

NATIONAL HOUSING AUTHORITY, PETITIONER, VS. FIRST UNITED CONSTRUCTORS CORPORATION, RESPONDENT.

G.R. No. 176535. September 07, 2011

Ponente: PEREZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-176535/>

PEREZ, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Revised Rules of Court filed by petitioner National Housing Authority (NHA), seeking to reverse and set aside the 1 August 2006 Decision[1] of the Court of Appeals (CA) and its Resolution dated 31 January 2007[2] in CA-G.R. SP No. 81635.

In the questioned Decision, the appellate court affirmed with modification the Decision promulgated on 7 January 2004[3] by the Construction Industry Arbitration Commission (CIAC), thru a three member Arbitral Tribunal[4] in CIAC Case No. 14-2003 entitled "First United Constructors Corporation v. National Housing Authority," that granted an arbitral award in favor of respondent First United Constructors Corporation (FUCC); and in its assailed Resolution, refused to reconsider its Decision.

The Facts

From the Petition,[5] the Comment[6] thereon of respondent, petitioner's Reply,[7] and their respective Annexes,[8] particularly the Complaint[9] of respondent, petitioner's Answer[10] and the Joint Stipulations[11] of the parties incorporated as Admitted Facts in the Supplemental Terms of Reference,[12] all filed with the CIAC, and from the CA Decision and the CIAC Decision, the Court gathers the following relevant facts and antecedents:

Respondent FUCC was the contractor of Phase I of the Freedom Valley Resettlement Project (the FVR Project or the Project) of petitioner NHA.[13]

The FVR Project was a proposed resettlement site for informal settlers of Metro Manila. Conceived in May 1996, it was the subject of a Memorandum of Agreement entered into by and among the Housing & Urban Development Coordinating Council (HUDCC), the Department of Environment & Natural Resources (DENR), the Metro Manila Development Authority (MMDA) and the Marilaque Commission.[14]

The FVR Project sits on a 750-hectare property reserved as a resettlement site for the landless and homeless residents of Metro Manila under Presidential Proclamation No. 799 dated 3 June 1996, situated in Sitio Boso-Boso, Brgy. San Jose, Antipolo City.[15]

Phase I of the FVR Project called for the development of an area of roughly 300 hectares of the resettlement site into 7,500 home lots of 60 to 80 square meters per lot in three (3) residential Clusters, namely: Cluster 1, Cluster 2 and Cluster 3.[16]

FUCC won the public bidding for the works contract of the FVR Project conducted by NHA on 26 February 1998 with a bid price of P568,595,780.00.[17]

The work consisted principally of bulk earthworks and the construction of roads, drainage, water supply and

sewerage systems, slope protection and bridge structures, as well as survey works, titling of the lots and other off-site works.[18]

On 2 March 1998, NHA issued a Notice of Award[19] for Phase I of the FVR Project to FUCC.

On 10 March 1998, NHA and FUCC entered into a "Contract for Land Development of Freedom Valley Resettlement Project, Phase I, Sitio Boso-Boso, Bgy. San Jose, Antipolo, Rizal"[20] (the "Contract") that covered the terms of the agreement between the parties for the works contract of Phase I of the FVR Project.

The work duration stipulated in the Contract was three hundred sixty five (365) days. The contract amount was the bid price of FUCC, or P568,595,780.00.[21]

FUCC commenced actual contract works on 16 March 1998. Counting 365 days, the original contract expiration date was 15 March 1999.[22]

Unfortunately, the FVR Project suffered various work suspensions and delays, so much so that the project was not completed on 15 March 1999.[23] There were also changes in the scope of work that necessitated the issuance of variation orders, specifically Variation Order No. 1,[24] and Variation Order No. 2,[25] which delayed the completion of the project further.

