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Third Division
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
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WYETH PHILIPPINES, INC.,
Petitioner,

G.R. No. 220045-48

Present:

-versus-

LEONEN, J., Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN*, JJ.

CONSTRUCTION INDUSTRY
ARBITRATION COMMISSION
("CIAC"), CIAC ARBITRATORS
VICTOR P. LAZATIN,
SALVADOR P. CASTRO, JR. and
MARIO E. VALDERRAMA; SKI
CONSTRUCTION GROUP, INC.;
and MAPFRE INSULAR
INSURANCE CORPORATION,
Respondents.

Promulgated:
June 22, 2020
Mis-DCBatt

X-----X

DECISION

LEONEN, J.:

When the award of the Construction Industry Arbitration Commission Arbitral Tribunal becomes the subject of judicial review, courts must defer to its factual findings by reason of its "technical expertise and irreplaceable experience of presiding over the arbitral process."¹ A stringent exception would be when the integrity of the arbitral tribunal itself has been jeopardized² which is not present in this case.

* On leave.

¹ *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 229 (2017) [Per J. Leonen, Second Division].

² *Id.*

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This is a Petition for Review on Certiorari³ filed by petitioner Wyeth Philippines, Inc. assailing the Consolidated Decision/Resolution⁴ and Resolution⁵ of the Court of Appeals in CA-G.R. SP Nos. 117924, 117925, 117929 & 125648, which modified the Award⁶ of the Construction Industry Arbitration Commission Arbitral Tribunal in CIAC Case No. 18-2009.

Petitioner Wyeth Philippines, Inc. (Wyeth) is the project owner of the “Dryer 3 and Wet Process Superstructure Works”⁷ located at Canlubang Industrial Estate, Bo. Pittland, Cabuyao, Laguna. In 2007, Wyeth invited bidders to submit proposals for its project through its consultant, Jacobs Engineering Singapore Pte. Ltd.⁸

Respondent SKI Construction Group, Inc. (SKI) submitted its qualified proposal to undertake the project for ₱242,800,000.00.⁹

On June 29, 2007, SKI was awarded the bid provided it executes the superstructure works in accordance with a Notice to Proceed issued by Wyeth. The Notice to Proceed conformed to by SKI President and CEO Albert Altura provided for the completion of the project on February 23, 2008, and the possession of the site on June 29, 2007. It also designated Jacob Constructors Singapore Pte. Ltd. as Project Manager.¹⁰

After signing the Notice to Proceed, SKI was given an advance payment of ₱72,840,000.00.¹¹

As required under the Contract, SKI caused respondent Mapfre Insular Insurance Corp. (Mapfre) to issue the following bonds in favor of Wyeth:

12.1. Surety Bond No. MAIC/G(25) 9995 (the “Payments Bond”), in the amount of P48,560,000.00 under which [SKI], as principal, and Mapfre, as surety, bound themselves unto [Wyeth] to jointly and severally pay claims for all labor and materials used or reasonably required for use in the performance of the Contract.

12.2. Surety Bond No. MAIC/G(25) 9994 (the “Advance

³ *Rollo*, pp. 123–184.

⁴ *Id.* at 15–49. The Decision dated January 23, 2015 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesonando E. Villon (Chairperson) and Pedro B. Corales of the Former Fifteenth Division of the Court of Appeals, Manila.

⁵ *Id.* at 51–58. The Resolution dated August 3, 2015 was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Sesonando E. Villon (Chairperson) and Pedro B. Corales of the Former Fifteenth Division of the Court of Appeals, Manila.

⁶ *Id.* at 294–334. The December 23, 2010 award was rendered by the Arbitra Tribunal composed of Victor P. Lazatin (Chairperson) and Salvador P. Castro, Jr. and Mario E. Valderrama, as Members.

⁷ *Id.* at 808.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Payment Bond”), in the amount of P72,840,000.00 under which [SKI], as principal, and Mapfre, as surety, bound themselves unto [Wyeth] to indemnify [Wyeth] for its failure to recoup the Advance Payment granted to [SKI] by [Wyeth] in connection with the Contract.

12.3. Performance Bond No. MAIC/G(13)4104 (the “Performance Bond”), in the amount of P48,560,000.00 under which [SKI], as principal, and Mapfre, as surety, bound themselves unto [Wyeth] to indemnify [Wyeth] for any loss or damage that [it] may suffer as a consequence of [SKI’s] failure to perform its obligations and comply with the terms and conditions of the Contract.¹²

On January 25, 2008, the Project Manager directed the cessation of all construction activities starting from January 26, 2008 until further notice to give SKI ample time to address internal issues regarding its workforce.¹³

In a letter dated February 6, 2008, Wyeth notified Mapfre that it might need to call upon the bonds.¹⁴

On February 8, 2008, Wyeth, through its managing director informed SKI of the termination of the contract.¹⁵ On February 11, 2008, SKI replied saying the termination was done without giving them 14 days to address the problems, pursuant to Clause 8 of the Conditions of the Contract:

“if in the opinion of the Project Manager... the Contractor fails to proceed regularly and diligently with the Works... then the Project Manager shall give them Notice by registered post or hand delivery specifying the defaults and if the Contractor either shall continue such default for fourteen (14) days after receipt of such notice... then the Owner... may within ten (10) days after such continuance or repetition... terminate the Employment of the Contractor.”¹⁶

SKI claimed they essentially only had three days to complete the project from the time they were informed of their default on January 23, 2008, until the Project Manager suspended all the construction activities starting January 26, 2008, even if they supposedly had until February 6, 2008 to complete it.¹⁷

On February 19, 2008, Wyeth wrote a letter to Mapfre, calling on the performance of the bonds they issued.¹⁸

On February 29, 2008, Wyeth wrote another letter to Mapfre, requesting confirmation that it will not be barred from claiming on the bonds

¹² Id. at 809.

¹³ Id. at 305.

¹⁴ Id.

¹⁵ Id. at 765–767.

¹⁶ Id. at 768–769.

¹⁷ Id.

¹⁸ Id. at 305.

pending settlement with SKI.¹⁹ On March 4, 2008, Mapfre confirmed that Wyeth will not be barred from pursuing its claims against the bonds. However, Mapfre stated that it will only act on the bonds after SKI's liability has been clearly established.²⁰

In a Letter dated January 14, 2009, Mapfre refused to pay the amount under the payments bond.²¹

On February 10, 2009, Wyeth wrote to Mapfre demanding payment of ₱47,371,855.91 representing the unrecouped amount from the advance payment of ₱72,840,000.00 given to SKI.²²

When the parties failed to arrive at an amicable settlement on the claims after various meetings, they agreed to refer the dispute to arbitration pursuant to Article 10 of their contract.²³

After the parties still failed to reach a settlement, Wyeth filed a Complaint before the Regional Trial Court of Makati to recover the amount under the payments bond. However, the parties eventually agreed to resolve the dispute through arbitration before the Construction Industry Arbitration Commission (Commission).

On June 2, 2009, SKI filed a Complaint against Wyeth before the Commission for the adjudication of its claims.²⁴ On June 29, 2009, Wyeth filed an Answer with Compulsory Counterclaims. On July 21, 2009, SKI filed a Reply to Counterclaim.²⁵

In its Order dated July 23, 2009, the Commission apprised the parties of the composition²⁶ of the Arbitral Tribunal and the setting of the preliminary conference on August 6, 2010.²⁷

During the preliminary conference, Wyeth filed an Omnibus Motion to implead Mapfre pursuant to the bonds it issued in favor of Wyeth.²⁸

On October 19, 2009, Mapfre filed an Answer²⁹ claiming that Wyeth

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id. at 305.

²³ Id. at 810.

²⁴ Id. at 296.

²⁵ Id.

²⁶ The tribunal was composed of Jose F. Mabanta, Mario E. Valderrama, and Victor P. Lazatin (Chairperson).

²⁷ *Rollo*, p. 296.

²⁸ Id.

²⁹ Id. at 748-757

was not entitled to recover anything. It claimed to have acted in good faith in rejecting Wyeth's claim, because the same had been extinguished by judicial compensation. However, should it be held liable to Wyeth, Mapfre prayed to be indemnified by SKI. On November 6, 2009, Wyeth filed its Reply.³⁰

On November 11, 2009, the Commission denied the motion filed by Wyeth seeking to recall the appointment of two members of the tribunal.³¹

On November 17, 2009, SKI, Wyeth, and Mapfre signed the Terms of Reference,³² stating admitted facts, positions, claims and counterclaims, issues to be determined, and amount of arbitration fees.

