

MEGAWORLD GLOBUS ASIA, INC., PETITIONER, VS. DSM CONSTRUCTION AND DEVELOPMENT CORPORATION AND PRUDENTIAL GUARANTEE AND ASSURANCE, INC., RESPONDENTS.

G.R. No. 153310. March 02, 2004

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TINGA, J.:

Before this Court is a Petition for Review on Certiorari assailing the Decision dated February 14, 2002, of the Court of Appeals in CA G.R. SP No. 67432,[1] which affirmed the Decision[2] of the Construction Industry Arbitration Commission (CIAC)[3] dated September 8, 2001, in CIAC Case No. 22-2000 finding petitioner Megaworld Globus Asia, Inc., liable to DSM Construction in the amount of P62,760,558.49.

The antecedents are as follows:

Relative to the construction of a condominium project called “The Salcedo Park,” located at H.V. dela Costa St., Salcedo Village, Makati City, the project owner, Megaworld, entered into three separate contracts with DSM Construction, namely: (1) Contract for Architectural Finishing Works; (2) Contract for Interior Finishing Works; and (3) Contract for Supply and Installation of Kitchen Cabinets and Closets. The total contract price, which was initially placed at P300 Million, was later reduced to P240 Million when the items for kitchen cabinets and walk-in closets were deleted.[4] The contracts also contain a stipulation for Retention Money, which is a portion of the total contract price (usually, as in this case, 10%) set aside by the project owner from all approved billings and retained for a certain period to guarantee the performance by the contractor of all corrective works during the defect-liability period which, in this case, is twelve months from the issuance of the Taking Over Certificate of Works.[5]

The Letter of Award for Architectural Finishing Works provides that the period for commencement and completion shall be twelve months, from August 1, 1997 to July 31, 1998. However, on February 21, 2000, representatives of both Megaworld and DSM Construction entered into an Interim Agreement whereby they agreed on a new schedule of the turnover of units from the 26[th] floor to the 40[th] floor, which was the last of the contracted works.[6] The consideration agreed upon in the Interim Agreement was P53,000,000.00. Of this amount, P3,000,000.00 was to be released immediately while five (5) equal installments of P7,000,000.00 were to be released depending on the turn-over of units from the 26th floor to the 40[th] floor. The remaining amount of P15,000,000.00 of the P53,000,000.00 consisted of half of the retention money.[7]

Because of the differences that arose from the billings, DSM Construction filed on August 21, 2002, a Complaint before the CIAC for compulsory arbitration, claiming payment of P97,743,808.33 for the outstanding balance of the three construction contracts, variation works, labor escalation, preliminaries loss and expense, earned retention money, interests, and attorney’s fees.[8] DSM Construction alleged that it already commenced the finishing works on the existing 12 floors on August 1, 1997, instead of waiting for the entire 40-floor structure to be completed. At one time, DSM Construction worked with other contractors whose work often depended on, interfered or conflicted with said contractors. Delay by a trade contractor would start a chain reaction by delaying

or putting off other works.[9]

Interposing mainly the defense of delay in the turn-over of units and the poor quality of work of DSM Construction, Megaworld filed its Answer and made a counter-claim for loss of profits, liquidated damages, costs of take-over and rectification works, administration expenses, interests, attorney's fees and cost of arbitration in the total amount of P85,869,870.28.[10]

Prudential Guarantee and Assurance, Inc. (PGAI), which issued a Performance Bond to guarantee Megaworld's contractual obligation on the project, was impleaded by Megaworld as a third-party respondent.[11]

On March 28, 2001, the parties signed before the members of the Arbitral Tribunal the Terms of Reference[12] (TOR) where they set forth their admitted facts,[13] respective documentary evidence,[14] summary of claims[15] and issues to be resolved by the tribunal.[16] After presenting their evidence in the form of affidavits of witnesses,[17] the parties submitted their respective memoranda/draft decisions.[18]

On October 19, 2001, the Arbitral Tribunal promulgated its Decision dated September 28, 2001, awarding P62,760,558.49 to DSM Construction and P9,473,799.46 to Megaworld.[19]

