METRO CONSTRUCTION, INC., PETITIONER, VS. CHATHAM PROPERTIES, INC., RESPONDENT.

G.R. No. 141897. September 24, 2001

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

The core issue in this case is whether under existing law and rules the Court of Appeals can also review findings of facts of the Construction Industry Arbitration Commission (CIAC).

Respondent Chatham Properties, Inc. (CHATHAM) and petitioner Metro Construction, Inc. (MCI) entered into a contract for the construction of a multi-storey building known as the Chatham House located at the corner of Herrera and Valero Streets, Salcedo Village, Makati City, Metro Manila. In April 1998, MCI sought to collect from CHATHAM a sum of money for unpaid progress billings and other charges and instituted a request for adjudication of its claims with the CIAC. The case was docketed as CIAC Case No. 10-98. The arbitral tribunal was composed of Joven B. Joaquin as Chairman, and Beda G. Fajardo and Loreto C. Aquino as members.

The preliminary conference before the CIAC started in June 1998 and was concluded a month after with the signing of the Terms of Reference (TOR) of the Case.[1] The hearings immediately started with the presentation of MCI's witnesses, namely: Ms. Ma. Suzette S. Nucum, Chief Accountant; Ms. Isabela Redito, Office Engineer; Mr. John Romulo, Field Manager; and Dr. John Y. Lai, President. CHATHAM's witnesses were: Engr. Ruperto Kapunan III, Managing Director of RK Development and Construction Co., Inc. (RKDCCI), which was the Construction Manager firm hired by CHATHAM to oversee the construction work of the Chatham House; Engr. Alex Bautista, Area Manager of RKDCCI; Mr. Avelino M. Mercado, CHATHAM's Project Manager; and Engr. Jose T. Infante.

In the meantime, the TOR was amended and finalized on 19 August 1998.[2]

The facts, as admitted by the parties before the CIAC and incorporated in the original TOR, are as follows:

> - On 21 April 1994, the parties formally entered into a xxx contract for the construction of the "Chatham House" xxx for the contract price of P50,000,000.00 inclusive of value-added tax, subject to adjustments in accordance with Article 9 of the contract. Construction of the project, however, commenced on 15 April 1994 upon the release by CHATHAM of the downpayment.
>
> - On 12 July 1994, a Supplemental Contract was executed by and between the parties whereby CHATHAM authorized MCI to procure in behalf of the former materials, equipment, tools, fixtures, refurbishing, furniture, and accessories necessary for the completion of the project.
>
> - Under Section 1.04 of the Supplemental Contract, the total amount of procurement and transportation cost[s] and expenses which may be reimbursed by MCI from CHATHAM shall not exceed the amount of P75,000,000.00.
>
> - In the course of the construction, Change Orders No. 1, 4, 8A, 11, 12 and 13 were implemented, payment of

which were recommended by xxx RKDCCI and approved by one of CHATHAM's Project Managers, Romulo F. Sugay.

- On 15 September 1995, CHATHAM through its Project Manager, Romulo F. Sugay, agreed to give P20,000 per floor for five (5) floors, or a total of P100,000.00 as bonus/incentive pay to MCI's construction workers for the completion of each floor on schedule. CHATHAM reimbursed MCI the amount of P60,000.00 corresponding to bonuses advanced to its workers by the latter for the 14[th], 16[th], and 17[th] floors.

- CHATHAM's payments to MCI totaled P104,875,792.37, representing payments for portions of MCI's progress billings and xxx additional charges.

The parties then stipulated on the following issues, again, as set forth in the TOR:

- Is MCI entitled to its claims for unpaid progress billings amounting to P21,062,339.76?

- Were the approved Change Orders 1, 4, 8a, 11, 12 and 13 fully paid by CHATHAM? If not, is MCI entitled to its claim for the unpaid balance?

- Is CHATHAM liable for Change Orders 7a, 7b, 10, 14, 15, 16, 17, 19 and 20?

- Were the CHB works from the 8[th] to the 31[st] floors part of the original contract or in the nature of extra/additional works? Is CHATHAM liable for the same? If so, how much?

- Is MCI entitled to an additional reimbursement of P40,000.00 for bonuses granted to workers as an incentive for the early completion of each floor?

- Were the deductions in the amount of P1,393,458.84 made by CHATHAM in MCI's progress billing reasonable?

- Is MCI's claim of P1,646,502.00 for labor escalation valid?

- Is MCI entitled to payment of attendance fee? To what extent and how much?

- Did MCI fail to complete and/or deliver the project within the approved completion period? If so, is MCI liable for liquidated damages and how much?

- Whether or not CHATHAM is entitled to claim x x actual damages? If so, to what extent and how much?

- Whether or not CHATHAM is entitled to x x x additional counterclaims as follows:

11.1.

Core testing expenses and penalty for concrete strength failure P3,630,587.38

11.2.

Expenses to rectify structural steel works for the foundation P1,331,139.74.

11.3.

Cost of additional materials (concrete & rebars) supplied by CPI P5,761,457.91

- Are the parties entitled to their respective claims for attorney's fees and cost of litigation? If so, how much?[3]

In the resolution of these issues, the CIAC discovered significant data, which were not evident or explicit in the documents and records but otherwise revealed or elicited during the hearings, which the CIAC deemed material and relevant to the complete adjudication of the case. In its decision of 19 October 1998,[4] the CIAC made the following findings and conclusions:

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It was established during the hearing that the contract was awarded to MCI through negotiation as no bidding was conducted. xxx It was also revealed that two agreements were entered into, one is labeled Construction Contract for the total fixed amount of P50,000,000.00 and the other a Supplemental Contract for an amount not to exceed P75,000,000.00. The latter is supposed to cover the procurement of materials for the project. The Construction Contract provides for monthly progress billings and payments based on actual accomplishments of the various phases of work. The Supplemental Contract provides for reimbursement of [the] total amount of procurement and transportation costs and expenses, upon MCI's presentation of suppliers' invoices/receipts.

However, from testimonies of witnesses from both parties, it was revealed that the two distinct manner(s) of payment to MCI was set aside. The earlier attempt by CHATHAM to prove that MCI was remiss in submitting suppliers' invoices and/or receipts in support of its billings against the Supplemental Contract was in fact later on abandoned when CHATHAM's witness Mercado admitted that the matter of adherence to the payment provision of the Supplemental Contract is a `non-issue.' This was borne out by the fact that progress billings and payments under both contracts were made on the basis of percentage of project completion.

