

ASSET PRIVATIZATION TRUST, PETITIONER, VS., COURT OF APPEALS, JESUS S. CABARRUS, SR., JESUS S. CABARRUS, JR., JAIME T. CABARRUS, JOSE MIGUEL CABARRUS, ALEJANDRO S. PASTOR, JR., ...*G.R. No. 121171. December 29, 1998*

Ponente: KAPUNAN, J.

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The petition for review on certiorari before us seeks us to reverse and set aside the decision of the Court of Appeals which denied due course to the petition for certiorari filed by the Asset Privatization Trust (APT) assailing the order of the Regional Trial Court (RTC) Branch 62, Makati City. The Makati RTC's order upheld and confirmed the award made by the Arbitration Committee in favor of Marinduque Mining and Industrial Corporation (MMIC) and against the Government, represented by herein petitioner APT for damages in the amount of P2.5 BILLION (or approximately P4.5 BILLION, including interest).

Ironically, the staggering amount of damages was imposed on the Government for exercising its legitimate right of foreclosure as creditor against the debtor MMIC as a consequence of the latter's failure to pay its overdue and unpaid obligation of P22 billion to the Philippine National Bank (PNB) and the Development Bank of the Philippines (DBP).

The antecedent facts of the case

The development, exploration and utilization of the mineral deposits in the Surigao Mineral Reservation have been authorized by Republic Act No. 1828, as amended by Republic Acts No. 2077 and 4167, by virtue of which laws, a Memorandum of Agreement was drawn on July 3, 1968, whereby the Republic of the Philippines thru the Surigao Mineral Reservation Board, granted MMIC the exclusive right to explore, develop and exploit nickel, cobalt and other minerals in the Surigao mineral reservation.[1] MMIC is a domestic corporation engaged in mining with respondents Jesus S. Cabarrus, Sr. as President and among its original stockholders.

The Philippine Government undertook to support the financing of MMIC by purchase of MMIC debenture and extension of guarantees. Further, the Philippine Government obtained a firm, commitment from the DBP and/or other government financing institutions to subscribed in MMIC and issue guarantee/s for foreign loans or deferred payment arrangements secured from the US Eximbank, Asian Development Bank, Kobe Steel, of amount not exceeding US\$100 Million.[2]

DBP approved guarantees in favor of MMIC and subsequent requests for guarantees were based on the unutilized portion of the Government commitment. Thereafter, the Government extended accommodations to MMIC in various amounts.

On July 13, 1981, MMIC, PNB and DBP executed a Mortgage Trust Agreement[3] whereby MMIC, as mortgagor, agreed to constitute a mortgage in favor of PNB and DBP as mortgagees, over all MMIC's assets, subject of real estate and chattel mortgage executed by the mortgagor, and additional assets described and

identified, including assets of whatever kind, nature or description, which the mortgagor may acquire whether in substitution of, in replenishment, or in addition thereto.

Article IV of the Mortgage Trust Agreement provides for Events of Default, which expressly includes the event that the MORTGAGOR shall fail to pay any amount secured by this Mortgage Trust Agreement when due.[4]

Article V of the Mortgage Trust Agreement prescribes in detail, and in addition to the enumerated events of defaults, circumstances by which the mortgagor may be declared in default, the procedure therefor, waiver of period to foreclose, authority of Trustee before, during and after foreclosure, including taking possession of the mortgaged properties.[5]

In various request for advances/remittances of loans of huge amounts, Deeds of Undertakings, Promissory Notes, Loans Documents, Deeds of Real Estate Mortgages, MMIC invariably committed to pay either on demand or under certain terms the loans and accommodations secured from or guaranteed by both DBP and PNB.

By 1984, DBP and PNB's financial exposure both in loans and in equity in MMIC had reached tremendous proportions, and MMIC was having a difficult time meeting its financial obligations. MMIC had an outstanding loan with DBP in the amount of P13,792,607,565.92 as of August 31, 1984 and in the amount of P8,789,028,249.38 as of July 15, 1984 or a total Government exposure of Twenty Two Billion Six Hundred Sixty-Eight Million Five Hundred Thirty-Seven Thousand Seven Hundred Seventy and 05/100 (P22,668,537,770.05), Philippine Currency.[6] Thus, a financial restructuring plan (FRP) designed to reduce MMIC's interest expense through debt conversion to equity was drafted by the Sycip Gorres Velayo accounting firm.[7] On April 30, 1984, the FRP was approved by the Board of Directors of the MMIC.[8] However, the proposed FRP had never been formally adopted, approved or ratified by either PNB or DBP.[9]

In August and September 1984, as the various loans and advances made by DBP and PNB to MMIC had become overdue and since any restructuring program relative to the loans was no longer feasible, and in compliance with the directive of Presidential Decree No. 385, DBP and PNB as mortgagees of MMIC assets, decided to exercise their right to extrajudicially foreclose the mortgages in accordance with the Mortgage Trust Agreement.[10]

The foreclosed assets were sold to PNB as the lone bidder and were assigned to three newly formed corporations, namely, Nonoc Mining Corporation, Maricalum Mining and Industrial Corporation, and Island Cement Corporation. In 1986, these assets were transferred to the Asset Privatization Trust (APT).[11]

On February 28, 1985, Jesus S. Cabarrus, Sr., together with the other stockholders of MMIC, filed a derivative suit against DBP and PNB before the RTC of Makati, Branch 62, for Annulment of Foreclosures, Specific Performance and Damages.[12] The suit, docketed as Civil Case No. 9900, prayed that the court: (1) annul the foreclosure, restore the foreclosed assets to MMIC, and require the banks to account for their use and operation in the interim; (2) direct the banks to honor and perform their commitments under the alleged FRP; and (3) pay moral and exemplary damages, attorney's fees, litigation expenses and costs.

In the course of the trial, private respondents and petitioner APT, as successor of the DBP and PNB's interest in MMIC, mutually agreed to submit the case to arbitration by entering into a "Compromise and Arbitration Agreement," stipulating, inter alia:

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants contain herein, the parties agreed as follows:

1. Withdrawal and Compromise. The parties have agreed to withdraw their respective claims from the Trial Court and to resolve their dispute through arbitration by praying to the Trial Court to issue a Compromise Judgment based on this Compromise and Arbitration Agreement.

In withdrawing their dispute from the court and in choosing to resolve it through arbitration, the parties have agreed that:

(a) their respective money claims shall be reduced to purely money claims; and

(b) as successor and assignee of the PNB and DBP interest in MMIC and the MMIC accounts, APT shall likewise succeed to the rights and obligations of PNB and DBP in respect of the controversy subject of Civil Case No. 9900 to be transferred to arbitration and any arbitral award/order against either PNB and/or DBP shall be the responsibility of, be discharged by and be enforceable against APT, the parties having agreed to drop PNB and DBP from the arbitration.

2. Submission. The parties hereby agree that (a) the controversy in Civil Case No. 9900 shall be submitted instead to arbitration under RA 876 and (b) the reliefs prayed for in Civil Case No. 9900 shall, with the approval of the Trial Court of this Compromise and Arbitration Agreement, be transferred and reduced to pure pecuniary/money claims with the parties waiving and foregoing all other forms of reliefs which they prayed for or should have prayed for in Civil Case No. 9900.[13]

The Compromise and Arbitration Agreement limited the issues to the following:

5. Issues. The issues to be submitted for the Committee's resolution shall be: (a) Whether PLAINTIFFS have the capacity or the personality to institute this derivative suit in behalf of the MMIC or its directors; (b) Whether or not the actions leading to, and including, the PNB-DBP foreclosure of the MMIC assets were proper, valid and in good faith.[14]

This agreement was presented for approval to the trial court. On October 14, 1992, the Makati RTC, Branch 62, issued an order, to wit:

WHEREFORE, this Court orders:

1. Substituting PNB and DBP with the Asset Privatization Trust as party defendant.
2. Approving the Compromise and Arbitration Agreement dated October 6, 1992, attached as Annex "C" of the Omnibus Motion.
3. Approving the Transformation of the reliefs prayed for [by] the plaintiffs in this case into pure money claims; and
4. The Complaint is hereby DISMISSED.[15]

The Arbitration Committee was composed of retired Supreme Court Justice Abraham Sarmiento as Chairman, Atty. Jose C. Sison and former Court of Appeals Justice Magdangal Elma as Members. On November 24, 1993, after conducting several hearings, the Arbitration Committee rendered a majority decision in favor of MMIC, the pertinent portions of which read as follows:

Since, as this Committee finds, there is no foreclosure at all was not legally and validly done, the Committee holds and so declares that the loans of PNB and DBP to MMIC, for the payment and recovery of which the void foreclosure sales were undertaken, continue to remain outstanding and unpaid. Defendant APT as the successor-in-interest of PNB and DBP to the said loans is therefore entitled and retains the right, to collect the same from MMIC pursuant to and based on the loan documents signed by MMIC, subject to the legal and valid defenses that the latter may duly and seasonably interpose. Such loans shall, however, be reduced by the amount which APT may have realized from the sale of the seized assets of MMIC which by agreement should no longer be returned even if the foreclosure were found to be null and void.

The documentary evidence submitted and adopted by both parties (Exhibits "3", "3-B"; Exhibits "100"; and also Exhibit "ZZZ") as their exhibits would show that the total outstanding obligation due to DBP and PNB as

of the date of foreclosure is P22,668,537,770.05, more or less.

Therefore, defendant APT can, and is still entitled to, collect the outstanding obligations of MMIC to PNB and DBP amounting to P22,668,537,770.05, more or less, with interest thereon as stipulated in the loan documents from the date of foreclosure up to the time they are fully paid less the proportionate liability of DBP as owner of 87% of the total capitalization of MMIC under the FRP. Simply put, DBP shall share in the award of damages to, and in obligations of MMIC in proportion to its 87% equity in the total capital stock of MMIC.

x x x.

As this Committee holds that the FRP is valid, DBP's equity in MMIC is raised to 87%. So pursuant to the above provision of the Compromise and Arbitration Agreement, the 87% equity of DBP is hereby deducted from the actual damages of P19,486,118,654.00 resulting in the net actual damages of P2,531,635,425.02 plus interest.

DISPOSITION

WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering the defendant to pay to the Marinduque Mining and Industrial Corporation, except the DBP, the sum of P2,531,635,425.02 with interest thereon at the legal rate of six per cent (6%) per annum reckoned from August 3, 9, and 24, 1984, *pari passu*, as and for actual damages. Payment of these actual damages shall be offset by APT from the outstanding and unpaid loans of the MMIC with DBP and PNB, which have not been converted into equity. Should there be any balance due to the MMIC after the offsetting, the same shall be satisfied from the funds representing the purchase price of the sale of the shares of Island Cement Corporation in the amount of P503,000,000.00 held under escrow pursuant to the Escrow Agreement dated April 22, 1988 or to such subsequent escrow agreement that would supercede [sic] it pursuant to paragraph (9) of the Compromise and Arbitration Agreement;
2. Ordering the defendant to pay to the Marinduque Mining and Industrial Corporation, except the DBP, the sum of P13,000,000.00 as and for moral and exemplary damages. Payment of these moral and exemplary damages shall be offset by APT from the outstanding and unpaid loans of MMIC with DBP and PNB, which have not been converted into equity. Should there be any balance due to MMIC after the offsetting, the same shall be satisfied from the funds representing the purchase price of the sale of the shares of Island Cement Corporation in the of P503,000,000.00 held under escrow pursuant to the Escrow Agreement dated April 22, 1988 or to such subsequent escrow agreement that would supercede [sic] it pursuant to paragraph (9) of the Compromise and Arbitration Agreement;
3. Ordering the defendant to pay to the plaintiff, Jesus Cabarrus, Sr., the sum of P10,000,000.00, to be satisfied likewise from the funds held under escrow pursuant to the Escrow Agreement dated April 22, 1988 or to such subsequent escrow agreement that would supercede it, pursuant to paragraph (9) of the Compromise and Arbitration Agreement, as and for moral damages; and
4. Ordering the defendant to pay arbitration costs.

This Decision is FINAL and EXECUTORY.

IT IS SO ORDERED.[16]

Motions for reconsiderations were filed by both parties, but the same were denied.

