FIESTA WORLD MALL CORPORATION, PETITIONER, VS. LINBERG PHILIPPINES, INC., RESPONDENT.

G.R. NO. 152471. August 18, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari[1] assailing the Decision[2] dated December 12, 2001 and Resolution[3] dated February 28, 2002 rendered by the Court of Appeals in CA-G.R. SP No. 63671, entitled "Fiesta World Mall Corporation, petitioner, versus Hon. Florito S. Macalino, Presiding Judge of the Regional Trial Court (RTC), Branch 267, Pasig City, and Linberg Philippines, Inc., respondents."

The facts of this case are:

Fiesta World Mall Corporation, petitioner, owns and operates Fiesta World Mall located at Barangay Maraouy, Lipa City; while Linberg Philippines, Inc., respondent, is a corporation that builds and operates power plants.

On January 19, 2000, respondent filed with the Regional Trial Court (RTC), Branch 267, Pasig City, a Complaint for Sum of Money against petitioner, docketed as Civil Case No. 67755. The complaint alleges that on November 12, 1997, petitioner and respondent executed a build-own-operate agreement, entitled "Contract Agreement for Power Supply Services, 3.8 MW Base Load Power Plant"[4] (the Contract). Under this Contract, respondent will construct, at its own cost, and operate as owner a power plant, and to supply petitioner power/electricity at its shopping mall in Lipa City. Petitioner, on the other hand, will pay respondent "energy fees" to be computed in accordance with the Seventh Schedule of the Contract, the pertinent portions of which provide:

2.1 x x x

E1

–

988,888 kw-hr x BER

Where:

E1 & E2

–

Energy fees in pesos for the billing period. Where E1 is based on the minimum energy off-take of 988,888 kw-hrs. per month and E2 is based on the actual meter reading less the minimum off-take.

BER

–

Base energy rate at Ps 2.30/Kw-Hr billing rate based on the exchange rate of Ps 26.20 to the US dollar, and with fuel oil to be supplied by LINBERG at its own cost. The base energy rate is subject to exchange rate adjustment accordingly to the formula as follows:

BER

–

0.6426 + 0.3224 Pn + 1.345 Fn
26.40 4.00

Where:

Pn

–

is defined as the average of the Bangko Sentral ng Pilipinas' published dealing rates for thirty (30) trading days immediately prior to the new billing rate.

Fn

–

Weighted average of fuel price per liter based on the average of the last three (3) purchases made by LINBERG as evidenced by purchase invoices.

ED

–

Energy delivered in kw-hrs per meter reading.

> - Minimum Energy Off-Take
>
> The energy fees payable to LINBERG shall be on the basis of actual KWH generated by the plant. However, if the actual KWH generated is less than the minimum energy off-take level, the calculation of the energy fees shall be made as if LINBERG has generated the minimum energy off-take level of 988,888 KW-HR per month.

The complaint further alleges that respondent constructed the power plant in Lipa City at a cost of about P130,000,000.00. In November 1997, the power plant became operational and started supplying power/electricity to petitioner's shopping mall in Lipa City. In December 1997, respondent started billing petitioner. As of May 21, 1999, petitioner's unpaid obligation amounted to P15,241,747.58, exclusive of interest. However, petitioner questioned the said amount and refused to pay despite respondent's repeated demands.

In its Answer with Compulsory Counterclaim, petitioner specifically denied the allegations in the complaint, claiming that respondent failed to fulfill its obligations under the Contract by failing to supply all its power/fuel needs. From November 10, 1998 until May 21, 1999, petitioner personally shouldered the cost of fuel. Petitioner also disputed the amount of energy fees specified in the billings made by respondent because the latter failed to monitor, measure, and record the quantities of electricity delivered by taking photographs of the electricity meter

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reading prior to the issuance of its invoices and billings, also in violation of the Contract.[5] Moreover, in the computation of the electrical billings, the minimum off-take of energy (E2) was based solely on the projected consumption as computed by respondent. However, based on petitioner's actual experience, it could not consume the energy pursuant to the minimum off-take even if it kept open all its lights and operated all its machinery and equipment for twenty-four hours a day for a month. This fact was admitted by respondent. While both parties had discussions on the questioned billings, however, "there were no earnest efforts to resolve the differences in accordance with the arbitration clause provided for in the Contract."