Both documentary and testimonial evidence prove that, effectively, the construction contract and supplemental contract is but one agreement for a lump sum contract amount of P125,000,000.00.

xxx

There was also the admitted fact that the contract was negotiated and awarded in the absence of a complete construction plan. In any case, in support of the total contract amount of P125 MILLION, is a Cost Breakdown (Exh. 17-L), where the estimated quantities of owner furnished materials (OFM) are indicated. It is however, understood that these quantities are estimates, based on (an) incomplete set of construction plans. It is likewise understood that except for the OFM, all the other costs in the Cost Breakdown form the basis for the lump-sum agreement under the contract, subject to adjustment only if there are any significant changes in the contract plans.

RKDCCI in its letter to MCI dated 15 Feb. 1995 (Exh. 4), informed MCI that it was confirming the agreement allegedly accepted by Dr. Lai that the Building Committee will take over the management of the construction operations (of the project) albeit under certain conditions. Specifically, the take over was for an interim period and will extend only after concreting of up to basement level 5 or up to 30 May 1995 whichever is later. The letter also stated that the Building Committee xxx will be responsible for management and direction including management of MCI engineers at the site, sequencing of work, additional labor, additional equipment and management of the yard and staging area. The letter, however, emphasized that the intent is not a take over of the contract or take over of the entire work and in fact, it was mentioned that MCI will still be responsible for earth anchoring and steel fabrication work.

CHATHAM claims that the interim take-over was necessitated by MCI's delay in the progress of its work, due allegedly to MCI's lack of manpower and equipment. During the hearings of this case, this claim of MCI's lack of manpower, necessary equipment, qualified engineers and inefficient construction management was testified to by both Mr. Mercado [of CHATHAM] and Engr. Kapunan of RKDCCI. CHATHAM's witnesses, however, testified that in spite of these alleged deficiencies, MCI was nevertheless allowed to continue to take full control of the operations. When asked why termination of the contract was not resorted to if truly, MCI was not performing its contracted obligations, witnesses Mercado and Kapunan cited "special relations" between the owner of MCI (Dr. John Lai) and the president of CHATHAM (Mr. Lamberto UnOcampo) as the reason.

On the other hand, Dr. Lai contends that, as explained in his letter to CHATHAM dated 17 February 1995, (Exh. 4-A) MCI's work was on schedule. During the hearings, Dr. Lai also insisted that beginning 15 February 1995, MCI was relieved of full control of the construction operations, that it was relegated to (be) a mere supplier of labor, materials and equipment, and that the alleged interim takeover actually extended through the completion of the project. Dr. Lai cited CHATHAM's purchases of materials, fielding labor force and sub-contracting works allegedly for the project without his knowledge and consent as proof that CHATHAM

> had taken full control of the project.
>
> To the above allegation of MCI that CHATHAM went ahead and procured materials, hired labor and entered into sub-contract agreements with the intention of eventually charging the costs thereof to MCI, witness Mercado countered, that CHATHAM has the right to do this under the provisions of Article 27 of the contract, dealing with `Recision, Cancellation, Termination of Contract.'
>
> By way of responding to the various counterclaims of CHATHAM, MCI referred to a letter of [the former] addressed to MCI dated 18 January 1997 (Exhibit E-1) the first paragraph of which reads as follows:
> After evaluating all the documents issued and received from both Chatham Properties Inc. and Metro Construction, Inc., the Building Committee of Chatham Properties, Inc. evaluated them. The Building Committee finds the total receivable of Metro Construction is in the amount of EIGHT MILLION PESOS (P8,000,000.00) only.

When queried by the Tribunal if the said amount already took into account the costs and expenses (Chatham) claims to have incurred for the account of MCI, Mr. Mercado answered in the affirmative. When queried further how the amount was arrived at, Mr. Mercado replied that it was the sum the Building Committee figured it was willing to pay MCI simply to close the issue.

Mr. Mercado even added that while MCI is not actually entitled to this amount, it was out of "friendship" that CHATHAM offered this sum to MCI as final settlement under the contract.

It is with the above attendant circumstances that this Tribunal will be guided in the resolution of issues brought before it for adjudication. From what this Tribunal finds as peculiar circumstances surrounding the contracting and implementation of the CHATHAM House Project, it arrived at the following fundamental conclusions:

- That indeed `special friendly relations' were present between the parties in this case, although decisions by either party on any particular issue were made not purely on the basis of such special relations. For example, this Tribunal believes that, contrary to the allegation of (CHATHAM's) witnesses, the decision not to terminate the contract was not due to the admitted `special relations' only, but also due to the greater problems the project would be faced with by terminating the MCI contract and mobilizing another contractor.

- That while there was no official termination of the contract, the manner by which CHATHAM had taken upon themselves the procurement of materials, the fielding of labor, the control over MCI's engineers, and the subcontracting of various phases of work on its own, is considered by this Tribunal as implied termination of the contract. The idea of allowing MCI to remain on the project in spite of what CHATHAM claims (to be) MCI's shortcomings, and MCI's agreement to stay on the project under conditions set by CHATHAM, is believed a matter of mutual benefit to both parties.

- That CHATHAM's invoking its rights under the provisions of Article 27 of the construction contract is believed out of place, as it failed to observe the required antecedent acts before it can exercise its prerogative under the said contract provision.

- That there is no reason to believe, either party was in any way guilty of bad faith in acting as it did on certain relevant matters. However, this Tribunal is of the belief that due perhaps to the eagerness on the part particularly of CHATHAM's representatives to take such steps it considered necessary to insure completion of the project within the period desired by CHATHAM, it deviated from some generally accepted procedures in the construction industry in dealing with MCI. One example was not giving MCI the opportunity to rectify some of what CHATHAM considered as construction deficiencies and instead engaging the services of other parties to undertake the corrective works and later on charging the costs thereof to MCI.

In addition to the above conclusions resulting from what this Tribunal considered peculiar of circumstances surrounding the implementation of the project that were revealed during the proceedings of this case, this Tribunal finds the necessity of establishing a cut-off date with regard to the fiscal liability of one party towards the other.

Mr. Avelino Mercado of CHATHAM presented a list of what he claims as its Payments to MCI (Exhibit 7) summarized as follows:

a.

Down payment (Paid in two equal trances)

P20,000,000.00

b.

Cash Advance for Mobilization

800,000.00

c.

Payments of Progress Billings up to Billing No. 19

71,081,183.44

d.