On October 17, 1994, private respondents filed in the same Civil Case No. 9900 an "Application/Motion for Confirmation of Arbitration Award." Petitioner countered with an "pposition and Motion to Vacate Judgment" raising the following grounds:

1. The plaintiff's Application/Motion is improperly filed with this branch of the Court, considering that the

said motion is neither a part nor the continuation of the proceedings in Civil Case No. 9900 which was dismissed upon motion of the parties. In fact, the defendants in the said Civil Case No. 9900 were the Development Bank of the Philippines and the Philippine National Bank (PNB);

2. Under Section 22 of Rep. Act 876, an arbitration under a contract or submission shall be deemed a special proceedings and a party to the controversy which was arbitrated may apply to the court having jurisdiction, (not necessarily with this Honorable Court) for an order confirming the award;

3. The issues submitted for arbitration have been limited to two: (1) propriety of the plaintiffs filing the derivative suit and (2) the regularity of the foreclosure proceedings. The arbitration award sought to be confirmed herein far exceeded the issues submitted and even granted moral damages to one of the herein plaintiffs;

4. Under Section 24 of Rep. Act 876, the Court must make an order vacating the award where 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.[17]

Private respondents filed a "REPLY AND OPPOSITION" dated November 10, 1984, arguing that a dismissal of Civil case No. 9900 was merely a "qualified dismissal" to pave the way for the submission of the controversy to arbitration, and operated simply as "a mere suspension of the proceedings." They denied that the Arbitration Committee had exceeded its powers.

In an Order dated November 28, 1994, the trial court confirmed the award of the Arbitration Committee. The dispositive portion of said order reads:

WHEREFORE, premises considered, and in the light of the parties [sic] Compromise and Arbitration Agreement dated October 6, 1992, the Decision of the Arbitration Committee promulgated on November 24, 1993, as affirmed in a Resolution dated July 26, 1994, and finally settled and clarified in the Separate Opinion dated September 2, 1994 of Committee Member Elma, and the pertinent provisions of RA 876, also known as the Arbitration Law, this Court GRANTS PLAINTIFFS' APPLICATION AND THUS CONFIRMS THE ARBITRATION AWARD, AND JUDGMENT IS HEREBY RENDERED:

(a) Ordering the defendant APT to the Marinduque Mining and Industrial Corporation (MMIC, except the DBP, the sum of P3,811,757,425.00, as and for actual damages, which shall be partially satisfied from the funds held under escrow in the amount of P503,000,000.00 pursuant to the Escrow Agreement dated April 22, 1988. The Balance of the award, after the escrow funds are fully applied, shall be executed against the APT;

(b) Ordering the defendant to pay to the MMIC, except the DBP, the sum of P13,000,000.00 as and moral and exemplary damages;

(c) Ordering the defendant to pay to Jesus S. Cabarrus, Sr., the sum of P10,000,000.00 as and for moral damages; and

(d) Ordering the defendant to pay the herein plaintiffs/applicants/movants the sum of P1,705,410.22 as arbitration costs.

In reiteration of the mandates of Stipulation No. 10 and Stipulation No. 8 paragraph 2 of the Compromise and Arbitration Agreement, and the final edict of the Arbitration Committee's decision, and with this Court's Confirmation, the issuance of the Arbitration Committee's Award shall henceforth be final and executory.

SO ORDERED.[18]

On December 27, 1994, petitioner filed its motion for reconsideration of the Order dated November 28, 1994. Private respondents, in turn, submitted their reply and opposition thereto.

On January 18, 1995, the trial court handed down its order denying APT's motion for reconsideration for lack of merit and for having been filed out of time. The trial court declared that "considering that the defendant APT through counsel, officially and actually received a copy of the Order of this Court dated November 28, 1994 on December 6, 1994, the Motion for Reconsideration thereof filed by the defendant APT on December 27, 1994, or after the lapse of 21 days, was clearly filed beyond the 15-day reglementary period prescribed or provided for by law for the filing of an appeal from final orders, resolutions, awards, judgments or decisions of any court in all cases, and by necessary implication for the filling of a motion for reconsideration thereof."

On February 7, 1995, petitioner received private respondents' motion for Execution and Appointment of Custodian of Proceeds of Execution dated February 6, 1995.

Petitioner thereafter filed with the Court of Appeals a special civil action for certiorari with temporary restraining order and/or preliminary injunction dated February 13, 1996 to annul and declare as void the Orders of the RTC-Makati dated November 28, 1994 and January 18, 1995 for having been issued without or in excess of jurisdiction and/or with grave abuse of discretion.[19] As ground therefor, petitioner alleged that:

I

THE RESPONDENT JUDGE HAS NOT VALIDLY ACQUIRED JURISDICTION MUCH LESS, HAS THE COURT AUTHORITY, TO CONFIRM THE ARBITRAL AWARD CONSIDERING THAT THE ORIGINAL CASE, CIVIL CASE NO. 9900, HAD PREVIOUSLY BEEN DISMISSED.

II

THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION, IN ISSUING THE QUESTIONED ORDERS CONFIRMING THE ARBITRAL AWARD AND DENYING THE MOTION FOR RECONSIDERATION OF ORDER OF AWARD.

III

THE RESPONDENT JUDGE GROSSLY ABUSED HIS DISCRETION AND ACTED WITHOUT OR IN EXCESS OF AND WITHOUT JURISDICTION IN RECKONING THE COUNTING OF THE PERIOD TO FILE MOTION FOR RECONSIDERATION, NOT FROM THE DATE OF SERVICE OF THE COURT'S COPY CONFIRMING THE AWARD, BUT FROM RECEIPT OF A XEROX COPY OF WHAT PRESUMABLY IS THE OPPOSING COUNSEL'S COPY THEREOF.[20]

On July 12, 1995, the Court of Appeals, through its fifth Division denied due course and dismissed the petition for certiorari.

Hence, the instant petition for review on certiorari imputing to the Court of Appeals the following errors.

ASSIGNMENT OF ERRORS

I

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE MAKATI REGIONAL TRIAL COURT, BRANCH 62 WHICH HAS PREVIOUSLY DISMISSED CIVIL CASE NO. 9900 HAD LOST JURISDICTION TO CONFIRM THE ARBITRAL AWARD UNDER THE SAME CIVIL CASE AND IN NOT RULING THAT THE APPLICATION FOR CONFIRMATION SHOULD HAVE BEEN FILED AS A NEW CASE TO BE RAFFLED OFF AMONG THE DIFFERENT BRANCHES OF THE RTC.

II

THE COURT OF APPEALS LIKewise ERRED IN HOLDING THAT PETITIONER WAS ESTOPPED FROM QUESTIONING THE ARBITRATION AWARD, WHEN PETITIONER QUESTIONED THE JURISDICTION OF THE RTC-MAKATI, BRANCH 62 AND AT THE SAME TIME MOVED TO VACATE THE ARBITRAL AWARD.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT TRIAL COURT SHOULD HAVE EITHER DISMISSED/DENIED PRIVATE RESPONDENTS' MOTION/PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND/OR SHOULD HAVE CONSIDERED THE MERITS OF THE MOTION TO VACATE ARBITRAL AWARD.

IV

THE COURT OF APPEALS ERRED IN NOT TREATING PETITIONER APT'S PETITION FOR CERTIORARI AS AN APPEAL TAKEN FROM THE ORDER CONFIRMING THE AWARD

V

THE COURT OF APPEALS ERRED IN NOT RULING ON THE LEGAL ISSUE OF WHEN TO RECKON THE COUNTING OF THE PERIOD TO FILE A MOTION FOR RECONSIDERATION.[21]

The petition is impressed with merit.

I

The RTC of Makati, Branch 62, did not have jurisdiction to confirm the arbitral award

The use of the term "dismissed" is not a "mere semantic imperfection." The dispositive portion of the Order of the trial court dated October 14, 1992 stated in no uncertain terms:

4. The Complaint is hereby DISMISSED.[22]

The term "dismiss" has a precise definition in law. "To dispose of an action suit, or motion without trial on the issues involved. Conclude, discontinue, terminate, quash." [23]

Admittedly the correct procedure was for the parties to go back to the court where the case was pending to have the award confirmed by said court. However, Branch 62 made the fatal mistake of issuing a final order dismissing the case. While Branch 62 should have merely suspended the case and not dismissed it,[24] neither of the parties questioned said dismissal. Thus, both parties as well as said court are bound by such error.

It is erroneous then to argue, as private respondents do, that petitioner APT was charged with the knowledge that the "case was merely stayed until arbitration finished," as again, the order of Branch 62 in very clear terms stated that the "complaint was dismissed." By its own action, Branch 62 had lost jurisdiction over the case. It could not have validly reacquired jurisdiction over the said case on mere motion of one of the parties. The Rules of Court is specific on how a new case may be initiated and such is not done by mere motion in a particular branch of the RTC. Consequently, as there was no "pending action" to speak of, the petition to confirm the arbitral award should have been filed as a new case and raffled accordingly to one of the branches of the Regional Trial Court.

II

Petitioner was not estopped from questioning the jurisdiction of Branch 62 of the RTC of Makati.

The Court of Appeals ruled that APT was already estopped to question the jurisdiction of the RTC to confirm the arbitral award because it sought affirmative relief in said court by asking that the arbitral award be vacated.

The rule is that "Where the court itself clearly has no jurisdiction over the subject matter or the nature of the action, the invocation of this defense may be done at any time. It is neither for the courts nor for the parties to violate or disregard that rule, let alone to confer that jurisdiction, this matter being legislative in character." [25] As a rule the, neither waiver nor estoppel shall apply to confer jurisdiction upon a court barring highly meritorious and exceptional circumstances.[26] One such exception was enunciated in *Tijam vs. Sibonghanoy*, [27] where it was held that "after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too

late for the loser to question the jurisdiction or power of the court."

Petitioner's situation is different because from the outset, it has consistently held the position that the RTC, Branch 62 had no jurisdiction to confirm the arbitral award; consequently, it cannot be said that it was estopped from questioning the RTC's jurisdiction. Petitioner's prayer for the setting aside of the arbitral award was not inconsistent with its disavowal of the court's jurisdiction.

III

Appeal of petitioner to the Court of Appeals thru certiorari under Rule 65 was proper.

The Court of Appeals in dismissing APT's petition for certiorari upheld the trial court's denial of APT's motion for reconsideration of the trial court's order confirming the arbitral award, on the ground that said motion was filed beyond the 15-day reglementary period; consequently, the petition for certiorari could not be resorted to as substitute to the lost right of appeal.

We do not agree.

Section 29 of Republic Act No. 876,[28] provides that:

x x x An appeal may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award through certiorari proceedings, but such appeals shall be limited to question of law. x x x.

The aforequoted provision, however, does not preclude a party aggrieved by the arbitral award from resorting to the extraordinary remedy of certiorari under Rule 65 of the Rules of Court where, as in this case, the Regional Trial Court to which the award was submitted for confirmation has acted without jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy remedy in the course of law.

Thus, Section 1 of Rule 65 provides:

SEC 1. Petition for Certiorari: - When any tribunal, board or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.

In the instant case, the respondent court erred in dismissing the special civil action for certiorari, it being from the pleadings and the evidence that the trial court lacked jurisdiction and/or committed grave abuse of discretion in taking cognizance of private respondent's motion to confirm the arbitral award and, worse, in confirming said award which is grossly and patently not in accord with the arbitration agreement, as will be hereinafter demonstrated.

IV

The nature and limits of the Arbitrators' powers.

As a rule, the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts.[29] Courts are without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators.[30] They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators, since any other rule would make an award the commencement, not the end, of litigation.[31] Errors of law and fact, or an erroneous decision of matters submitted to the judgment of the arbitrators, are insufficient to invalidate an award fairly and honestly made.[32] Judicial review of an arbitration is, thus, more limited than judicial review of a trial.[33]

Nonetheless, the arbitrators' awards is not absolute and without exceptions. The arbitrators cannot resolve issues

beyond the scope of the submission agreement.[34] The parties to such an agreement are bound by the arbitrators' award only to the extent and in the manner prescribed by the contract and only if the award is rendered in conformity thereto.[35] Thus, Sections 24 and 25 of the Arbitration Law provide grounds for vacating, rescinding or modifying an arbitration award. Where the conditions described in Articles 2038,[36] 2039[37] and 2040[38] of the Civil Code applicable to compromises and arbitration are attendant, the arbitration award may also be annulled.