In its Order dated December 22, 2009, the Arbitral Tribunal granted Wyeth's Motion for Reconsideration by recalling the appointment of Jose F. Mabanta from the tribunal, and directing the two members to choose a replacement from the list of accredited arbitrators who is not a nominee of any of the parties.³³

On February 1, 2010, the Arbitral Tribunal promulgated its Order denying Wyeth's prayer to declare all proceedings, including the conduct of preliminary conference, preparation, and signing of Terms of Reference, as vacated.³⁴ On April 14, 2010, Wyeth filed a Manifestation and Motion on the Appointment of Felisberto G.L. Reyes (Reyes), claiming that he was an original nominee of SKI.³⁵ On April 19, 2010, Reyes resigned as member of the tribunal.³⁶ On April 27, 2010, the Commission appointed Salvador P. Castro, Jr. to replace Reyes.³⁷

After the conduct of hearings, submission of parties' memoranda and offers of exhibits, the Arbitral Tribunal issued its December 23, 2010 Award,³⁸ finding that Wyeth validly terminated the contract because SKI incurred delay in the construction of the project. SKI was held liable for the payment of additional costs incurred by reason of the delay in the performance of its obligation. However, it awarded SKI the cost of rebars, formworks, safety equipment and repairs it had made.³⁹

In finding SKI liable, the Arbitral Tribunal reasoned out that: (1) the

³⁰ Id. at 801-805.

³¹ Id. at 297.

³² Id. at 806-818.

³³ Id. at 298.

³⁴ Id. at 300.

³⁵ Id. at 301.

³⁶ Id. at 302.

³⁷ Id. at 303.

³⁸ Id. at 294-334.

³⁹ Id. at 20.

agreed commitments under various construction programs were not met,⁴⁰ (2) the notes from the project meetings and Wyeth's letters raising causes of delays were not disputed and some were even acknowledged by SKI,⁴¹ and (3) while SKI's delays were justified, they failed to raise a timely objection to Wyeth's Variation Order indicating that the problems they encountered had no time impact to the project's completion.⁴² The Arbitral Tribunal further held that SKI is not entitled to an extension of time as its justifications were afterthoughts to escape its liability for the delays. Lastly, its failure to assert its entitlement to damages within the period allowed under the contract barred it from claiming them.⁴³

The Arbitral Tribunal held that Wyeth, as project owner, had a wide latitude in exercising its prerogative to terminate the contract and that the termination was valid because SKI could further prejudice the completion of the project should it be given another chance to discharge its contractual obligations.⁴⁴

The Arbitral Tribunal awarded SKI its valid claims, specifically: (1) the value of rebars considering that Wyeth had already agreed to SKI's entitlement to this; (2) the value of safety harness used by Wyeth; (3) the cost of repair of the damaged tower crane; and (4) the value of the damaged tower crane collar.⁴⁵

However, the Arbitral Tribunal denied SKI's following claims: (1) the additional labor costs to catch up with the works as it was SKI who caused the delay;⁴⁶ (2) the additional costs due to change in the formworks system because it was SKI's contractual obligation to supply them;⁴⁷ (3) the cost for complying with additional safety requirements because SKI failed to observe the strict safety requirements stipulated in the contract;⁴⁸ and (4) the additional cost for a Load Moment Indicator (LMI) which aids in inspecting and certifying the worthiness of the crane.⁴⁹

The Arbitral Tribunal also denied for lack of merit the other claims of SKI considering that the termination of the contract was valid:

- (1) Additional overhead expenses from March 2008 to December 2008
- (2) Loss of profit for undue termination
- (3) Loss of profit for deleted items

⁴⁰ Id. at 311-312.

⁴¹ Id. at 312.

⁴² Id.

⁴³ Id.

⁴⁴ Id. at 314.

⁴⁵ Id. at 319-320.

⁴⁶ Id. at 317.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 318.

- (4) Standby cost of equipment, formworks, crane, Generator set and other materials; and
- (5) Moral and exemplary damages

On the other hand, the Arbitral Tribunal found the need to evaluate Wyeth's counterclaims, considering that it far exceed the value of the contract sum of the project in dispute.⁵⁰ Particularly, it held that Wyeth's claim of payment to various contractors in the amount of ₱167,588,306.67 is questionable since the total contract sum is ₱214,944,802.30 and ₱108,326,018.64 was already paid to SKI, leaving only ₱106,618,783.70 or 49.60% of the total contract sum.⁵¹

The Arbitral Tribunal held that while Wyeth suffered pecuniary loss, the evidence it submitted were not clear and convincing as to establish actual damages. Hence, the Tribunal applied Article 2224 of the Civil Code⁵² and the parties' agreement on liquidated damages⁵³ as measure for temperate damages. It awarded Wyeth temperate damages amounting to ₱24,280,000.00, the maximum amount permitted under the contract.⁵⁴

The Arbitral Tribunal held that Wyeth failed to present clear and convincing evidence on the scope, details, costing and reasonableness of some of their claims, specifically: (1) costs incurred for labor and materials; (2) additional cost of labor; (3) payment to various contractors; (4) rectification works; (5) additional cost to retain the site establishment; and (6) payment to other contractors. However, it found Wyeth's claim of payment to various suppliers in the amount of ₱6,852,678.71 as valid and undisputed.⁵⁵

The Arbitral Tribunal further held that the unrecouped down payment is deemed included in Wyeth's "global" or excess claim after lumping all the cost it allegedly incurred (including all payments to SKI as well as all other contractors/suppliers) less the contract price, and granted the unrecouped amount of ₱42,293,679.02 in addition to the Temperate Damages.⁵⁶

The Arbitral Tribunal ruled that the cost of arbitration should be equally shouldered by SKI and Wyeth, Mapfre should shoulder its own costs, and no party may recover attorney's fees from each other.⁵⁷ It further held Mapfre jointly and severally liable with SKI, on its: (1) Advance Payment Bond, for the unrecouped down payment; (2) Payment Bond; and

⁵⁰ Id. at 321.

⁵¹ Id. at 322.

⁵² Id. at 326.

⁵³ Id.

⁵⁴ Id. at 327.

⁵⁵ Id. at 323.

⁵⁶ Id. at 327.

⁵⁷ Id.

(3) Performance Bond equal to the Temperate Damages awarded.⁵⁸ The Arbitral Tribunal held that the right to file claim on the Payment Bond is not “time-barred” and the referral to arbitration is based on the agreement between Wyeth and Mapfre, without objection from SKI.⁵⁹ Lastly, it held that Mapfre should be indemnified by SKI in case it is made to pay Wyeth.⁶⁰

The Award’s dispositive portion read:

WHEREFORE, AWARD is hereby made as follows:

A. FOR CLAIMANT

1. Rebar	PhP12,298,307.68
2. Formworks	2,787,795.20
3. Safety Harness	157,500.01
4. Repair of Damaged Tower Crane	1,172,384.00
5. Damage Tower Crane Collar	1,890,518.28

Total	PhP18,306,505.17

B. FOR RESPONDENT

1. Temperate Damages for the following Claims: PhP24,280,000.00

- a) Cost incurred for Labor and Materials
- b) Additional Cost for Labor
- c) Additional Site Management
- d) Payment to Various Contractors
- e) Rectification Work
- f) Payment to Other Contractors

2. Payment to Various Suppliers	PhP6,852,678.71
3. Unrecouped Down Payment	PhP42,293,670.02

SUMMARY

COMPUTATION

Claimant	PhP18,306,505.17
Respondent	
Temperate Damages	PhP24,280,000.00
Payment to Various Suppliers	6,852,678.71
Recoupment of Down Payment	PhP42,293,679.02 (PhP73,426,357.73)
Due to Respondent	----- PhP 55,119,852.56 =====

⁵⁸ Id. at 331.

⁵⁹ Id.

⁶⁰ Id.

This amount of Php55,119,852.56 due to Respondent from Claimant shall earn legal interest from the date of this Award until fully paid.

On the Third Party Complaint, the Arbitral Tribunal awards to Respondent against MAPFRE the maximum amounts as follows:

- | | | |
|--------------------------------|---|------------------|
| 1. On the Advance Payment bond | - | PhP42,293,679.02 |
| 2. On the Payment Bond | - | 6,852,678.71 |
| 3. On the Performance Bond | - | 24,280,000.00 |

but [sic] MAPFRE's liability cannot exceed the net liability of Claimant, its principal, in the amount of Php55,119,852.56. Moreover, on the Cross-Claims against Claimant, MAPFRE is awarded the right of indemnification for any amounts that it may pay to Respondent, with legal interest from the time of Notice of Payment is served on the Claimant. [sic]

SO ORDERED.⁶¹

On February 18, 2011, Wyeth filed a Petition for Review,⁶² docketed as CA-G.R. SP No. 117929, before the Court of Appeals, praying for the deletion of the award to SKI of the value of rebars, formworks, safety equipment, and costs of the damaged tower crane and tower crane collar. It also prayed that its net award be increased from ₱55,119,852.56 to ₱348,573,877.08. Lastly, it prayed that Mapfre be held solidarily liable with SKI for the entire amount of ₱348,573,877.08. On the same day, Mapfre filed a separate Petition for Review,⁶³ docketed as CA-G.R. SP No. 117924. On February 21, 2011, SKI filed its Petition for Review,⁶⁴ docketed as CA G.R. SP No. 117925, before the Court of Appeals.