Megaworld filed a Petition for Review under Rule 43 of the Rules of Civil Procedure before the Court of Appeals. It faulted the Arbitral Tribunal for finding that DSM Construction achieved a 95.56% level of accomplishment as of February 14, 2000; for absolving DSM Corporation of the consequences of the alleged delay in the performance of its work; and for ruling that DSM Construction had complied with the contractual requirements for filing requests for extension. Megaworld likewise questioned the sufficiency of evidence to justify the awards for liquidated damages; the balance of the contract price; the balance of amounts payable on account of the Interim Agreement of February 21, 2000; the amount of P6,596,675.55 for variation orders; the amount of P29,380,902.35 as reimbursement for preliminaries/loss and expense; the amount of P413,041.52 for labor escalation costs; and the balance of the retention money in the amount of P14,700,000.00 despite its award of P11,820,000.00 under the February 21, 2000, Interim Agreement. Finally, Megaworld claimed that the Arbitral Tribunal erred in denying its claim for liquidated damages, expenses incurred for the cost of take-over work, administrative expenses, and its recourse against PGAI and for limiting its recovery for rectification work to only P9,197,863.55.[20]

On February 14, 2002, the Court of Appeals promulgated its Decision[21] affirming that of the Arbitral Tribunal. The court pointed out that only questions of law may be raised before it on appeal from an award of the CIAC.[22] That pronouncement notwithstanding, the Court of Appeals proceeded to review the decision of the Arbitral Tribunal and found the same to be amply supported by evidence.[23]

Megaworld sought reconsideration of the Court of Appeals' Decision arguing, among other things, that the appellate court ignored the ruling in *Metro Construction, Inc. v. Chatham Properties*[24] that the review of the CIAC award may involve either questions of fact, law, or both fact and law.

The Court of Appeals denied the motion for reconsideration in its Resolution[25] dated April 25, 2002. While acknowledging that the findings of fact of the CIAC may be questioned in line with *Metro Construction*,[26] the appellate court stressed that the tribunal's decision is not devoid of factual or evidentiary support.

Megaworld elevated the case to this Court through the present Petition, advancing the following grounds, viz:

I

THE COURT OF APPEALS IN EFFECT REFUSED TO HEED THE RULE LAID DOWN BY THIS HONORABLE COURT IN THE METRO CONSTRUCTION, INC. VS. CHATHAM PROPERTIES, INC.

CASE WHEN IT DISMISSED MGAI'S PETITION DESPITE THE GRAVE QUESTIONS OF BOTH FACT AND LAW BROUGHT BEFORE IT BY THE PETITIONER.

II

THE FINDING OF THE APPELLATE COURT THAT THE DECISION WAS BASED ON SUBSTANTIAL EVIDENCE ADDUCED BY BOTH PARTIES SANS ANY REVIEW OF THE RECORD OR OF ATTACHMENTS OF DSM IS FATALLY WRONG, SUCH FINDING BEING MERELY AN ADOPTION OF THE TRIBUNAL'S DECISION WHICH, AS EARLIER POINTED OUT, WAS NOT SUPPORTED BY COMPETENT, CREDIBLE AND ADMISSIBLE EVIDENCE.

III

THE COURT OF APPEALS SERIOUSLY ERRED IN GIVING BLANKET APPROVAL OF ALL THE UNFOUNDED CLAIMS AND CONCLUSIONS OF THE CIAC ARBITRAL TRIBUNAL'S SEPTEMBER 28, 2001 DECISION TO THE DETRIMENT OF PETITIONER'S CARDINAL RIGHT TO DUE PROCESS, PARTICULARLY TO ITS RIGHT TO ADMINISTRATIVE DUE PROCESS.

IV

THE FINDINGS AND CONCLUSIONS MADE BY A HIGHLY PARTISAN CIAC ARBITRAL TRIBUNAL HAVE NO BASIS ON THE EVIDENCE ON RECORD. HENCE, THE EXCEPTION TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE BROUGHT TO THE HONORABLE COURT IS APPLICABLE IN THE CASE AT BAR.[27]

Although Megaworld, at the outset,[28] intimates that the case involves grave questions of both fact and law, a cursory reading of the Petition reveals that, except for the amorphous advertence to administrative due process, the alleged errors fundamentally involve only questions of fact. Megaworld's plea for the Court to pass upon the findings of facts of the Arbitral Tribunal, which were upheld by the appellate court, must perforce fail.

To jumpstart its bid, Megaworld exploits the Court of Appeals' pronouncement in the assailed decision that only questions of law may be raised before it from an award of the CIAC. The appellate court did so, Megaworld continues, in evident disregard of Metro Construction.[29]

Under Section 19 of Executive Order No. 1008,[30] the CIAC's arbitral award "shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court." In Metro Construction, however, this Court held that, with the modification of E.O. No. 1008 by subsequent laws and issuances,[31] decisions of the CIAC may be appealed to the Court of Appeals not only on questions of law but also on questions of fact and mixed questions of law and fact.