Other Payments (Mar 1994 to Apr 1996)

5,474,419.67

e.

Advances on MCI Payrolls (April 1996 to March 1997)

8,196,755.51

Total

P104,752,358.42

The records of this case show that the last progress payment to MCI was in January 1996 representing payment of Progress Billing No. 19 for the period ending 31 December 1995. The percentage of completion claimed then by MCI was 80.02%, the amount evaluated and eventually paid to MCI was the equivalent of 77.15% work accomplishment. No further progress payments were made thereafter, other than for advances to cover MCI

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payrolls from April 1996 to March 1997 in the amount of P8,196,755.51 and for various advances and payments of approved change orders in the amount of P5,474,419.67.

In the meantime, up to Billing No. 23 for the period ending 30 April 1996, MCI billed CHATHAM a total accomplishment of 95.29%. This billing was however, evaluated by CHATHAM, and in its letter to MCI dated 27 May 1996 (Exhibit E) it confirmed that MCI's remaining balance of work stands at P7,374,201.15 as of 23 May 1996. This amount, percentage-wise, equals roughly 5.88% of the contract amount as testified to by Engr. Jose Infante. (Exhibit 22-B). Therefore, what was computed as MCI's work accomplishment as of 23 May 1996 was 94.12% and it is this evaluation which this Tribunal believes MCI is entitled to as of said date.

Applying this percentage of completion of 94.12% to the P125,000,000.00 contract amount gives a total accomplishment equivalent to P117,650,000.00 as of 23 May 1996. Add to this amount the sum of P5,353,091.08 representing the total of approved Change Orders as of 31 December 1995 gives a total MCI accomplishment of P123,003,091.08, as CHATHAM saw it. Of this amount, CHATHAM admitted having paid MCI the total sum of P104,752,358.42 only (Exhibit 7) up to March 15, 1997, leaving a balance of P18,250,732.66. It should be noted that of the total payment of P104,752,358.42, the sum of P5,750,000.00 was paid after May 1996 so that as of 23 May 1996, CHATHAM's total payment to MCI was P99,002,358.42.

Effectively, therefore, the amount due MCI as of 23 May 1996 amounted to P24,005,732.66 computed as follows:

Total accomplishment as of 23 May 1996 at 94.12%

P117,655,000.00

Add approved change orders

5,353,091.08

Total

P123,008,091.08

Less payments up to 23 May 1996

99,002,358.42

Balance due MCI as of 23 May 1996

P24,005,732.66

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Of the above balance of P24,005,732.66 as of 23 May 1996, the only payments made by CHATHAM to MCI is the sum of P5,750,000.00 from June 1996 onwards, allegedly to cover MCI payrolls. It is of course noted that CHATHAM's suspension of further payments to MCI was because it had been undertaking on its own, the further procurement of materials and sub-contracting of various phases of works on the project.

In consideration of the above facts, this Tribunal's conclusion that there was in fact an implied take over of the project is further confirmed. Furthermore, this Tribunal additionally concludes that the cut-off date for purposes of delineating the financial obligations of the parties between them should be 23 May 1996, the date when CHATHAM evaluated MCI's accomplishment at 94.10% but nevertheless suspended all further progress payments to MCI.

MCI presented further documentary evidence (Exhibit E-6) the subject of which is "PUNCHLISTING-CIVIL STRUCTURAL." In this particular document which bears the signatures of representatives of both MCI and RKDCCI, MCI tried to prove that as of 30 August 1996 it had actually attained 99.16% work accomplishment. While it may be true that as of that date the project had reached 99.16% completion, there is no incontrovertible evidence showing that MCI was responsible for such accomplishment. This was in fact actually testified to by Engr. Alex Bautista of RKDCCI, when he said that it was an evaluation of the project's completion stage, not necessarily MCI's work accomplishment. This Tribunal therefore stands firm on its conclusion that MCI's accomplishment is only up to the extent of 94.10%.[5]

With those findings, the CIAC disposed of the specific money claims by either granting or reducing them. On Issue No. 9, i.e., whether CHATHAM failed to complete and/or deliver the project within the approved completion period and, if so, whether CHATHAM is liable for liquidated damages and how much, the CIAC ruled in this wise:

> This Tribunal holds that the provision of the contract insofar as the Overall Schedule is concerned cannot justifiably be applied in the instant case in view of the implied take-over of the Chatham House project by CHATHAM. Accordingly, this Tribunal finds no necessity to resolve whether or not MCI complete[d] and/or deliver[ed] the project within the approved completion period. In fact, Mr. Mercado testified that it was CHATHAM who ultimately completed the project, with assistance of the construction managers.
>
> In any case, this Tribunal finds merit in RKDCCI's claim that MCI was in delay in the concreting milestone and that [it] is liable for liquidated damages therefor. This, notwithstanding MCI's invoking that Chatham is estopped from claiming liquidated damages after it failed to deduct the alleged liquidated damages from MCI's progress billings. This Tribunal holds that such failure to deduct, which CHATHAM claims it did in order not to hamper progress of work in the project, is an option which [it] may or may not exercise.
>
> However, this Tribunal finds that CHATHAM's Exh. 11-A where the liquidated damages on delays in concreting milestone was applied is not consistent with [its] own Exhibit 3-I. This Tribunal notes that in Exh. 11-A, CHATHAM included a projected delay of 85 days for the Helipad Concreting works, while no such projected delay was included in Exh. 3-I as it should be.
>
> This Tribunal holds that Exh. 3-I showing a delay of 294 days in concreting milestones should rightfully be used in computing liquidated damages. Accordingly, this Tribunal holds that MCI is liable for liquidated damages in the amount of P3,062,498.78 as follows:
>
> 1/4x1/3[(1/10xP125,000,000.00)1%]x294=P3,062,498.78.[6]

The CIAC then decreed:

> Accordingly, as presented below, all the amounts due MCI are first listed and added up and the total payment is deducted therefrom. The admitted total payment figure as reflected in the Terms of Reference is the amount

applied instead of the total reflected in CHATHAM's Summary of Payments which incidentally reflected a lesser amount. From the `Balance Due MCI' the `Amounts CPI is Held Entitled To' is deducted and the `Net Amount Due MCI' is arrived at.

A. AMOUNTS HELD MCI IS ENTITLED TO:

A.1.

