



Republic of the Philippines
 Supreme Court
 Manila

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 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

OCT 12 2018

THIRD DIVISION

**TOURISM INFRASTRUCTURE
 AND ENTERPRISE ZONE
 AUTHORITY,**

G.R. No. 219708

Petitioner,

Present:

PERALTA, J., *Chairperson*,
 LEONEN,
 REYES, A., JR.,*
 GESMUNDO,** and
 REYES, J., JR., *JJ.*

- versus -

GLOBAL-V BUILDERS CO.,
 Respondent.

Promulgated:

October 3, 2018

X----------X

DECISION

PERALTA, J.:

This is a petition for review on certiorari, under Rule 45 of the Rules of Court, of the Amended Decision¹ of the Court of Appeals in CA-G.R. SP No. 131024, dated April 6, 2015, and its Resolution,² dated July 22, 2015, affirming the Final Award³ dated July 16, 2013 of the Arbitral Tribunal that was constituted by the Construction Industry Arbitration Commission (CIAC).

The facts are as follows:

* Designated additional member per Special Order No. 2588 dated August 28, 2018.

** On official business.

¹ Penned by Justice Baltazar-Padilla, Former Special Seventh Division, with Justice Gonzales-Sison (Acting Chairperson) and Justice Reyes-Carpio as members; *rollo*, pp. 62-92.

² *Id.* at 93-94.

³ *Id.* at 166-181.

In 2007 and 2008, the Philippine Tourism Authority (PTA) entered into five Memoranda of Agreement (MOA) with respondent Global-V Builders Co. (Global-V). The Memoranda of Agreement are as follows:

- 1) Memorandum of Agreement (MOA) dated February 2, 2007 for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) located at Boracay, Aklan;⁴
- 2) MOA dated September 6, 2007 for the Boracay Environmental Infrastructure Project (BEIP)-Extension of Drainage Component System (Main Road and Access Road) located at Barangay Balabag, Boracay, Aklan;⁵
- 3) MOA dated December 7, 2007 for the Additional Sidewalk, Streetlighting and Drainage System (Main Road), located at Boracay, Aklan;⁶
- 4) MOA dated September 19, 2008 for the Widening of Boracay Road along Willy's Place at Barangay Balabag, Boracay, Aklan;⁷ and
- 5) MOA dated February 29, 2008 for the Perimeter Fence at Banaue Hotel in Banaue, Ifugao.⁸

The BEIP-Extension of Drainage Component System (Main Road and Access Road) Project and the Perimeter Fence at Banaue Hotel Project were procured through competitive bidding, while the rest of the projects aforementioned were obtained through negotiated procurement pursuant to Section 53, paragraphs (b) and (d) of Republic Act (R.A.) No. 9184 (The Government Procurement Reform Act).

On July 31, 2012, Global-V filed a Request for Arbitration⁹ and a Complaint¹⁰ before the CIAC, seeking payment from the Tourism Infrastructure and Enterprise Zone Authority (TIEZA), the office that took over the functions of PTA, of unpaid bills in connection with the five projects, as well as payment of interest, moral and exemplary damages, and attorney's fees. The claims of Global-V amounted to P16,663,736.34, broken down as follows:

Widening of Boracay Road along Willy's Place	P2,305,738.07
Construction of Stamped Concrete Sidewalk and Installation of Streetlights	5,222,948.37
Additional Sidewalk Streetlight and Drainage System (Main Road)	5,279,380.10
BEIP Extension of Drainage Component System (Main Road & Access Road)	332,815.76
Perimeter Fence at Banaue Hotel	249,873.54

⁴ *Id.* at 229-236.

⁵ *Id.* at 300-301.

⁶ *Id.* at 252-258.

⁷ *Id.* at 263-269.

⁸ *Id.* at 274-275.

⁹ CA rollo, p. 298.

¹⁰ *Id.* at 287-296.

Interest (6% as of 31 July 2012)	2,722,980.50
Moral damages	100,000.00
Exemplary damages	100,000.00
Attorney's fees	350,000.00 ¹¹

On August 30, 2012, TIEZA filed a Refusal of Arbitration (Motion to Dismiss for Lack of Jurisdiction),¹² instead of filing an Answer. TIEZA argued that CIAC has no jurisdiction over the case filed by Global-V because the Complaint does not allege an agreement to arbitrate and the contracts do not contain an arbitration agreement in accordance with Sections 2.3 and 2.3.1¹³ of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules).

In its Comment/Opposition to Respondent's Refusal of Arbitration,¹⁴ Global-V countered that R.A. No. 9184 vests on CIAC jurisdiction over disputes involving government infrastructure projects like the projects in this case. Section 59 of R.A. No. 9184 provides that "[a]ny 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."

Global-V asserted that the pertinent provisions of R.A. No. 9184 governing the subject infrastructure projects are deemed part of the contracts entered into by the parties. It cited *Guadines v. Sandiganbayan*,¹⁵ which held that "[b]asic is the rule that provisions of existing laws and regulations are read into and form an integral part of contracts, [more so] in the case of government contracts." Global-V contended that considering that the arbitration process is an integral part of the contracts between the parties by operation of law, the requirement under Section 2.3 of the CIAC Rules has been met.

TIEZA filed its Rebuttal to Comment/Opposition,¹⁶ arguing that an arbitration clause is a condition *sine qua non* before CIAC can acquire jurisdiction over the subject matter, as provided for in the CIAC Rules.

¹¹ Rollo, p. 175.

¹² CA rollo, pp. 301-304.

¹³ SECTION 2.3 *Condition for Exercise of Jurisdiction*. — For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.

2.3.1 Such arbitration agreement or subsequent submission must be alleged in the Complaint.

¹⁴ CA rollo, pp. 305-309.