Of such subsequent laws and issuances, only Section 1,[32] Rule 43 of the 1997 Rules of Civil Procedure expressly mentions the CIAC. While an argument may be made that procedural rules cannot modify substantive law, adding in support thereof that Section 1, Rule 43 has increased the jurisdiction of the Court of Appeals by expanding the scope of review of CIAC awards, or that it contravenes the rationale for arbitration, extant from the record is the fact that no party raised such argument. Consequently, the matter need not be delved into.

In any case, the attack against the merits of the Court of Appeals' Decision must fail. Although Metro Construction may have been unbeknownst to the appellate court when it promulgated its Decision, the fact remains that, as noted therein,[33] it reviewed the findings of facts of the CIAC and ruled that the findings are amply supported by the evidence.

The Court of Appeals is presumed to have reviewed the case based on the Petition and its annexes, and weighed them against the Comment of DSM Construction and the Decision of the Arbitral Tribunal to arrive at the

conclusion that the said Decision is based on substantial evidence. In administrative or quasi-judicial bodies like the CIAC, a fact may be established if supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[34]

The tenability of the assailed Decision is clear from the following discussion of the arguments raised by Megaworld before the Court of Appeals which significantly are the same arguments it has raised before this Court.

Issue of Accomplishment Level

Megaworld contested the finding of 95.56% level of accomplishment by the Arbitral Tribunal, alleging that the receipts DSM Construction issued for payments under the Interim Agreement show that the latter only achieved 90% accomplishment up to the 31st floor while the 32nd to the 34th floors were only 60% completed.[35] Megaworld insisted, therefore, that the level of accomplishment was nowhere near 90%.

DSM Construction countered that Megaworld, in claiming a level of accomplishment of only 90%, contradicted its own Project Manager, TCGI,[36] which came up with a different percentage of accomplishment that are notably higher than Megaworld's computation.[37]

In resolving this issue, the Arbitral Tribunal relied on the computation of Davis Langdon & Seah (DLS), the project's independent surveyor,[38] which found the level of accomplishment as of February 14, 2000, to be 95.56%. DLS's computation is recited in Exhibit "NN",[39] thus:

Architectural Finishing :[40]

The 24th Progress Billing evaluated by DLS covering the period November 15, 1999 to December 15, 1999 over the Contract Price for Architectural Finishing Works.

Php213,658,888.77[41]

Php223,456,756.68[42]

= 95.62%

Kitchen Cabinets & Bedroom Closets:[43]

The 9th Progress Billing evaluated by DLS covering the period December 1, 1999 to December 9, 1999 over the contract price for Kitchen Cabinet and Bedroom Closet.

Php26,228,091.73[44]

Php28,556,915.17[45]

= 91.84%

Interior Finishing Works:[46]

The 13th Progress Billing evaluated by DLS covering the period January 8, 2000 to February 7, 2000 for the Interior Finishing Works over the contract price for Interior Finishing Work.

Php49,383,114.67[47]

Php50,685,416.55[48]

= 95.55%

Php213,658,888.77

Php26,228,091.72 Php49,383,114.67 289,270,295.17=95.56%

_____ + _____ + _____ = _____

Php223,456,756.68 Php 28,556,915.17 Php50,685,416.55 302,699,097.40

Clearly, thus, CIAC's finding that the level of accomplishment of DSM Construction as of February 12, 2002, stood at 95.56% was affirmed by the Court of Appeals because it is supported by substantial evidence.

The Court of Appeals also noted that the Arbitral Tribunal did not give due course to all of DSM Construction's claims. Indeed, the Arbitral Tribunal rejected the construction company's demand for payment for subsequent works done after February 12, 2000, because Exhibit "OO," on which DSM Construction's demand was based, does not bear any mark that it had been received by Megaworld. Thus, the Arbitral Tribunal concluded that subsequent works up to September 22, 2000, when DSM Construction supposedly stopped working on the project, had not been established.[49]

This Court observes that between the two contrasting claims of Megaworld and DSM Construction on the percentage of work accomplishment, the Arbitral Tribunal instead accorded weight to the assessment of DLS which is the project surveyor. Apart from being reasonable, DLS's evaluation is impartial. Thus, as correctly pointed out by the Arbitral Tribunal, DLS rejected DSM Construction's 99% accomplishment claim when it limited its evaluation to only 95.56%.