From the original contract: 94.12% of P125,000,000.00

P117,650,000.00

A.2

Approved Change Orders

5,353,091.08

A.3

Pending Change Orders

1,648,560.46

A.4

CHB Works

1,248,654.71

A.5

Workers Bonus

-0-

A.6

Disputed Deductions

909,484.70

A.7

Labor Escalation

1,076,256.00

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A.8

Attendance Fee

508,162.73

Total

P128,394,209.68

Less: Total payments-Item II-6 of TOR

104,875,792.37

Balance Due MCI

P 23,518,417.31

B. AMOUNTS HELD CPI IS ENTITLED TO:

B.1.

Liquidated Damages

P 3,062,498.78

B.2.

Actual Damages

335,994.50

B.3.

Penalties

1,778,285.44

B.4

Cash Payments in Behalf of MCI

2,214,715.68

Total Amount Due CPI

P 7,391,494.40

C. NET AMOUNT DUE MCI (A minus B) P16,126,922.91

WHEREFORE, judgment is hereby rendered in favor of the Claimant [MCI] directing Respondent [CHATHAM] to pay Claimant [MCI] the net sum of SIXTEEN MILLION ONE HUNDRED TWENTY SIX THOUSAND NINE HUNDRED TWENTY TWO & 91/100 (16,126,922.91) PESOS.

SO ORDERED.[7]

Impugning the decision of the CIAC, CHATHAM instituted a petition for review with the Court of Appeals, which was docketed as CA-G.R. SP No. 49429. In its petition, CHATHAM alleged that:

The Arbitral Tribunal grossly erred in failing to indicate specific reference to the evidence presented or to the transcript of stenographic notes in arriving at its questioned Decision, in violation of the cardinal rule under Section 1, Rule 36 of the Revised Rules of Civil Procedure that a judgment must state clearly and definitely the facts and the law on which it is based.

The Tribunal's conclusions are grounded entirely on speculations, surmises and conjectures.

The Arbitral Tribunal grossly erred in failing to consider the evidence presented by CHATHAM and the testimony of its witnesses.

The Arbitral Tribunal gravely abused its discretion in considering arbitrarily that there was an implied takeover contrary to the facts and evidence submitted.

The Arbitral Tribunal committed grave error and gross misapprehension of facts in holding that CHATHAM is not entitled to liquidated damages despite failure of MCI to meet the over-all schedule of completion.

The Arbitral Tribunal manifestly erred in holding that MCI is entitled to its claim for unpaid progress billings.

The Arbitral Tribunal committed gross and reversible error in equating the percentage of MCI's work accomplishment with the entire work in place, despite evidence to the contrary.

The Arbitral Tribunal gravely erred in making 23 May 1996 as the cut-off date for purposes of delineating the financial obligations of the parties.

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> The Arbitral Tribunal erred in denying CHATHAM its claim for actual damages pursuant to Article 27.8 of the Construction Contract.
>
> The facts set forth in CHATHAM's Answer with Compulsory Counterclaim as well as its documentary and testamentary evidence were not overturned or controverted by any contrary evidence.[8]

In its decision of 30 September 1999,[9] the Court of Appeals simplified the assigned errors into one core issue, namely, the "propriety" of the CIAC's factual findings and conclusions. In upholding the decision of the CIAC, the Court of Appeals confirmed the jurisprudential principle that absent any showing of arbitrariness, the CIAC's findings as an administrative agency and quasi-judicial body should not only be accorded great respect but also given the stamp of finality. However, the Court of Appeals found exception in the CIAC's disquisition of Issue No. 9 on the matter of liquidated damages.

The Court of Appeals disagreed with the CIAC's finding that there was an implied takeover by CHATHAM of the project and that it was unnecessary for the CIAC to rule on whether MCI completed and/or delivered the project within the approved completion schedule of the project since CHATHAM failed to observe the antecedent acts required for the termination of the contract, as set forth in the Construction Agreement.

The Court of Appeals ascertained that the evidence overwhelmingly proved that there was no takeover by CHATHAM and that MCI exercised complete control, authority and responsibility over the construction. In support of this conclusion, the appellate court pointed to the following evidentiary bases:[10]

> - Testimony of CHATHAM's Engr. Kapunan that the interim takeover for the works on the basement was triggered by lack of manpower and delays as early as February 1995, as evidenced by their assessment[11] and that the interim takeover was only with respect to the direction or management of the field operations and was limited only to works on the basement and intended to assist MCI to catch up with the schedule of completion, since at that time the project was very much delayed; thereafter, the MCI was back in full control of the project.[12]
>
> - Testimony of Engr. Bautista that the takeover was only partial and temporary and limited to the management portion on the basement only and that MCI was always in control of the project.[13]
>
> - Testimony of Engr. Infante that MCI personnel were constantly present in the project and the "intervention" (not takeover) by CHATHAM was justified to ensure completion of the project on time.[14]
>
> - Documentary exhibits evincing the nature and extent of MCI's work during the takeover period which belied its claims that it was not in control of the project because of the takeover thus:
> Exhibit "4" - Letter dated 15 February 1995 of Engr. Kapunan of RKDCCI to John Lai of MCI stating that the takeover of directions or management of the field operations is interim, i.e. while the takeover is effective immediately it will extend only after concreting Level B-1 or approximately until 30 May 1995 which ever is later.
>
> Exhibit "4-A" Letter dated 17 February 1995 written by Dr. Lai of MCI to Engr. Kapunan in response to the latter's 15 February 1995 letter stating that "[A]lso we were assured that we will not be responsible for any errors or accidents that may occur during this INTERIM period," indicating that Dr. Lai was very much aware of the interim period.
>
> Exhibit "4-C" - Letter dated 18 February 1995 written by Engr. Ben C. Ruiz of RKDCCI to Dr. Lai containing the reasons for the takeover.
>
> Exhibit "8A" - Letter dated 5 September 1995 written by Dr. E.G. Tabujara to Dr. Lai/Romy Laron (Project Manager of MCI) requesting for an engineer of MCI to accompany the inspector of RKDCCI to witness batching procedures. By so doing, Dr. E.G. Tabujara acknowledged that Dr. Lai was in control of the project.