¹⁵ 665 Phil. 563, 582 (2011).

¹⁶ CA rollo, pp. 316-324.

CIAC constituted an Arbitral Tribunal to handle the case, with its first task of ruling on the motion to dismiss filed by TIEZA.¹⁷

On November 16, 2012, the Arbitral Tribunal directed the parties to submit their respective memorandum on TIEZA's motion to dismiss, and the parties complied.¹⁸

In an Order dated December 18, 2012, the Arbitral Tribunal dismissed TIEZA's motion to dismiss for lack of merit, to wit:

Respondent [TIEZA] filed its Motion to Dismiss on the ground that the CIAC has no jurisdiction over the instant case in the absence of an arbitration clause in the MOA between the parties. Respondent also expresses the view that the arbitration cannot proceed because Claimant [Global-V] failed to exhaust administrative remedies.

On the first ground, Respondent has cited Section 2.3 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules), which states "For the CIAC to acquire jurisdiction, the parties to the dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration."

On the second ground, Respondent draws the attention of this Tribunal to the absence of allegation in the Complaint filed by Claimant that it exhausted administrative remedies. Respondent alleges that Claimant did not exhaust administrative remedies by failing to file a money claim before the Commission on Audit (COA). It cited the case of National Irrigation Authority vs. Enciso (G.R. No. 142571, 5 May 2006), which states: "Only after COA has ruled on the claim, may the injured party invoke judicial intervention by bringing the matter to this court on petition for certiorari."

On the other hand, Claimant asserts that the absence of an arbitration clause in the MOA does not deprive the CIAC of jurisdiction in view of a provision in R.A. 9184 which states:

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.

¹⁷ Rollo, Final Award, p. 167.

¹⁸ CA rollo, pp. 329, 346-357.

It is Claimant's position that the provisions cited above, being provisions of law, are deemed part of the MOA between the parties and therefore the requirement under Section 2.3 of CIAC Rules has been effectively met. Claimant alleges that, in fact, there is an arbitration clause in the MOA inasmuch as the General Conditions of Contract, which are integral parts of the MOA, have the above-cited provisions in Par. 21.3 of Clause 21 thereof.

*On the issue of Failure to Exhaust Administrative remedies raised by the Respondent, particularly in Claimant not first filing its money claims with the COA, Claimant contends that a later case on this issue effectively counters the claim of Respondent. In *Vigilar vs. Aquino* (G.R. No. 180388, 18 January 2011), the Supreme Court disregarded the defense on not first filing the claim before the COA on the ground that application of the rule would cause unreasonable delay or official inaction to the prejudice of the contractor.*

We rule in favor of the Claimant. The absence of an arbitration clause in the main body of the MOA is not fatal to the case of the Claimant. Claimant has correctly pointed out that the above-cited provisions in R.A. 9184 are deemed incorporated in the MOA. To rule otherwise would frustrate the intention of the law. In any case, the applicable provisions of R.A. 9184 are found in "The General Conditions of Contract".

*On the issue of exhaustion of administrative remedies, Claimant has complied with this condition, correctly citing the *Vigilar vs. Aquino* case. In addition, under Section 3.2 of the CIAC Rules, Claimant has satisfied precondition no. 2, viz "there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made." In the instance case, more than three years have elapsed since the date Claimant made its Final Demand for payment before the head of TIEZA himself. WHEREFORE, Respondent's Motion to Dismiss for lack of jurisdiction is hereby dismissed for lack of merit.¹⁹*

TIEZA filed a motion for reconsideration of the Arbitral Tribunal's Order dated December 18, 2012. The Arbitral Tribunal denied the motion for reconsideration in its Order dated January 29, 2013, thus:

*Respondent [TIEZA] contends that this Tribunal erred in ruling that: (1) it has jurisdiction over the complaint; and (2) Claimant [Global-V] has complied with the requirement of exhaustion of administrative remedies. On the first issue, Respondent has reiterated its position [that] the contract between the parties does not have an arbitration clause. On the second issue, Respondent argues that the cited *Vigilar vs. Aquino* case involves a claim which remained unpaid for two decades while the Claim of Claimant involves a lesser period.*

This Tribunal stands by its previous ruling that the provisions of Section 59 of R.A. No. 9184 are deemed incorporated in the contract between the parties. There are several alternative modes of dispute resolution; arbitration is one of them. This Tribunal[']s reading of the cited provisions of R.A. No. 9184 is that the parties reduce their agreement in writing should

¹⁹ Rollo, Final Award, pp. 168-169.



they choose to resort to alternative modes of dispute resolution, other than arbitration.

*On the issue of exhaustion of administrative remedies, this Tribunal holds the view that the period of unreasonable delay cited in the *Vigilar vs Aquino* case should not be interpreted literally. In the instant case, considering the amount of claim involved, the period of almost five years of nonpayment can already be considered as unreasonable delay, which would exempt Claimant from the "Exhaustion of Administrative Remedies" rule.*

In view of the foregoing, Respondent's MR is hereby denied with finality for lack of Merit. Moreover, Respondent is directed to submit its Answer to Claimant's Complaint within ten (10) days from receipt of this Order.²⁰

On February 11, 2013, TIEZA filed its Answer *Ex Abundanti Ad Cautelam*²¹ in compliance with the directive of the Arbitral Tribunal.