Finally, as a special affirmative defense in its answer, petitioner alleged that respondent's filing of the complaint is premature and should be dismissed on the ground of non-compliance with paragraph 7.4 of the Contract which provides:

> 7.4 Disputes
>
> If FIESTA WORLD disputes the amount specified by any invoice, it shall pay the undisputed amount on or before such date(s), and the disputed amount shall be resolved by arbitration of three (3) persons, one (1) by mutual choice, while the other two (2) to be each chosen by the parties themselves, within fourteen (14) days after the due date for such invoice and all or any part of the disputed amount paid to LINBERG shall be paid together with interest pursuant to Article XXV from the due date of the invoice. It is agreed, however, that both parties must resolve the disputes within thirty (30) days, otherwise any delay in payment resulting to loss to LINBERG when converted to $US as a result of depreciation of the Pesos shall be for the account of FIESTA WORLD. Corollarily, in case of erroneous billings, however, LINBERG shall be liable to pay FIESTA WORLD for the cost of such deterioration, plus interest computed pursuant to Art. XXV from the date FIESTA WORLD paid for the erroneous billing. (Underscoring supplied)

Thereafter, petitioner filed a Motion to Set Case for Preliminary Hearing on the ground that respondent violated the arbitration clause provided in the Contract, thereby rendering its cause of action premature.

This was opposed by respondent, claiming that paragraph 7.4 of the Contract on arbitration is not the provision applicable to this case; and that since the parties failed to settle their dispute, then respondent may resort to court action pursuant to paragraph 17.2 of the same Contract which provides:

> 17.2 Amicable Settlement
>
> The parties hereto agree that in the event there is any dispute or difference between them arising out of this Agreement or in the interpretation of any of the provisions hereto, they shall endeavor to meet together in an effort to resolve such dispute by discussion between them but failing such resolution the Chief Executives of LINBERG and FIESTA WORLD shall meet to resolve such dispute or difference and the joint decision of such shall be binding upon the parties hereto, and in the event that a settlement of any such dispute or difference is not reached, then the provisions of Article XXI shall apply.

Article XXI, referred to in paragraph 17.2 above, reads:

ARTICLE XXI

JURISDICTION

> The parties hereto submit to the exclusive jurisdiction of the proper courts of Pasig City, Republic of the Philippines for the hearing and determination of any action or proceeding arising out of or in connection with this Agreement.

In its Order dated October 3, 2000, the trial court denied petitioner's motion for lack of merit.

Petitioner then filed a Motion for Reconsideration but it was denied in an Order dated January 11, 2001.

Dissatisfied, petitioner elevated the matter to the Court of Appeals via a Petition for Certiorari, docketed as CA-G.R. SP No. 63671. On December 12, 2001, the appellate court rendered its Decision dismissing the petition and affirming the challenged Orders of the trial court.

Petitioner's Motion for Reconsideration of the above Decision was likewise denied by the appellate court in its Resolution[6] dated February 28, 2002.

Hence, the instant Petition for Review on Certiorari.

The sole issue for our resolution is whether the filing with the trial court of respondent's complaint is premature.

Paragraph 7.4 of the Contract, quoted earlier, mandates that should petitioner dispute any amount of energy fees in the invoice and billings made by respondent, the same "shall be resolved by arbitration of three (3) persons, one (1) by mutual choice, while the other two (2) to be each chosen by the parties themselves." The parties, in incorporating such agreement in their Contract, expressly intended that the said matter in dispute must first be resolved by an arbitration panel before it reaches the court. They made such arbitration mandatory.

It is clear from the records that petitioner disputed the amount of energy fees demanded by respondent. However, respondent, without prior recourse to arbitration as required in the Contract, filed directly with the trial court its complaint, thus violating the arbitration clause in the Contract.