In *Chung Fu Industries (Phils.) vs. Court of Appeals*,[39] we held:

x x x. It is stated explicitly under Art. 2044 of the Civil Code that the finality of the arbitrators' awards is not absolute and without exceptions. Where the conditions described in Articles 2038, 2039, and 2040 applicable to both compromises and arbitration are obtaining, the arbitrators' award may be annulled or rescinded. Additionally, under Sections 24 and 25, of the Arbitration Law, there are grounds for vacating, modifying or rescinding an arbitrator's award. Thus, if and when the factual circumstances referred to in the above-cited provisions are present, judicial review of the award is properly warranted.

Accordingly, Section 20 of R.A. 876 provides:

SEC. 20. Form and contents of award. - The award must be made in writing and signed and acknowledged by a majority of the arbitrators, if more than one; and by the sole arbitrator, if there is only one. Each party shall be furnished with a copy of the award. The arbitrators in their award may grant any remedy or relief which they deem just and equitable and within the scope of the agreement of the parties, which shall include, but not be limited to, the specific performance of a contract.

xxx

The arbitrators shall have the power to decide only those matters which have been submitted to them. The terms of the award shall be confined to such disputes. (Underscoring ours).

xxx.

Section 24 of the same law enumerating the grounds for vacating an award states:

SEC. 24. Grounds for vacating award. - In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

- (a) The award was procured by corruption, fraud, or other undue means; or
- (b) That there was evident partiality or corruption in arbitrators or any of them; or
- (c) That 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; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or any other misbehavior by which the rights of any party have been materially prejudiced; or
- (d) That 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. (Underscoring ours).

xxx.

Section 25 which enumerates the grounds for modifying the award provides:

SEC. 25. Grounds for modifying or correcting award - In anyone of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the controversy which was

arbitrated:

- (a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award; or
- (b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or
- (c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.

x x x.

Finally, it should be stressed that while a court is precluded from overturning an award for errors in determination of factual issues, nevertheless, if an examination of the record reveals no support whatever for the arbitrators' determinations, their award must be vacated.[40] In the same manner, an award must be vacated if it was made in "manifest disregard of the law." [41]

Against the backdrop of the foregoing provisions and principles, we find that the arbitrators came out with an award in excess of their powers and palpably devoid of factual and legal basis.

V

There was no financial structuring program; foreclosure of mortgage was fully justified.

The point need not be belabored that PNB and DBP had the legitimate right to foreclose of the mortgages of MMIC whose obligations were past due. The foreclosure was not a wrongful act of the banks and, therefore, could not be the basis of any award of damages. There was no financial restructuring agreement to speak of that could have constituted an impediment to the exercise of the bank's right to foreclose.

As correctly stated by Mr. Jose C. Sison, a member of the Arbitration Committee who wrote a separate opinion:

1. The various loans and advances made by DBP and PNB to MMIC have become overdue and remain unpaid. The fact that a FRP was drawn up is enough to establish that MMIC has not been complying with the terms of the loan agreement. Restructuring simply connotes that the obligations are past due that is why it is "restructurable";
2. When MMIC thru its board and the stockholders agreed and adopted the FRP, it only means that MMIC had been informed or notified that its obligations were past due and that foreclosure is forthcoming;
3. At that stage, MMIC also knew that PNB-DBP had the option of either approving the FRP or proceeding with the foreclosure. Cabarrus, who filed this case supposedly in behalf of MMIC should have insisted on the FRP. Yet Cabarrus himself opposed the FRP;
4. So when PNB-DBP proceeded with the foreclosure, it was done without bad faith but with honest and sincere belief that foreclosure was the only alternative; a decision further explained by Dr. Placido Mapa who testified that foreclosure was, in the judgment of PNB, the best move to save MMIC itself.

"Q : Now in this portion of Exh. "L" which was marked as Exh. "L-1", and we adopted as Exh. 37-A for the respondent, may I know from you, Dr. Mapa what you meant by "that the decision to foreclose was neither precipitate nor arbitrary"?

A : Well, it is not a whimsical decision but rather decision arrived at after weighty considerations of the information that we have received, and listening to the prospects which reported to us that we had assumed would be the premises of the financial rehabilitation plan was not materialized nor expected to materialized.

Q : And this statement that "it was premised upon the known fact" that means, it was referring to the decision to foreclose, was premised upon the known fact that the rehabilitation plan earlier approved by the stockholders was no longer feasible, just what is meant "by no longer feasible"?

A : Because the revenue that they were counting on to make the rehabilitation plan possible, was not anymore expected to be forthcoming because it will result in a short fall compared to the prices that were actually taking place in the market.

Q : And I supposed that was you were referring to when you stated that the production targets and assumed prices of MMIC's products, among other projections, used in the financial reorganization program that will make it viable were not met nor expected to be met?

A : Yes."

xxx

Which brings me to my last point in this separate opinion. Was PNB and DBP absolutely unjustified in foreclosing the mortgages?

In this connection, it can readily be seen and it cannot quite be denied that MMIC accounts in PNB-DBP were past due. The drawing up of the FRP is the best proof of this. When MMIC adopted a restructuring program for its loan, it only meant that these loans were already due and unpaid. If these loans were restructurable because they were already due and unpaid, they are likewise "forecloseable". The option is with the PNB-DBP on what steps to take.

The mere fact that MMIC adopted the FRP does not mean that DBP-PNB lost the option to foreclose. Neither does it mean that the FRP is legally binding and implementable. It must be pointed that said FRP will, in effect, supersede the existing and past due loans of MMIC with PNB-DBP. It will become the new loan agreement between the lenders and the borrowers. As in all other contracts, there must therefore be a meeting of minds of the parties; the PNB and DBP must have to validly adopt and ratify such FRP before they can be bound by it; before it can be implemented. In this case, not an iota of proof has been presented by the PLAINTIFFS showing that PNB and DBP ratified and adopted the FRP. PLAINTIFFS simply relied on a legal doctrine of promissory estoppel to support its allegation in this regard.[42]

Moreover, PNB and DBP had to initiate foreclosure proceedings as mandated by P.D. No. 385, which took effect on January 31, 1974. The decree requires government financial institutions to foreclose collaterals for loans where the arrearages amount to 20% of the total outstanding obligations. The pertinent provisions of said decree read as follows:

SEC. 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree to foreclose the collaterals and/or securities for any loan, credit, accommodations, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institutions concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtor, including the right to foreclosure on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%).

SEC. 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the

borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings. (Underscoring supplied.)

Private respondents' thesis that the foreclosure proceedings were null and void because of lack of publication in the newspaper is nothing more than a mere unsubstantiated allegation not borne out by the evidence. In any case, a disputable presumption exists in favor of petitioner that official duty has been regularly performed and ordinary course of business has been followed.[43]

VI

Not only was the foreclosure rightfully exercised by the PNB and DBP, but also, from the facts of the case, the arbitrators in making the award went beyond the arbitration agreement.

In their complaint filed before the trial court, private respondent Cabarrus, et al. prayed for judgment in their favor:

1. Declaring the foreclosure effected by the defendants DBP and PNB on the assets of MMIC null and void and directing said defendants to restore the foreclosed assets to the possession of MMIC, to render an accounting of their use and/or operation of said assets and to indemnify MMIC for the loss occasioned by its dispossession or the deterioration thereof;
2. Directing the defendants DBP and PNB to honor and perform their commitments under the financial reorganization plan which was approved at the annual stockholders' meeting of MMIC on 30 April 1984;
3. Condemning the defendants DBP and PNB, jointly and severally to pay the plaintiffs actual damages consisting of the loss of value of their investment amounting to not less than P80,000,000.00, the damnum emergens and lucrum cessans in such amount as may be establish during the trial, moral damages in such amount as this Honorable Court may deem just and equitable in the premises, exemplary damages in such amount as this Honorable Court may consider appropriate for the purpose of setting an example for the public good, attorney's fees and litigation expenses in such amounts as may be proven during the trial, and the costs legally taxable in this litigation.

Further, Plaintiffs pray for such other reliefs as may be just and equitable in the premises.[44]

Upon submission for arbitration, the Compromise and Arbitration Agreement of the parties clearly and explicitly defined and limited the issues to the following:

- (a) whether PLAINTIFFS have the capacity or the personality to institute this derivative suit in behalf of the MMIC or its directors;
- (b) whether or not the actions leading to, and including, the PNB-DBP foreclosure of the MMIC assets were proper, valid and in good faith.[45]

Item No. 8 of the Agreement provides for the period by which the Committee was to render its decision, as well as the nature thereof:

8. Decision. The committee shall issue a decision on the controversy not later than six (6) months from the date of its constitution.

In the event the committee finds that PLAINTIFFS have the personality to file this suit and extra-judicial foreclosure of the MMIC assets wrongful, it shall make an award in favor of the PLAINTIFFS (excluding DBP), in an amount as may be established or warranted by the evidence which shall be payable in Philippine Pesos at the time of the award. Such award shall be paid by the APT or its successor-in-interest within sixty (60) days from the date of the award in accordance with the provisions of par. 9 hereunder. x x x. The PLAINTIFFS' remedies under this Section shall be in addition to other remedies that may be available to the

PLAINTIFFS, all such remedies being cumulative and not exclusive of each other.

On the other hand, in case the arbitration committee finds that PLAINTIFFS have no capacity to sue and/or that the extra-judicial foreclosure is valid and legal, it shall also make an award in favor of APT based on the counterclaims of DBP and PNB in an amount as may be established or warranted by the evidence. This decision of the arbitration committee in favor of APT shall likewise finally settle all issues regarding the foreclosure of the MMIC assets so that the funds held in escrow mentioned in par. 9 hereunder will thus be released in full in favor of APT.[46]

The clear and explicit terms of the submission notwithstanding, the Arbitration Committee clearly exceeded its powers or so imperfectly executed them: (a) in ruling on and declaring valid the FRP; (b) in awarding damages to MMIC which was not a party to the derivative suit; and (c) in awarding moral damages to Jesus S. Cabarrus, Sr.

The arbiters overstepped their powers by declaring as valid proposed Financial Restructuring Program.

The Arbitration Committee went beyond its mandate and thus acted in excess of its powers when it ruled on the validity of, and gave effect to, the proposed FRP.

In submitting the case to arbitration, the parties had mutually agreed to limit the issue to the "validity of the foreclosure" and to transform the reliefs prayed for therein into pure money claims.

There is absolutely no evidence that the DBP and PNB agreed, expressly or impliedly, to the proposed FRP. It cannot be overemphasized that a FRP, as a contract, requires the consent of the parties thereto.[47] The contract must bind both contracting parties.[48] Private respondents even by their own admission recognized that the FRP had yet not been carried out and that the loans of MMIC had not yet been converted into equity.[49]

However, the arbitration Committee not only declared the FRP valid and effective, but also converted the loans of MMIC into equity raising the equity of DBP to 87%.[50]

The Arbitration Committee ruled that there was "a commitment to carry out the FRP"[51] on the ground of promissory estoppel.

Similarly, the principle of promissory estoppel applies in the present case considering as we observed, the fact that the government (that is Alfredo Velayo) was the FRP's proponent. Although the plaintiffs are agreed that the government executed no formal agreement, the fact remains that the DBP itself which made representations that the FRP constituted a "way out" for MMIC. The Committee believes that although the DBP did not formally agree (assuming that the board and stockholders' approvals were not formal enough), it is bound nonetheless if only for its conspicuous representations.

Although the DBP sat in the board in a dual capacity-as holder of 36% of MMIC's equity (at that time) and as MMIC's creditor-the DBP can not validly renege on its commitments simply because at the same time, it held interest against the MMIC.

The fact, of course, is that as APT itself asserted, the FRP was being "carried out" although apparently, it would supposedly fall short of its targets. Assuming that the FRP would fail to meet its targets, the DBP-and so this Committee holds-can not, in any event, brook any denial that it was bound to begin with, and the fact is that adequate or not (the FRP), the government is still bound by virtue of its acts.