On May 25, 2011, Wyeth filed a Motion for Execution of the Award⁶⁵ before the Commission.

In its March 6, 2012 Resolution,⁶⁶ the Arbitral Tribunal denied the motion for execution on the basis of CIAC Resolution No. 06-2002 or "Policy Guidelines to Clarify the Policy Guidelines Regarding Execution of a Final Award During Appeal"⁶⁷ and further explained that "allowing [Wyeth] to move for the execution of the CIAC award as well as question the same award on appeal results to an absurd and conflicting scenario of a party seeking enforcement of a final and executory judgment while also seeking the reversal or modification of the same judgment."⁶⁸

⁶¹ Id. at 332-333.

⁶² Id. at 2065-2110.

⁶³ Id. at 1966-2002.

⁶⁴ Id. at 1810-1965.

⁶⁵ Id. at 2119-2129.

⁶⁶ Id. at 2036-2041.

⁶⁷ Id. at 2038.

⁶⁸ Id. at 2040.

The Arbitral Tribunal ratiocinated that since the Revised Rules⁶⁹ is substantially a reenacted rule regarding the Rule on Execution of Final Award, it can be regarded that the present rule adopts the interpretation of the previous rule which under CIAC Resolution No. 06-2002 is that “no execution shall issue where both parties appeal[ed].”⁷⁰

In its May 25, 2012 Order,⁷¹ the Arbitral Tribunal denied the motion for reconsideration filed by Wyeth.

On July 16, 2012, Wyeth filed a Petition for Mandamus,⁷² docketed as CA-G.R. SP No. 125648 before the Court of Appeals, questioning the March 6, 2012 Resolution and May 25, 2012 Order of the CIAC.

In a May 15, 2014 Resolution,⁷³ the Court of Appeals granted Wyeth’s Motion for Consolidation of Cases filed on June 7, 2013. Thus, the Petitions for Review filed by Wyeth and SKI were consolidated with the Petition for Review filed by Mapfre. Subsequently, Wyeth’s Petition for Mandamus was also consolidated with the three (3) other petitions.⁷⁴

In its January 23, 2015 Consolidated Decision/Resolution,⁷⁵ the Court of Appeals held that SKI is liable for the delay, as it is undisputed that SKI did not achieve the milestones stated in the Conditions of the Contract, and failed to ask for an extension of time if the delays were indeed not attributable to it.⁷⁶

The Court of Appeals also affirmed the Arbitral Tribunal’s ruling that Wyeth validly terminated its contract with SKI, because SKI did not proceed regularly and diligently with the project when it failed to supply equipment and materials, adequate manpower, and sufficient supervision over the project.⁷⁷

The Court of Appeals also found that Wyeth served a Notice of Default to SKI on January 23, 2008 and the latter had until February 6, 2008, or 14 days from notice within which to remedy the defaults. However, when asked for an update on February 5, 2008, SKI said it was still addressing the issues with its workforce prompting Wyeth to terminate the contract.⁷⁸

⁶⁹ Revised Rules of Procedure Governing Construction Arbitration as amended until CIAC Resolution No. 07-2010

⁷⁰ *Rollo*, p. 2038.

⁷¹ *Id.* at 2042–2043.

⁷² *Id.* at 2003–2035.

⁷³ *Id.* at 2395–2397.

⁷⁴ *Id.* at 22.

⁷⁵ *Id.* at 15–49.

⁷⁶ *Id.* at 28.

⁷⁷ *Id.* at 30.

⁷⁸ *Id.*

The Court of Appeals affirmed the Arbitral Tribunal's findings that SKI's claims for the following are baseless, since SKI was responsible for the delays in the construction of the project:

- (1) Additional labor cost;
- (2) Additional cost due to change in formworks system;
- (3) Additional cost due to additional safety requirements;
- (4) Additional cost due to use of cranes with LMI;
- (5) Additional overhead expenses from March 2008 to December 2008;
- (6) Loss of profit for undue termination;
- (7) Loss of profit for deleted items;
- (8) Standby cost; and
- (9) Moral and exemplary damages.⁷⁹

It also held that while SKI is entitled to the value of rebars, formworks, and costs of repair, the amount cannot be established with certainty.⁸⁰ Thus, the Court of Appeals only awarded SKI temperate damages amounting ₱4,500,000.00 and ₱157,500.01, for the value of safety harnesses, as the claim was undisputed.⁸¹

The Court of Appeals held that the Arbitral Tribunal erred in awarding temperate damages to Wyeth, and instead awarded actual damages amounting to ₱90,717,632.06,⁸² broken down as follows:

- (1) Payment of ₱5,507,726.50 to Precision Ready Mix, ₱28,985,790.00 to Capitol Steel and ₱3,844,481.14 to Unitan, considering that SKI agreed to such amounts;
- (2) Payment to Chittick of ₱2,110,763.67, or to the extent covered by official receipt;
- (3) Payment to SMCC of ₱9,794,372.29, or to the extent covered by official receipt;
- (4) Payment to EEI of the total amount of ₱21,959,311.60, for being supported by official receipt;
- (5) Payment to Cape East of ₱12,301,474.21, or only to the extent covered by official receipt;
- (6) Payment to Freyssinet of ₱477,105.35 or to the extent covered by official receipt;
- (7) Payment of ₱5,357,143.00 to RMD, for being covered by an official receipt;
- (8) Payment of ₱111,607.14 to BCA for being covered by an official receipt; and

⁷⁹ Id. at 31-34.

⁸⁰ Id. at 35.

⁸¹ Id.

⁸² Id. at 41.

(9) Payment of ₱122,767.86 to T-Shuttle.⁸³

However, it held that the following claims were not proven by Wyeth: (1) payment to Tetra Pak of ₱32,572,301.44; (2) additional project costs in the amount of ₱101,923,163.14; and (3) payment to Unitan for termination-related cost of ₱20,767,401.12.⁸⁴

For Wyeth's claim on the bonds, the Court of Appeals held that:

- (1) Wyeth's claim against the Payment Bond is not time-barred because it filed its claim within a year from the time of its denial. This made Mapfre liable to perform the Payment Bond amounting to ₱38,337,997.14;
- (2) Wyeth's claim against the Advance Payment Bond is not extinguished and it is entitled to the unrecouped downpayment of ₱42,293,679.02; and
- (3) Mapfre is liable under the Performance Bond up to the extent of ₱48,560,000.00, due to SKI's delay.⁸⁵

The Court of Appeals also found it inappropriate to award attorney's fees in favor of either party and held that each party shall bear its own arbitration cost.⁸⁶

The Court of Appeals held that the Arbitral Tribunal did not err in refusing to execute its Award, considering that the 2010 CIAC Rules is silent as to whether a party may ask for the execution of the award it also assails, and Wyeth failed to state good reasons why judgment should be executed pending appeal pursuant to Rule 39, Section 2(a) of the Rules of Court.⁸⁷

The dispositive portion of the Consolidated Decision/Resolution read:

WHEREFORE, this Court hereby disposes and orders that in CA-G.R. SP No. 117924, the Decision promulgated on 22 April 2013 is hereby **MODIFIED** as will be stated hereunder; in CA-G.R. SP No. 117925, SKI's Petition for Review is **PARTLY GRANTED**; in CA-G.R. SP No. 117929, Wyeth's Petition for Review is **PARTLY GRANTED**; and in CA-G.R. SP No. 125648, Wyeth's Petition for Mandamus is **DENIED**.

Accordingly,

1. Wyeth is ordered to pay SKI the total amount of PhP4,500,000.00 as temperate damages and PhP157,500.01 for the value of the safety harness or a total of PhP4,657,500.01;

⁸³ Id. at 38-41.

⁸⁴ Id. at

⁸⁵ Id. at 41-44.

⁸⁶ Id. at 45.

⁸⁷ Id. at 46-47.

2. In addition to the award of unrecouped downpayment in the amount of PhP42,293,670.02, Wyeth is awarded the amount of PhP90,717,632.06 as actual damages. Hence, SKI is ordered to pay Wyeth the total amount of PhP133,011,302.08;

3. The above award to SKI and Wyeth shall earn interest at the rate of 6% per annum computed from the date of the assailed Award until fully paid;

4. Mapfre's liability under the Bonds shall be as follows: under the Advance Payment Bond, PhP42,293,670.02; under the Payment Bond, PhP38,337,997.64 and under the Performance Bond, PhP48,560,000.00. Mapfre is awarded the right of indemnification for any amount it may pay to Wyeth, with interest at the rate of 6% per annum, from time of Notice of Payment is served to SKI until fully paid; and

5. Each party shall bear its own costs.

SO ORDERED.⁸⁸

In an August 3, 2015 Resolution,⁸⁹ the Court of Appeals denied the respective motions for reconsideration filed by Wyeth and SKI.

On October 2, 2015, petitioner filed the present Petition for Review on Certiorari.