On March 7, 2013, the parties and their respective counsels attended the preliminary conference. TIEZA manifested that its participation in the preparation of the Terms of Reference (TOR) was being done to safeguard its rights in the proceedings, without waiving its challenge on the jurisdiction of CIAC. TIEZA also informed the Arbitral Tribunal that it was intending to amend its Answer *Ex Abundanti Ad Cautelam* in view of two supervening events: its Request for Special Audit (on all MOAs entered into by the parties) dated January 29, 2013 and the Commission on Audit's (COA's) Notice of Disallowance²² dated January 3, 2013, which was received by TIEZA on March 5, 2013.²³ The said Notice disallowed the payment of the amount of P12,161,423.11 for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project, as COA found the concrete stamping logo to be unnecessary in the promotion of trade and business of TIEZA in Boracay and in the tourism infrastructure development as a whole, and the cost of the project was extravagant.

The TOR drafted during the preliminary conference was signed by Global-V and its counsel, as well as the members of the Arbitral Tribunal. TIEZA and its counsel, however, did not affix their signatures on the TOR, as it was to be submitted for review and approval of the supervising Assistant Solicitor General and the Solicitor General.

After the preliminary conference, the Arbitral Tribunal received the following pleadings from the parties: TIEZA's Answer *Ex Abundanti Ad Cautelam*²⁴ dated February 11, 2013; Global-V's Reply to Amended Answer²⁵

²⁰ *Id.* at 169-170.

²¹ *CA rollo*, pp. 370-383.

²² *Id.* at 386-387.

²³ *Rollo*, Final Award, p. 170.

²⁴ *CA rollo*, p. 370.

²⁵ *Id.* at 411-417.

dated March 27, 2013; TIEZA's Rejoinder *Ad Cautelam*²⁶ dated April 5, 2013; TIEZA's Extremely Urgent Manifestation and Motion *Ad Cautelam*²⁷ dated April 10, 2013; and Global-V's Manifestation²⁸ dated April 11, 2013.

On April 18, 2013, the Arbitral Tribunal resolved the issues raised in the aforementioned pleadings submitted by the parties. The Arbitral Tribunal affirmed with finality its ruling in the Order dated January 29, 2013 that CIAC has jurisdiction over this case. The Arbitral Tribunal said that it only allowed the jurisdictional issue to be reopened on the manifestation of TIEZA that a supervening event occurred, which was the special audit being conducted by COA on all MOAs and projects entered into between TIEZA and Global-V. The Arbitral Tribunal noted, however, that TIEZA made its request to COA to conduct the said special audit on the day that the Arbitral Tribunal issued the Order dated January 29, 2013, denying TIEZA's motion for reconsideration and affirming its ruling in the Order dated December 18, 2012 that CIAC has jurisdiction over this case. The Arbitral Tribunal stood by its previous ruling that CIAC has jurisdiction over this case. It stated that to rule otherwise would open a ground for CIAC to lose its jurisdiction merely by COA's act of conducting a special audit; there is no established jurisprudence to support the proposition that CIAC could lose jurisdiction in this manner.²⁹

On April 26, 2013, a second preliminary conference was conducted for the purpose of amending the TOR. The amended TOR was signed by Global-V and its counsel, and by the members of the Arbitral Tribunal. TIEZA, through its representative, also signed the amended TOR with reservation, in view of the non-inclusion of the jurisdictional issue in the amended TOR. The date for the filing of judicial affidavits was agreed to be on May 17, 2013.³⁰

Global-V submitted the judicial affidavit of its sole witness, Lawrence C. Lim, while TIEZA filed a Manifestation *Ad Cautelam* stating that since CIAC has no jurisdiction over the case, it would no longer participate in the proceedings, except to submit a draft decision.

The issues for resolution before the Arbitral Tribunal were as follows:

1. Is Claimant entitled to its claims involving the construction of Perimeter Fence at Banaue Hotel in Banaue, Ifugao and BEIP Extension of Drainage Component System (Main and Access Road)?
 - 1.1 If so, how much per project?
2. For being negotiated contracts, are the contracts for the widening of Boracay Road along Willy's Place; Construction of Stamped

²⁶ *Id.* at 418-430.

²⁷ *Id.* at 433-437.

²⁸ *Id.* at 438-443.

²⁹ *Rollo*, Final Award, pp. 170-171.

³⁰ *Id.* at 171.

Concrete Sidewalk and Installation of Streetlights, Additional Street Lighting and Drainage System (Main Road) valid?

- 2.1 If these contracts are valid, is Claimant entitled to its claims?
- 2.2 If so, how much?
3. Is Claimant entitled to its claim for payment of the construction of Stamped Concrete Sidewalk and Installation of Streetlights?
 - 3.1 Has Claimant the authority from its joint venture partner to claim for payment of the above?
4. Is Claimant entitled to payment of interest at 6% as of 31 July 2012 in the total sum of P2,722,980.50 including accrued amounts from 31 July 2012 until the principal obligations shall have been paid?
5. Is Claimant entitled to payment of moral damages, exemplary damages and attorney's fees in the amount of P550,000.00?
6. Who should bear the cost of arbitration?³¹

On July 16, 2013, the Arbitral Tribunal promulgated its Final Award³² in favor of Global-V, to wit:

8. SUMMARY OF RULINGS

The rulings of this Arbitral Tribunal may be summarized as follows:

- (1) Claimant [Global-V] is entitled to the release of retention fees for the BEIP Extension of Drainage Component System (Main Road and Access Road) Project and the Perimeter Fence at Banaue Hotel Project.
- (2) The contracts for the widening of Boracay Road along Willy's Place; Construction of Stamped Concrete Sidewalk and Installation of Streetlights, Additional Street Lighting and Drainage System (main Road) are valid.
- (3) Claimant is entitled to the payment of the cost of undertaking the Boracay Road along Willy's Place Project.
- (4) Claimant is entitled to its claim in connection with the Additional Street Lighting and Drainage System (Main Road) Project.
- (5) Claimant's claim in connection with the Construction of Stamped Concrete Sidewalk and Installation of Streetlights Project is denied for lack of authority from its partner to file this Arbitration.
- (6) Claimant is not entitled to its claims for moral and exemplary damages.
- (7) Claimant is entitled to recovery of attorney's fees.
- (8) Respondent [TIEZA] shall bear the cost of arbitration.