Variation Order No. 1 reduced the number of home lots to be generated, from 7,500 - under the original development plan - to only 4,980. Variation Order No. 2 further reduced that number to 4,032. These changes in the scope of work resulted in the reduction of the contract price from the original P568,595,780.00 to P488,393,466.98.[26]

Because of the delays engendered by the suspension orders and the changes in the scope of the contract works, NHA granted time extensions to FUCC, to wit: an additional 279 calendar days under Time Extension No. 1;[27] another extension of 200 calendar days in conjunction with the issuance of Variation Order No. 2;[28] and finally, 200 more calendar days under Resumption Order No. 2.[29] All told, a total of 679 calendar days were added to the original work duration stipulated in the Contract. From 15 March 1999, the contract completion date was moved, initially, to 19 December 1999, and finally, to 11 November 2001.[30]

In the course of the contract works, FUCC submitted five (5) Progress Billings, all of which were paid by NHA, to wit: Progress Billing No. 1[31] in the amount of P52,707,464.21, for the period 16 March to 30 June 1998; Progress Billing No. 2[32] in the amount of P14,343,039.55, for the period 1 July to 31 December 1998; Progress Billing No. 3[33] in the amount of P47,329,827.89, for the period 1 January to 15 October 1999; Progress Billing No. 4[34] in the amount of P114,494,481.30, for the period 16 October 1999 to 31 January 2001; and Progress Billing No. 5[35] in the amount of P42,333,109.23, for the period 31 January to 30 June 2001.

The FVR Project was never completed as envisioned and planned because NHA abandoned the original concept of the Project. In a Resolution passed on 25 September 2001,[36] the Board of Directors of NHA reclassified the FVR Project from a resettlement site of informal settlers into a mixed-market site and services type of project, and terminated the Contract.[37]

In a letter dated 17 October 2001,[38] NHA formally advised FUCC of the termination of the Contract.

NHA terminated the Contract under the "Contractor Not at Fault" clause of the General Conditions of the Contract.[39]

At the time the Contract was terminated, FUCC had various claims pending with NHA in connection with the FVR Project.

It appears that over a period of almost five (5) years, FUCC pleaded and negotiated with various NHA officials for the payment of these claims but its pleas fell on deaf ears.[40]

This impelled FUCC to pursue its claims before the CIAC pursuant to Article XVII[41] of the Contract by filing a Complaint[42] against NHA on 17 July 2003. The case was docketed as CIAC Case No.14-2003 entitled "First United Constructors Corporation vs. National Housing Authority."

In its Complaint, FUCC prayed thus:

WHEREFORE, it is respectfully prayed that after proper arbitration proceedings, claimant be adjudged entitled to the payment of its claims, as follows:

1)

Payment for Accomplished Works Not Yet Billed in the amount of P9,672,784.98;

2)

Payment for the Cost of Materials, Equipment, Facilities, etc. Included for the Project in the amount of P4,801,992.82;

3)

Payment for Price Escalation in the amount of P27,794,126.25;

4)

Payment for Price Adjustment in the amount of P14,768,770.22;

5)

Payment for Disengagement Costs in the amount of P83,242,365.73;

6)

Payment for Idle Equipment in the amount of P142,780,800.00;

7)

Payment for Interest on Idle Equipment in the amount of P44,262,048.00;

8)

Payment for Attorney's Fees equivalent to Ten Percent (10%) of the total of the foregoing claims; and

9)

Payment of Twelve Percent (12%) interest on the total arbitration award from the date of promulgation of judgment until fully paid.

Other reliefs just and equitable are likewise prayed for.[43]

The CIAC appointed a 3-member Arbitral Tribunal (CIAC Arbitral Tribunal) to adjudicate FUCC's claims.

NHA initially filed a Motion to Dismiss,[44] claiming that FUCC had failed to exhaust all administrative remedies, which was opposed by FUCC. In an Order dated 8 September 2003, the CIAC Arbitral Tribunal denied the motion and ordered NHA to file its answer to FUCC's Complaint.[45]

In its Answer,[46] NHA raised the following defenses, viz: FUCC had no right of action since its recourse to

arbitration was premature; there was no actual suspension of contract works notwithstanding the suspension orders issued by NHA; the Contract was not unilaterally terminated by NHA; FUCC's Progress Billing No. 6 should only be for the amount of P6,496,926.29; FUCC's claim for Price Escalation for Progress Billings Nos. 1 to 5 came too late in the day, and that the amount that should be paid is only P26,297,951.62 and payable only after FUCC procured the required surety bond; and the claims for Payment for Cost of Materials, Equipment and Facilities, Disengagement Cost, Cost of Idle Equipment and interests thereon, are non-arbitrable issues. By way of counter-claim, NHA prayed that it be allowed to recover from FUCC the amount of P38 Million, which represents the remaining balance or unliquidated portion of the P85.2 Million that NHA had advanced to FUCC at the start of the FVR Project.