Issues of Delay and Liquidated Damages

Next, Megaworld attributed the delay in the completion of the construction project solely to DSM Construction. The latter countered that among the causes of delay was the lack of coordination among trade contractors and the absence of a general contractor.[50] Although the contract purportedly contains a provision for the coordination of trade contractors, the lack of privity among them prevented coordination such that DSM Construction could not require compliance on the part of the other trade contractors.

The Arbitral Tribunal decided this question by turning to Section 2.01 of the General Conditions of the Contract, which states:

2.01 SITE, ACCESS & WORKS

The Contractor shall accept the Site as found on the date for possession and at their own expense clear the site of any debris which may have been left by the preceding occupants/contractors.

The Arbitral Tribunal held that Section 2.01 presupposes that on the date of possession by DSM Construction of the work premises, the preceding contractor had already left the same.[51] The tribunal explained that the delay incurred by other trade contractors also resulted in the delay of the work of DSM Construction.

It also pointed out that under Section 5.3 (1)[52] of the Interim Agreement,[53] Megaworld is required to complete and turn over to DSM Construction preceding works for the latter to complete their works in accordance with the Revised Work Schedule. Section 5.3 (1), the Arbitral Tribunal noted, even allows DSM Construction to recover losses incurred on account of the standby time of DSM's personnel/manpower or workers mobilized while Megaworld is not ready to turn over the preceding works. The Arbitral Tribunal further held that, in accordance with Section 5.3 (2)[54] of the Interim Agreement, DSM Construction was entitled to an extension of time corresponding to the number of days of delay reckoned from the time the preceding work item or area should have been turned over to DSM Construction. Consequently, such delay, which is not exclusively imputable to DSM Construction, negates the claim for liquidated damages by Megaworld.[55]

In affirming the Arbitral Tribunal's disposition of the issues of delay and payment of liquidated damages, the appellate court noted that the Arbitral Tribunal narrated the claims and defenses of both DSM Construction and Megaworld before making an evaluation thereof and arriving at its conclusion.[56] Clearly, the evidence and arguments were carefully weighed to justify the said disposition.

The Tribunal's finding that the project had already been delayed even before DSM Construction commenced its work is borne out by the evidence. In his letter, Exhibit X-2,[57] Project Management Consultant Eduardo C. Arrojado, conceded that the previous contractors had delayed the project, at the same time faulting DSM Construction for incurring its own delay. Furthermore, the work of DSM Construction pertaining as it did to the architectural and interior finishing stages as well as the supply and installation of kitchen cabinets and closets, obviously related to the final details and completion stage of the project. Thus, commencement of its task had to depend on the turn over of the complete work of the prior contractors. Hence, the delay of the previous contractors resulted in the delay of DSM Construction's work.

Issues of the Contract Price Balance and Retention Money

Megaworld also questioned the Arbitral Tribunal's awards of P7,129,825.19 corresponding to the balance of the contract price, and P11,820,000.00 pursuant to the Interim Agreement.[58] Megaworld alleged that DSM Construction was no longer entitled to the balance of the contract price and the retention money after the latter received payments pursuant to the Interim Agreement in the amounts of P5,444,553.18 for the 26th to the 28th floors, another P5,444,553.18 for the 29th to the 31st floors at a 90% completion rate, and P4,161,818.18 for the 32nd to the 34th floors which were 60% completed. Megaworld also contended that since it spent more money to complete the scope of work of DSM Construction, the latter was no longer entitled to any of the balance.

On the other hand, DSM Construction argued that the award was justified in view of the failure of Megaworld to controvert the amount of P7,129,825.19 included in the Account Overview of DLS. DSM Construction also emphasized that it was not claiming the entire P53 Million under the Interim Agreement but only the amount corresponding to the actual work done. Even based on DLS's computation, a total of P11,820,000.00 of retention money is still unpaid out of the 50% agreed to be released under the Interim Agreement (P15,000,000.00 less P3,180,000.00 retention money or P11,820,000.00 for the paid billings).[59]

The Arbitral Tribunal ruled that the balance claimed under the three contracts was based on what DSM Construction had actually accomplished less the payments it had previously received. Considering that the remaining works which were performed by another trade contractor, Deticio and Isabedra Builders, were paid directly by Megaworld, no other cost for work accomplished in the Interim Agreement is due DSM Construction except the retention money of P11,820,000.00.[60]