9. AWARD

WHEREFORE, award is hereby rendered in favor of Claimant in the amount of P10,178,440.17[.] The Respondent shall also bear the cost of arbitration in the amount of P322,897.58.

The Award shall earn interest at 6% per annum computed from the time of (sic) this Award becomes final until full payment shall have been made.

³¹ *Id.* at 174-175.

³² *Id.* at 166.

SO ORDERED.³³

TIEZA filed with the Court of Appeals a petition for review with prayer for restraining order and writ of preliminary injunction. It raised the following issues:

I

THE CIAC HAS NO JURISDICTION OVER THE CLAIM OF THE RESPONDENT.

- a. The respondent did not comply with the CIAC Rules.
- b. The respondent's claims are money claims within the primary jurisdiction of the COA, not the CIAC.
- c. There was no agreement to arbitrate between the petitioner and the respondent.
- d. Sec. 59 of R.A. No. 9184 does not *ipso facto* vest the CIAC with jurisdiction over disputes arising from the construction contracts with the government, as it contains a condition that the parties 'incorporate the process of arbitration in the contract.'

II

THE RESPONDENT IS NOT ENTITLED TO PAYMENT FOR THE SUBJECT CONTRACTS.

- a. The MOAs for the Widening of the Boracay Road along Willy's Place, Construction of the Stamped Concrete Sidewalk and Installation of Streetlights Project, and Additional Sidewalk, Street Lighting, and Drainage System (Main Road) Projects are void.
- b. The respondent is not entitled to the retention money in the BEIP Extension of Drainage Component System (Main Road & Access Road) and the Perimeter Fence at Banaue Hotel Projects.

III

THE RESPONDENT IS NOT ENTITLED TO INTEREST, DAMAGES, AND COST OF ARBITRATION.³⁴

In a Decision³⁵ dated June 19, 2014, the Court of Appeals granted the petition, nullified the Final Award of the Arbitral Tribunal dated July 16, 2013, and dismissed Global-V's complaint on the ground that CIAC has no jurisdiction over the case under Section 4 of Executive Order (E.O.) No. 1008, because the parties did not agree to submit to arbitration any and all of their disputes arising from the construction contracts.

³³ *Id.* at 180.

³⁴ *Id.* at 68-69.

³⁵ *Id.* at 95-112.

Global-V filed a motion for reconsideration, maintaining that CIAC has jurisdiction over the case.

In an Amended Decision³⁶ dated April 6, 2015, the Court of Appeals reversed and set aside its Decision dated June 19, 2014 and upheld the Final Award of the Arbitral Tribunal dated July 16, 2013.

After a second look and further examination of the applicable law, jurisprudence and evidence on record, the Court of Appeals found that CIAC has jurisdiction over this case under Section 4³⁷ of E.O. No. 1008, as the parties agreed to submit their disputes arising from the construction contracts to voluntary arbitration. The Court of Appeals explained:

WE revisited the memoranda of agreement entered into by TIEZA and Global-V together with the attachments thereto, such as the Special Conditions of the Contract (SCC) and General Conditions of the Contract (GCC), and found that they indeed agreed to submit to arbitration any and all of their disputes arising from the construction contracts.

Clause 20 of the General Conditions of Contract (GCC) which accompanied the memoranda of agreement reads —

20. Resolution of Dispute

x x x

20.2 **Any and all disputes arising from the implementation of this Contract** covered by R.A. 9184 and its IRR-A **shall be submitted to arbitration** in the Philippines according to the provisions of [R]epublic Act 9285, otherwise known as the "Alternative Dispute Resolution Act 2004"; *Provided, however*, [t]hat process of arbitration shall be incorporated as a provision in this Contract that will be executed pursuant to the provisions of the Act and its IRR-A; *Provided, further*, [t]hat, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. Additional instructions on resolution of disputes, if any, shall be indicated in the SCC. x x x

The agreement of the parties to submit their disputes arising from the implementation of the memoranda of agreement to arbitration under RA 9285 is apparent from the aforementioned stipulation. Also evident is the fact that such stipulation is restricted by a condition that the process of arbitration shall be incorporated in the contract.

³⁶ *Id.* at 62.

³⁷ SECTION 4. *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, 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.

In OUR questioned Decision, it is the failure of the parties to incorporate in their contract the procedure for the conduct of arbitration that led US to conclude that the CIAC lacks jurisdiction over the controversy. However, after a more careful scrutiny and study of the instant case and the prevailing laws and judicial antecedents, WE are directed to a different conclusion such that non-compliance with a stipulated condition in the contract will not divest the CIAC of its jurisdiction over the construction controversy. The mere presence of an arbitration clause in their contract is sufficient to clothe CIAC [with] the authority to hear and decide the construction suit. On this score, WE cannot subscribe to TIEZA's claim that Section 59 of RA 9184 does not *ipso facto* vest the CIAC with jurisdiction over disputes arising from construction contracts with the government, as they contain a condition that the parties incorporate the process of arbitration in the contract. Neither would the provision under the SCC where the name and address of the Arbiter were not indicated, as what was written therein was "N. A.", strip the CIAC of its power over the extant construction contract dispute.