The issues having been joined, the CIAC Arbitral Tribunal called the parties to a Preliminary Conference. The parties subsequently agreed upon a Terms of Reference[47] and a Supplemental Terms of Reference[48] to guide the CIAC Arbitral Tribunal in the arbitration process and in the resolution of the case. The parties also submitted to the CIAC Arbitral Tribunal their "Joint Stipulations,"[49] which were incorporated in the Supplemental Terms of Reference as "Admitted Facts." [50]

Under the Terms of Reference and the Supplemental Terms of Reference, the CIAC Arbitral Tribunal was called upon to resolve the following issues to determine the validity of FUCC's claims against NHA, to wit:

- Did Claimant exhaust all administrative remedies before filing this arbitration case?
 - 1.1 Is claimant's recourse to arbitration premature?
- Is claimant entitled to its claims for:
 - 2.1 payment for accomplished works not yet billed (Progress Billing No. 6)? If so, how much?
 - 2.1.1 Is the submission by the Claimant of the files and folders covering the unpaid claims of the planters/farmers necessary for the processing of its claim for accomplished works not yet billed (Progress Billing No. 6)?
 - 2.2 payment for cost of materials, equipment, pro-rated cost of facilities constructed for the project, etc.? If so, how much?
 - 2.2.1 Whether or not these claims are arbitrable or not [sic]
 - 2.3 Price Escalation? If so, how much?
 - 2.4 Price Adjustment? If so, how much?
 - 2.5 Disengagement Costs? If so, how much?
 - 2.5.1 Whether or not this claim is arbitrable or not [sic]
 - 2.6 Idle Equipment? If so, how much?
 - 2.6.1 Whether or not this claim is arbitrable or not [sic]
 - 2.6.2 Was there actual or physical suspension of the works for the period covered by the suspension orders?
 - 2.7 Interest on Idle Equipment? If so, how much?
- Is Respondent entitled to the recoupment of the remaining portion of the advance payment made for the Project?
- Are the parties entitled to their respective claims for interest on the total arbitration amount that would be

adjudged in their own favor?

4.1 If so at what rate and from what period?

- Who between the parties is liable for the cost of arbitration?

- Whether or not the termination of the Contract is unilateral

6.1 Whether or not the Claimant opposed, contested or protested the termination

- Who caused the alleged delays in the processing or payment of Claimant FUCC's claims, if any?

- Did Claimant FUCC procure a Payment Guarantee Bond (Surety Bond) from either the GSIS or any bona fide private surety company?

- Was the procurement by Claimant FUCC of the Payment Guarantee Bond (Surety Bond) a condition for the payment of its claims for Progress Billing No. 6 and Price Escalation for Progress Billing Nos. 1 to 5?[51]

To prove its claims, FUCC presented one witness in the person of Engr. Ben S. Dumaliang (Engr. Dumaliang), the Project Director of FUCC for the FVR Project, and submitted his Affidavit in Question-and-Answer Form dated 4 November 2003,[52] which served as the witness' direct testimony. On the basis of said affidavit, Engr. Dumaliang was cross-examined by NHA's counsel.[53]

FUCC adopted and marked Annexes "A" to "GGGGGG" of its Complaint as Exhibits "A" to "GGGGGG" and submitted the same as part of its documentary evidence. FUCC likewise marked the documents attached to the Affidavit in Question-and-Answer Form of Engr. Dumaliang as Exhibits "HHHHHH" to "RRRRRR" and likewise submitted the same as part of its documentary evidence.[54] FUCC thereafter rested its case.

To prove its defenses and counter-claim, NHA likewise presented only one witness in the person of Engr. Mariano E. Raner III (Engr. Raner), the Special Project Director of the FVR Project, and submitted his Affidavit dated 2 December 2003[55] in lieu of his direct testimony. Engr. Raner was cross-examined by FUCC's counsel on the basis of said Affidavit.[56]

NHA marked 21 pieces of documentary evidence and submitted the same as Exhibits "1" to "21,"[57] and thereafter rested its case.