The Court of Appeals affirmed the award of the Arbitral Tribunal regarding the balance of the contract price of P7,129,825.19 and the retention money of P11,820,000.00 to DSM Construction. The Court of Appeals noted that the Arbitral Tribunal again narrated the claims and defenses of both DSM Construction and Megaworld before arriving at its conclusion. The appellate court further stated that the mere fact that the tribunal did not award the whole amount claimed by DSM Construction (P12,820,000.00) and instead awarded only P11,820,000.00 belies Megaworld's allegation that the tribunal adopted "hook, line and sinker" DSM Construction's claims.[61]

This Court finds the award of the balance of the contract price of P7,129,825.20 justified in view of DLS' explanation in Exhibit MM-3[62] that the amount of P7,129,825.20 represented the unpaid billing for architectural, interior and kitchen billings before Megaworld and DSM Construction drafted the Interim Agreement.

Issue of Variation Works

Megaworld also disputed before the Court of Appeals the P6,686,675.55[63] award by the Arbitral Tribunal for variation works. Variation works consist of the addition, omission or alteration to the kind, quality or quantity of the works.[64] DSM Construction originally claimed a total of P26,208,639.00 for variation works done but, of this claim, the Arbitral Tribunal only awarded P6,686,675.55 in line with the evaluation of DLS.

Megaworld conceded that DSM Construction performed additional works to the extent of P5,036,252.81. However, Megaworld claimed that since it incurred expenses when it hired another trade contractor to take over the works left uncompleted by DSM Construction, the latter lost its right to claim such amount especially since DSM Construction did not comply with the documentation when claiming variation works.[65]

DSM Construction asserted that the Arbitral Tribunal, in fact, should have awarded P26,208,639.00 instead of limiting the award to only P6,686,675.55 because it was not even disputed that variation works were performed. It also contended that it cannot be faulted for the lack of documentation because the fault lay on Megaworld's project manager who failed to forward the variation orders to DLS.[66]

The Arbitral Tribunal ruled in favor of DSM Construction, holding that there was enough evidence to prove that the contractor made a request for change or variation orders. The Arbitral Tribunal also found the testimony of Engineer Eduardo C. Arrojado convincing, factual and balanced despite Megaworld's attempt to discredit him. However, while the amount claimed for variation works was P26,208,639.00, the Arbitral Tribunal limited the awarded to only P6,686,675.55[67] since a closer scrutiny of the other items indicated that some works were not performed.[68]

The appellate court upheld the award of the Arbitral Tribunal because the award was based not only on the documentary exhibits prepared by DLS but on the testimony of Engineer Eduardo C. Arrojado, as well.[69]

This Court is convinced that payments for variation works is due. Undoubtedly, variation works were performed by DSM Construction. This was confirmed by Engineer Eduardo C. Arrojado who testified that he recommended the payment for substantial additional works to DSM Construction. He further stated that since time was of the essence in the completion of the project, there were variation orders which were performed without the prior approval of the owner. However, he explained that this was a common construction practice. Finally, he stated that he agreed with the evaluation of DLS.[70]

The testimony justified the Arbitral Tribunal's reliance on the evaluation made by DLS which limited the claim for variation works to P6,596,675.55.

Issue of Preliminaries/Loss and Expense

Megaworld also disputed the award of P29,380,902.35 for preliminaries/losses and expense.

The provision for preliminaries/loss and expense in the contract assumes a direct loss and/or expense incurred in the regular progress of work for which the contractor would not be reimbursed under any other provision of the contract.[71] DSM Construction's claim for preliminaries/loss and expense in the amount of P36,603,192.82 covered the loss and expense incurred on payroll, equipment rental, materials and site clearing on account of such factors as delay in the execution of the works for causes not attributable to DSM Construction.[72]

Megaworld refused to recognize DSM Construction's claim because the latter allegedly failed to comply with Clause 6.16 of the Conditions of Contract, which imposes a two-month deadline for submission of claims for preliminaries reckoned from "the happening of the event giving rise to the loss and expense." [73] DSM Construction, however, argued that the documentary evidence shows that out of the four claims for preliminaries,

only one (Exhibit MM-5 with an evaluation of P17,552,722.47), covering the period August 1, 1998 to April 1999, was submitted beyond the two-months requirement.[74] DSM Construction also pointed out that the two-month requirement for this claim was waived by Megaworld through DLS when the latter recognized the validity of claims by coming up with an evaluation of P17,552,722.47 for the period covered in Exhibit MM-5.[75]