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> Exhibit "8" - Letter dated 4 September 1995 by Engr. Romulo R. Sugay to Dr. Lai offering an incentive to the workers of MCI to exert (their) best effort for topping off by the end of December; another clear indication that Dr. Lai was in control of the project.
>
> Exhibit "4-D" - Letter dated 4 January 1996 indicating that Mr. H.T. Go offered Dr Lai an incentive of P1,800,000 on the condition that MCI meets the new schedule/milestones. MCI's acceptance of the incentive offer likewise shows that MCI was in control of the Project.
>
> Exhibits "3," "3-I," "3-M," "3-N," "3-W-1," "3-X," "3-Y," and "3-Z" - among others containing reminders to MCI of its duties and shortcomings, likewise attest to the fact that MCI was in control (of) and responsible for the Project, although markedly deficient.
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> Exhibits "5," "5-A," "5-B," "5-C," "5-D," "5-E," "5-F," "5-O," "C-7," and "E-9" - evidencing that MCI continued to manage other works on the project even during the time of the interim takeover of the basement works, as seen in the series of communications between CHATHAM or RKDCCI and MCI within the period beginning February 1995 to 30 May 1995.

- Respondent's Request for Adjudication, Annex G, Records, Folder No. 6 - which incorporated Change Order No. 12, among others, dated 28 August 1995, recommended by the RKDCCI and accepted by Dr. Lai, and which request for an extension of 25 days readily showed that even after 30 May 1995, after the close of the supposed takeover period, MCI was still the contractor in complete control of the project for it would not have otherwise accepted the said change order if it (were) no longer the Contractor of the project due to the termination of the Construction agreement as of said date on account of the alleged takeover.

- Exhibits "3-J," "3-M," "3-Q," "3-R," "3-V," "3-W-1," "3-W-2," "5-F," "5-1," "6," "12-II," "12-JJ," "12-MM," and "12-NN" - tending to prove that RKDCCI monitored the work from start to finish and had zealously pointed out to MCI the defects or improper execution of the construction works, and gave MCI all the opportunity to rectify the construction deficiencies and complete the works of the project.

The Court of Appeals concluded that the interim takeover was necessitated by CHATHAM's insistence to meet its own turnover dates with the buyers of the project's units. Thus, CHATHAM was constrained to hire subcontractors with sufficient manpower and supervision and incur various expenses to facilitate the completion of the project and/or assist MCI in making up for its delay.

The Court of Appeals then considered it imperative to determine whether MCI failed to complete the project on time for which it may be held liable for liquidated damages based on the delays in the overall schedule of completion pursuant to Art. 13.5 of the Construction Agreement, to wit:

> 13.5. Over-All Schedule - For not meeting the final completion date of the PROJECT, the OWNER will deduct from the Contract Sum or amounts due the CONTRACTOR, the amount equivalent to 1/10 of 1% of the Contract Sum for every calendar day of delay, provided, however, that the maximum penalty should not exceed 25% of the fee payable to the CONTRACTOR as stipulated in the Bill of Quantities. Penalties from concreting milestones shall be deducted from the penalty of Over-All Schedule.[15]

The Court of Appeals disposed of the controversy in this wise:

> As is extant from the records, the completion date of the Project under the Construction Contract or under the revised construction schedule was never met by reason of [MCI's] lack of manpower, necessary equipment, qualified engineers and inefficient management of the construction works on the Project. Thus, under the Contract (Exhibit `1'), [MCI] had 780 days, or until 22 January 1996, from starting date, or April 12, 1994, to finish the project. The completion date, however, was not followed and was revised as early as December 17, 1994, extending the milestone dates up to March 15, 1996 (Exhibits `3-G' and `3-H'). As of December 25,

> 1995, the number of days delayed was already 294 days. Thus, on February 22, 1996, the contract milestones were again revised, inclusive of 53 days extension, to May 23, 1996 (Exhibits `3-I' and `3-O'). The May 23, 1996 turnover milestone nor the July 22, 1996 turnover of the whole project were neither met (Exhibits `3-P', `3-R', `3-S' and `3-T' but [CHATHAM] was again constrained to allow [MCI] to continue working on the Project to complete the balance of the works (Exhibit `M'). And all throughout the construction of the Project, [CHATHAM] had to assist [MCI] along the way to expedite the execution and completion of the Project (Exhibits `3-K' and `3-V').
>
> From the foregoing disquisitions, it is clear that [MCI] is liable for liquidated damages, as per Article 13.5 of the Construction Contract, for its failure to complete the project within the period stipulated in the Construction Contract and even despite an extension of 53 days from the original schedule or of the overall schedule of completion. [MCI] should therefore pay [CHATHAM] the amount of liquidated damages equivalent to P24,125,000.00 for 193 days of delay in the overall schedule of completion counted from overall completion date on July 22, 1996 up to the date of completion on February 15, 1997, as stated in the Certificate of Occupancy, computed as follows, to wit:
> 1/10[1%(P125,000,000.00)] per day x 193 days
> =[1/10 (P1,250,000.00)] per day x 193 days
> =P125,000.00 per day x 193 days
> =P24,125,000.00

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered partially granting [CHATHAM's] claim for liquidated damages. The Tribunal's Decision dated 19 October 1998 is hereby AFFIRMED with the modification on [MCI's] liability for liquidated damages in the amount of P24,125,000.00. Thus,

A. AMOUNTS [MCI] IS ENTITLED TO:

A.1.

From the original contract: 94.12% of P125,000,000.00

P117,650,000.00

A.2

Approved Change Orders

5,353,091.08

A.3

Pending Change Orders

1,648,560.46

A.4

CHB Works

1,248,654.71

A.5

Workers Bonus

-0-

A.6

Disputed Deductions

909,484.70

A.7

Labor Escalation

1,076,256.00

A.8

Attendance Fee

508,162.73

Total

P128,394,209.68

Less: Total payments-Item ll-6 of TOR

104,875,792.37

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Balance Due Respondent

P 23,518,417.31

B. AMOUNTS [CHATHAM] IS ENTITLED TO:

B.1.

Liquidated Damages

P 24,125,000.00

B.2.

Actual Damages

335,994.50

B.3.

Penalties

1,778,285.44

B.4

Cash Payments in Behalf of MCI

2,214,715.68

Total Amount Due CPI

P 28,453,995.62

C. NET AMOUNT DUE [CHATHAM] (B minus A) P 4,935,578.31

Correspondingly, Respondent [MCI] is hereby directed to pay the Petitioner [CHATHAM] the net sum of FOUR MILLION NINE HUNDRED THIRTY-FIVE THOUSAND FIVE HUNDRED SEVENTY-EIGHT & 31/100 (P4,935,578.31) PESOS.[16]

MCI promptly filed on 25 October 1999 a motion for reconsideration. In its Resolution of 4 February 2000, the Court of Appeals denied MCI's motion for reconsideration for lack of merit, as well as CHATHAM's Motion to Lift Garnishment and Levy Pending Appeal, filed on 13 October 1999, for being premature.[17]

Thus, MCI filed the instant petition for review to challenge the decision of the Court of Appeals. MCI alleges that the Court of Appeals erred in reviewing and reversing the CIAC's factual findings, that there was an implied takeover by CHATHAM of the project, and that MCI was not in delay in the overall schedule. In so doing, the Court of Appeals contravened Section 19 of Executive Order (E.O.) No. 1008,[18] which limits the review of an Arbitral Award to only questions of law, thus:

> Section 19. Finality of Awards - The arbitral award shall be binding upon the parties. It shall be final and inappealable (sic) except on questions of law which shall be appealable to the Supreme Court.