On January 13, 2016, the Court required respondents to file a comment.⁹⁰ On March 30, 2016, private respondent SKI filed its Comment.⁹¹ Subsequently, private respondent Mapfre filed also filed its Comment on April 11, 2016.⁹²

On June 20, 2016, this Court granted the motions for extension of time filed by private respondents, noted their separate comments, and required petitioner to file a consolidated reply.⁹³ Petitioner filed a Manifestation and Motion to Admit Consolidated Reply⁹⁴ and a Consolidated Reply⁹⁵ on September 22, 2016.

Petitioner avers that whether it is entitled to an execution pending appeal is a question of law, properly determinable under its Petition for Review filed under Rule 45 of the Rules of Court and the factual issues raised would fall under the exceptions. Specifically, petitioner claims that

⁸⁸ Id. at 47-48.

⁸⁹ Id. at 51-62.

⁹⁰ Id. at 2486-2487.

⁹¹ Id. at 2501-2522.

⁹² Id. at 2523-2555.

⁹³ Id. at 2581-2582.

⁹⁴ Id. at 2597-2603.

⁹⁵ Id. at 2611-2669.

the Arbitral Tribunal and the Court of Appeals have conflicting findings of fact, and manifestly overlooked certain relevant and undisputed details which, if properly considered, would justify a different conclusion. Also, it claimed that the Court of Appeals' findings as to the parties' entitlement to claims are contradicted by the evidence on record.

Petitioner argues that it proved and substantiated all of its monetary claims, entitling it to an additional award of ₱377,269,282.64, inclusive of VAT. It claimed that aside from the official receipts, it proved payment by unrefuted testimonies of witnesses, parole evidence, and tabular summaries. Petitioner argues that respondent SKI is not entitled to an award for the value of rebars, formworks, and costs of repair.

Petitioner also maintains that the liability of respondent Mapfre under the Advance Payment Bond should be ₱47,368,910.42, and ₱48,560,000.00 for the Payment Bond. Furthermore, petitioner posits that respondents SKI and Mapfre should be solidarily liable to pay attorney's fees and arbitration costs.

Lastly, Petitioner claims that it is entitled to an execution pending appeal under the 2010 CIAC Revised Rules of Procedure Governing Construction Arbitration. It counters that CIAC Resolution No. 06-2002 is not applicable because: (1) it deals with entry of judgment and not execution of judgment; (2) it was not published in the Official Gazette; (3) it was expressly repealed under the 2005 Revised Rules of Procedure Governing Construction Arbitration; and (4) it was not part of the 2010 CIAC Revised Rules of Procedure Governing Construction Arbitration.

In its Comment, private respondent SKI claims that it is entitled to exemplary damages, considering that there is substantial evidence that petitioner agreed to its other claims.

As for petitioner's monetary claims, private respondent SKI maintains that this Court, not being a trier of facts, is not expected to review the evidence, especially that a specialized body like the Arbitral Tribunal, and the Court of Appeals had already evaluated them and ruled that they were not proven with a reasonable degree of certainty.⁹⁶

In any event, respondent SKI claims that petitioners' claim of ₱417,845,459.62, which is almost twice of the total contract sum, was neither substantiated by evidence nor proven with reasonable certainty.⁹⁷

Respondent SKI posits that both the Arbitral Tribunal and the Court of

⁹⁶ Id. at 2503.

⁹⁷ Id. at 2503.

Appeals correctly denied the motion for execution filed by the petitioner, being consistent with the standing policy of the Commission of not granting motions for execution if parties appealed the decision.⁹⁸

Finally, respondent SKI argues that petitioner failed to justify why it should be awarded attorney's fees and arbitration costs.⁹⁹

In its Comment, respondent Mapfre avers that petitioner is not entitled to an award of actual damages considering that its claims were without proof of official receipts.¹⁰⁰

Respondent Mapfre maintains that it is not liable under the Payment Bond because when petitioner terminated the contract, it already paid respondent SKI ₱129,590,429.08, and any claim of petitioner for labor and materials should be deducted from the unspent balance. Similarly, it argues that its liability under the Advance Payment Bond was extinguished by compensation, because the unrecovered amount was applied as payment for unpaid billings of respondent SKI.¹⁰¹ Furthermore, respondent Mapfre claims that it is not liable for variations of work only relayed to it after February 23, 2008.¹⁰² It also claims that it cannot be liable for the alleged cost of rectification works and additional management costs as these were fraudulent.¹⁰³

Lastly, Respondent Mapfre maintains that petitioner is not entitled to an execution pending appeal considering that it cannot approve and reject parts of the award for temperate damages in its favor. As petitioner is not entitled to recover anything, respondent Mapfre argues that petitioner is likewise not entitled to recover attorney's fees and costs of arbitration.¹⁰⁴

In rebuttal, petitioner argues that since both respondents SKI and Mapfre did not appeal the decision of the Court of Appeals, then they are bound to pay the award ordered by it at the least. Petitioner avers that the issue of respondent Mapfre's liability under the bonds is already settled, and the only issue remaining is the amount of its liability.¹⁰⁵

Petitioner reiterates that it has proven and substantiated its monetary claims, and respondent SKI is not entitled to temperate damages because it failed to prove the cost of its repair and the damage is attributable to

⁹⁸ Id. at 2516.

⁹⁹ Id. at 2518.

¹⁰⁰ Id. at 2526.

¹⁰¹ Id. at 2530.

¹⁰² Id. at 2537.

¹⁰³ Id.

¹⁰⁴ Id. at 2547-2549.

¹⁰⁵ Id. at 2616.

petitioner.¹⁰⁶ Petitioner counters that its monetary claims are not unreasonable, considering that respondent SKI caused the delay, which, in turn, resulted in delay-related claims by contractors, and additional costs for engaging other contractors and suppliers to complete and rectify respondent SKI's defective works.¹⁰⁷

Petitioner further reiterates that it is entitled to execution pending appeal considering that the Arbitral Tribunal's award of ₱55,119,852.56 has already become final and executory.¹⁰⁸

The issues for this Court's resolution are as follows:

- (1) Whether or not the issues petitioner raised are properly determinable under the present Petition for Review before the Court;
- (2) Whether or not respondent SKI is entitled to temperate damages;
- (3) Whether or not petitioner is entitled to a total of ₱327,127,827.49 as additional costs incurred to complete the construction project due to the delay of respondent SKI;
- (4) Whether or not the Court of Appeals correctly determined the amount of liability of respondent Mapfre under the Advance Payment Bond and Payment Bond; and
- (5) Whether or not petitioner is entitled to an execution pending appeal of the Arbitral Tribunal's Award.

This Court denies the petition.

I

“[T]o encourage the early and expeditious settlement of disputes in the Philippine construction industry[,]”¹⁰⁹ Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law created the Construction Industry Arbitration Commission (Commission). Section 4 of the Construction Industry Arbitration Law lays down the jurisdiction of the Commission, as follows:

Section 4. *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with,

¹⁰⁶ Id. at 2639 and 2641.

¹⁰⁷ Id. at 2624–2625.

¹⁰⁸ Id. at 2660.

¹⁰⁹ Executive Order No. 1008 (1985), sec. 2.

contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Cognizant of the competence of the Commission, Republic Act No. 9184 or the Government Procurement Reform Act, affirms its jurisdiction and states that, "disputes that are within the competence of the [Commission] to resolve shall be referred thereto."¹¹⁰ Similarly, Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004, Section 35 provides that the Commission "shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is 'commercial' pursuant to Section 21 of this Act."¹¹¹

The authority of the Commission proceeds from its technical expertise. The Construction Industry Arbitration Law states that arbitrators shall be persons of distinction in whom the business sector, "particularly the stake holders [sic] of the construction industry[.]"¹¹² and the government can have confidence.¹¹³ "They shall possess the competence, integrity, and leadership qualities to resolve any construction dispute expeditiously and equitably. The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and

¹¹⁰ Republic Act No. 9184 (2003), sec. 59 provides:

SECTION 59. *Arbitration.* — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": *Provided, however,* That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: *Provided,* That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

¹¹¹ Rep. Act No. 8285 (2004), sec. 35 provides:

Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

¹¹² CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 8, sec. 8.1.

¹¹³ Executive Order No. 1008 (1985), sec. 14.

lawyers who are experienced in construction disputes.”¹¹⁴ Technical experts may also aid the arbitrators in resolving the disputes if requested by the parties, as stated in Section 15 of the Construction Industry Arbitration Law:

SECTION 15. *Appointment of Experts.* — The services of technical or legal experts may be utilized in the settlement of disputes if requested by any of the parties or by the Arbitral Tribunal. If the request for an expert is done by either or by both of the parties, it is necessary that the appointment of the expert be confirmed by the Arbitral Tribunal.

Whenever the parties request for the services of an expert, they shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required.

The Commission's authority is expounded in *CE Construction Corp. v. Araneta Center, Inc.*:¹¹⁵

The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates *authoritative* dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as “referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment.”¹¹⁶ (Emphasis in the original, citation omitted)

II

Due to the highly “technical nature of the proceedings” before the Commission, and the voluntariness of the parties to submit to its proceedings, “the Construction Industry Arbitration Law provides for a narrow ground by which the arbitral award can be questioned[.]”¹¹⁷ The Construction Industry Arbitration Law provides that arbitral awards are final and inappealable, except only on pure questions of law:

SECTION 19. *Finality of Awards.* — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of

¹¹⁴ CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 8, sec. 8.1.