On 7 January 2004, the CIAC Arbitral Tribunal promulgated its Decision[58] (CIAC Decision) containing findings and rulings on substantially all of the issues presented by the parties, and rendering an award in favor of FUCC, as follows:

AWARD

WHEREFORE, on the basis of the foregoing findings and rulings, an award is hereby rendered in favor of Claimant, FIRST UNITED CONSTRUCTORS CORPORATION, and against the Respondent, NATIONAL HOUSING AUTHORITY ordering the latter to pay the former the total of the following amounts, less the amount for recoupment of the balance of the advance payment including the interest viz;

- 1) Php 7,384,534.22 representing payment for Billing No. 6;
- 2) Php 989,325.27 representing interest of No. 1 above;
- 3) P4,677,680.00 representing payment for cost of materials, equipment, facilities;
- 4) P415,993.13 representing interest of No. 3 above;
- 5) P26,297,951.62 representing payment for Price Escalation of PB Nos. 1-5;
- 6) P1,863,191.86 representing interest of No. 5 above;
- 7) P14,768,770.22 representing payment for Price Adjustment of PB Nos. 5 & 6;

- 8) P1,847,512.46 representing interest of No. 7 above;
- 9) P65,842,309.72 representing payment for Disengagement Costs;
- 10) P7,468,141.43 representing interest of No. 9 above;
- 11) P131,948,674.56 representing payment of Idle Equipment;
- 12) P36,634,736.09 representing interest of No. 11 above.

P300,138,820.59 gross total award in favor of Claimant

13) P * * * * * representing 12% interest of the gross total award of P300,138,820.59, from the date of promulgation of this decision, and until it is fully paid.

Note: * * * * * is to be determined upon execution of judgment.

Award to Respondent's counter-claim:

- 1) P37,951,201.14 representing the recoupment of the balance of Advance payment made to the Claimant.
- 2) P455,414.41 representing interest of No. 1 above.

P38,406,615.55 balance of recoupment plus interest.

Net Award to be paid by Respondent to the Claimant;

P300,138,820.59 Gross Award of Claimant's Claims

Less P 38,406,615.55 Balance of recoupment plus interest

P261,732,205.04 Net Award to be paid by Respondent to Claimant.

Finally, the Respondent is hereby ordered to pay Claimant, one-half of the cost of arbitration in the amount of P768,219.76, as its share in the arbitration cost, which was advanced by the Claimant during the pendency of this case.[59]

On 30 January 2004, NHA appealed the CIAC Decision to the Court of Appeals by filing a Petition for Review Under Rule 43 (With Prayer for Restraining Order & Injunctive Writ),[60] which was docketed thereat as CA-G.R. SP No. 81635.[61]

NHA's prayer for a Temporary Restraining Order (TRO) to prevent the execution of the CIAC Decision was granted by the Court of Appeals in a Resolution dated 14 April 2004.[62]

Upon the lapse of the TRO, NHA filed an Urgent Motion for Early Resolution of its application for the issuance of a Writ of Preliminary Injunction, which was similarly granted by the Court of Appeals in a Resolution dated 8 July 2004.[63] The Writ of Preliminary Injunction issued by the appellate court enjoined "respondent and the agency a quo from executing the disputed decision during the pendency of [the] petition or until further order of the Court." [64]

On 26 February 2004, or prior to the issuance of the TRO, the CIAC issued in favor of FUCC a Writ of Execution of the arbitral award. Accordingly, Mr. Cristobal Florendo, Sheriff IV of the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court in Quezon City, who was appointed as the Implementing Sheriff, issued and served Notices of Garnishment on the Land Bank of the Philippines (Land Bank), the Development Bank of the Philippines (DBP), the Philippine National Bank (PNB), the Veterans Bank of the Philippines (Veterans Bank), the Bureau of Treasury, and on the Government Security and Insurance Service Savings Bank. The Implementing Sheriff later served Orders of Delivery of Money on the Land Bank, DBP, and the Bureau of Treasury.[65]

Petitioner filed a Motion to Lift Garnishment and for the Issuance of Writ of Preliminary Mandatory Injunction on

the ground that the service of the Notices of Garnishment violated the Resolution dated 14 April 2004 (directing the issuance of a TRO) and the Resolution dated 8 July 2004 (granting the issuance of a Writ of Preliminary Injunction) to enjoin the execution of the arbitral award. This motion was denied by the Court of Appeals in a Resolution dated 13 December 2004.[66]

Petitioner subsequently filed a Very Urgent Motion to Lift Writ of Garnishment citing essentially the same grounds as the previous motion.[67]