This was the ruling of the Supreme Court in *Hutama-Rsea Joint Operations, Inc. v. Citra Metro Manila Tollways Corp.* [G.R. No. 180640, April 24, 2009] -


x x x

It bears to emphasize that the mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction, **without any qualification or condition precedent. To affirm a condition precedent in the construction contract, which would effectively suspend the jurisdiction of the CIAC until compliance therewith, would be in conflict with the recognized intention of the law and rules to automatically vest CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause.**³⁸

Moreover, the Court of Appeals ruled that it is the stipulation of the parties to submit their construction dispute to arbitration that determines whether CIAC could exercise jurisdiction over the case; such that, the failure of the complainant to allege in the Complaint or Request for Arbitration such agreement will not deny CIAC of such power conferred on it by law. Besides, the MOAs, to which the Special Conditions of the Contract and the General Conditions of Contract were attached, were submitted to the Arbitral Tribunal for its study.

The Court of Appeals also held that TIEZA's argument that the omission to aver in the Request for Arbitration and Complaint that administrative remedies have been exhausted warrants the dismissal of the complaint was unfounded. As provided under Section 3.2.2 of the CIAC Rules, non-compliance with the precondition set forth under the CIAC Rules

³⁸ *Rollo*, pp. 77-79; emphases supplied.



will only suspend the arbitration proceedings, but it will not cause the dismissal of the complaint, more so affect the jurisdiction of CIAC to conduct the proceedings.

The Court of Appeals found unmeritorious the assertion of TIEZA that the money claim of Global-V falls within the jurisdiction of COA, and not CIAC. It pointed out that TIEZA itself cited Section 3.2 of the CIAC Rules, which provision relates to construction contracts entered into with the government. This is further supported by Section 4 of E.O. No. 1008, which provides that disputes within the jurisdiction of CIAC involve government and private contracts. If it is the COA which has jurisdiction over disputes arising from these contracts, the law should have expressly mentioned such intent, but it did not. What is excluded from the coverage of E.O. No. 1008 are only disputes arising from employer-employee relationships.

Further, the Court of Appeals upheld the ruling of the Arbitral Tribunal that the MOAs entered into through negotiated procurement are valid and, thus, granted Global-V's claims, except the claim pertaining to the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project.

The Court of Appeals held that the agreements between PTA and Global-V have a binding effect against TIEZA, especially that the latter stepped into the shoes of PTA only after the completion of the projects. The change in the organizational structure and officers of PTA cannot defeat the validity of the contracts. To rule otherwise would cause great injustice to Global-V, which completed its undertakings under the contracts. Further, the public is now enjoying and benefiting from the said projects; hence, it is only proper that Global-V be compensated therefor.

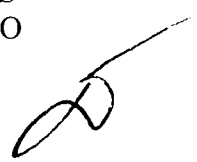
The Court of Appeals upheld the Arbitral Tribunal's award of 6% interest on the monetary award, attorney's fees, and cost of arbitration.

TIEZA's motion for reconsideration was denied by the Court of Appeals in its Resolution³⁹ dated July 22, 2015.

Hence, TIEZA filed this petition, raising the following issues:

I. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE CIAC HAD JURISDICTION OVER THE DISPUTE DESPITE THE PARTIES' STIPULATION IN THE CONTRACT THAT THERE WILL BE NO ARBITRATION;

³⁹ *Id.* at 93-94.



II. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE CIAC HAD JURISDICTION OVER THE DISPUTE NOTWITHSTANDING THE PRIMARY JURISDICTION OF THE COA OVER THE MONEY CLAIM OF GLOBAL-V;

III. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE NEGOTIATED PROCUREMENT OF THE CONTRACTS BETWEEN TIEZA AND GLOBAL-V IS VALID UNDER R.A. NO. 9184;

IV. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AWARDING INTEREST, ATTORNEY'S FEES, AND COSTS OF ARBITRATION.⁴⁰

I. Whether or not the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute.

TIEZA contends that the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute. It maintains that the five MOAs between the parties do not contain an arbitration agreement as required by E.O. No. 1008, R.A. No. 9184, and the CIAC Rules.

Although the Court of Appeals found that there was an agreement to arbitrate in Clause 20 of the General Conditions of Contract, TIEZA contends that a suspensive condition for its effectivity is provided: *that the process of arbitration be incorporated in the MOAs*. Hence, for the agreement to arbitrate to arise, the suspensive condition — its incorporation in the MOA — must first be complied with. TIEZA asserts that contrary to the Court of Appeals' finding, the suspensive condition is imposed not on the exercise of CIAC's jurisdiction, but on the effectivity of the arbitration clause itself. Since the suspensive condition was not complied with, there is no effective arbitration clause present in this case. Hence, the dispute cannot be considered to be within the jurisdiction of CIAC, and the arbitration should have not proceeded pursuant to Section 4.3⁴¹ of the CIAC Rules.

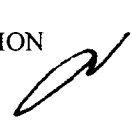
TIEZA's contention is unmeritorious.

E.O. No. 1008⁴² created the CIAC as an arbitral machinery to settle disputes in the construction industry expeditiously in order to maintain and promote a healthy partnership between the government and the private sector

⁴⁰ *Id.* at 39.

⁴¹ SECTION 4.3. *When Arbitration Cannot Proceed.* — Where the contract between the parties does not provide for arbitration and the parties cannot agree to submit the dispute(s) to arbitration, the arbitration cannot proceed and the Claimant/s shall be informed of that fact.

⁴² Entitled, "CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES."



in the furtherance of national development goals. It was therein declared to be the policy of the State to encourage the early and expeditious settlement of disputes in the Philippine construction industry. CIAC's jurisdiction over disputes arising from construction contracts is contained in Section 4 of E.O. No. 1008, to wit:

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

The CIAC, pursuant to its rule-making power granted by E.O. No. 1008, promulgated the first Rules of Procedure Governing Construction in August 1988, and it has amended the rules through the years to address the problems encountered in the administration of construction arbitration.

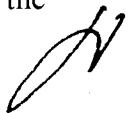
In this case, the pertinent provisions of the CIAC Rules are as follows:

SECTION 2.1 *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over construction disputes, which arose from, or is connected with contracts entered into by parties involved in construction in the Philippines whether the dispute arose before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts.