¹¹⁵ 816 Phil. 221, (2017) [Per J. Leonen, Second Division].

¹¹⁶ *Id.*

¹¹⁷ *Metro Bottled Water Corp. v. Andrada Construction & Development Corp., Inc.*, G.R. No. 202430, March 6, 2019, <<http://sc.judiciary.gov.ph/4380/>> [Per J. Leonen, Third Division].

law which shall be appealable to the Supreme Court.

In keeping with the Construction Industry Arbitration Law, any appeal from the Commission's arbitral tribunals must remain limited to questions of law. Its rationale is explained in *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*:¹¹⁸

Section 19 [of Executive Order No. 1008] makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile

¹¹⁸ 298-A Phil. 361, 361-362 (1993) [Per J. Feliciano, Third Division].

institution.¹¹⁹ (Citations omitted)

The general rule then is that the awards of the Arbitral Tribunal may be appealed only on pure questions of law, and its factual findings should be respected and upheld. Since the Construction Industry Arbitration Law does not provide when an arbitral award may be vacated, we can glean the exceptions from *Spouses David v. Construction Industry and Arbitration Commission*.¹²⁰

We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.¹²¹ (Citation omitted)

Accordingly, there is a need to determine whether the issues raised by petitioner involve questions of law or fact. A question of law arises when there is “doubt. . . as to what the law is on a certain set of facts[,]” while there is a “question of fact when the doubt arises as to the truth or falsity of the alleged facts.”¹²² For a question to be one of law, there must be no doubt as to the veracity or falsehood of the facts alleged, but if it involves an “examination of the probative value of the evidence presented[,]” then the question posed is one of fact.¹²³

In the present case, petitioner urges us to resolve the following issues in its favor:

- (1) Whether it is entitled to execution pending appeal and the writ of mandamus can compel the Commission to execute the award pending appeal;
- (2) Whether or not the award of temperate damages amounting to ₱4,500,000.00 in favor of respondent SKI is supported by the evidence on record;
- (3) Whether it proved and substantiated its monetary claims entitling it to an additional award of ₱327,127,827.49, broken down as:

¹¹⁹ Id.

¹²⁰ 479 Phil. 578 (2004) [Per J. Puno, Second Division].

¹²¹ Id. at 590–591.

¹²² Id. at 584.

¹²³ Id.

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- (a) Payment to Tetra Pak Processing System of ₱32,572,301.44;
 - (b) Additional amount of ₱147,818,032.88 for payments to SMCC Philippines, Inc.;
 - (c) Additional amount of ₱2,700,486.33 for payments to Chittick Fire & Security Corporation;
 - (d) Additional project management costs in the amount of ₱101,923,163.14;
 - (e) ₱20,767,401.12 for termination-related costs paid to Unitan Construction and Development Corporation;
 - (f) Additional amount of ₱14,403,210.44 for payment to Cape East Philippines, Inc.; and
 - (g) Additional payment of ₱6,943,232.14 to Freyssinet Filipinas, Corp.;¹²⁴
- (4) Whether it is entitled to the full amounts of liability of respondent Mapfre under the Advance Payment Bond and the Payment Bond; and
- (5) Whether it is entitled to recovery of attorney's fees and costs of arbitration.

Petitioner further submits that:

- (1) The issue concerning its entitlement to a motion for execution pending appeal involves question of law;
- (2) The other issues raised involve the resolution of conflicting findings of fact by the Arbitral Tribunal and the Court of Appeals;
- (3) The Arbitral Tribunal and Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; and
- (4) The findings of the Court of Appeals are contradicted by the presence of evidence on record.¹²⁵

Except for the first issue, which involves a question of law, the other issues raised by petitioner, as admitted by it, are questions of fact, which necessitates a reexamination of the probative value of the evidence presented by the parties. In asking this Court to go over each claim submitted by the parties to the Arbitral Tribunal, petitioner is asking this Court to pass upon claims which are either clearly factual or require previous determination of factual issues.¹²⁶ Petitioner therefore attempts to re-litigate before us the detailed factual claims it already made before the Arbitral Tribunal and asserts that its review falls within the exceptions. However, the reasons raised by petitioner are not among the exceptional grounds to review the factual findings of the Arbitral Tribunal.

Exceptions allowed in the review of Rule 45 petitions, such as the

¹²⁴ *Rollo*, pp. 38-41.

¹²⁵ *Id.* at 141.

¹²⁶ *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, 298-A Phil. 361 (1993) [Per J. Feliciano, Third Division].

lower court's misapprehension of facts or a conflict in factual findings, do not apply to reviews of the Arbitral Tribunal's decisions.¹²⁷ In reviewing factual findings of the Arbitral Tribunal, exceptions must pertain to its conduct and the qualifications of the arbitrator, and not to its errors of fact and law, misappreciation of evidence, or conflicting findings of fact.¹²⁸ It is only when "the most basic integrity of the arbitral process was imperiled" that a factual review of the findings of the arbitral tribunal may be reviewed.¹²⁹ This, the petitioner did not allege or prove in the present case.

Courts should thus defer to the factual findings of the Arbitral Tribunal as held in *CE Construction Corp. v. Araneta Center, Inc.*:¹³⁰

In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. The CIAC Arbitral Tribunal perused each of the parties' voluminous pieces of evidence. Its members personally heard, observed, tested, and propounded questions to each of the witnesses. Having been constituted solely and precisely for the purpose of resolving the dispute between ACI and CECON for 19 months, the CIAC Arbitral Tribunal devoted itself to no other task than resolving that controversy. This Court has the benefit neither of the CIAC Arbitral Tribunal's technical competence nor of its irreplaceable experience of hearing the case, scrutinizing every piece of evidence, and probing the witnesses.

True, the inhibition that impels this Court admits of exceptions enabling it to embark on its own factual inquiry. Yet, none of these exceptions, which are all anchored on considerations of the CIAC Arbitral Tribunal's integrity and not merely on mistake, doubt, or conflict, is availing.

This Court finds no basis for casting aspersions on the integrity of the CIAC Arbitral Tribunal. There does not appear to have been an undisclosed disqualification for any of its three (3) members or proof of any prejudicial misdemeanor. There is nothing to sustain an allegation that the parties' voluntarily selected arbitrators were corrupt, fraudulent, manifestly partial, or otherwise abusive. From all indications, it appears that the CIAC Arbitral Tribunal extended every possible opportunity for each of the parties to not only plead their case but also to arrive at a mutually beneficial settlement. This Court has ruled, precisely, that the arbitrators acted in keeping with their lawful competencies. This enabled them to come up with an otherwise definite and reliable award on the controversy before it.

Inventive, hair-splitting recitals of the supposed imperfections in the CIAC Arbitral Tribunal's execution of its tasks will not compel this Court to supplant itself as a fact-finding, technical expert.

¹²⁷ *Metro Bottled Water Corp. v. Andrada Construction & Development Corp., Inc.*, G.R. No. 202430, March 6, 2019, <<http://sc.judiciary.gov.ph/4380/>> [Per J. Leonen, Third Division] citing *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221 (2017), [Per J. Leonen, Second Division].

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 816 Phil. 221 (2017), [Per J. Leonen, Second Division].

ACI's refutations on each of the specific items claimed by CECON and its counterclaims of sums call for the point by point appraisal of work, progress, defects and rectifications, and delays and their causes. They are, in truth, invitations for this Court to engage in its own audit of works and corresponding financial consequences. In the alternative, its refutations insist on the application of rates, schedules, and other stipulations in the same tender documents, copies of which ACI never adduced and the efficacy of which this Court has previously discussed to be, at best, doubtful.

This Court now rectifies the error made by the Court of Appeals. By this rectification, this Court does not open the doors to an inordinate and overzealous display of this Court's authority as a final arbiter.

Without a showing of any of the exceptional circumstances justifying factual review, it is neither this Court's business nor in this Court's competence to pontificate on technical matters. These include things such as fluctuations in prices of materials from 2002 to 2004, the architectural and engineering consequences — with their ensuing financial effects — of shifting from reinforced concrete to structural steel, the feasibility of rectification works for defective installations and fixtures, the viability of a given schedule of rates as against another, the audit of changes for every schematic drawing as revised by construction drawings, the proper mechanism for examining discolored and mismatched tiles, the minutiae of installing G.I. sheets and sealing cracks with epoxy sealants, or even unpaid sums for garbage collection.

