order No. RO VI-01, for a period of one (1) year from its effectivity or from November 27, 1990 to November 26, 1991, in the following manner:

"WHEREFORE, premises considered, the Orders of the Board appealed from are hereby REVERSED and SET ASIDE. Monomer is hereby GRANTED full exemption from Wage Order No. RO VI-01, for a period of one year from effectivity of the Wage Order, which is from 27 November 1990 to 26 November 1991.

SO DECIDED."<sup>[1]</sup>

Petitioner has come before us by way of a Petition for Certiorari under Rule 65.

The issue posed is whether or not respondent MSCI can qualify as a distressed employer from February 15, 1990 to August 31, 1990 as well as during the interim period from September 1, 1990 to November 30, 1990 and thus be entitled to exemption from compliance with Wage Order No. RO VI-01. To resolve this issue, however, a pivotal determination must first be made: What is the correct paid-up capital of MSCI for the pertinent period covered by the application for exemption — P5 million or P64,688,528.00?

The Board held that the paid-up capital of MSCI on the aforesaid dates was actually P64,688,528.00 and not P5 million as claimed by MSCI in its application for exemption and, thus, the established losses amounting to P3,400,738.00 constitute an impairment of only 5.25% of the true paid-up capital of P64 million plus,<sup>[2]</sup> which losses are not enough to meet the required 25% impairment requirement. This conclusion is anchored on the belief of the Board that the value of the assets of ASCI, party to the Memorandum of Agreement, transferred to MSCI on March 28, 1990 should be taken into consideration in computing the paid-up capital of MSCI to reflect its true financial structure. Moreover, the loans or advances extended by MTII, the other party to the Agreement, to MSCI should allegedly be treated as additional investments to MSCI<sup>[3]</sup> and must therefore be included in computing respondent's paid-up capital.

Public respondent-Commission thought otherwise. In reversing the Board and granting the exemption, the Commission held that the Board exceeded its authority in computing and giving new valuation to what should be the paid-up capital of MSCI. It stressed that RA No. 6727, or the Wage Rationalization Act, and its implementing guidelines have not conferred upon the Board the authority to change the paid-up capital of a corporation.<sup>[4]</sup>

The foregoing asseveration of the parties considered, we find no grave abuse of discretion on the part of the Commission in setting aside the findings of the Board and granting full exemption to MSCI from Wage Order No. RO VI-01.

NWPC Guidelines No. 01, Series of 1992 as well as the new NWPC Guidelines No. 01, Series of 1996, define Capital as referring to paid-up capital at the end of the last full accounting period, in the case of corporations or total invested capital at the beginning of the period under review, in the case of partnerships and single proprietorships. To have a clear understanding of what paid-up capital is, however, a referral to Sections 12 and 13 of BP Blg. 68 or the Corporation Code would be very helpful, viz:

*"Sec. 12. Minimum capital stock required of stock corporations. — Stock corporations incorporated under this Code shall not be required to*