2.1.1 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 provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

xxx

SECTION 2.3 *Condition for exercise of jurisdiction.* — For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.



2.3.1 Such arbitration agreement or subsequent submission must be alleged in the Complaint. Such submission may be an exchange of communication between the parties or some other form showing that the parties have agreed to submit their dispute to arbitration. Copies of such communication or other form shall be attached to the Complaint.

x x x

SECTION 4.1 *Submission to CIAC Jurisdiction.* — 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, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. (Emphasis supplied.)

From the foregoing, it is evident that for CIAC to acquire jurisdiction over a construction controversy, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration, and that 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's jurisdiction.

In this case, the Court of Appeals found that there was an agreement to arbitrate in the General Conditions of Contract, particularly in Clause 20.2 thereof, which formed part of the MOAs dated September 6, 2007 (BEIP-Extension of Drainage Component System [Main Road and Access Road] Project) and February 29, 2008 (Perimeter Fence at Banaue Hotel Project), which contracts were procured through competitive bidding. To reiterate, Clause 20.2 of the General Conditions of Contract states:

20. Resolution of Dispute

x x x

20.2. Any and all disputes arising from the implementation of this Contract covered by x x x R.A. 9184 and its IRR-A shall be submitted to arbitration in the Philippines according to the provisions of [R]epublic Act 9285, otherwise known as the "Alternative Dispute Resolution Act 2004"; *Provided, however,* That process of arbitration shall be incorporated as a provision in this Contract that will be executed pursuant to the provisions of the Act and its IRR-A; *Provided, further,* That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. Additional instructions on resolution of disputes, if any, shall be indicated in the SCC.⁴³



⁴³

Rollo, p. 291; emphasis ours.

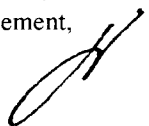
Undoubtedly, Clause 20.2 of the General Conditions of Contract is an arbitration clause that clearly provides that all disputes arising from the implementation of the contract *covered by R.A. No. 9184* shall be submitted to arbitration in the Philippines. In accordance with Section 4.1 of the CIAC Rules, the existence of the arbitration clause in the General Conditions of Contract that formed part of the said MOAs shall be deemed an agreement of the parties to submit existing or future controversies to CIAC's jurisdiction. Since CIAC's jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract.⁴⁴ Hence, the fact that the process of arbitration was not incorporated in the contract by the parties is of no moment. Moreover, the contracts in this case are expressly covered by R.A. No. 9184 (The Government Procurement Reform Act), which provides under Section 59⁴⁵ thereof that all disputes arising from the implementation of a contract covered by it shall be submitted to arbitration in the Philippines, and disputes that are within the competence of CIAC to resolve shall be referred thereto.

As CIAC's jurisdiction over the disputes arising from the said MOAs is conferred by E.O. No. 1008 and R.A. No. 9184, the process of arbitration questioned to not have been incorporated in the contracts could then only refer to the process of arbitration by CIAC, as provided in the CIAC Rules. Therefore, there is no vagueness in the process of arbitration to follow even if it was not incorporated as a provision in the contracts.

Further, the MOAs dated February 2, 2007 (Construction of Stamped Concrete Sidewalk and Installation of Streetlights [Main Road] Project) and December 7, 2007 (Additional Sidewalk, Streetlighting and Drainage System [Main Road] Project) specifically stated that the projects covered thereby were additional works to the original contracts covered by bidding (with General Conditions of Contract containing an arbitration clause) and, together with the MOA dated September 19, 2008 (Widening of Boracay Road along Willy's Place Project), *were negotiated procurements made pursuant to Sections 53 (d) and 53 (b), respectively, of the IRR-A of R.A. No. 9184*. The jurisdiction of CIAC over the construction controversy involving the said MOAs is questioned because the MOAs do not contain an arbitration clause. However, the said MOAs expressly state that they are covered by R.A. No. 9184. By virtue of R.A. No. 9184, which is the law that authorized the negotiated procurement of the construction contracts entered into by the

⁴⁴ *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*, 604 Phil. 631, 644 (2009).

⁴⁵ 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.** (Emphasis ours.)



parties, CIAC is vested with jurisdiction over the dispute. Applicable laws form part of, and are read into contracts;⁴⁶ hence, the provision on settlement of disputes by arbitration under Section 59 of R.A. No. 9184 formed part of the MOAs in this case.

Based on the foregoing, the Court of Appeals correctly ruled that CIAC had jurisdiction over this case.

II. Whether or not the Court of Appeals erred in ruling that COA had no primary jurisdiction over the money claim of Global-V.

TIEZA contends that the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute notwithstanding the primary jurisdiction of COA over the money claim of Global-V. Global-V's demand for payment should have first been brought as a money claim before COA, which has primary jurisdiction over the matter. The matter of allowing or disallowing the requests for payment is within the primary power of COA to decide. If there is a refusal on the part of a government official to grant a money claim, the proper remedy is with COA.

The contention is unmeritorious.

The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law.⁴⁷ Section 4 of E.O. No. 1008 provides that the CIAC shall have *original* and *exclusive* jurisdiction over disputes arising from, or connected with, construction contracts, which may involve government or private contracts, provided that the parties to a dispute agree to submit the dispute to voluntary arbitration. In *LICOMCEN, Inc. v. Foundation Specialists, Inc.*,⁴⁸ the Court held that the text of Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. What is only excluded from the coverage of E.O. No. 1008 are disputes arising from employer-employee relationships, which shall continue to be covered by the Labor Code of the Philippines.