The CIAC Arbitral Tribunal acted in keeping with the law, its competence, and the adduced evidence; thus, this Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards.¹³¹ (Citation omitted)

Moreover, the parties voluntarily submitted to arbitration any dispute arising from their contract and acknowledged that an Arbitral Tribunal constituted under the Commission has full competence to rule on the dispute presented to it. “An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction[.]”¹³²

Article 6 of the Articles of Agreement of the parties provides that:

If any dispute or difference shall arise as to:

- (1) The interpretation of the Contract Documents, or;
- (2) Any dispute on any matter or thing of any nature arising out of or in connection with this Contract between the Owner (or Project Manager on the Owner's behalf) and the Contractor either during the progress or after

¹³¹ Id. at 283-284.

¹³² CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 4, sec. 4.1.

the completion or abandonment of The Works or after the termination of the employment of the Contractor,

it shall be referred to arbitration in accordance with Clause 10 of the Conditions of the Contract.¹³³

Clause 10.1 of the Conditions of the Contract provides that:

Provided always that in case any dispute or difference shall arise between the Owner (or the Project Manager on the Owner's behalf) and the Contractor, either during the progress or after the completion or abandonment of The Works as to the construction of this Contract or as to any matter of whatsoever nature arising thereunder or in connection therewith (including any matter left by this Contract to the discretion of the Project Manager or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in the these Conditions or the rights and liabilities of the parties under these Conditions), the Owner and the Contractor hereby agree to exert all efforts to settle their differences or dispute amicably. Failing this effort then such dispute or difference shall be referred to arbitration by an Arbitration Tribunal in accordance with the Construction Industry Arbitration Law of the Philippines [Executive Order No. 1008], as amended by the Alternative Dispute Resolution Act of 2004 (R.A. No. 9285), including the Rules of Procedures Governing Construction Arbitration approved and promulgated by the Construction Industry Arbitration Commission (CIAC) and any amendments thereto.¹³⁴

Accordingly, the present dispute is better left to the Commission, a quasi-judicial body with the technical expertise to resolve disputes outside the expertise of regular courts.¹³⁵

III

Both the Arbitral Tribunal and Court of Appeals held that since respondent SKI delayed in the fulfilment of its obligation, petitioner validly terminated the contract. Considering that respondent SKI did not appeal the findings of the Arbitral Tribunal and Court of Appeals as to the issues of termination and delay, the findings on these issues are deemed final as to respondent SKI. "Issues not raised on appeal are already final and cannot be disturbed."¹³⁶

Thus, the next issues to be resolved involve the monetary claims of petitioner and respondent SKI.

¹³³ *Rollo*, p. 394.

¹³⁴ *Id.* at 454.

¹³⁵ *Camp John Hay Development Corp. v. Charter Chemical and Coating Corp.*, G.R. No. 198849, August 7, 2019, <<http://sc.judiciary.gov.ph/6600/>> [Per J. Leonen, Third Division].

¹³⁶ *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Trijointventure*, 818 Phil. 27 (2017) [Per J. Leonen, Third Division].

We uphold the findings of the Arbitral Tribunal as to the rights and monetary claims of petitioner and respondent SKI.

Petitioner claimed that respondent SKI is not entitled to an award—actual or temperate damages—for the value of rebars, formworks, and costs of repair to the damaged tower crane and tower crane collar.¹³⁷

Furthermore, petitioner alleged that it proved and substantiated its claim of an additional ₱327,127,827.49 or ₱377,269,282.64, inclusive of VAT, broken down as:

- (1) Payment to Tetra Pak Processing System of ₱32,572,301.44;
- (2) Additional amount of ₱147,818,032.88 for payments to SMCC Philippines, Inc.;
- (3) Additional amount of ₱2,700,486.33 for payments to Chittick Fire & Security Corporation;
- (4) Additional project management costs in the amount of ₱101,923,163.14;
- (5) ₱20,767,401.12 for termination-related costs paid to Unitan Construction and Development Corporation;
- (6) Additional amount of ₱14,403,210.44 for payment to Cape East Philippines, Inc.; and
- (7) Additional payment of ₱6,943,232.14 to Freyssinet Filipinas, Corp.¹³⁸

Petitioner points out that, aside from the official receipts, it proved payment by unrefuted testimonies of witnesses, parole evidence and tabular summaries.

“[A] contract is the law between the parties and, absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts[.]”¹³⁹ without the need to resort to other aids in interpretation. Thus, there is basis in finding petitioner and respondent SKI entitled to some of its claims.

Based on the contract of the parties, particularly Clause 8.3 of the Conditions of Contract:

3.) In the event of the Employment of the Contractor being Terminated as

¹³⁷ *Rollo*, pp. 1966–2002.

¹³⁸ *Id.* at 38–41.

¹³⁹ *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Trijointventure*, 818 Phil. 27, 70 (2017), [Per J. Leonen, Third Division].

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aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Owner and Contractor:

1.) The **Owner** may employ and pay other persons to carry out and complete The Works and they may enter upon The Works **and use all temporary buildings, plant, tools, equipment, materials and goods intended for, delivered to and placed on or adjacent to The Works, and may purchase (where they are not already paid for) all materials and goods necessary for the carrying out and completion of The Works.**

2.) The Contractor shall [except where the Termination occurs by reason of the Bankruptcy of the Contractor or of the Contractor having a winding up order made or a petition for suspension of payment or the appointment of a Rehabilitation Receiver or Management Committee or (except for the purposes of reconstruction) a resolution for voluntary winding up passed] if so required by the Owner or the Project Manager within fourteen (14) days of the date of Termination, assign to the Owner without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Contract, but on the terms that a Supplier or Sub-Contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Owner. In any case the Owner may pay any Supplier or Sub-Contractor for any materials or goods delivered or works executed for the purposes of this Contract (whether before or after the date of Termination) in so far as the price thereof has not already been paid by the Contractor. Payments made under this sub-clause may be deducted by the Owner from any sum due or to become due to the Contractor.¹⁴⁰ (Emphasis supplied)

Clause 8.5 of the Conditions of Contract further provides:

5.) **The Contractor shall allow or pay to the Owner in the manner hereinafter appearing the amount of any direct loss and/or damage caused to the Owner by the Termination.** Until after the Taking Over of The Works, the Owner shall not be bound by any provision of this Contract to make any further payment to the Contractor but upon such Taking Over and the verification within a reasonable time of the accounts, the Project Manager shall certify the amount of expenses properly incurred by the Owner and the amount of any direct loss and/or damage caused to the Owner by the Termination and, if such amounts when added to the monies paid to the Contractor before the date of Termination exceed the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Owner by the Contractor; and if the said amounts when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Owner to the Contractor. Provided that in no circumstances shall the Contractor be entitled to be paid more than the value of the work properly executed up to the date of Termination.¹⁴¹ (Emphasis supplied)

¹⁴⁰ *Rollo*, p. 447.

¹⁴¹ *Id.* at 448.

Considering Clause 8.3.1 of the Conditions of Contract of the parties and the findings of the Arbitral Tribunal and Court of Appeals, respondent SKI is entitled to the value of rebars, formworks, and the costs of repair to the damaged tower crane and tower crane collar. Both the Arbitral Tribunal and the Court of Appeals found it undisputed that: (1) there were rebars and formworks left at the site; and (2) the tower crane and tower crane collar were damaged. The Arbitral Tribunal aptly held that respondent SKI is entitled to the value of rebars since petitioner "agreed to [respondent's] entitlement as evidenced by the signed-off document during their reconciliation meeting."¹⁴² It also found valid the claims of respondent SKI for the value of the formworks and the repair of the damaged tower crane and tower crane collar.

On petitioner's claim, Clause 8.5 of the Conditions of Contract of the parties, and the findings of both the Arbitral Tribunal and Court of Appeals confirm that petitioner is entitled to adequate compensation for the amount of expenses incurred and the direct loss or damage caused by the termination of the project. The Arbitral Tribunal held that petitioner should be awarded temperate damages based on the parties' agreement on liquidated damages¹⁴³ because petitioner failed to prove its actual damages with clear and convincing evidence. It further found that only petitioner's claim of payment to various suppliers in the amount of ₱6,852,678.71 was "undisputed" and "valid."¹⁴⁴ It also granted the unrecouped advance payment of ₱42,293,679.02 given to respondent SKI in addition to the temperate damages.¹⁴⁵

We see no reason to deviate from the factual findings of the Arbitral Tribunal which has the technical expertise and competence in resolving construction disputes.

Clause 10.5 and 10.6 of the Conditions of the Contract provides:

5. Subject to the provisions of these Conditions, the Arbitrators shall, without prejudice to the generality of their powers, **have power to direct such measurements and/or valuations as may in their opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum** which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or Notice and **to determine all matters in dispute which shall be submitted to them** in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

¹⁴² Id. at 319.

¹⁴³ Id. at 326.

¹⁴⁴ Id. at 323.

¹⁴⁵ Id. at 327.