Instead of merely acting upon the Very Urgent Motion to Lift Writ of Garnishment, the Court of Appeals resolved the main petition and promulgated the Decision dated 1 August 2006[68] that affirmed with modification the CIAC Decision.[69] The appellate court denied petitioner's Very Urgent Motion to Lift Writ of Garnishment permanently[70] and lifted the Writ of Preliminary Injunction it had earlier issued. The decretal portion of the CA Decision reads, thus:

WHEREFORE, under the premises, we hereby dispose of this case as follows:

1. The following portions of the arbitral award are hereby AFFIRMED, thus:

WHEREFORE, on the basis of the foregoing findings and rulings, an award is hereby rendered in favor of Claimant, FIRST UNITED CONSTRUCTORS CORPORATION, and against the Respondent, NATIONAL HOUSING AUTHORITY ordering the latter to pay the former the total of the following amounts, less the amount for recoupment of the balance of the advance payment including the interest, viz:

- 1) P7,384,534.22 representing payment for Billing No. 6;
- 2) P989,325.27 representing interest (on) No. 1 above;
- 3) P4,667,680.00 representing payment for cost of materials, equipment, facilities;
- 4) P415,993.00 representing interest (on) No. 3 above;
- 5) P26,297,951.62 representing payment for Price Escalation of PB Nos. 1-5;
- 6) P1,863,191.86 representing interest (on) No. 5 above;
- 7) P14,768,770.22 representing payment for Price Adjustment of PB Nos. 5 & 6;
- 8) P1,847,512.46 representing interest (on) No. 7 above;
- 9) P131,948,674.56 representing payment for Idle Equipment; and
- 10) P36,634,736.09 representing interest on No. 11 above

xx xx xx

Award to Respondent's (herein petitioner's) counter-claim:

- 1) P37,951,201.14 representing the recoupment

of the balance of advance
payment made to the
claimant

- 2) P455,414.41 representing interest on No.1 above

P38,406,615.55 balance of recoupment plus interest

xx xx xx

Finally, the Respondent (herein petitioner) is hereby ordered to pay to Claimant (herein respondent) one-half of the cost of arbitration the amount of P768,219.76, as its share in the arbitration cost, which was advanced by the claimant during the pendency of this case.

2. Determination of the correct amount to be paid by petitioner as disengagement costs and the interest due thereon is hereby REMANDED to the CIAC.

3. Computation of the total award in favor of respondent and the 12% interest due thereon is also REMANDED to the CIAC, with instruction that said 12% interest be computed from finality of this decision.

4. Computation of the net award which petitioner must pay respondent by deducting the gross total award for petitioner from the gross total award for petitioner [sic] from the gross total award with interest for respondent is also REMANDED to the CIAC.

Accordingly, with the foregoing disposition, the Writ of Preliminary Injunction earlier issued against respondent herein is hereby LIFTED.

On 17 August 2006, the CIAC submitted its Compliance^[71] to the remand orders of the Court of Appeals, showing the re-computed arbitral award in favor of FUCC.^[72]

On 24 August 2006, NHA filed an Omnibus Motion dated 22 August 2006^[73] that incorporated its Motion for Reconsideration of the CA Decision dated 1 August 2006 and its Motion to Require the CIAC to Explain and to Hold in Abeyance the Re-Computation of Award.

FUCC, on the other hand, filed a Motion to Act on the Compliance submitted by the CIAC, while the Land Bank filed an Urgent Manifestation/ Motion for Clarification for the appellate court to determine whether the bank could legally release the frozen funds of NHA.^[74]

The Court of Appeals directed the parties to file their respective comment to the cross-motions and to the manifestation of Land Bank, and thereafter considered the issues submitted for resolution.^[75]

On 31 January 2007, the Court of Appeals issued a Resolution^[76] denying petitioner's Omnibus Motion that included its Motion for Reconsideration of the CA Decision dated 1 August 2006. The appellate court did not act on the Compliance submitted by the CIAC and on petitioner's Motion to Require the CIAC to Explain and to Hold in Abeyance the Re-Computation of Award. With respect to the Urgent Manifestation/Motion for Clarification of Land Bank, the appellate court directed Land Bank to "forthwith release to respondent the garnished fund of petitioner not exceeding P147,894,629.24 in partial satisfaction of [the] Court's decision dated 1 August 2006."^[77] The dispositive portion of the Resolution reads thus:

WHEREFORE, for lack of merit, petitioner's Omnibus Motion is DENIED. Respondent's Motion to Act on the Compliance submitted by CIAC Ex Abundante Cautelam and petitioner's Urgent Motion for Issuance of Temporary Restraining or Preliminary Injunctive Writ are merely NOTED.