Further, the Arbitral Tribunal found that Global-V has complied with the condition of exhaustion of administrative remedies, correctly citing *Vigilar, et al. v. Aquino*.⁴⁹ In addition, under Section 3.2 of the CIAC Rules,

⁴⁶ *Power Sector Assets and Liabilities Management Corp. v. Pozzolanic Phils., Inc.*, 671 Phil. 731, 763-764 (2011).

⁴⁷ *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, 662 Phil. 441, 460 (2011).

⁴⁸ *Id.*

⁴⁹ 654 Phil. 755 (2011).



Global-V has satisfied precondition No. 2, viz. “there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made[.]” The Arbitral Tribunal stated that the period of unreasonable delay cited in *Vigilar, et al. v. Aquino*⁵⁰ should not be interpreted literally. It correctly ruled that considering the amount of claim involved in this case, the period of almost five years of nonpayment can already be considered as unreasonable delay, which would exempt Global-V from the rule on exhaustion of administrative remedies.

III. Whether or not the Court of Appeals erred in ruling that the negotiated procurement of the contracts between TIEZA and Global-V is valid under R.A. No. 9184.

TIEZA contends that the Court of Appeals erred on a question of law in finding that the negotiated procurement of the Widening of Boracay Road along Willy's Place Project; the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project; and the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project complied with the requirements of negotiated procurement under Section 53 of R.A. No. 9184.

At this juncture, it must be pointed out that Global-V's claim in connection with the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project was denied by the Arbitral Tribunal for lack of authority from Global-V's partner to file the Request for Arbitration/Complaint, and the denial was affirmed by the Court of Appeals. It appears that Global-V did not appeal from the decision of the Court of Appeals. As the claim for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project has been denied, the issue raised by TIEZA regarding the validity of the said project need not be discussed herein.

TIEZA argues that in regard to the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project, the second requisite in R.A. No. 9184, Section 53 (d), that is, that the subject contract to be negotiated has similar or related scopes of work as the original contract, was not complied with. While the original contract (BEIP-Extension of Drainage Component System [Main Road and Access Road] Project) was only for the construction of a drainage collection system in Barangay Balabag, Boracay, the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project already included the construction or installation of electrical works, lamp posts, sidewalks, pedestals, etc., which were no longer related to the scope of the

⁵⁰

Id.



BEIP-Extension of Drainage Component System (Main Road and Access Road) Project.

The contention is unmeritorious.

The Arbitral Tribunal held that the aforementioned MOAs were valid and it granted Global-V's claims, except the claim pertaining to the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project, on these bases:

During his testimony, Claimant's witness presented documents showing that it was Claimant (sic) who amply justified the award of the three projects to Claimant based on negotiated procurement (Exhibit Nos. C-02, C-14, C-15, C-28, C-29 and C-30).

x x x

In the documents presented by Claimant, Respondent justified the negotiated procurement under Section 53(b) of R.A. No. 9184 for the Boracay Road along Willy's Place Project, and under Section 53(d) for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights Project and the Additional Street Lighting and Drainage System (Main Road) Project.

Section 53(b) of R.A. 9184 states:

“b. In case of imminent danger to life or property during a state [of] calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities”

In his Memorandum to Respondent's General Manager dated 19 September 2008 (Exhibit C-02), the Deputy General Manager invoked the above-quoted provision to justify the award of the Boracay Road along Willy's Place Project. He stated in the memorandum that "the immediate completion of the project is necessary because of the continuing and consistent influx of tourists to Boracay particularly this (sic) coming holidays and peak season.”

Section 53 (d) of R.A. 9184 states:

“Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR; Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the on-going project; and the contractor has no negative slippage;



Provided further, That negotiations for procurement are commenced before the expiry of the original contract. Wherever applicable, the principle shall also govern consultancy contract, where the consultants have unique experience and expertise to deliver the required service”

This provision was invoked by Respondent's Technical Evaluation Committee and Bids and Awards Committee in justifying the award of the Construction of Stamped Concrete Sidewalk and Installation of Streetlights Project and the Additional Street Lighting and Drainage System (Main Road) Project.

Notwithstanding the reversal in the stand of the Respondent on the validity of the award of the aforementioned projects under negotiated procurement, there appear to be no substantial reasons to disturb the original findings of Respondent's officials that the projects could be negotiated. Therefore, this Tribunal hereby upholds the validity of the contracts.⁵¹

The Court Appeals was likewise not convinced by the same arguments raised before this Court by TIEZA, as it held:

It is to be noted that the subject MOAs were entered into by the then PTA, the precursor of TIEZA. The PTA officers ruled that the projects could be negotiated, and therefore, need not go through public bidding because of the urgent need to accomplish them in view of the continuing influx of tourists in Boracay. Worthy of emphasis is the fact that tourism is the primary source of livelihood in Boracay. With the great flow of tourists in the island, especially during peak season, it is the duty of the tourism department to take steps to secure the safety of the people therein. In this regard, the three projects were offered to Global-V via negotiated procurements. Global-V is the same company that was previously contracted, through competitive bidding, for the construction of the BEIP-Drainage Component System. In March, 2009 after the completion of the projects, Global-V billed PTA for the same. The demand continued until PTA was replaced by TIEZA. Despite the demands for payment, however, TIEZA failed and refused to pay the costs of the project as it is now questioning the validity of the contracts entered into by its predecessor because the projects did not go through the process of public bidding.

TIEZA's contention fails to convince. The agreements between PTA and Global-V have a binding effect against TIEZA, especially that the latter came into the picture only after the completion of the projects. To OUR minds, the change in the organizational structure and officers of PTA cannot defeat the validity of the contracts. If WE are to rule otherwise, great injustice would be inflicted upon Global-V who did its part of the contract and after it had completed its undertakings, it is only to be rebuffed by TIEZA by assailing the enforceability of the contracts.