6. The award of such Arbitrators shall be final and binding on the parties. The decision of the Arbitrators shall be a condition precedent to any right of legal action that either party may have against the other.¹⁴⁶ (Emphasis supplied)

The contract provides that the award of the Arbitral Tribunal shall be final and binding on the parties, considering that it is granted wide discretion and necessary powers to determine and settle all disputes submitted to it. Aside from the contract itself, two (2) principles guide the Arbitral Tribunal in its task: (1) “the basic matter of fairness[;]” and (2) “the effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation.”¹⁴⁷

Thus, the Arbitral Tribunal is in a better position to adjudicate and determine the claims and rights of the parties.¹⁴⁸ It fulfilled its task with technical competence and complied with the requirements of the CIAC Rules of Procedure. It was also given the full opportunity to exclusively preside over the arbitral proceedings for 19 months (from June 2009 to December 2010), where it examined and cross-examined the evidence presented by the parties and conducted ocular inspection with “proven experts in the field.”¹⁴⁹

Any review by this Court of their findings would require conducting its own ocular inspection, hiring its own experts, and “[providing] its own interpretations of the findings of a highly technical agency.”¹⁵⁰ Therefore, a review of these factual findings requires substantial proof “that the integrity of the arbitral tribunal has been compromised” or that the arbitral tribunal arrived at its findings “in a haphazard, immodest manner.”¹⁵¹ Absent such proof, this Court will not disturb the factual findings by the arbitral tribunal.

The Court of Appeals should not have disturbed the factual findings of the Arbitral Tribunal. In doing so, the Court of appeals based their modification on neither a legal question nor any exceptional ground requiring it to look into factual issues. Findings of fact of the Arbitral Tribunal, which has the competence and technical expertise on matters regarding the construction industry, should be upheld.¹⁵² Although it agreed with the Arbitral Tribunal as to respondent SKI’s claims, the Court of Appeals held that respondent SKI failed to present proof of the actual damages it suffered and granted temperate damages instead.¹⁵³ On

¹⁴⁶ Id. at 455.

¹⁴⁷ *Tondo Medical Center v. Rante*, G.R.No. 230645, July 1, 2019 <<http://sc.judiciary.gov.ph/6024/>> [Per J. Reyes, J., Second Division].

¹⁴⁸ *Metro Bottled Water Corp. v. Andrada Construction & Development Corp., Inc.*, G.R. No. 202430, March 6, 2019, <<http://sc.judiciary.gov.ph/4380/>>, [Per J. Leonen, Third Division].

¹⁴⁹ Id.

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Trijointventure*, 818 Phil. 27, 53–54 (2017), [Per J. Leonen, Third Division].

¹⁵³ *Rollo*, pp. 326–326.

petitioner's claim, it held that petitioner's monetary claims are in the nature of actual damages and granted petitioner the amount of ₱90,717,632.06, or up to the extent proved by official receipts.¹⁵⁴

Article 2224 of the Civil Code provides for temperate damages, as follows:

Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not [sic], from the nature of the case, be proved with certainty.

On the other hand, actual damages are provided for under Article 2199 of the Civil Code:

Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Further, “[e]xcept as provided by law or by stipulation, [a claimant] is entitled to an adequate compensation only for pecuniary loss” duly proven.¹⁵⁵ Thus, actual damages must be proven “with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable”¹⁵⁶ like official receipts and invoices, as explained in *Metro Rail Transit Development Corp. v. Gammon Philippines*:¹⁵⁷

Actual damages constitute compensation for sustained measurable losses. It must be proven “with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.” It is never presumed or based on personal knowledge of the court.

In *International Container Terminal Services, Inc. v. Chua*:

“Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. . . . Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.”

....

¹⁵⁴ Id. at 228.

¹⁵⁵ Id.

¹⁵⁶ *Oceaneering Contractors (PHILS.), INC. v. Barretto*, 657 Phil. 607, 617 [Per J. Perez, First Division].

¹⁵⁷ G.R. No. 200401, January 17, 2018 <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63930>> [Per J. Leonen, Third Division].

This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne. An award of actual damages is “dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.” (Emphasis in the original, citations omitted)

Although official receipts are the best evidence of payment, this Court has acknowledged that actual damages may be proved by other forms of documentary evidence, including invoices.

In *MCC Industrial Sales Corporation v. Ssangayong Corporation*, this Court did not award actual damages because the claimant failed to substantiate its claims with official receipts.

In *G.Q. Garments, Inc. v. Miranda*, this Court held that an allegation of a witness must be supported by receipts or other documentary proofs to prove the claim of actual damages.

In *Gonzales v. Camarines Sur II Electric Cooperative, Inc.*, this Court noted that petitioners did not back up its claims of actual damages by documentary proof such as a receipt or an invoice. (Citations omitted)

In concluding that respondent SKI’s claims for the value of rebars, formworks, safety harness equipment, and costs of the repair were validly proven, the Arbitral Tribunal thoroughly examined and considered the evidence presented by the parties. Thus, its evaluation of the evidence and findings of fact must be upheld.

With the same technical expertise and competence, the Arbitral Tribunal held that petitioner shall be awarded temperate damages based on the parties’ agreement on liquidated damages instead, for failure of petitioner to prove actual damages with clear and convincing evidence.¹⁵⁸ There is no merit to petitioner’s contention that the testimonies of the witnesses and the tabular summaries it presented are acceptable to establish its monetary claims because these must still be supported by official receipt or invoice. Moreover, the tabular summaries are considered self-serving, since petitioner prepared them. Petitioner’s argument that what it sought to establish by the tabular summaries is merely the general result of the entire cost it incurred was an argument raised and rejected in *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation*.¹⁵⁹ Similarly, “it is not merely the general result of the evidence that is sought[,]” but the fact of the cost is also in question, and evidence, such as receipts, “must be adduced

¹⁵⁸ *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation*, 563 Phil. 184, 215 (2007) [Per J. Velasco, Second Division].

¹⁵⁹ *Id.*

to support any claim[.]”¹⁶⁰

Because the Arbitral Tribunal found that petitioner failed to prove its alleged substantial pecuniary loss with competent proof and there was no opportunity for respondent SKI to assess the cost of the works awarded by petitioner to the contractors, the Arbitral Tribunal aptly awarded petitioner temperate damages based on the maximum amount of liquidated damages under the agreements voluntarily executed by the parties. Clause 6.2 of the Conditions of the Contract provides:

2. If the Contractor fails to complete The Works by the Date for Completion stated in Appendix A or within any extended time fixed in accordance with these Conditions, then the *Contractor shall pay or allow to the Owner a sum calculated at the rate stated in Appendix A as Liquidated Damages* for the period during which The Works remain or have remained uncompleted as Certified in writing by the Project Manager. Without prejudice to his other remedies available at law or elsewhere in this Contract, the Owner may deduct such from any monies due or to become due to the Contractor under this Contract.¹⁶¹ (Emphasis supplied)

In the Notice to Proceed:

2.5 Liquidated and Ascertained Damages (L.A.D.) shall be imposed and become payable by the Contractor to the Owner if the Contractor fails to complete The Works by the Completion Date and milestones dates set out in 2.3 and 2.4 above. The L.A.D. for The Works shall be at the rate of one tenth of one percent (1/10 of 1%) of the Contract Sum per day or part thereof[.]¹⁶²

Considering that there is no reason to deviate from the findings of the Arbitral Tribunal based on the contract of the parties, this Court affirms the same.

On the costs of the arbitration, the CIAC Revised Rules of Procedure Governing Construction Arbitration, Rule 16, Section 16.5 states:

Decision as to costs of arbitration. — In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitral Tribunal, the Final Award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each of them.

¹⁶⁰ Id.

¹⁶¹ *Rollo*, p. 438.

¹⁶² Id. at 611.

Rule 142 of the Rules of Court governing the imposition of costs likewise provides the following:

Section 1. Costs Ordinarily follow the result of suit. Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power for special reasons, to adjudge that either party shall pay the cost of an action, or that the same shall be divided, as may be equitable.

The Terms of Reference signed by the parties expressly provides that: “[t]he costs of arbitration which include the filing, administrative, arbitrators’ fees, and charges for Arbitration Development Fund, including all incidental expenses, shall be on a **pro rata basis**, subject to the determination of the Arbitral Tribunal which of the parties shall eventually shoulder such costs or the mode of sharing thereof.”¹⁶³ Based on the rules and the contract, the Arbitral Tribunal properly exercised its jurisdiction in holding that petitioner and respondent SKI should equally shoulder the arbitration costs. It likewise properly held that no party may recover attorney’s fees from each other.

IV

Pursuant to the bonds it issued in favor of petitioner, Mapfre is jointly and severally liable with respondent SKI up to the amount awarded by the Arbitral Tribunal.

Under the bonds executed by respondent SKI as principal and Mapfre as surety, they bound themselves to indemnify petitioner the following: (1) in the Advance Payment Bond, the amount of ₱72,840,000.00 for failure to recoup the advance payment granted to respondent SKI,¹⁶⁴ (2) under the Payment Bond, the amount of ₱48.56 million to pay for claims for labor and materials used or reasonably required for use in the performance of the Contract; and (3) under the Performance Bond, ₱48.56 million for any loss or damages that petitioner may suffer as a consequence of failure by respondent SKI to perform its obligations under the Contract.¹⁶⁵

Both the Arbitral Tribunal and the Court of Appeals held that respondent Mapfre is jointly and severally liable with respondent SKI pursuant to the Advance Payment Bond, Payment Bond and Performance Bond it issued in favor of petitioner.¹⁶⁶ Respondent Mapfre is clearly bound by its undertaking under the bonds. Considering that respondent Mapfre did not appeal the Court of Appeals decision, its joint and several liability under

¹⁶³ Terms of Reference, Article VIII.