MCI then asserts that as signatories to the contract, it and CHATHAM complied with this legal provision when they included as part of their TOR the stipulation that "[t]he decision of the Arbitral Tribunal shall be final and non-appealable except on questions of law." Accordingly, the binding character of this provision upon the parties is conclusive and final.

MCI also contends that while it may be argued that recent (1) issuances by the Supreme Court, specifically, Circular No. 1-91, which eventually became Revised Administrative Circular No. 1-95; (2) legislation, in particular, Republic Act No. 7902, which amended Batas Pambansa Blg. 129; and (3) amendments to the Rules on Civil Procedure, modifying E.O. No. 1008 in the sense that "questions of facts, of law, or mixed questions of facts and law may be the subject of an appeal of the CIAC's decision to the Court of Appeals," it is still E.O. No. 1008 which remains to be the fundamental and substantive law that endows parties to an arbitral controversy the right to appeal. Hence, the provisions on appeal of E.O. No. 1008 should be controlling, i.e., only questions of law should be entertained. Therefore, the only effect of these rules on E.O. No. 1008 is the transfer of the appeal forum from the Supreme Court to the Court of Appeals.

MCI further asserts that, even assuming that the CIAC's findings of facts are reviewable on appeal, the Court of Appeals gravely abused its discretion when it accepted "hook, line and sinker" CHATHAM's contention that MCI was in delay, and ignored competent, clear and substantial evidence that prove the contrary, and that CHATHAM is not entitled to liquidated damages.

For its part, CHATHAM avers that the evolution on the rules governing appeals from judgments, decisions, resolutions, orders or awards of the CIAC convincingly discloses that E.O. No. 1008 has already been superseded. With the power of the Supreme Court to promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice, and procedure in all courts, its issuances and amendments to the Rules on Civil Procedure, not to mention R.A. No. 7902, as enacted by Congress, effectively modified E.O. No. 1008. Accordingly, the judgments, awards, decisions, resolutions, orders or awards of the CIAC are now appealable to the Court of Appeals on questions of facts, mixed questions of facts and law, and questions of law, and no longer with the Supreme Court on exclusively questions of law. Further, the TOR cannot limit the expanded jurisdiction of the Court of Appeals based on the latest rules. Thus, the Court of Appeals did not err in reviewing the factual findings of the CIAC.

CHATHAM also contends that, even if the Court of Appeals can only review questions of law, said court did not err in rendering the questioned decision as the conclusions therein, drawn as they were from factual determinations, can be considered questions of law.

Finally, CHATHAM asseverates that the Court of Appeals did not commit grave abuse of discretion in reversing the CIAC's ascertainment on the implied take-over and liquidated damages.

This Court shall now resolve the primary issue raised in this case.

E.O. No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof.[19] By express provision of Section 19 thereof, the arbitral award of the CIAC is final and unappealable, except on questions of law, which are appealable to the Supreme Court.

The parties, however, disagree on whether the subsequent Supreme Court issuances on appellate procedure and R.A. No. 7902 removed from the Supreme Court its appellate jurisdiction in Section 19 of E.O. No. 1008 and vested the same in the Court of Appeals, and whether appeals from CIAC awards are no longer confined to questions of law.

On 27 February 1991, this Court issued Circular No. 1-91, which prescribes the Rules Governing Appeals to the Court of Appeals from Final Orders or Decisions of the Court of Tax Appeals and Quasi-Judicial Agencies. Pertinent portions thereof read as follows:

> - Scope -- These rules shall apply to appeals from final orders or decisions of the Court of Tax Appeals. They shall also apply to appeals from final orders or decisions of any quasi-judicial agency from which an appeal is now allowed by statute to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Secretary of Agrarian Reform and Special Agrarian Courts under R.A. No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission and Philippine Atomic Energy Commission.
>
> - Cases not Covered. -- These rules shall not apply to decisions and interlocutory orders of the National Labor Relations Commission or the Secretary of Labor and Employment under the Labor Code of the Philippines, the Central Board of Assessment Appeals, and other quasi-judicial agencies from which no appeal to the courts is prescribed or allowed by statute.
>
> - Who may appeal and where to appeal. -- The appeal of a party affected by a final order, decision, or judgment of the Court of Tax Appeals or a quasi-judicial agency shall be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact or of law or mixed questions of fact and law. From final judgments or decisions of the Court of Appeals, the aggrieved party may appeal by certiorari to the Supreme Court as provided in Rule 45 of the Rules of Court.

Subsequently, on 23 February 1995, R.A. No. 7902 was enacted. It expanded the jurisdiction of the Court of Appeals and amended for that purpose Section 9 of B.P. Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980.[20]

Section 9(3) thereof reads:

> Section 9. Jurisdiction. -- The Court of Appeals shall exercise:
>
> x x x
>
> (3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential

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> Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
>
> The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. x x x

Then this Court issued Administrative Circular No. 1-95,[21] which revised Circular No. 1-91. Relevant portions of the former reads as follows:

> 1. Scope. --These rules shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of any quasi-judicial agency from which an appeal is authorized to be taken to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunication Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, and Construction Industry Arbitration Commission.
>
> Section 2. Cases Not Covered. - These rules shall not apply to judgments or final orders issued under the Labor Code of the Philippines, Central Board of Assessment Appeals, and by other quasi-judicial agencies from which no appeal to the court is prescribed or allowed.
>
> Section 3. Where to Appeal. -- An appeal under these rules may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

Thereafter, this Court promulgated the 1997 Rules on Civil Procedure. Sections 1, 2 and 3 of Rule 43 thereof provides:

> Section 1. Scope. -- This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.
>
> Section 2. Cases Not Covered. - This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.
>
> Section 3. Where to Appeal. -- An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves question of fact, of law, or mixed questions of fact and law.