The Arbitral Tribunal ruled that DSM Construction was entitled to extended preliminaries considering that delay was not attributable to DSM Construction. The Arbitral Tribunal observed that Megaworld did not present evidence to refute the claim for extended preliminaries which were previously evaluated by DLS. However, after assessing the two previous evaluations by DLS, the tribunal ruled that the claims for hauling and disposal and cleaning and clearing of debris should not be included in the extended preliminaries. Hence, the Arbitral Tribunal reduced the amount of P44,051.62 from the claim of P2,655,879.89 per Exhibit “MM-7,” and P3,883,309.54 from the claim of P5,651,235.24 per Exhibit “MM-8,” such amounts being unnecessary.[76]

The appellate court affirmed the award, stressing the fact that the Arbitral Tribunal denied some of the claims which it did not find valid.[77]

DSM Construction’s entitlement to the payment for preliminaries was explained by Engineer Eduardo C. Arrojado to be the necessary result of the extension of the contract between DSM Construction and Megaworld.[78] Notably, majority of the claims of DSM Construction was reduced by the Arbitral Tribunal on the basis of Exhibit MM-4[79] or the Summary of Variation Order Status Report prepared by DLS.

Although the Arbitral Tribunal ruled that DSM Construction was entitled to claim for preliminaries, the award was not based on the claim of DSM Construction but on the evaluation made by DLS.

The foregoing disquisition adequately shows that the evidence on record supports the findings of facts of the Arbitral Tribunal on which the Court of Appeals based its decision. In fact, although not all the exhibits in the Arbitral Tribunal were presented before the Court of Appeals, the record of the appellate court contains the operative facts and the substance of said exhibits, thus enabling the intelligent disposition of the issues presented before it. This Court went over all the records, including the exhibits, to ascertain whether the appellate court missed any crucial point. It did not.

The alleged undue favor accorded by the Arbitral Tribunal to DSM Construction is belied by the fact that the Arbitral Tribunal did not grant all of DSM Construction’s claims. In majority of DSM Construction’s claims, the Arbitral Tribunal awarded amounts lower than what DSM Construction demanded. The Arbitral Tribunal also granted some of Megaworld’s claims.[80]

Neither did the Court of Appeals merely “swallow hook, line and sinker” the award of the Arbitral Tribunal. While the appellate court affirmed the decision of the Arbitral Tribunal, it also ruled in favor of Megaworld when it limited DSM Construction’s lien to only six units instead of all the condominium units to which DSM was entitled under the Contract, rationalizing that the P62 Million award can be covered by the value of the six units of the condominium project.[81]

Considering that the computations, as well as the propriety of the awards of the Arbitral Tribunal, are unquestionably factual issues that have been discussed and ruled upon by Arbitral Tribunal and affirmed by the Court of Appeals, we cannot depart from such findings. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals.[82]

Megaworld, however, adamantly contends that the present case constitutes an exception to the above rule

because: (1) there is grave abuse of discretion in the appreciation of facts; (2) the judgment is premised on misapprehension of facts; and, (3) the findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[83]

We disagree. None of these flaws appear in this case. Grave abuse of discretion means the capricious or whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[84] No abuse of discretion was established by Megaworld. On the contrary, what is apparent is Megaworld's effort to attribute grave abuse of discretion to the Arbitral Tribunal simply because of the unfavorable judgment against it. Megaworld's assertion that there was misapprehension of facts and that the evidence is insufficient to support the decision is also untenable. The Decisions of the Arbitral Tribunal and the Court of Appeals adequately explain the reasons therefor and are supported by substantial evidence.

Likewise unmeritorious is Megaworld's assertion that it was deprived of administrative due process. The Arbitral Tribunal considered the arguments and the evidence submitted by both parties. That it accorded greater weight to DSM Construction's evidence, by itself, does not constitute a denial of due process.

WHEREFORE, the Petition is DENIED. The Decision dated February 14, 2001, of the Court of Appeals is AFFIRMED. The Temporary Restraining Order issued by this Court on July 12, 2002, is hereby LIFTED. Costs against Petitioner.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Puno, (Chairman), J., on leave.

[1] Rollo, pp. 105-122. Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Rodrigo V. Cosico and Eliezer R. De Los Santos, concurring.

[2] Id., at 129-183; CA Rollo, pp. 88-142.

[3] Ibid. The Arbitral Tribunal was chaired by Ernesto S. De Castro with Regulus E. Cabote and Lauro M. Cruz as members.

[4] Rollo, pp. 133-134.

[5] Id., at 135.

