Republic of the Philippines
Supreme Court
Manila

SPECIAL FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Special First Division, issued a Resolution dated **November 12, 2014,** *which reads as follows*:

"G.R. No. 176657 - *Department of Foreign Affairs and Bangko Sentral ng Pilipinas, Petitioners, v. Hon. Franco T. Falcon and BCA International Corporation, Respondents.*

For our disposition are (a) petitioners' Motion for Modification of Certain Pronouncements in this Honorable Court's Decision dated September 1, 2010, and (b) respondent BCA International Corporation's (BCA's) Motion for Partial Reconsideration and Clarification of the same Decision.

In their motion, petitioners Department of Foreign Affairs (DFA) and Bangko Sentral ng Pilipinas (BSP) take exception to the Court's ruling that the e-Passport Project, being a government procurement contract under Republic Act No. 9184, is not an infrastructure project within the purview of Republic Act No. 8975 which bans injunctions against national government projects issued by any court other than the Supreme Court. Petitioners posit that Republic Act No. 8975 should be interpreted as "reasonably comprehensive" as to cover all information technology (IT) projects, regardless of funding, since the rationale for said statute is to ensure expeditious and efficient completion of national government projects vital to public administration and good governance. In light of the high importance of government IT projects, petitioners argue that the lower courts should not casually enjoin them. Petitioners further propose that the provision in Republic Act No. 9184 limiting the definition of "infrastructure" to the civil works component of IT projects should be

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utilized only for the purpose of implementing said law. Implicitly, petitioners resist the use of the limited definition of "infrastructure" under Republic Act No. 9184 in the application of the provisions of Republic Act No. 8975.

The Court finds no merit in petitioners' theory.

To stress, Republic Act No. 8975 seeks to prevent the undue delay in the implementation of national government ***infrastructure*** projects. In enumerating the projects, contracts and activities that may not be enjoined by the lower courts save under the exceptional circumstance of extreme urgency involving a constitutional issue, Republic Act No. 8975 unequivocally refers to infrastructure projects or works and activities necessarily related to infrastructure projects. However, Republic Act No. 8975 does not define an "infrastructure" project. An infrastructure project may either be funded by the private sector (as provided for in Republic Act No. 6957 as amended by Republic Act No. 7718, or the Build-Operate-and-Transfer [BOT] Law) or the government (as regulated under Republic Act No. 9184). Differing definitions of the term "infrastructure" can be found in the BOT Law and Republic Act No. 9184.

Petitioners admit that under Republic Act No. 9184, which is the law governing the e-Passport Project, only the civil works component of an IT project is considered "infrastructure." Verily, the legislative intent to treat the non-civil works aspect of publicly funded IT projects as an acquisition of goods or services, and not as infrastructure, is plainly evident in the wording of Republic Act No. 9184. It is axiomatic that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation.[1]

Although there is practical wisdom in petitioners' contention that IT projects regardless of source of funding are paramount to national progress and efficient public administration and thus, all types of IT projects must be equally protected from unwarranted and precipitate lower court issuances of injunctive writs, their remedy lies not with the courts but with the legislature which has the power to amend the relevant statutes to address this particular concern. The Court held in *Kida v. Senate of the Philippines*[2]:

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[1] *Commissioner of Internal Revenue v. Ariete,* G.R. No. 164152, January 21, 2010, 610 SCRA 464, 472.

[2] G.R. Nos. 196271, 196305, 197221, 197280, 197282, 197392 and 197454, February 28, 2012, 667 SCRA 200, 226.

> Well-settled is the rule that the court may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention had been called to the omission. Providing for lapses within the law falls within the exclusive domain of the legislature, and courts, no matter how well-meaning, have no authority to intrude into this clearly delineated space. (Citations omitted.)

Coming now to BCA's Motion for Partial Reconsideration and Clarification, the Court likewise finds the arguments therein unconvincing. Nonetheless, we find two issues raised by BCA worth discussing; specifically, that (a) the Court erred in ruling that the trial court had jurisdiction to issue an injunctive writ but at the same time invalidated the same writ on the ground of lack of irreparable injury to BCA since *certiorari* is only availing to correct errors of jurisdiction and not errors of judgment; and (b) the Court made pronouncements in its Decision that "may be misconstrued as foreclosing specific performance as a remedy against DFA."

First, while indeed the trial court had jurisdiction to issue an injunctive writ against the e-Passport Project, which was not an infrastructure project as contemplated under Republic Act No. 8975 in relation to Republic Act No. 9184, the trial court must nonetheless comply with the legal requirements for the issuance of a writ of preliminary injunction. In the past, the Court has upheld the setting aside in *certiorari* proceedings of a trial court issued writ of preliminary injunction where there was neither a showing of extreme urgency to prevent irreparable injury nor a clear and unmistakable right to the writ.[3] We also ruled that, where the right invoked is what is in dispute and has yet to be determined, the trial court's issuance of an injunctive writ was tainted with grave abuse of discretion.[4] In the case at bar, not only did BCA fail to show an unmistakable right to the writ prayed for or to prove any grave and irreparable injury, the legal consequences of the reciprocal issuances of notices of default by the parties to each other were still to be litigated and resolved in the proper arbitration proceedings.

Second, the observation in the Decision that "[t]he BOT Law expressly allows the government to terminate a BOT agreement, even

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3 *Manila International Airport Authority v. Powergen, Inc.*, 568 Phil. 481, 489-490 (2008).
4 *Wilson Ong Ching Kian Chuan v. Court of Appeals*, 415 Phil. 365, 374-375 (2001).

without fault on the part of the project proponent"[5] was expressly made in relation to the finding that "it is not indubitable that BCA is entitled to injunctive relief."[6] There is nothing in the Decision that can be misinterpreted as foreclosing any relief or remedy that may be availed of based on the pertinent laws and the facts that may be proven before the arbitration court.

All the other issues raised in BCA's motion have already been discussed in the Decision or are too insubstantial to justify the partial reconsideration prayed for by private respondent.

WHEREFORE, premises considered, petitioners' Motion for Modification of Certain Pronouncements in this Honorable Court's Decision dated September 1, 2010 and respondent BCA International Corporation's Motion for Partial Reconsideration and Clarification are **DENIED** for lack of merit.

SO ORDERED." **BRION, J.**, additional member per Raffle dated July 4, 2012.

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court

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5 *Rollo* (Vol. II), p. 2532.
6 Id.

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