The FRP, of course, did not itself promise a resounding success, although it raised DBP's equity in MMIC to 87%. It is not excuse, however, for the government to deny its commitments.[52]

Atty. Sison, however, did not agree and correctly observed that:

But the doctrine of promissory estoppel can hardly find application here. The nearest that there can be said of

any estoppel being present in this case is the fact that the board of MMIC was, at the time the FRP was adopted, mostly composed of PNB and DBP representatives. But those representatives, singly or collectively, are not themselves PNB or DBP. They are individuals with personalities separate and distinct from the banks they represent. PNB and DBP have different boards with different members who may have different decisions. It is unfair to impose upon them the decision of the board of another company and thus pin them down on the equitable principle of estoppel. Estoppel is a principle based on equity and it is certainly not equitable to apply it in this particular situation. Otherwise the rights of entirely separate, distinct and autonomous legal entities like PNB and DBP with thousands of stockholders will be suppressed and rendered nugatory.[53]

As a rule, a corporation exercises its powers, including the power to enter into contracts, through its board of directors. While a corporation may appoint agents to enter into a contract in its behalf, the agent, should not exceed his authority.[54] In the case at bar, there was no showing that the representatives of PNB and DBP in MMIC even had the requisite authority to enter into a debt-for-equity swap. And if they had such authority, there was no showing that the banks, through their board of directors, had ratified the FRP.

Further, how could the MMIC be entitled to a big amount of moral damages when its credit reputation was not exactly something to be considered sound and wholesome. Under Article 2217 of the Civil Code, moral damages include besmirched reputation which a corporation may possibly suffer. A corporation whose overdue and unpaid debts to the Government alone reached a tremendous amount of P22 Billion Pesos cannot certainly have a solid business reputation to brag about. As Atty. Sison in his separate opinion persuasively put it:

Besides, it is not yet a well settled jurisprudence that corporations are entitled to moral damages. While the Supreme Court may have awarded moral damages to a corporation for besmirched reputation in *Mambulao vs. PNB* 22 SCRA 359, such ruling cannot find application in this case. It must be pointed out that when the supposed wrongful act of foreclosure was done, MMIC's credit reputation was no longer a desirable one. The company then was already suffering from serious financial crisis which definitely projects an image not compatible with good and wholesome reputation. So it could not be said that there was a "reputation" besmirched by the act of foreclosure.[55]

The arbiters exceeded their authority in awarding damages to MMIC, which is not impleaded as a party to the derivative suit.

Civil Code No. 9900 filed before the RTC being a derivative suit, MMIC should have been impleaded as a party. It was not joined as a party plaintiff or party defendant at any stage of the proceedings. As it is, the award of damages to MMIC, which was not a party before the Arbitration Committee, is a complete nullity.

Settled is the doctrine that in a derivative suit, the corporation is the real party in interest while the stockholder filing suit for the corporation's behalf is only nominal party. The corporation should be included as a party in the suit.

An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. x x x.[56]

It is a condition sine qua non that the corporation be impleaded as a party because-

x x x. Not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation and in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporations must be joined as party because it is its cause of action that is being litigated and because judgment must be a res adjudicata against it.[57]

The reasons given for not allowing direct individual suit are:

- (1) x x x "the universally recognized doctrine that a stockholder in a corporation has no title legal or equitable to the corporate property; that both of these are in the corporation itself for the benefit of the stockholders." In other words, to allow shareholders to sue separately would conflict with the separate corporate entity principle;
- (2) x x x that the prior rights of the creditors may be prejudiced. Thus, our Supreme Court held in the case of *Evangelista v. Santos*, that "the stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of section 16 of the Corporation Law xxx;"
- (3) the filing of such suits would conflict with the duty of the management to sue for the protection of all concerned;
- (4) it would produce wasteful multiplicity of suits; and
- (5) it would involve confusion in ascertaining the effect of partial recovery by an individual on the damages recoverable by the corporation for the same act.[58]

If at all an award was due MMIC, which it was not, the same should have been given sans deduction, regardless of whether or not the party liable had equity in the corporation, in view of the doctrine that a corporation has a personality separate and distinct from its individual stockholders or members. DBP's alleged equity, even if it were indeed 87%, did not give it ownership over any corporate property, including the monetary award, its right over said corporate property being a mere expectancy or inchoate right.[59] Notably, the stipulation even had the effect of prejudicing the other creditors of MMIC.

The arbiters, likewise, exceeded their authority in awarding moral damages to Jesus Cabarrus, Sr.

It is perplexing how the Arbitration Committee can in one breath rule that the case before it is a derivative suit, in which the aggrieved party or the real party in interest is supposedly the MMIC, and at the same time award moral damages to an individual stockholder, to wit:

WHEREFORE, premises considered, judgment is hereby rendered:

xxx.

3. Ordering the defendant to pay to the plaintiff, Jesus S. Cabarrus, Sr., the sum of P10,000,000.00, to be satisfied likewise from the funds held under escrow pursuant to the Escrow Agreement dated April 22, 1988 or to such subsequent escrow agreement that would supersede it, pursuant to paragraph (9), Compromise and Arbitration Agreement, as and for moral damages; x x x[60]

The majority decision of the Arbitration Committee sought to justify its award of moral damages to Jesus S. Cabarrus, Sr. by pointing to the fact that among the assets seized by the government were assets belonging to Industrial Enterprise Inc. (IEI), of which Cabarrus is the majority stockholder. It then acknowledge that Cabarrus had already recovered said assets in the RTC, but that "he won no more than actual damages. While the Committee cannot possibly speak for the RTC, there is no doubt that Jesus S. Cabarrus, Sr., suffered moral damages on account of that specific foreclosure, damages the Committee believes and so holds, he Jesus S. Cabarrus, Sr., may be awarded in this proceeding." [61]

Cabarrus' cause of action for the seizure of the assets belonging to IEI, of which he is the majority stockholder, having been ventilated in a complaint he previously filed with the RTC, from which he obtained actual damages, he was barred *res judicata* from filing a similar case in another court, this time asking for moral damages which he

failed to get from the earlier case.[62] Worse, private respondents violated the rule against non-forum shopping.

It is a basic postulate that s corporation has a personality separate and distinct from its stockholders.[63] The properties foreclosed belonged to MMIC, not to its stockholders. Hence, if wrong was committed in the foreclosure, it was done against the corporation. Another reason is that Jesus S. Cabarrus, Sr. cannot directly claim those damages for himself that would result in the appropriation by, and the distribution to, him part of the corporation's assets before the dissolution of the corporation and the liquidation of its debts and liabilities. The Arbitration Committee, therefore, passed upon matters not submitted to it. Moreover, said cause of action had already been decided in a separate case. It is thus quite patent that the arbitration committee exceeded the authority granted to it by the parties' Compromise and Arbitration Agreement by awarding moral damages to Jesus S. Cabarrus, Sr.

Atty. Sison, in his separate opinion, likewise expressed befuddlement to the award of moral damages to Jesus S. Cabarrus, Sr.:

It is clear and it cannot be disputed therefore that based on these stipulated issues, the parties themselves have agreed that the basic ingredient of the causes of action in this case is the wrong committed on the corporation (MMIC) for the alleged illegal foreclosure of its assets. By agreeing to this stipulation, PLAINTIFFS themselves (Cabarrus, et al.) admit that the cause of action pertains only to the corporation (MMIC) and that they are filing this for and in behalf of MMIC.

Perforce this has to be so because it is the basic rule in Corporation Law that "the shareholders have no title, legal or equitable to the property which is owned by the corporation (13 Am. Jur. 165; Pascual vs. Oresco, 14 Phil. 83). In *Ganzon & Sons vs. Register of Deeds*, 6 SCRA 373, the rule has been reiterated that 'a stockholder is not the co-owner of corporate property.' Since the property or assets foreclosed belongs [sic] to MMIC, the wrong committed, if any, is done against the corporation. There is therefore no direct injury or direct violation of the rights of Cabarrus et al. There is no way, legal or equitable, by which Cabarrus et al. could recover damages in their personal capacities even assuming or just because the foreclosure is improper or invalid. The Compromise and Arbitration Agreement itself and the elementary principles of Corporation Law say so. Therefore, I am constrained to dissent from the award of moral damages to Cabarrus.[64]

From the foregoing discussions, it is evident that, not only did the arbitration committee exceed its powers or so imperfectly execute them, but also, its findings and conclusions are palpably devoid of any factual basis and in manifest disregard of the law.

We do not find it necessary to remand this case to the RTC for appropriate action. The pleadings and memoranda filed with this Court, as well as in the Court of Appeals, raised and extensively discussed the issues on the merits. Such being the case, there is sufficient basis for us to resolve the controversy between the parties anchored on the records and the pleadings before us.[65]

WHEREFORE, the Decision of the Court of Appeals dated July 17, 1995, as well as the Orders of the Regional Trial Court of Makati, Branch 62, dated November 28, 1994 and January 19, 1995, is hereby REVERSED and SET ASIDE, and the decision of the Arbitration Committee is hereby VACATED.

SO ORDERED

Romero (Chairman) J., Please see Dissenting Opinion.

Purisma, J., concur and also joined the separate concurring opinion of J. Pardo.

Pardo, J., see separate concurring opinion.

- [1] Rollo, pp. 261-262.
- [2] Id., at 262-263.
- [3] CA Rollo, p. 130.
- [4] Rollo, p. 264.
- [5] Ibid.
- [6] Id., at 261.
- [7] Id., at 265.
- [8] CA Rollo, p. 134.
- [9] Id., at 149.
- [10] CA Rollo, pp. 134-135.
- [11] Id., at 135-136.
- [12] Rollo, p. 266.
- [13] CA Rollo, pp. 109-110.
- [14] Id., at 111-112.
- [15] Id., at 111.
- [16] Id., at 168-172. Underscoring in the original.
- [17] Id., at 287-288.
- [18] CA Rollo, pp. 51-52.
- [19] Rollo, p. 38.
- [20] CA Rollo, p. 18.
- [21] Rollo, pp. 21-22
- [22] CA Rollo, p. 11
- [23] WEST'S LEGAL THESAURUS DICTIONARY, 1986 ed.
- [24] Bengson v.Chan, 75 SCRA 112 [1972].
- [25] La Naval Drug Co. v. CA, 236 SCRA 78 [1994].
- [26] Ibid.

[27] 23 SCRA 29 [1968].

[28] Entitled "AN ACT TO AUTHORIZED THE MAKING OF ARBITRATION AND SUBMISSION AGREEMENTS, TO PROVIDE FOR THE APPOINTMENT OF ARBITRATORS AND THE PROCEDURE FOR ARBITRATION IN CIVIL CONTROVERSIES, AND OTHER PURPOSES," otherwise known as "The Arbitration Law."

[29] The Hartbridge, 62F. 2d 72 [1932].

[30] Jame Richardson & Sons v. W.E. Hedger Transp. Corp., 98F. 2d 55 [1938].

[31] General Construction Co. v. Hering Realty Co., 201 F. Supp. 487 [1962].

[32] Coleman Company v. International Union, Etc., 317 P. 2d 831 [1957].

[33] Bernhardt v. Polygraphic Co., 100 L ed 199 [1956].

[34] Allstate Insurance Company v. Cook, 519 P. 2d 66 [1974].

[35] Coleman Company v. International Union, Etc., supra: Local 63, Textile Workers Union v. Cheney Brothers, 109 A. 2d 240 [1954]

[36] ART. 2038 A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code.

[37] ART. 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties.

But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents.

[38] ART 2040. If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise may be rescinded.

[39] 206 SCRA 545, 553-555 [1992].

[40] Storer Broadcasting v. American Federation of Tel., 600 F. 2d 45 [1979].

[41] See Wilko v Swan, 346 U.S. 427, 74 S. Ct. 182, 98 L. 168 [1953].

Note: U.S. laws on voluntary arbitration as alternative mode of setting disputes provide substantially similar grounds to vacate an award as those in Philippine laws. Under the Uniform Arbitration Act, the grounds for vacation of an award are as follows:

- Procurement by corruption, fraud, or other undue means
- Partiality on the part of an arbitrator appointed as neutral
- Misconduct or corruptions of the arbitrators
- Exceeding of powers by the arbitrators
- Refusal of arbitrators to hear material evidence, or to give a postponement where there was sufficient cause
- Prejudicial misconduct of the hearing
- Lack of a valid arbitration agreement, the issue not having been determined
- Similar grounds for vacation of the award are stated in the United States Arbitration Act:
- Corruption, fraud or undue means.

- Evident partiality or corruption.
- Misconduct in refusal to postpone the hearing or to hear material evidence, or any other misbehavior prejudicial to the rights of any party.
- The arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award was not made. [4 Am Jur 2d., 235-236]

[42] CA Rollo, pp. 176-179.

[43] Sec. 3 (m) and (q), Rule 131, Rules of Court.

[44] CA Rollo, pp. 76-77. Underscoring in the original.

[45] Id., at 111-112.