With respect to its Urgent Manifestation/ Motion for Clarification, the Land Bank of the Philippines is DIRECTED to forthwith release to respondent the garnished fund of petitioner not exceeding P147,894,629.24 in partial satisfaction of this Court's decision dated August 1, 2006, upon filing of a good and sufficient bond by respondent in the sum of P150,000,000.00 to answer for the restitution of the former amount and reparation of damages to petitioner should said decision be reversed, whether totally or partially.^[78]

Undaunted, NHA filed the present Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court. Petitioner prays that this Court reverse and set aside the CA Decision dated 1 August 2006 and the Resolution dated 31 January 2007 claiming, in the main, that in promulgating the questioned Decision and Resolution, the Court of Appeals allegedly "egregiously overlooked, ignored or disregarded many discernible, indisputable facts or circumstances of weight and significance" that would allegedly have "logically altered the result of the case" had they "been judiciously considered."^[79]

The Issues

According to petitioner, instead of those alleged "indisputable facts or circumstances," the appellate court's findings were "premised merely on manifestly wrong presumptions, surmises, mistaken or improbable inferences and misapprehension of facts." [80] Specifically, petitioner claims that the Court of Appeals committed a grave and substantial error of judgment:

I

WHEN IT AFFIRMED THE AWARD FOR PROGRESS BILLING NO. 6 AND PRICE ESCALATION FOR PROGRESS BILLING NOS. 1 TO 5 DESPITE THE INDISPUTABLE OR ADMITTED FACT THAT RESPONDENT FUCC DID NOT POST ANY PERFORMANCE BOND, WHICH IS DECIDEDLY A CONDITION PRECEDENT FOR THE PAYMENT OF THESE CLAIMS.

II

WHEN IT AFFIRMED THE AWARD FOR PROGRESS BILLING NO. 6 IN THE AMOUNT OF P7,384,534.22 DESPITE THE MANIFEST OR CLEAR FACT THAT RESPONDENT FUCC'S CLAIM FOR SAID BILLING WAS ONLY P6,496,926.29.

III

WHEN IT AFFIRMED THE AWARD FOR COST OF MATERIALS, EQUIPMENT AND FACILITIES IN THE AMOUNT OF P4,677,680.00 AND DISENGAGEMENT COST ON THE BASIS OF AN OBVIOUSLY ILLOGICAL AND ERRONEOUS INTERPRETATION OF EXHIBIT "19."

IV

WHEN IT AFFIRMED THE AWARD FOR IDLE EQUIPMENT IN THE AMOUNT OF P131,948,674.56 NOTWITHSTANDING THE CLEAR AND PATENT FACT THAT RESPONDENT FUCC'S EQUIPMENT NEVER WENT IDLE.

V

WHEN IT AFFIRMED THE AWARD FOR COST OF MATERIALS, EQUIPMENT AND FACILITIES, DISENGAGEMENT COST AND IDLE EQUIPMENT DESPITE THE CLEAR OR MANIFEST FACT THAT THESE CLAIMS WERE NON-ARBITRABLE AT THE TIME THE COMPLAINT WAS FILED ON 17 JULY 2003.

VI

WHEN IT RULED THAT RESPONDENT FUCC DID NOT CONSENT TO THE TERMINATION OF THE PROJECT NOTWITHSTANDING THE GLARING FACT THAT RESPONDENT FUCC DID NOT PROTEST THE TERMINATION AND HAD EVEN STOPPED IMPLEMENTING THE WORKS ON ITS OWN VOLITION EVEN BEFORE ITS RECEIPT OF THE NOTICE OF TERMINATION. [81]

The Ruling of the Court

We deny the petition for lack merit.

I. Re: Payment Guarantee Bond as Condition

Precedent for Payment of Progress Billing No. 6
and Price Escalation for Progress Billings Nos. 1 to 5

Petitioner questions the award for Progress Billing No. 6 in the amount of P7,384,534.22 and for Price Escalation for Progress Billings Nos. 1 to 5 in the amount of P26,297,951.62.