[6] Id., at 134.

[7] CA Rollo, p. 352.

[8] Rollo, pp. 494-512.

[9] Id., at 499.

[10] Id., at 294-315.

[11] Id., at 130.

[12] Id., at 759-770.

[13] Id., at 760-763.

[14] Id., at 763-765.

[15] Id., at 767.

[16] Id., at 765-767.

[17] Id., at 131.

[18] Id., at 133.

[19] Id., at 182-183.

[20] Id., at 112-113.

[21] Id., at 105-122.

[22] Id., at 115.

[23] Id., at 117.

[24] G.R. No. 141897, September 24, 2001, 365 SCRA 697.

[25] Rollo, pp. 125-127.

[26] Supra, note 24.

[27] Rollo, pp. 22-23.

[28] Ibid.

[29] Supra, note 24.

[30] Creating an Arbitration Machinery in the Construction Industry of the Philippines. Otherwise known as the Construction Industry Arbitration Law.

[31] S.C. Circular No. 1-91; Revised Administrative Circular No. 1-95; B.P. Blg. 129, as amended by R.A. 7802; Rule 43 of the 1997 Rules of Civil Procedure.

[32] Rule 43 of the 1997 Rules of Civil Procedure. 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 (emphasis supplied).

[33] Rollo, p. 117.

[34] Section 5, Rule 133 of the Revised Rules on Evidence; *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 63 (1936).

[35] CA Rollo, p. 45.

[36] Id., at 663.

Ref. No. Contract Package Contractor % Accomplishment To Date

1A ARCHITECTURAL DSM 92.750

1C

KITCHEN CAB. & CLOSET DSM 92.400

6 INTERIOR FINISHING DSM 95.600

[37] Id., at 663.

[38] Id., at 100-101.

[39] Id., at 662; Arbitral Tribunal Record, Exhibit Envelope No. 2; Folder Captioned “EXHS. NN to OO-2 & X-2.”

[40] Id., p. 397. Arbitral Tribunal’s Record, Exhibit Envelope No. 2; Folder Captioned “EXHS. NN to OO-2 & X-2”; Exhibit “NN-1A”.

[41] Ibid.

[42] Ibid.

[43] Ibid. Arbitral Tribunal Record, Exhibit Envelope No. 2; Folder Captioned “EXHS. NN to OO-2 & X-2”; Exhibit “NN-3”.

[44] Ibid.

[45] Ibid.

[46] Ibid. Arbitral Tribunal Record, Exhibit Envelope No. 2; Folder Captioned “EXHS. NN to OO-2 & X-2”; Exhibit “NN-4”.

[47] Ibid.

[48] Ibid.

[49] Rollo, p. 117.

[50] CA Rollo, pp. 665-667.

[51] Id., at 101-107.

[52] Section 5.3 TURN OVER OF PRECEDING WORK ITEMS OR AREA

- MGAI shall complete and turn over to DSM preceding work items for the latter to complete their works in accordance with the Revised Work Schedule. Losses incurred by DSM by reason of MGAI’s failure to turn over preceding works on account of standby time of DSM’s personnel/manpower or workers mobilized therein shall be chargeable against MGAI based on the actual losses incurred certified by the Project Manager (CA Rollo, p. 303).

[53] CA Rollo, pp. 299-305.

[54] Section 5.3 TURN OVER OF PRECEDING WORK ITEMS OR AREA

....

- Should MGAI fails (sic) to turn-over, DSM shall be entitled to an extension of time corresponding to the number of days of delay measured from the time the preceding work item or area should be turned-over until the same has been actually turn-over to DSM (CA Rollo, p. 303).

[55] CA Rollo, pp. 111-113.

[56] Rollo, p. 118.

[57] Arbitral Tribunal Record, Exhibit Envelope No. 2; Folder Captioned "EXHS. NN to OO-2 & X-2".

[58] CA Rollo, pp. 58-62.

[59] Id., at 676-680.

[60] Id., at 122.

[61] Rollo, p. 119.

[62] Arbitral Tribunal Record, Exhibit Folder No. 2; Folder Captioned "EXHS. V-MM-8".

[63] Rollo, p. 164; CA Rollo, p. 62. The amount of P6,596,675.55 adverted to by Megaworld is incorrect. The correct amount of P6,686,675.55 is based on the evaluation by DLS:

Item description	Amount
------------------	--------

Exhibits	
Agreed Variation Works	P1,650,422.73 JJ-JJ-10

Disputed Variation Works	
P5,036,252.82 KK to KK45	

Total Claim Additional Works	
P6,686,675.55	

[64] CA Rollo, p. 213.