[46] Id., at 102. Underscoring in the original.

[47] Article 1318, Civil Code.

[48] Article 1308, id.

[49] CA Rollo p. 140.

[50] In the computation of the award the Arbitration Committee deducted the share of DBP, thus:

As this Committee holds that the FRP is valid, DBP's equity in MMIC is raised to 87%. So pursuant to the provision of the Compromise and Arbitration Agreement, the 87% equity of DBP is hereby deducted from the actual damages x x x. (See note 16.)

[51] CA Rollo, p. 137.

[52] Id., at 148-150.

[53] Id., at 179-180.

[54] Article 1887, Civil Code.

[55] CA Rollo, p. 178.

[56] Gamboa vs. Victoriano, 90 SCRA 40, 47 [1979].

[57] Agbayani's Commercial Law of the Philippines, Vol. III, p. 566, citing Ballantine, pp. 366-367.

[58] Id., at 565-566.

[59] See Evangelista vs. Santos, 86 Phil. 387 [1950].

[60] CA Rollo, pp. 170-172.

[61] Id., at 167.

[62] Sec 4 of the Rules of the Court (before its amendment by the 1998 Rules of Court Procedure) provides:

Sec. 4. Effect of splitting a single cause of action. - If two or more complaints are brought for different parts of a single cause of action, the filing of the first may be pleaded in abatement of the other or others, in accordance with section 1(e) of Rule 16, and a judgment upon the merits in any one is available as a bar to the other.

[63] Article 2, Corporation Code.

[64] CA Rollo, pp. 174-175. Underscoring in the original.

[65] *Caneda, Jr. vs. Court of Appeals*, 181 SCRA 762 [1990]; *Quisumbing vs. Court of Appeals*, 122 SCRA 703 [1983]; *Board of Liquidators vs. Zulueta*, 115 SCRA 548 [1982].

SEPARATE CONCURRING OPINION

PARDO, J.:

I concur. However, I wish to add a few points not particularly emphasized in the majority opinion.

The petition before the Court is one for review via certiorari under Rule 45 of the Revised Rules of Court seeking to set aside the resolution of the Court of Appeals that denied due course and dismissed APT's petition for certiorari to annul the proceedings had before the Regional Trial Court, Makati, Branch 62, in Civil Case No. 9900, particularly the order confirming the arbitration award, reading as follows:

"WHEREFORE, premises considered, and in the light of the parties Compromise and Arbitration Agreement dated October 6, 1992, the Decision of the Arbitration Committee promulgated on November 24, 1993, as affirmed in a Resolution dated July 26, 1994, and finally settled and clarified in the Separate Opinion dated September 2, 1994 of Committee Member Elma, and the pertinent provisions of RA 876, also known as the Arbitration Law, this Court GRANTS PLAINTIFFS' APPLICATION AND THUS CONFIRMS THE ARBITRATION AWARD, AND JUDGMENT IS HEREBY RENDERED:

(a) Ordering the defendant APT to the Marinduque Mining and Industrial Corporation (MMIC), except the DBP, the sum of P3,811,757,425.00, as and for actual damages under escrow in the amount of P503,000,000.00 pursuant to the Escrow Agreement dated April 22, 1988. The balance of the award, after the escrow funds are fully applied, shall be executed against the APT;

(b) Ordering the defendant to pay to the MMIC, except the DBP, the sum of P13,000,000.00 as and for moral and exemplary damages;

(c) Ordering the defendant to pay to Jesus S. Cabarrus, Sr., the sum of P10,000,000.00 as and for moral damages; and

(d) Ordering the defendant to pay the herein plaintiffs/applicants/movants the sum of P1,705,410.00 as arbitration costs.

In reiteration of the mandates of Stipulation No. 10 and Stipulation No. 8 paragraph 2 of the Compromise and Arbitration Agreement, and the final edict of the Arbitration Committee's decision, and with this Court's Confirmation, the issuance of the Arbitration Committee's Award shall henceforth be final and executory.

SO ORDERED."

Originally instituted on February 8, 1985, in the Regional Trial Court, Makati, Metro Manila, private respondents, Jesus S. Cabarrus, Sr., et al., a few of the numerous minority stockholders of Marinduque Mining and Industrial Corp. (hereafter MMIC), filed a complaint, later amended on March 13, 1985, for annulment of foreclosure, specific performance and damages against the Philippine National bank (PNB) and the Development Bank of the Philippines (DBP) alleging that in 1984, the PNB and DBP effected illegally the extra-judicial foreclosure of real estate and chattel mortgages constituted in their favor by the MMIC of the latter's assets of real estate and chattels, to satisfy an obligation amounting to P22,668,537,770.05, and that prior to the extra-judicial foreclosure, PNB and DBP had agreed to a financial reorganization plan of MMIC to reduce the latter's indebtedness to P3 billion and to convert the balance of its obligation into equity.

In their joint answer to the amended complaint, defendants PNB and DBP denied the material allegations of the

amended complaint but admitted that in August and September, 1984, they foreclosed extra-judicially the mortgages on MMIC's assets, with the qualification that the correct amount of obligation owed by MMIC as of July 15, 1984, was P22,083,313,168.29; that the foreclosure of the mortgages was legal and valid as mandated by Presidential Decree No. 385 and by the provisions of the mortgage trust agreements between PNB, DBP and MMIC; and, that the plaintiffs therein, herein respondents Cabarrus, et al., were not entitled to actual and moral damages.

In the course of the trial of Civil Case No. 9900, plaintiffs Jesus S. Cabarrus, et al. and the Asset Privatization Trust (APT), as successor-in-interest of the DBP and PNB's interest in MMIC accounts, entered into a compromise and arbitration agreement dated October 6, 1992, whereby they "agreed to move for the dismissal of the case, to transform the reliefs prayed for therein into pure money claims and to submit the controversy to arbitration under Republic Act (RA) 876 before a committee composed of three members" limiting the issues to two, namely:

"(a) whether plaintiffs have the capacity or the personality to institute this derivative suit in behalf of the MMIC or its directors, and

"(b) whether or not the actions leading to, and including, the PNB-DBP foreclosure of the MMIC assets were proper, valid and in good faith."

Thus, the parties created an Arbitration Committee composed of three (3) members, one (1) representative of the plaintiff; one (1) representative of APT; and the Chairman to be agreed upon by both parties. Consequently, APT nominated Atty. Jose C. Sison, a trustee of APT and its counsel; MMIC nominated former Justice of the Court of Appeals Magtanggol Elma; and they selected retired Supreme Court Justice Abraham F. Sarmiento as Chairman.

After conducting hearings and receiving voluminous evidence, on November 24, 1993, the Arbitration Committee released what purports to be its decision penned by the Chairman, the dispositive portion of which reads as follows:

"DISPOSITION

"WHEREFORE, premises considered, judgment is hereby rendered:

"1. Ordering the defendant to pay the Marinduque Mining and Industrial Corporation, except the DBP, the sum of P2,531,635,425.02 with interest thereon at the legal rate of six (6%) per cent per annum reckoned from August 3, 9, and 24, 1984, *pari passu* as and for actual damages. Payment of these actual damages shall be offset by APT from the outstanding and unpaid loans of MMIC with DBP and PNB, which have not been converted into equity. Should there be any balance due to MMIC after the offsetting, the same shall be satisfied from the funds representing the purchase price of the sale of the shares of Island Cement Corporation in the amount of P503,000,000.00 held under escrow pursuant to the Escrow Agreement dated April 22, 1988 or to such subsequent escrow agreement that would superseded it pursuant to paragraph (9) of the Compromise and Arbitration Agreement;

"2 Ordering the defendant to pay to the Marinduque Mining and Industrial Corporation, except the DBP, the sum of P13,000,000.00, as and for moral and exemplary damages. Payment of these moral and exemplary damages shall be offset by APT from the outstanding and unpaid loans of MMIC with DBP and PNB, which have not been converted into equity. Should there be any balance due to MMIC after the offsetting, the same shall be satisfied from the funds representing the purchase price of the sale of the shares of island Cement Corporation in the amount of P503,000,000.00 held under escrow pursuant to the Escrow Agreement dated April 22, 1988 or to such subsequent escrow agreement that would superseded it pursuant to paragraph (9) of the Compromise and

Arbitration Agreement;

"3. Ordering the defendant to pay to the plaintiff, Jesus S. Cabarrus, Sr., the sum of P10,000,000.00, to be satisfied likewise from the funds held under escrow pursuant to the Escrow Agreement dated April 22, 1988 or to such subsequent escrow agreement that would supersede it, pursuant to paragraph (9), Compromise and Arbitration Agreement, as and for moral damages; and

"4. Ordering the defendant to pay arbitration costs.

"This Decision is FINAL and EXECUTORY.

"IT IS SO ORDERED."

Member Elma submitted a separate concurring and dissenting opinion reading as follows:

"ELMA, concurring and dissenting:

"I am in complete agreement with the findings of the Decision on the principal issues submitted for the Committee's resolution, viz: that plaintiffs Cabarrus, et al., have the capacity or the personality to institute this derivative suit in behalf of Marinduque Mining and Industrial Corporation (MMIC) and that the actions leading to, and including the PNB-DBP foreclosure of the MMIC assets were improper, invalid and/or not done in good faith. Consequently, there is concurrence on my part to the award of actual, moral and exemplary damages to MMIC, and moral damages to plaintiff Jesus S. Cabarrus, Sr.

"However, I am unable to agree with and, therefore, regretfully dissent as to the manner or method of computation and amount of actual damages awarded to MMIC, particularly set forth in paragraph 1 of the dispositive portion of the Decision.

x x x

"Considering that under the "Compromise and Arbitration Agreement", the parties agreed that their respective claims be reduced to purely pecuniary/money claims, then MMIC and/or plaintiffs on behalf of all the other stockholders of MMIC are entitled to actual or compensatory damages equivalent to the present value of their equity over the MMIC assets, i.e. the total stockholders' equity of P20,826,700,952.00 as of December 31, 1992. Further, since as held in the Decision that the DBP would have an 87% equity in MMIC as a consequence of the finding that the Financial Rehabilitation Plan (FRP) is valid (p. 64 of the Decision), then the amount of P18,119,229,828.24 (equivalent to DBP's 87% equity) should be deducted from the total stockholders' equity of P20,826,700,952.00 leaving a net amount of P2,707,471,123.76 to be awarded to MMIC (excluding DBP's share) as actual or compensatory damages.

"It is to be noted that defendant APT did not present any evidence rebutting the figures and computations made by witness Pastor. Since the Decision finds the FRP valid, then the stockholders of MMIC (excluding DBP) should be placed in the same position that they would have been where not for the fact that the FRP was improperly and illegally aborted by PNP/DBP. Accordingly, it is my submission that defendant APT should be ordered to pay MMIC (excluding DBP) the sum of P2,707,471,123.76 with legal interest thereon per annum from August 3, 1984 as and for actual damages.

x x x"

Member Sison submitted a separate opinion reading as follows:

"SEPARATE OPINION

"x x x

"It is clear and it cannot be disputed therefore that based on these stipulated issues, the parties themselves have agreed that the basic ingredient of the causes of action in this case is the wrong committed on the corporation (MMIC) for the alleged illegal foreclosure of its assets. By agreeing to this stipulation, PLAINTIFFS themselves (Cabarrus, et al.) admit that the cause of action pertains only to the corporation (MMIC) and that they are filing this for and in behalf of MMIC.

"Perforce this has to be so because it is basic rule in Corporation Law that "the shareholders have no title, legal or equitable to the property which is owned by the corporation (13 Am. Jur. 165; Pascual vs. Oresco, 14 Phil. 83). In *Ganzon & Sons vs. Register of Deeds*, 6 SCRA 373, the rule has been reiterated that "a stockholder is not the co-owner of the corporate property." Since the property or assets foreclosed belongs to MMIC, the wrong committed, if any, is done against the corporation. There is therefore no direct injury or direct violation of the rights of Cabarrus et al. There is no way, legal or equitable, by which Cabarrus et al. could recover damages in their personal capacities even assuming or just because the foreclosure is improper or invalid. The Compromise and Arbitration Agreement itself and the elementary principles of Corporation Law say so. Therefore, I am constrained to dissent from the award of moral damages to Cabarrus.