X X X



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Rollo, pp. 176-177.

What further convinces US to allow the contracts is the fact that the public is now enjoying and benefiting from the said projects. Hence, it is only proper that Global-V be compensated therefor.⁵²

The Court holds that the aforesaid MOAs are valid as they complied with the requirements of negotiated procurement under Section 53, paragraphs (b) and (d) of R.A. No. 9184.

The Widening of Boracay Road along Willy's Place Project was justified under Section 53 (b)⁵³ of R.A. No. 9184 and its IRR-A, to wit: "other causes where immediate action is necessary to prevent damage to or loss of life or property." As Boracay is famous for its white-sand beaches and is a tourist attraction and destination in the Philippines, the PTA found it "of utmost urgency with the onset of the tourist peak season" to undertake the project to ensure the safety of the people and tourists of Boracay.

Moreover, the Court finds that the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project complied with the requirements of Section 53 (d)⁵⁴ of R.A. No. 9184. The MOA⁵⁵ covering this additional project stated that the project was found very necessary in the completion of the original project (the BEIP-Extension of Drainage Component System [Main Road and Access Road] Project). This additional project should be considered as similar or related to the scope of work as in the original project, since it also involves the construction of a drainage system and included the construction of additional sidewalk, as well as street lighting, to complete the original project. The Court notes that Section 48⁵⁶ of R.A. No. 9184 provides

⁵² *Id.* at 86-87.

⁵³ SECTION 53. *Negotiated Procurement.* - Negotiated Procurement shall be allowed only in the following instances:

x x x x

b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

⁵⁴ SECTION 53. *Negotiated Procurement.* - Negotiated Procurement shall be allowed only in the following instances:

x x x x

d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service[.]

⁵⁵ *Rollo*, p. 252.

⁵⁶ SECTION 48. *Alternative Methods.* — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

x x x x



that the Procuring Entity,⁵⁷ in this case, PTA/TIEZA, may, *in order to promote economy and efficiency*, resort to alternative methods of procurement, including negotiated procurement. Hence, the PTA must have considered the construction of the additional sidewalk and street lighting economical and related to the original contract to fund them together with the construction of the drainage system of the main road. As Global-V aptly commented, “[w]hy will [p]etitioner hire another company to lay the sidewalks while [it] was constructing the concrete drainage canals on top of which the sidewalks would be built?”⁵⁸ As found by the Arbitral Tribunal, Section 53 (d) of R.A. No. 9184 was invoked by TIEZA’s Technical Evaluation Committee and Bids and Awards Committee in justifying the award of the Additional Sidewalk, Streetlighting and Drainage System (Main Road) Project, and there appears to be no substantial reason to disturb the original findings of TIEZA’s officials that the projects could be negotiated, notwithstanding the reversal in the stand of TIEZA.

IV. Whether the Court of Appeals erred in imposing 6% legal interest, attorney's fees, and cost of arbitration against TIEZA.

TIEZA contends that the Court of Appeals erred in imposing 6% legal interest, attorney’s fees and cost of arbitration against it despite the lack of basis for such award. It questions the award of attorney's fees and cost of arbitration as it did not act in gross and evident bad faith.

The contention is without merit.

The Court of Appeals correctly sustained the imposition of 6% legal interest on the monetary award pursuant to *Nacar v. Gallery Frames, et al.*,⁵⁹ which held that “[w]hen the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.”


The Court upholds the award of attorney’s fees and cost of arbitration against TIEZA. The Arbitral Tribunal stated that Global-V’s witness

(e) Negotiated Procurement — a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

⁵⁷ *Procuring Entity* — refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects (Section 5 (o), R.A. No. 9184).

⁵⁸ Rollo, p. 668.


⁵⁹ 716 Phil. 267, 283 (2013).



presented a letter of agreement wherein Global-V agreed to pay its counsel attorney's fees in the amount of P350,000.00. The Arbitral Tribunal awarded attorney's fees to Global-V on the ground that TIEZA acted in gross and evident bad faith in its refusal to pay the valid, just and demandable claims of Global-V under Article 2208,⁶⁰ paragraph 5 of the Civil Code. For the same reason justifying the award of attorney's fees, the cost of arbitration was also charged against TIEZA. The said award was affirmed by the Court of Appeals, and the Court sustains the same.⁶¹

WHEREFORE, the Amended Decision of the Court of Appeals dated April 6, 2015 and its Resolution dated July 22, 2015 in CA-G.R. SP No. 131024, upholding the Final Award of the Arbitral Tribunal dated July 16, 2013 in CIAC Case 28-2012, are **AFFIRMED**. It is hereby clarified that the imposition of legal interest at the rate of six percent (6%) on the total monetary award of P10,178,440.17 shall be reckoned from the finality of this Decision until full payment.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

⁶⁰ ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim[.]

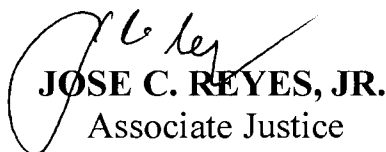
⁶¹ See *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, 572 Phil 494, 510 (2008).

WE CONCUR:


MARVIC M. V. F. LEONEN
 Associate Justice


Reyes
ANDRES B. REYES, JR.
 Associate Justice

(on official business)
ALEXANDER G. GESMUNDO
 Associate Justice


JOSE C. REYES, JR.
 Associate Justice

ATTESTATION

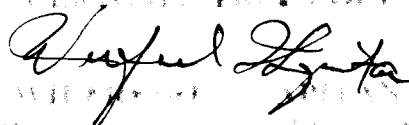
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
 Associate Justice
 Chairperson, Third Division

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.


TERESITA J. LEONARDO-DE CASTRO
 Chief Justice

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