It bears stressing that such arbitration agreement is the law between the parties. Since that agreement is binding between them, they are expected to abide by it in good faith.[7] And because it covers the dispute between them in the present case, either of them may compel the other to arbitrate.[8] Thus, it is well within petitioner's right to demand recourse to arbitration.

We cannot agree with respondent that it can directly seek judicial recourse by filing an action against petitioner simply because both failed to settle their differences amicably. Suffice it to state that there is nothing in the Contract providing that the parties may dispense with the arbitration clause. Article XXI on jurisdiction cited by respondent, i.e., that "the parties hereto submit to the exclusive jurisdiction of the proper courts of Pasig City" merely provides for the venue of any action arising out of or in connection with the stipulations of the parties in the Contract.

Moreover, we note that the computation of the energy fees disputed by petitioner also involves technical matters that are better left to an arbitration panel who has expertise in those areas. Alternative dispute resolution methods or ADRs – like arbitration, mediation, negotiation and conciliation – are encouraged by this Court. By enabling the parties to resolve their disputes amicably, they provide solutions that are less time-consuming, less tedious, less confrontational, and more productive of goodwill and lasting relationships.[9] To brush aside such agreement providing for arbitration in case of disputes between the parties would be a step backward. As we held in BF Corporation v. Court of Appeals,[10]

> It should be noted that in this jurisdiction, arbitration has been held valid and constitutional. Even before the approval on June 19, 1953 of Republic Act No. 876 (The Arbitration Law), this Court has countenanced the settlement of disputes through arbitration (Puromines, Inc. v. Court of Appeals, G.R. No. 91228, March 22, 1993, 220 SCRA 281-290). Republic Act No. 876 was adopted to supplement the New Civil Code's provisions on arbitration (Chung Fu Industries Phils., Inc. v. Court of Appeals, G.R. No. 92683, February 25, 1992, 206 SCRA 545, 551). Its potentials as one of the alternative dispute resolution methods that are now rightfully vaunted as "the wave of the future' in international relations, is recognized worldwide. To brush aside a contractual agreement calling for arbitration in case of disagreement between the parties would therefore be a

step backward.

In this connection, since respondent has already filed a complaint with the trial court without prior recourse to arbitration, the proper procedure to enable an arbitration panel to resolve the parties' dispute pursuant to their Contract is for the trial court to stay the proceedings.[11] After the arbitration proceeding has been pursued and completed, then the trial court may confirm the award made by the arbitration panel.[12]

In sum, we hold that the Court of Appeals erred in disregarding the arbitration clause in the parties' Contract.

WHEREFORE, we GRANT the instant petition. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 63671 are REVERSED. The parties are ordered to submit their controversy to the arbitration panel pursuant to paragraph 7.4 of the Contract. The Regional Trial Court, Branch 267, Pasig City is directed to suspend the proceedings in Civil Case No. 67755 until after the Arbitration Panel shall have resolved the controversy and submitted its report to the trial court. Costs against respondent.

SO ORDERED.

Puno, (Chairperson), Corona and Garcia, JJ., concur.Azcuna, J., on official business.

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[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justice Oswaldo D. Agcaoili (retired) and Associate Justice Mariano C. Del Castillo, Annex "A," Petition, Rollo, pp. 20-26.

[3] Annex "B," id., pp. 27-28.

[4] Annex "D," id., pp. 30-51.

[5] Par. 59, petitioner's Answer to the Complaint; Rollo, p. 157.

[6] Id., p. 28.

[7] LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., G.R. No. 141833, March 26, 2003, 399 SCRA 562, 571-572, citing Toyota Motor Philippines Corporation v. Court of Appeals, 216 SCRA 236 (1992).

[8] LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., id.

[9] Id.

[10] G.R. No. 120105, March 27, 1998, 288 SCRA 267, 286.

[11] LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc., supra, citing Section 7 of Republic Act No. 876.

[12] BF Corporation v. Court of Appeals, supra, citing Section 23 of Republic Act No. 876.

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