"Neither could I agree to the award of moral damages to MMIC. The acts complained of here in which the Committee based its award of moral damages to MMIC is the foreclosure of the various real estate and chattel mortgages. The majority of the Committee believes that these foreclosures constitute a violation of an agreement forged between PNB-DBP, on one hand, and MMIC, on the other, regarding the restructuring of the various past due loans of MMIC to what has been termed as the Financial Restructuring Program (FRP).

x x x

"In this connection, it can readily be seen and it cannot quite be denied that MMIC accounts in PNB-DBP were past due. The drawing up of the FRP is the best proof of this. When MMIC adopted a restructuring program for its loan, it only meant that these loans were already due and unpaid. If these loans were restructurable because they were already due and unpaid, they are likewise "forecloseable". The option is with the PNB-DBP on what steps to take.

"The mere fact that MMIC adopted the FRP does not mean that DBP-PNB lost the option to foreclose. Neither does it mean that the FRP is legally binding and implementable. It must be pointed that said FRP will, in effect, supersede the existing and past due loans of MMIC with PNB-DBP. It will become the new loan agreement between the lenders and the borrowers. As in all other contracts, there must therefore be a meeting of the minds of the parties; the PNB and DBP must have to validity adopt and ratify such FRP before they can be bound by it; before it can be implemented. In this case, not an iota of proof has been presented by the PLAINTIFFS showing that PNB and DBP ratified and adopted the FRP. PLAINTIFFS simply relied on a legal doctrine of promissory estoppel to support its allegations in this regard.

x x x

"All told, PNB and DBP had the right to foreclose and were justified in doing so. But were the foreclosure legally done or carried out? Were the requirements of notice, posting and publication required by Acts 3135 and 1508 substantially complied with?

x x x

"I cannot, however, concur with the Committees for holding that such minor taint of illegality in the foreclosure is enough to justify the award of damages amounting to P19,486,118,654.00. "Rules of law respecting the recovery of damages are framed with reference to just rights of both parties, not merely what may be right for an injured person to receive, but also what is just to compel the other party to pay, to accord just compensation for the injury" (Kennings vs. Kline Ind. 602). Following this universally accepted rule on damages, I do not believe it is just to compel APT to pay such huge amount for such a minor technical infraction.

"But while I do not agree with this pronouncement of the Committee, I nevertheless concur with the result as far as the disposition of the award for actual damages is concerned. I agree that DEFENDANT APT can, and is still entitled to, collect the outstanding obligations of MMIC to PNB and DBP amounting to P22,668,537,770.05 with interest thereon as stipulated in the loan documents from the date of foreclosure until the time they are fully paid. The resultant effect of such a disposition is that APT can offset the said obligation due from MMIC such that ultimately no damages will be due and payable to MMIC. As there may be damage without injury, there can be injury without damage (15 Am. Jur., p. 388). This case is a case of "injury without damage".

Both parties moved for reconsideration of the "decision" of the Arbitration Committee. In addition, respondents Cabarrus et al. filed a motion for clarification and to re-open the case to receive evidence. In a resolution dated July 26, 1984, with one member dissenting, the Arbitration Committee denied the motions for reconsideration of both parties as well as all other pending motions.

On October 17, 1984, respondents Cabarrus et al. filed directly with the Regional Trial Court, Makati, Branch 62, in the same Civil Case No. 9900, a pleading entitled application/motion for confirmation of arbitral award.

On November 4, 1994, petitioner APT filed an opposition and motion to vacate judgment, contending that respondent's motion was improperly filed with the same branch of the court in Civil Case No. 9900, which was previously dismissed, and that the motion should have been filed as a separate special proceedings in the Regional Trial Court to be docketed by the Clerk of Court.

Nonetheless, acting on the application/motion, Judge Roberto C. Diokno, presiding judge, Regional Trial Court, Makati, Branch 62, on November 28, 1994, issued an order granting plaintiffs' application confirming the arbitration award, and rendering judgment as set out in the opening paragraph of this opinion.

On December 12, 1994, petitioner APT received notice of the lower court's order. On December 27, 1994, petitioner APT filed a motion for reconsideration. By order dated January 18, 1995, the trial court denied the motion. On February 7, 1995, respondents Cabarrus, et al. filed a motion for execution and appointment of custodian of proceeds of execution. Petitioner opposed the motion. It is apparently still unresolved.

On February 15, 1995, petitioner APT filed with the Court of Appeals an original special civil action for certiorari with prayer for temporary restraining order or preliminary injunction[1] to annul the two (2) orders of the respondent Regional Trial Court above-mentioned confirming the arbitral award and denying its reconsideration.

The issue presented in said petition was whether respondent Judge Roberto C. Diokno, Regional Trial Court, Makati, Branch 62 had jurisdiction to act on private respondents' application/motion for confirmation of arbitral award in the same Civil Case No. 9900, which had been dismissed earlier on motion of the parties, and thus the court gravely abused its discretion in confirming the arbitral award.

In its decision promulgated on July 17, 1995, the Court of Appeals denied due course and dismissed the petition for certiorari for lack of merit.

Hence, this petition for review filed on September 07, 1995.[2]

The petition is impressed with merit.

First, the Regional Trial Court, Makati, Branch 62, did not validly acquire jurisdiction over the case by respondent's filing of a mere motion in the same Civil Case No. 9900 because the case had been dismissed earlier and such dismissal had become final and unappealable. As heretofore stated, on October 6, 1992, the parties entered into a compromise and arbitration agreement expressly providing that they "have agreed to withdraw their respective claims from the Trial Court and to resolve their dispute through arbitration by praying to the Trial Court to issue a compromise judgment based on this Compromise and Arbitration Agreement."

Clearly, the parties had withdrawn the action then pending with the Regional Trial Court, Makati, Branch, 62, in Civil Case No. 9900, and agreed that they would submit their dispute to arbitration and reduce their respective claims to "purely money claims", "waiving and foregoing all other forms of reliefs which they prayed for or could have prayed for in Civil Case No. 9900." The parties "agreed to move for the dismissal of the case, to transform the reliefs prayed for therein to pure money claims and submit the controversy to arbitration under Republic Act (RA) 876 before a committee composed of three members."

In its order dated October 12, 1992, in Civil Case No. 9900, the trial court presided over by respondent Judge categorically decreed that "The complaint is hereby dismissed". Such disposition terminated the case finally and irretrievably disposed of the same.[3] The term "dismissed" has a definite meaning in law. "A judgment of 'dismissed', without qualifying words indicating a right to take further proceedings, is presumed to be dismissed on the merits".[4] The dismissal could not have been a suspension of action provided for in the arbitration law, Republic Act No. 876.

Upon the finality of such order of dismissal, the case could no longer be revived by mere motion. The trial court had lost its authority over the case.[5] We cite as squarely applicable the decision where this Court emphatically said "But after the dismissal has become final through the lapse of the fifteen-day reglementary period, the only way by which the action may be resuscitated or 'revived,' is by the institution of a subsequent action through the filing of another complaint and the payment of the fees prescribed by law. This is so because upon attainment of finality of a dismissal through the lapse of said reglementary period, the Court loses jurisdiction and control over it and can no longer make any disposition in respect thereof inconsistent with such dismissal"[6] It is true that the confirmation of an arbitral award is within the jurisdiction over the subject matter of a regional trial court. Such jurisdiction must be invoked by proper motion as a special proceedings with notice to the parties filed in the proper court with the clerk of court (and upon payment of the prescribed fees).[7]

Second, the Arbitration Committee did not actually reach a valid decision on the subject controversy.

In the purported decision dated November 24, 1994, penned by Chairman Sarmiento, the Committee ordered petitioner APT to pay to MMIC the sum of P2,531,635,425.02, with interest thereon at the legal rate at 6% per annum August 3, 9 and 24, 1984, *pari passu* as actual damages; to pay MMIC P13 million, as moral and exemplary damages, and to pay Jesus S. Cabarrus, Sr. P10 million, as moral damages.

In the concurring and dissenting opinion of Member Elma, he agreed with the finding on the principal issue submitted for resolution. However, he dissented as to the manner or method of computation and amount of actual damages awarded to MMIC. He submitted that APT should be ordered to pay MMIC the sum of P2,707,471,123.76, with legal interest thereon per annum from August 3, 1984, as actual damages.

In his separate opinion, Member Sison stated that he concurred with the result as far as the disposition of the award of actual damages is concerned. He agreed that APT is entitled to collect the outstanding obligations of MMIC to PNB and DBP amounting to P22,668,537,770.05, with interest as stipulated in the loan documents from

the date of foreclosure until fully paid. The resultant effect is that APT can offset said obligation due from MMIC such that ultimately no damages shall be due and payable to MMIC. He was against the award of moral and exemplary damages to MMIC and Jesus S. Cabarrus, Sr.

It is obvious that the disposition in Chairman Sarmiento's award and the concurring and dissenting opinion of Member Elma do not tally and, hence, because of the dissent of Member Sison, the Arbitration Committee did not reach a majority decision constituting a valid judgment or fallo of the Committee.

"The powers and duties of boards and commissions may not be exercised by the individual members separately. Their acts are official only when done by the members convened in session upon a concurrence of at least a majority and with at least a quorum present." [8]

Respondent Cabarrus, et al. considered the disposition as confusing and incomplete as to the award of damages and thereby requiring the reception of further evidence as to necessitate the re-opening of hearings on the case. On May 20, 1994, they filed a motion for clarification seeking answer from the arbitration committee as to the final amount of actual damages the MMIC is entitled to, and, on June 9, 1994, they filed a motion to reopen the case and to receive evidence.

Even the Arbitration Committee's resolution of the various motions for reconsideration and other reliefs was conflicting. For Chairman Sarmiento, respondents' motion for reconsideration, dated December 15, 1993, and petitioner's motion for reconsideration dated January 3, 1994, respondents' motion for clarification dated June 8, 1994, and respondents' urgent motion to re-open the case and to receive evidence were all DENIED for lack of merit.

Member Elma dissented from the denial of the parties' motion for reconsideration, reiterating that MMIC is entitled to actual damages in the sum of P2,707,471,123.76, with legal interest thereon from August 3, 1984.

Member Azura (substituting Sison) concurred with the Chairman in denying respondents' motion for reconsideration, motion for clarification to re-open the case but favored granting petitioner's (APT) motion for reconsideration.

WHEREFORE, I vote to GRANT the petition at bench, reverse the decision of the Court of Appeals[9] as well as the orders of the Regional Trial Court, Makati, Branch 62, in Civil Case No. 9900, vacate the "decision" of the Arbitration Committee dated November 24, 1993, finally, ENJOIN the trial court from further acting on the case.

[1] Docketed as CA-G.R. SP No. 36484.

[2] On August 28, 1998, the Court granted petitioner an extension of thirty days from the expiration of the reglementary period within which to file a petition for certiorari.

[3] *Olympia International, Inc. vs. Court of Appeals*, 180 SCRA 354; *Paz Bacabac vs. Delfin*, 1 SCRA 1194; *Aquizap vs. Basilio*, 21 SCRA 1435.

[4] *Black's Law Dictionary*, Fourth Edition, 1951 edition, p. 556.

[5] Cf. *Isasi vs. Republic*, 101 Phil. 405; *Olympia International, Inc. vs. Court of Appeals*, supra.

[6] *Ortigas & Company Limited Partnership vs. Judge Tirso Velasco*; *Dolores V. Molina vs. Hon. Presiding Judge, RTC, Quezon City, Branch 105*, 234 SCRA 455 [1994].

[7] R.A. No. 876, Sections 22, 23.

[8] 42 Am. Jur. 389, Sec. 74, cited in *Arocha vs. Vivo*, 21 SCRA 532, 540.

[9] CA-G.R. SP No. 36484, promulgated on July 17, 1995.