Through Circular No. 1-91, the Supreme Court intended to establish a uniform procedure for the review of the final orders or decisions of the Court of Tax Appeals and other quasi-judicial agencies provided that an appeal therefrom is then allowed under existing statutes to either the Court of Appeals or the Supreme Court. The Circular designated the Court of Appeals as the reviewing body to resolve questions of fact or of law or mixed

questions of fact and law.

It is clear that Circular No. 1-91 covers the CIAC. In the first place, it is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making.[22] The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts.[23] The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.

In the second place, the language of Section 1 of Circular No. 1-91 emphasizes the obvious inclusion of the CIAC even if it is not named in the enumeration of quasi-judicial agencies. The introductory words "[a]mong these agencies are" preceding the enumeration of specific quasi-judicial agencies only highlight the fact that the list is not exclusive or conclusive. Further, the overture stresses and acknowledges the existence of other quasi-judicial agencies not included in the enumeration but should be deemed included. In addition, the CIAC is obviously excluded in the catalogue of cases not covered by the Circular and mentioned in Section 2 thereof for the reason that at the time the Circular took effect, E.O. No. 1008 allows appeals to the Supreme Court on questions of law.

In sum, under Circular No. 1-91, appeals from the arbitral awards of the CIAC may be brought to the Court of Appeals, and not to the Supreme Court alone. The grounds for the appeal are likewise broadened to include appeals on questions of facts and appeals involving mixed questions of fact and law.

The jurisdiction of the Court of Appeals over appeals from final orders or decisions of the CIAC is further fortified by the amendments to B.P. Blg.129, as introduced by R.A. No. 7902. With the amendments, the Court of Appeals is vested with appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except "those within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948."

While, again, the CIAC was not specifically named in said provision, its inclusion therein is irrefutable. The CIAC was not expressly covered in the exclusion. Further, it is a quasi-judicial agency or instrumentality. The decision in Luzon Development Bank v. Luzon Development Bank Employees[24] sheds light on the matter, thus:

> Assuming arguendo that the voluntary arbitrator or the panel of voluntary arbitrators may not strictly be considered as a quasi-judicial agency, board or commission, still both he and the panel are comprehended within the concept of a `quasi-judicial instrumentality.' It may even be stated that it was to meet the very situation presented by the quasi-judicial functions of the voluntary arbitrators here, as well as the subsequent arbitrator/arbitral tribunal operating under the Construction Industry Arbitration Commission, that the broader term `instrumentalities' was purposely included in [Section 9 of B.P. Blg. 129 as amended by R.A. No. 7902].
>
> An `instrumentality' is anything used as a means or agency. Thus, the terms governmental `agency' or `instrumentality' are synonymous in the sense that either of them is a means by which a government acts, or by which a certain government act or function is performed. The word `instrumentality,' with respect to a state, contemplates an authority to which the state delegates governmental power for the performance of a state function.

Any remaining doubt on the procedural mutation of the provisions on appeal in E.O. No. 1008, vis-à-vis Circular

No. 1-91 and R.A. No. 7902, was completely removed with the issuance by the Supreme Court of Revised Administrative Circular No. 1-95 and the 1997 Rules of Civil Procedure. Both categorically include the CIAC in the enumeration of quasi-judicial agencies comprehended therein. Section 3 of the former and Section 3, Rule 43 of the latter, explicitly expand the issues that may be raised in an appeal from quasi-judicial agencies or instrumentalities to the Court of Appeals within the period and in the manner therein provided. Indisputably, the review of the CIAC award may involve either questions of fact, of law, or of fact and law.

In view of all the foregoing, we reject MCI's submission that Circular No. 1-91, B.P. Blg. 129, as amended by R.A. 7902, Revised Administrative Circular 1-95, and Rule 43 of the 1997 Rules of Civil Procedure failed to efficaciously modify the provision on appeals in E.O. No. 1008. We further discard MCI's claim that these amendments have the effect of merely changing the forum for appeal from the Supreme Court to the Court of Appeals.

There is no controversy on the principle that the right to appeal is statutory. However, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified provided that vested rights are not impaired. The Supreme Court is bestowed by the Constitution with the power and prerogative, inter alia, to promulgate rules concerning pleadings, practice and procedure in all courts, as well as to review rules of procedure of special courts and quasi-judicial bodies, which, however, shall remain in force until disapproved by the Supreme Court.[25] This power is constitutionally enshrined to enhance the independence of the Supreme Court.[26]

The right to appeal from judgments, awards, or final orders of the CIAC is granted in E.O. No. 1008. The procedure for the exercise or application of this right was initially outlined in E.O. No. 1008. While R. A. No. 7902 and circulars subsequently issued by the Supreme Court and its amendments to the 1997 Rules on Procedure effectively modified the manner by which the right to appeal ought to be exercised, nothing in these changes impaired vested rights. The new rules do not take away the right to appeal allowed in E.O. No. 1008. They only prescribe a new procedure to enforce the right.[27] No litigant has a vested right in a particular remedy, which may be changed by substitution without impairing vested rights; hence, he can have none in rules of procedure which relate to remedy."[28]

The foregoing discussion renders academic MCI's assertion on the binding effect of its stipulation with CHATHAM in the TOR that the decision of the CIAC shall be final and non-appealable except on questions of law. The agreement merely adopted Section 19 of E.O. No. 1008, which, as shown above, had been modified.

The TOR, any contract or agreement of the parties cannot amend, modify, limit, restrict or circumscribe legal remedies or the jurisdiction of courts. Rules of procedure are matters of public order and interest and unless the rules themselves so allow, they cannot be altered, changed or regulated by agreements between or stipulations of the parties for their singular convenience.[29]

Having resolved the existence of the authority of the Court of Appeals to review the decisions, awards, or final orders of the CIAC, the Court shall now determine whether the Court of Appeals erred in rendering the questioned decision of 30 September 1999.

Settled is the general rule that the findings of facts of the Court of Appeals are binding on us. There are recognized exceptions to the rule, such as when the findings are contrary to those of the trial court,[30] as in this case. Hence, we have to take a closer reexamination of this case.

The CIAC is certain that the evidence overwhelmingly tended to prove that the manner by which CHATHAM took charge in the procurement of materials, fielding of labor, control of MCI engineers and the subcontracting of

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various phases of the work, constituted an implied takeover of the project. The CIAC then concludes that the cut-off date for delineating the fiscal liabilities of the parties is 23 May 1996 when CHATHAM evaluated MCI's work accomplishment at 94.12% and then suspended all further progress payments to MCI. For these reasons, the CIAC found it trifling to determine whether MCI was in delay based on the Overall Schedule. However, the CIAC discovered that MCI was in delay for 294 days in the concreting milestone and held the latter liable for liquidated damages in the amount of P3,062,498.78.