¹⁶⁴ *Rollo*, p. 328.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

the bonds it issued in favor of petitioner is “deemed final” with respect to it, since issues not raised on appeal are already final and cannot be disturbed.¹⁶⁷

However, petitioner questions the amount of Mapfre’s liability under the bonds and claims that it should be liable for ₱47,368,910.42 under the Advance Payment Bond and ₱42,938,557.46 under the Payment Bond, because the Court of Appeals failed to include the 12% VAT in the amount it granted.¹⁶⁸

On this issue, this Court reinstates and affirms the findings of the Arbitral Tribunal as they are “binding, respected, and final[;]” otherwise, it would have the effect of “setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.”¹⁶⁹ Petitioner failed to allege that the present case falls within the exceptional grounds which would warrant a review of the factual findings by this Court.

Considering that this Court upholds the monetary claims of petitioner as found by the Arbitral Tribunal, respondent Mapfre is also jointly and severally liable with respondent SKI to the extent awarded by the Arbitral Tribunal for the following amounts: (1) ₱42,293,679.02 under the Advance Payment Bond; (2) ₱6,852,678.71 under the Payment Bond; and (3) ₱24,280,000.00 under the Performance Bond.

V

Lastly, petitioner is not entitled to an execution pending appeal because it appealed the Award of the Arbitral Tribunal.

The CIAC Revised Rules of Procedure Governing Construction (As amended by CIAC Resolution Nos. 15-2006, 16-2006, 18-2006, 19-2006, 02-2007, 07-2007, 13-2007, 02-2008, 03-2008, 11-2008, 01-2010, 04-2010, and 07-2010) or the 2010 Revised Rules provides that:

RULE 18 – EXECUTION OF FINAL AWARD

SECTION 18.1 *Execution of Award.* — A final arbitral award shall become executory upon the lapse of fifteen (15) days from receipt thereof by the parties.

SECTION 18.2 *Petition for review.* — A petition for review from a final award may be taken by any of the parties within fifteen (15) days from

¹⁶⁷ *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Trijointventure*, 818 Phil. 27, 72 (2017), [Per J. Leonen, Third Division].

¹⁶⁸ *Rollo*, p. 2621.

¹⁶⁹ *Metro Rail Transit Development Corp. v. Gammon Philippines*, G.R. No. 200401, January 17, 2018 <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63930>>, [Per J. Leonen, Third Division].

receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

SECTION 18.3 *Entry of judgment.* — If a petition for review is filed from a final award and a temporary restraining order (TRO) is issued by the appellate court, such award shall become executory only upon the issuance of the entry of judgment of the appellate court, or upon the lapse/lifting of the TRO or lifting of the preliminary injunction.

SECTION 18.4 *Effect of petition for review.* — The petition for review shall not stay the execution of the final award sought to be reviewed unless the Court of Appeals directs otherwise upon such terms as it deems just.

SECTION 18.5 *Execution/enforcement of awards.* — As soon as a decision, order or final award has become executory, the Arbitral Tribunal (or the surviving remaining member/s), shall, motu proprio or on motion of the prevailing party issue a writ of execution requiring any sheriff or proper officer to execute said decision, order or final award. If there are no remaining/surviving appointed arbitrator/s, the Commission shall issue the writ prayed for.

Notwithstanding the Commission's disagreement with the substance or merit of the award/decision, if execution is ripe or proper under the CIAC Rules, it shall release the writ of execution issued by the arbitrator/s. Hence, once an award/decision becomes executory, the release of the writ of execution by the Commission is purely ministerial, regardless of whether or not the arbitrator/s considered the comments of the Commission, or any of its members, on points of substance in the award during scrutiny. (Citation omitted, emphasis in the original)

The 2010 Revised Rules was subsequently amended several times to conform to the Alternative Dispute Resolution law and the international practices and standards, while preserving the spirit and intent of Construction Industry Arbitration Law. Thus, since 2010, the Revised Rules has been amended by CIAC Resolution Nos. 08-2014, 07-2016, 06-2017, 01-2019, 04-2019, and 05-2019. Particularly, Section 18. 5 paragraph 2 has been amended by CIAC Resolution No. 04-2019 to reflect the following:

SECTION 18.5 *Execution/enforcement of awards.* - As soon as a decision, order or final award has become executory, the Arbitral Tribunal (or the surviving remaining member/s), shall, motu proprio or on motion of the prevailing party issue a writ of execution requiring any sheriff or proper officer to execute said decision, order or final award. If there are no remaining/surviving appointed arbitrator/s, the Commission shall issue the writ prayed for.

As a general rule, and if no bond to stay execution is posted, the motion for execution pending appeal filed by the prevailing party may be granted, unless it appealed said award or any portion thereof. If execution is ripe or proper under the CIAC Rules, the Commission shall concur with, and release, the writ of execution issued by the arbitrator/s. Hence, once an award/decision becomes executory, the release of the writ of execution by the Commission is purely ministerial. (Citations omitted, emphasis in the original)

R

Prior to the 2019 Revised Rules, there has been no clear and categorical statement in the 2010 Revised Rules as to the effect of a pending appeal to a motion of execution filed by the prevailing party. Thus, in its March 6, 2012 Resolution, the Arbitral Tribunal denied the Motion for Writ of Execution filed by petitioner reasoning that: (1) the CIAC Resolution No. 06-2002 or “Policy Guidelines to clarify the Policy Guidelines Regarding Execution of a Final Award During Appeal” expresses the policy against interim execution when both parties appealed from the decision of the arbitrator;¹⁷⁰ and (2) the interim execution is allowed only with respect to a party who has accepted the award by not appealing it.

The Commission expresses that this policy “sought to liberalize the rule on execution during appeal, by allowing a stay of execution rather than hastening the execution, and thereby give due recognition to the right of the party to avail of and exhaust the remedies for appeal under the law[.]”¹⁷¹ The Court of Appeals agreed with the Arbitral Tribunal and added that petitioner failed to state good reasons for allowing an execution pending appeal.

As stated in the present 2019 Revised Rules: “[a]s a general rule, and if no bond to stay execution is posted, the motion for execution pending appeal filed by the prevailing party may be granted, unless it appealed said award or any portion thereof.” It is clear then that the general rule is that the motion for execution pending appeal may be granted, and the exception would be if the award or any portion of it is appealed, by any party or both parties.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only application. The present rule as it stands is consistent with the interpretation of the Arbitral Tribunal, as affirmed by the Court of Appeals. When petitioner appealed the Award, its case fell within the exception for when a motion for execution pending appeal cannot be granted. Furthermore, similar to the expressed policy in CIAC Resolution No. 02-2006, the 2019 Revised Rules, “being procedural in nature, may be applied retroactively to all pending cases,” such as in this case. The old rules and all policies issued in connection with it, as well as policies inconsistent with it, are expressly repealed.¹⁷²

WHEREFORE, premises considered, the petition is **DENIED**. The December 23, 2010 Award of the Construction Industry Arbitration

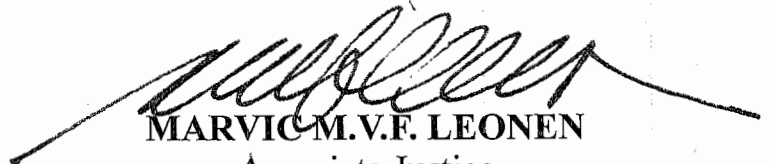
¹⁷⁰ *Rollo*, p. 2226.

¹⁷¹ *Id.* at 2227.

¹⁷² CIAC Revised Rules of Procedure Governing Construction Arbitration (June 22, 2019), Rule 23, sec. 23.1.

Commission in CIAC Case No. 18-2009 is **AFFIRMED** and **REINSTATED**.

SO ORDERED.

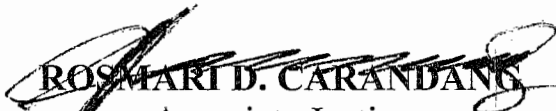


MARVIC M.V.F. LEONEN
Associate Justice

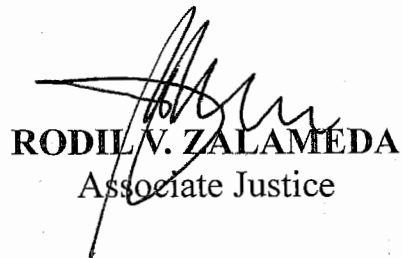
WE CONCUR:



ALEXANDER G. GESMUNDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

On leave
SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

Misael D. Battung III
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

NOV 04 2020