DISSENTING OPINION

ROMERO, J.:

In the instant petition for review on certiorari, petitioner Asset Privatization Trust (APT) is impugning the decision of respondent Court of Appeals in CA-GR SP No. 36484 dated July 17, 1995, grounded upon the following assigned errors which it had allegedly committed:

"1) The Court of Appeals erred in not holding that the Makati Regional Trial Court, Branch 62, which had previously dismissed Civil Case No. 9900, had lost jurisdiction to confirm the arbitral award under the same civil case and in not ruling that the application of confirmation should have been filed as a new case to be raffled among the different branches of the RTC;

2) The Court of Appeals likewise erred in holding that petitioner was estopped from questioning the arbitration award, when petitioner questioned the jurisdiction of the RTC-Makati, Branch 62, and at the same time moved to vacate the arbitral award;

3) The Court of Appeals erred in not holding that the respondent Trial Court should have either dismissed/denied private respondents' motion/petition for confirmation of arbitration award and/or should have considered the merits of the motion to vacate (the) arbitral award;

4) The Court of Appeals erred in not treating petitioner APT's petition for certiorari as an appeal taken from the order confirming the award; and

5) The Court of Appeals erred in not ruling on the legal issue of when to reckon the counting of the period to file a motion for reconsideration."[1]

The resolution of these issues will ultimately test the process of arbitration, how effective or ineffective it is an alternative mode of settling disputes, and how it is affected by judicial review. My esteemed colleagues have taken the view that the petition is impressed with merit and that the assailed decision of the Court of Appeals should be reversed. In doing so, I believe they have dealt arbitration a terrible blow and wasted years, even decades, of development in this filed. I beg to differ and, therefore, dissent.

The controversy is actually simpler than it appears. The Marinduque Mining and Industrial Corporation (MMIC) obtained several loans from the Philippine National Bank (PNB) and the Development Bank of the Philippines (DBP) secured by mortgages over practically all of its assets. As of July 15, 1984, MMIC's obligation had ballooned to P22,668,537,770.05.[2] and it had no way of making the required payments. MMIC and its two creditor banks thus ironed out a complex financial restructuring plan (FRP) designed to drastically reduce MMIC's liability through a "debt-to-equity" scheme.[3] This notwithstanding, the creditors opted to sell MMIC's mortgaged properties through extrajudicial foreclosure proceedings, where PNB turned out to be the lone bidder.[4]

Aggrieved by this apparent bad faith in the part of the creditor banks, private respondents Jesus S. Cabarrus, Sr., and other minority stockholders of MMIC filed a derivative suit[5] against PNB and DBP before the Makati Regional Trial Court. They prayed for the annulment of the foreclosure and for the restoration of the company's assets, the recognition by the creditor banks of their commitments under the FRP, and the payment of damages, as well as attorney's fees and costs of litigation. The case was raffled to Branch 62 and docketed as Civil Case No. 9900.

In the meantime, the rights and the interests of PNB and DBP, including MMIC's indebtedness, were transferred to petitioner, created by virtue of Proclamation No. 50, in relation to Administrative Order No. 14. Hence,

petitioner was substituted as party defendant in Civil Case No. 9900.

On October 6, 1992, the parties entered into a Compromise and Arbitration Agreement[6] providing, inter alia, that they were withdrawing their respective claims, which would be reduced to pure money claims, and that they were submitting the controversy to arbitration under Republic Act No. 876.[7] The issues for arbitration were thus limited to a determination of the plaintiffs' capacity or right to institute the derivative suit in behalf of the MMIC or its directors, and of the propriety of the foreclosure. Of notable import was the provision on the nature of the judgment that the arbitration committee might render, viz.:

"10. Binding Effect and Enforcement. The award of the arbitration committee shall be final and executory upon its issuance upon the parties to the arbitration and their assigns and successors-in-interest. In the event the award is not voluntarily satisfied by the losing party, the party in whose favor the award has been made may, pursuant to Republic Act No. 876, apply to the proper Regional Trial Court for its enforcement."
(Underscoring supplied)

Upon motion of the parties, this agreement was presented to the court a quo for its approval.[8] On October 14, 1992, said court issued an order (a) dismissing the complaint; (b) substituting the creditor banks with the APT as party defendant; (c) "approving the Compromise and Arbitration Agreement dated October 6, 1992"; and (d) "approving the transformation of the reliefs prayed for by the plaintiffs in this case into pure money claims." [9]

On November 24, 1993, after more than six months of hearing, the arbitration committee[10] concluded that the assailed foreclosure was not valid and accordingly decided the case in favor of MMIC. Hence, petitioner was ordered to pay MMIC actual damages in the amount of P2,531,635,425.02, with legal interest, and moral and exemplary damages amounting to P13,000,000.00, and to pay Jesus S. Cabarrus, Sr., the sum of P10,000,000.00 by way of moral damages, such awards to be offset from the outstanding and unpaid obligations of MMIC with the creditor banks, which have not been converted into equity. The committee likewise decreed its decision to be "final and executory." [11]

Nearly a year later, MMIC filed in Civil Case No. 9900, a verified "Application/Motion for Confirmation of Arbitration Award." [12] This was opposed by petitioner on two grounds, namely, that Branch 62 no longer had jurisdiction to act on said motion after it "dismissed" the complaint in its order of October 14, 1992, and that the award "far exceeded the issues submitted" for arbitration by the parties. [13] Not wanting to be outdone, MMIC filed a "Reply and Opposition," arguing that the "qualified dismissal" of Civil Case No. 9900 was merely intended to expedite the submission of the controversy to arbitration and was, therefore, "a mere suspension of the proceedings," and that the arbitration committee did not exceed its authority in making the award.

On November 28, 1994, the trial court issued an order[14] confirming the award of the committee in all respects except as to the award of actual damages to MMIC, which was increased to P3,811,757,425.00. The order closed with the following declaration:

"In reiteration of the mandates of Stipulation No. 10 and Stipulation No. 8 paragraph 2 of the Compromise and Arbitration Agreement, and the final edict of the Arbitration Committee's decision, and with this Court's Confirmation, the issuance of the Arbitration Committee's Award shall henceforth be final and executory."

Petitioner filed a "Motion for Reconsideration" of said order on December 27, 1994, but this was denied by the court a quo in its order dated January 18, 1995 for lack of merit and for having been filed beyond the reglementary period. Thus, it said:

". . . (C)onsidering that the defendant APT, through counsel, officially and actually received a copy of the Order of this Court dated November 28, 1994 on December 6, 1994, the Motion for Reconsideration thereof filed by the

defendant APT on December 27, 1994, or after the lapse of 21 days, was clearly filed beyond the 15-day reglementary period prescribed or provided for . . . (by law) for the filing of an appeal from final orders, resolutions, awards, judgments or decisions of any court in all cases, and by necessary implication, for the filing of a motion for reconsideration thereof."

Instead of appealing such denial, petitioner filed on February 15, 1995, an "Appeal by Certiorari . . . under Sections 1 and 2 of Rule 65 of the Revised Rules of Court" before the Court of Appeals, praying for the nullification of the trial court's orders dated November 28, 1994 and January 18, 1995. It argued that the trial court had no jurisdiction or authority to confirm the arbitral award, "considering that the original case, Civil Case No. 9900, had previously been dismissed," and that the trial judge "acted with grave abuse of discretion in issuing the questioned orders confirming the award and denying the motion for reconsideration thereof." [15]

On July 17, 1995, the Court of Appeals dismissed the petition for lack of merit. [16] From this dismissal, petitioner elevated its cause to this Tribunal for a review, raising the issues stated at the outset.

I find it distressing that, in reaching the outcome of this controversy, the majority has emasculated the process of arbitration itself. This should not be the case for after all, the decision of the arbitration committee is no longer the one being attacked in these proceedings, but the judgment of the Court of Appeals which herein petitioner found to be erroneous. The Court has had occasion to trace the history of arbitration and to discuss its significance in the case of *Chung Fu Industries (Phils.), Inc. v. Court of Appeals*, [17] viz.:

"Allow us to take a leaf from history and briefly trace the evolution of arbitration as a mode of dispute settlement.

Because conflict is inherent in human society, much effort has been expended by men and institutions in devising ways of resolving the same. With the progress of civilization, physical combat has been ruled out and instead, more specific means have been evolved, such as recourse to the good offices of a disinterested third party, whether this be a court or private individual or individuals.

Legal history discloses that 'early judges called upon to solve private conflicts were primarily the arbiters, persons not specially trained but in whose morality, probity and good sense the parties in conflict reposed full trust. Thus, in Republican Rome, arbiter and judge (*judex*) were synonymous. The magistrate or praetor, after noting down the conflicting claims of litigants, and clarifying the issues, referred them for decision to a private person designated by the parties, by common agreement, or selected by them from an opposite listing (*the album judicium*) or else by having the arbiter chosen by lot. The judges proper, as specifically trained state officials endowed with (their) own power and jurisdiction, and taking cognizance of litigations from beginning to end, only appeared under the Empire, by the so-called *cognito extra ordinem*.'

Such means of referring a dispute to a third party has also long been an accepted alternative to litigation at common law.

Sparse though the law and jurisprudence may be on the subject of arbitration in the Philippines, it was nonetheless recognized in the Spanish Civil Code; specifically, the provisions on compromises made applicable to arbitrations under Articles 1820 and 1821. Although said provisions were repealed by implication with the repeal of the Spanish Law of Civil Procedure, these and additional ones were reinstated in the present Civil Code.

Arbitration found a fertile field in the resolution of labor-management disputes in this Philippines. Although early on, Commonwealth Act 103 (1936) provided for compulsory arbitration as the state policy to be administered by the Court of Industrial Relations, in time such a modality gave way to voluntary arbitration. While not completely supplanting compulsory arbitration which until today is practiced by government officials, the Industrial Peace Act which was passed in 1953 as Republic Act No. 875, favored the policy of free collective bargaining, in

general, and resort to grievance procedure, in particular, as the preferred mode of setting disputes in industry. It was accepted and enunciated more explicitly in the Labor Code, which was passed on November 1, 1974 as Presidential Decree No. 442, with the amendments later introduced by Republic Act No. 6715 (1989).

Whether utilized in business transactions or in employer-employee relations, arbitration was gaining wide acceptance. A consensual process, it was preferred to orders imposed by government upon the disputants. Moreover, court litigations tended to be time-consuming, costly, and inflexible due to their scrupulous observance of the due process of law doctrine and their strict adherence to rules of evidence.

As early as the 1920's, this Court declared:

‘In the Philippines fortunately, the attitude of the court towards arbitration agreements is slowly crystallizing into definite and workable form . . . The rule now is that unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable arrangements and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator.’

That there was a growing need for a law regulating arbitration in general was acknowledged when Republic Act No. 876 (1953), otherwise known as the Arbitration Law, was passed. ‘Said Act was passed. ‘Said Act was obviously adopted to supplement -- not to supplant -- the New Civil Code on arbitration. It expressly declares that "the provisions of chapters one and two, Title XIV, Book IV of the Civil Code shall remain in force."'

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In practice nowadays, absent an agreement of the parties to resolve their disputes via a particular mode, it is the regular courts that remain the fora to resolve such matters. However, the parties may opt for recourse to third parties, exercising their basic freedom to ‘establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals good customs, public order or public policy.’ In such a case, resort to the arbitration process may be spelled out by them in a contract in anticipation of disputes that may arise between them. Or this may be stipulated in a submission agreement when they are actually confronted by a dispute. Whatever be the case, such recourse to an extrajudicial means of settlement is not intended to completely deprive the courts of jurisdiction. In fact, the early cases on arbitration carefully spelled out the prevailing doctrine at the time, thus: ‘. . . a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitrators and to them alone is contrary to public policy and cannot oust the courts of jurisdiction.’

But certainly, the stipulation to refer all future disputes to an arbitrator or to submit an ongoing dispute to one is valid. Being part of a contract between the parties, it is binding and enforceable in court in case one of them neglects, fails or refuses to arbitrate. Going a step further, in the event that they declare their intention to refer their differences to arbitration first before taking court action, this constitutes a condition precedent, such that where a suit has been instituted prematurely, the court shall suspend the same and the parties shall be directed forthwith to proceed to arbitration.

A court action may likewise be proper where the arbitrator has not been selected by the parties.

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. . . . It is stated explicitly under Art. 2044 of the Civil Code that the finality of the arbitrator's award is not absolute and without exceptions. Where the conditions described in Articles 2038, 2039 and 2040[18] applicable to both compromises and arbitrations are obtaining, the arbitrators' award may be annulled or rescinded. Additionally, under Sections 24 and 25 of the Arbitration Law, there are grounds for vacating,

modifying or rescinding an arbitrator's award. Thus, if and when the factual circumstances referred to in the above-cited provisions are present, judicial review of the award is properly warranted.

What if courts refuse or neglect to inquire into the factual milieu of an arbitrator's award to determine whether it is in accordance with law or within the scope of his authority? How may the power of judicial review be invoked?