The Court of Appeals made a contrary conclusion and declared that MCI was in delay for 193 days based on the overall schedule of completion of the project and should incur liquidated damages in the amount of P24,125,000.00.

It is undisputed that the CIAC and the Court of Appeals found MCI liable for liquidated damages but on different premises. Based on the CIAC's assessment, MCI's responsibility was anchored on its delay in the concreting milestone, while the Court of Appeal's evaluation concentrated on MCI's delay in completing the project based on the overall schedule of work. The variance in the evaluation spells a staggering difference in the party who should ultimately be held liable and the net amount involved.

A study of the final computation of the net amount due in both the final disquisitions of the CIAC and the Court of Appeals shows that all the other figures therein are constant, save for the amount of liquidated damages for which MCI should be accountable. If this Court concurs with the CIAC's conclusions, MCI's responsibility for liquidated damages is, as already stated, P3,062,498.78. Setting this off against CHATHAM's overall fiscal accountability would bring the latter's total liability to MCI to P16,126,922.91. If the Court of Appeals is correct, MCI would be held liable for a much higher P24,125,000 liquidated damages. Setting this off against CHATHAM's monetary responsibilities, MCI would still have to pay CHATHAM P4,935,578.31.

After painstakingly combing through the voluminous records, we affirm the findings of the CIAC. The evidence taken as a whole or in their totality reveals that there was an implied takeover by CHATHAM on the completion of the project. The evidence that appears to accentuate the Court of Appeals' decision ironically bolstered the CIAC's conclusion. The testimonies of Engr. Kapunan, Engr. Bautista, Dr. Lai, and the letter of Engr. Ruiz,[31] acknowledging the "temporary takeover" by CHATHAM of the project, underscore the palpable fact that there was indeed a takeover. We confer particular credit to Dr. Lai's testimony that as of 15 February 1995, MCI was relieved of full control of the construction operations, that it was relegated to a mere supplier of labor, materials and equipment, and that the alleged interim takeover actually extended through the completion of the project. Even CHATHAM admits the takeover but sugarcoated the same with words like "interim" and "charging the costs to MCI." With these glaring admissions, we can even consider that the takeover was not implied but blatant.

Exhibits "4," "4-A," "4-C," "8A," "8," "4-D," "3," "3-I," "3-M," "3-N," "3-W-1," "3-X," "3-Y," "3-Z," "5,""5-A," "5-B," "5-C" "5-D," "5-E," "5-F," "5-O," "C-7," "E-9," etc.,[32] relied upon by the Court of Appeals when considered by themselves and singly, seemingly and initially evince MCI's control over the project. However, they eventually lose evidentiary puissance to support the Court of Appeals' conclusion when reckoned against the totality of the evidence that CHATHAM took charge of the completion of the project, particularly, the fact that CHATHAM suspended all progress billing payments to MCI. The continued presence and participation of MCI in the project was, as found by the CIAC, a matter of mutual benefit to and convenience of the parties.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the assailed 30 September 1999 decision of the Court of Appeals in CA-G.R. SP No. 49429 is hereby PARTIALLY MODIFIED by setting aside the order directing Metro Construction, Inc. to pay Chatham Properties, Inc. the amount of P4,935,578.31. The arbitral award of the Construction Industry Arbitration Commission in CIAC Case 10-98, promulgated on 19 October 1998, directing

Chatham Properties, Inc. to pay Metro Construction, Inc. the sum of SIXTEEN MILLION ONE HUNDRED TWENTY-SIX THOUSAND NINE HUNDRED TWENTY-TWO & 91/100 (P16,126,922.91) PESOS, is accordingly REINSTATED.

No pronouncement as to costs.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Rollo, 101-107; Annex "C."

[2] Id., 108-110; Annex "C-1." All references to the owner and claimant or contractor were changed to CHATHAM and MCI, respectively.

[3] Rollo, 103-107.

[4] Decision of the CIAC, Rollo, 276-325; Annex "E."

[5] Rollo, 280-285.

[6] Rollo, Decision of CIAC, 304-305.

[7] Id. 324-325.

[8] MCI's Petition for Review with the Court of Appeals, 8-9; OR, 15-16.

[9] Per Rivera, J., with Abad Santos, Jr. and Salas, B., JJ., concurring.

[10] See Decision of the Court of Appeals, Rollo, 88-90.

[11] Exhibit 19-Q and 19-R; TSN 5 August 1998, 82-83.

[12] TSN, 5 August 1998, 84-85.

[13] TSN, 19 August 19 1998, 173-182.

[14] TSN, 7 September 1998 62-63.

[15] OR, 487-488.

[16] Rollo, 91-92.

[17] Id., 94-99.

[18] Entitled "Creating an Arbitration Machinery for the Philippine Construction Industry," which took effect on 4 February 1985.

[19] See National Irrigation Administration v. Court of Appeals, 318 SCRA 255, 266 [1999].

[20] B.P. Blg. 129 was signed into law on 14 August 1981.

[21] This took effect on 1 June 1995.

[22] See The Presidential Anti-Dollar Salting Task Force v. Court of Appeals, 171 SCRA 348 [1989].

[23] See Tropical Homes v. National Housing Authority, 152 SCRA 540 [1987]; See also Antipolo Realty Corp.

v. NHA, 153 SCRA 399 [1987]; Solid Homes, Inc. v. Payawal, 177 SCRA 572 [1989].

[24] 249 SCRA 162 [1995].

[25] Article VIII, Section 5 of the 1987 Constitution.

[26] See Echegaray v. Secretary of Justice, 301 SCRA 96 [1999]; See also GSIS v. Court of Appeals, 222 SCRA 685 [1993].

[27] See Fabian v. Desierto, 295 SCRA 470 [1998].

[28] Ibid.

[29] See Republic of the Philippines v. Hernandez, 253 SCRA 509 [1996].

[30] Litonjua v. Court of Appeals, 286 SCRA 136 [1998]; Rosario v. Court of Appeals, 310 SCRA 464 [1999]; Republic v. Court of Appeals, 314 SCRA 230 [1999].

[31] See Decision of the Court of Appeals, Rollo, 88-90.

[32] Id.

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