[65] Id., pp. 62-65.

[66] Id., pp. 683-686.

[67] Rollo, p. 120.

[68] CA Rollo, pp. 122-128.

[69] Rollo, pp. 119-120.

[70] Arbitral Tribunal Record No. 11; TSN, May 16, 2001, pp. 29-31.

[71] Rollo, p. 169.

[72] CA Rollo, pp. 687-693.

[73] Id., at 65-67.

[74] Id., at 688.

[75] Id., at 689.

[76] Rollo, p. 173.

[77] Id., at 121.

[78] Arbitral Tribunal Record, Exhibit Envelope No. 2; Folder Captioned “NN to OO-2 & X-2”; Affidavit of Engineer Eduardo C. Arrojado, p. 4.

[79] Arbitral Tribunal Record, Exhibit Envelope No. 2; Folder Captioned “EXHS. V-MM-8”.

Description of Work DSM’s Claim (Peso) DLS Evaluation (Peso)

Labor cost adjustment 2,220, 400.47 160,602.00

Clearing and Disposal for the ff:

FSI(16F-17F,T1 and 23F T2)

Asahi (16-20F T1 &16-26F T2)

Amperes(16-20F T1 & 16-26F T2)

Alen (16-20F T1 & 16-26F T2) 1,065,496.20 637,575.85

Cleaning and Disposal for the ff:

Asahi (16-30F T1)

Amperes (16-30F T1)

Alen (16-30F T1) 428,812.44 99,657.54

Plastering @ elevator lobbies 1,754,749.21 1,118,161.14

Damages at unit 9A H@) Closet - (8,899.44)

Damages on Arch’l. by Alen 1,872,529.59 325,691.22

Del. Of Granite @ Col. Molding and Pedestal - (163,998.49)

Chippings of Mortar Drops 178,361.70 -

Damage to Gypsum Ceiling and Parquet 806,653.34 268,884.45

Rectification Works from 26F- 40F T1 2,545,983.47 469,524.83

Rectification Works from 23F-34F, T2 1,396,625.91 409,820.10

Rev. to 9A & 10A, Tower1 201,651.98 199,946.73

Add’l Metal Door @ Filter Room @ 43F 17,330.08 17,330.08

Painting of Damaged/Repaired Walls 90,502.20 2,997.24

Rectf’n Works on Damages incurred by Contractors 439,784.31 439,784.31

Ext. Prelims for pd. Aug. 1, ’98-Apr. 30, ’99 19,548,710.41 17,552,722.47

Ext. Prelims for pd. May 1, ’99-Sep. 30, ’99 7,962,984.45 7,408,425.91

[80] Rollo , pp. 182-183.

VI. Awards

CLAIMANT’S [DSM’s] CLAIM Award

Outstanding balance on 3 main contracts P7,129,825.19 7,129,825.19
Pursuant to 21 February 2000 Memorandum 12,820,000.00 11,820,000.00
Variation Works 26,208,639.00 6,686,675.55
Labor Escalation 1,282,151.32 413,041.52
Preliminaries/Loss and Expense 35,603,192.82 29,380,902.35
Earned Retention Money 14,700,000.00 14,700,000.00
Subtotal 97,743,808.33 70,130,444.61
6% Interest for 6 months 2,932,314.25 2,103,913.34
Attorney's Fees 250,000.00 0.00
Total Claimant's Claim/Award P100,926,122.58 72,234,357.95
RESPONDENT'S [MEGAWORLD's]
Loss of Profit P31,680,000.00 0.00
Liquidated Damages 32,844,003.36 0.00
Take over Works 19,320,543.71 0.00
Rectification Works 26,243,431.43 9,197,863.55
Administration Expenses 4,334,772.01 0.00
6% Interest for 6 months 6,865,365.03 275,935.91
Attorney's Fees 2,000,000.00 0.00
Cost of Arbitration 1,000,000.00 0.00
Total Respondent Counterclaims/Award P124,288,115.54 9,473,799.46
Total Net Award to Claimant P62,760,558.49

[81] *Id.*, at 121.

[82] *Public Estates Authority v. Uy*, G.R. Nos. 147933-34, December 12, 2001], 372 SCRA 180.

[83] *Rollo*, p. 94.

[84] *Sinon v. Civil Service Commission*, G.R. No. 101251, November 5, 1992, 215 SCRA 410.

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