This is where the proper remedy is certiorari under Rule 65 of the Revised Rules of Court. It is to be borne in mind, however, that this action will lie only where a grave abuse of discretion or an act without or in excess of jurisdiction on the part of the voluntary arbitrator is clearly shown. For 'the writ of certiorari is an extraordinary remedy and that certiorari jurisdiction is not to be equated with appellate jurisdiction. In a special civil action of certiorari, the Court will not engage in a review of the facts found nor even of the law as interpreted or applied by the arbitrator unless the supposed errors of fact or of law are so patent and gross and prejudicial as to amount to a grave abuse of discretion or an excess de pouvoir on the part of the arbitrator.'[19]

So, what are the issues that need to be addressed in this action? Certainly not the capacity of the plaintiffs below to file the derivative suit in behalf of MMIC nor the validity of the extrajudicial foreclosure conducted by PNB and DBP. These were the issues submitted for arbitration by the parties and resolved with finality by the arbitration committee upon agreement of the parties themselves. The issues, therefore, all stemming from the judgment of the Court of Appeals, may be narrowed down to three: (1) Was it right in upholding the trial court's authority to confirm the arbitration award considering that said court had earlier dismissed the complaint? (2) Was it correct in finding that herein petitioner was estopped from questioning such award? (3) Was it justified in not treating petitioner's petition for certiorari as an appeal from the trial court's order confirming said award?

(1) Petitioner overly stresses the fact that in the trial court's order of October 14, 1992, the complaint was "dismissed" upon approval of the Compromise and Arbitration Agreement between the parties. Such dismissal, however, far from finally disposing of the controversy as the term denotes, simply "suspended" it during the period of arbitration. It is, as a colleague pointed out during the deliberation of this action, a mere "semantic imperfection." Here is a situation where the intent of the tribunal was obviously not to end the case with finality, but to place the proceedings in abeyance while the parties breathed life into an alternative mode of settling their differences in the most expeditious manner. Arbitration is not a self-enforcing process. It focuses the direction of the hearing and the reception and appreciation of evidence by assigning these tasks to a group of persons chosen by the parties themselves. By this, a circuitous and time-consuming court trial is avoided, leaving the court with the singular duty of confirming the arbitrator's decision, and allowing it to devote more of its time to resolving other cases. As the appellate court correctly pointed out:

"... (T)he dismissal of the Complaint in Civil Case No. 9900 was not intended by the parties and by the court a quo, despite the phraseology in Item No. 4 of the dispositive portion of the Order of October 14, 1992, as a dismissal that would put an end to the case. Rather it was simply a pronouncement for the cessation of the proceedings in the court and the commencement of the arbitration proceedings. It was for all intents and purposes a stay of the civil action until an arbitration has been had or pending the return of the arbitral award. This is evident since the parties submitted to the court below not only an agreement to arbitrate but also a compromise which is always submitted to the court for approval and as a basis for a judgment. x x x"[20]

Regarding the trial court's authority to confirm the decision of the arbitration committee, suffice it to say that such was not merely its right but its duty as well. Under Section 22 of R.A. No. 876, upon application or motion of any party to arbitration, the court has the obligation of confirming the arbitrators' award absent any specific ground to vacate, modify or correct the same. Herein private respondents did apply for such confirmation on February 7, 1995. This was even opposed by petitioner on the ground that the judgment had not yet become final and executory, in complete disregard of paragraph 10 of the Compromise and Arbitration Agreement and the very

decision of the arbitration committee.

The award itself was properly made since it was not vacated, modified or corrected upon any of the grounds enumerated under Sections 24 and 25 of R.A. No. 876, to wit:

"Section 24. Grounds for vacating award. - In any of the following cases, the court must make an order vacating the award upon the petition of any to the party controversy when such party proves affirmatively that in the arbitration proceedings:

(a) The award was procured by corruption, fraud, or other undue means; or

(b) That there was evident partiality or corruption in the arbitrators or any of them; or

(c) That 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; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

(d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award the subject matter submitted to them was not made.

Where an award is vacated, the court, in its discretion, may direct a new hearing either before the same arbitrators or before a new arbitrators chosen in the manner provided in the submission or contract for the selection of the original arbitrators, and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

Where the court vacates an award, costs, not exceeding fifty pesos, and disbursements may be awarded to the prevailing party and the payment thereof may be enforced in like manner as the payment of costs upon the motion in an action."

Section 25. Grounds for modifying or correcting award. " In any one of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the controversy which was arbitrated:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award; or

(b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or

(c) Where the award is imperfect in a manner of from not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties." (Underscoring supplied)

Petitioner utterly failed to prove the existence of any of these grounds. Its strongest argument, that the arbitration award "far exceeded the issue submitted for arbitration," apart from being unsubstantiated, does not go into the merits of the award, which is the only way its modification or correction could be justified under the terms of Section 25, aforequoted.

Furthermore, petitioner violated several covenants by asking the court a quo to vacate the arbitration award. First, in paragraph 10 of the Compromise and Arbitration Agreement, it agreed to abide by the arbitration committee's

decision which "shall be final and executory upon its issuance upon the parties to the arbitration and their assigns and successors-in-interest." Next, the decision that the arbitrators did render on November 24, 1993 specifically declared the same to be "final and executory." Finally, in the court's confirmation order of November 28, 1994, the finality of the award was reiterated by the court. Arbitration, as an alternative mode of settlement, is gaining adherents in legal and judicial circles here and abroad. If its tested mechanism can simply be ignored by an aggrieved party, one who, it must be stressed, voluntarily and actively participated in the arbitration proceedings from the very beginning, it will destroy the very essence of mutuality inherent in consensual contracts.

2) Petitioner claims that it is not estopped from questioning the arbitration award probably because, notwithstanding its tenacious quest for affirmative relief, it did not translate this pursuit into positive action. The Court of Appeals succinctly puts it in this wise:

" . . . The record shows that on its motion, petitioner APT was able to postpone the hearing on therein plaintiff's application/motion for confirmation of arbitral award to a date and time that it chose. However, when said matter was called for hearing, only counsel for therein plaintiffs showed up. Nonetheless, respondent Judge gave APT a period of seven (7) days from notice within which to comment on the application/motion for confirmation. At no time did petitioner APT ask for a hearing to present its evidence. While petitioner APT repeatedly sought to vacate the arbitral award, it made no concrete move to pursue its cause. In fact, at the hearing on its motion for reconsideration, both parties through their respective counsels gave oral arguments and thereafter agreed to submit the motion for reconsideration for resolution. If petitioner APT honestly believed that the respondent Judge erroneously took cognizance of plaintiffs' Application/Motion for Confirmation of Arbitration Award, then it should have limited itself to challenging the jurisdiction of said court. The fact remains that petitioner APT repeatedly sought affirmative relief from the respondent Judge in the same Civil Case No. 9900. Under the circumstances, petitioner APT may not be heard now to complain that it was deprived of its right to question the award made by the Arbitration Committee." [21] (Underscoring supplied)

3) The final issue which, to my mind, has particular relevance to the case at bar, pertains to the alleged error of the Court of Appeals in not treating APT's petition for certiorari as an appeal from the trial court's confirmation order.

Petitioner's counsel received a copy of the confirmation order dated November 28, 1994, on December 12, 1994. [22] Said order was, for review purposes, a "final order" because it finally disposed of the case. Other than executing the confirmation order, there was nothing else that the court was duty-bound to perform. Petitioner's remedy, therefore, was to question the order, by appeal on certiorari, not before the Court of Appeals, but before the Supreme Court [23] within the reglementary period of fifteen days which expired on December 27, 1994. Instead of appealing, however, petitioner filed a motion for reconsideration of the order on said deadline. Unfortunately, this was denied by the court a quo in its order dated January 18, 1995, a copy of which was received by petitioner's counsel on February 1, 1995. Under prevailing procedural laws, it had just one day to perfect its appeal. On February 15, 1995, petitioner opted to file with the Court of Appeals and "Appeal by Certiorari . . . under Sections 1 and 2 of the Rule 65 of the Revised Rules of Court." The reason is obvious: It could no longer file a regular appeal from the assailed order because the period for doing so has lapsed. The Court of Appeals thus made the following pertinent observation:

". . . Assuming arguendo that petitioner APT's counsel received a copy (of the November 28, 1994, order), as claimed by them, on December 12, 1994, then the petitioner had fifteen (15) days therefrom or until December 27, 1994, within which to appeal. The petitioner's motion for reconsideration was admittedly filed on December 27, 1994, the last day of the reglementary 15-day period, and the order dated January 18, 1995, denying the same was received by petitioner's counsel on February 1, 1995. Petitioner APT had only the following day perfect his

appeal. Instead, it chose to file the instant special civil action of certiorari on February 15, 1995."

From the start, petitioner seemed unsure of its position on appeal. While initially questioning the "order confirming the award" of the arbitration committee, it later stated that it was raising the issue of "filing by (herein private respondents) of a Motion for Execution and Appointment of Custodian of proceeds of Execution dated February 6, 1995." The latter recourse is obviously erroneous, for no appeal under either Rule 45 or Rule 65 may be taken from a "motion" or the "filing" of one. Under Rule 45, only judgments or final orders of a court or tribunal may be appealed to a higher court, while Rule 65 allows a special civil action where the acts of a tribunal, board or officer are under attack for being performed with grave abuse of discretion.

The applicable law, of course, is R.A. No. 876, which provides for appeals from arbitration awards under Section 29 thereof, viz.:

"... (A)n appeal may be taken from ... a judgment entered upon an award through certiorari proceedings, but such appeals shall be limited to questions of law. The proceedings upon such an appeal, including the judgment thereon, shall be governed by the Rules of Court in so far as they are applicable."

The term "certiorari" in the aforequoted provision refers to an ordinary appeal under Rule 45, not the special action of certiorari under Rule 65. It is an "appeal," as Section 29 proclaims. The proper forum for this action is, under the old and the new rules of procedure, the Supreme Court. Thus, Section 2(c) of Rule 41 of the 1997 Rules of Civil Procedure states that, "in all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45." Moreover, Section 29 limits the appeal to "questions of law," another indication that it is referring to an appeal by certiorari under Rule 45 which, indeed, is the customary manner of reviewing such issues. On the other hand, the extraordinary remedy of certiorari under Rule 65 may be availed of by a party where there is "no appeal, nor any plain, speedy, and adequate remedy in the course of law," and under circumstances where "a tribunal, board or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion." [24]

Based on the foregoing, it is clear that petitioner had run out of options after its motion for reconsideration was denied by the trial court in its order dated January 18, 1995. To compound its negligence, it filed the wrong action with the wrong forum. These, to my mind, are serious procedural flaws. To rule otherwise, as the majority did, would constitute a grave injustice to private respondents.

I vote to DISMISS the petition.

[1] Rollo, pp. 11-36 @ 21-22.

[2] CA Rollo, p. 261.

[3] Ibid., pp. 31-34 re commitments of PNB and DBP.

[4] Id, pp. 134-135.

[5] The complaint was amended on March 11, 1985; CA Records, pp. 71-77.

[6] CA Records, pp. 99-103.

[7] Otherwise known as the "Arbitration Law."

[8] Rollo, pp. 93-94.

[9] Ibid., pp. 15-16.

[10] Composed of retired Supreme Court Associate Justice Abraham Sarmiento, as Chairman, and former Court

of Appeals Associate Justice Magdangal B. Elma, nominee of the plaintiffs and Atty. Jose C. Sison, APT's nominee and its lawyer of record, as members.

[11] CA Records, pp. 107-173. Separate Opinions were submitted by Atty. Sison and Justice Elma.

[12] *Ibid.*, pp. 267-284.

[13] *Id.*, pp. 287-289.

[14] *Id.*, pp. 42-52.

[15] *Id.*, pp. 3-30.

[16] Penned by Martinez, Jr., J.; Ramirez and Morales, JJ., concurring.

[17] 206 SCRA 545 (1992).

[18] "Article 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code.

However, one of the parties cannot set up a mistake of fact as against the other of the latter, by virtue of the compromise, has withdrawn from a litigation already commenced."

"Article 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties.

But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents."

"Article 2040. If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise may be rescinded.

Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise."

[19] Citations omitted.

[20] Rollo, pp. 50-51.

[21] *Ibid.*, pp. 53-54.

[22] This date was supplied by petitioner in its "Appeal by Certiorari" filed before the Court of Appeals.

[23] Section 2(c), Rule 41, 1997 Rules of Civil Procedure.

[24] Section 1, Rule 65, 1997 Rules of Civil Procedure.

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