In sustaining these items of award granted by the CIAC to FUCC, the Court of Appeals ratiocinated as follows:

Petitioner's sole objection to the award of P7,384,534.22 as payment for Progress Billing No. 6 and P26,297,951.62 as payment of price escalation for Progress Billing Nos. 1-5 is that these claims did not become ripe for adjudication for failure of respondent to fulfill a condition sine qua non, which is the filing of a payment guarantee bond. Without this bond, respondent had no right of action against petitioner at the time of filing of the complaint in arbitration. x x x

Without question, the filing of a bond is a condition for the payment of the foregoing claims of respondent. We do not accept the reasoning of the CIAC that this requirement was rendered moot and academic by its granting of said claim; that sort of reasoning begs the question. However, we agree with CIAC that respondent's omission to file bond was excusable. On October 4, 2002, respondent proposed an arrangement under which it would submit its bond only when petitioner is about to release the check but that petitioner will hold on to it until respondent's bond is received and verified. Respondent was prompted to make this request in view of its unfavorable cash flow position, a dire situation it found itself in when the project was pre-terminated. x x x As found by CIAC, petitioner never responded to this request, giving rise to the presumption that it had not denied it. x x x. This presumption holds considering that, even at this stage, petitioner never explained its inaction.

Thus, we sustain the award of P7,384,534.22 as payment for Progress Billing No. 6 and P26,297,951.62 as payment of price escalation for Progress Billing Nos. 1-5. However, consistent with the provisions of the Contract, we require the latter to post the requisite bond in the manner arranged by respondent with petitioner.[82]

Petitioner assails what it sees as a "flip-flopping" of the Court of Appeals, i.e. for ruling in one breath that "(w)ithout question, the filing of a bond is a condition for the payment of the foregoing claims of respondent," but pronouncing in another that "we agree with CIAC that respondent's omission to file bond was excusable," only to qualify in the third breath that "consistent with the provisions of the Contract, we require the latter to post the requisite bond in the manner arranged by respondent with petitioner,"[83] and asserts that the posting of the bond is a government requirement that cannot be excused under both the law and the Contract (citing Articles VII and VIII thereof), and is simply indispensable.[84] In fact, according to petitioner, it is a condition precedent for the payment of FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billings Nos. 1 to 5. And since FUCC allegedly failed to comply with this condition precedent, it had no existing or accrued cause of action to compel NHA to pay the two (2) claims.[85]

Respondent counters that the Payment Guarantee Bond was required by NHA at the inception of the Project as a condition for the release of the advance payment to FUCC in the amount P85.2 Million,[86] and not as a requirement for the processing or release of FUCC's Progress Billings;[87] that the Payment Guarantee Bond expired without the entire advance payment being recouped by NHA because of the many work suspensions and delays suffered by the FVR Project; and that FUCC tried to renew the bond but the GSIS refused because the Contract for the FVR Project had already been terminated as of 16 October 2001.[88] It is respondent's submission that since its inability to submit a renewed Payment Guarantee Bond from the GSIS was NHA's very own act of terminating the Contract, NHA cannot use the same as reason not to process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5.[89]

We have meticulously examined the record vis-à-vis the submissions of the parties and find no reason to disturb the ruling of the Court of Appeals.

The record shows that at the start of the FVR Project, FUCC received from NHA an advance payment for mobilization in the amount of P85.2 Million, or fifteen percent (15%) of the contract cost.[90] There is no dispute that this advance payment was to be recouped by NHA from FUCC by taking partial amounts from the progress payments to FUCC. There is likewise no dispute that to secure the recoupment of this advance payment, NHA required FUCC to post a Payment Guarantee Bond in the amount of P85.2 Million issued by GSIS prior to the

release of the advance payment.[91]

It appears that before NHA could recoup from FUCC the entire advance payment, the Payment Guarantee Bond expired. This, at a time when NHA had yet to recover some P38 Million out of the P85.2 Million advance payment.[92]

FUCC tried to renew and pay for the extension of the bond but GSIS refused because the Contract for the FVR Project had already been terminated as of 16 October 2001.[93]

Because of the inability of FUCC to submit a renewed Payment Guarantee Bond from GSIS, NHA refused to process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billings Nos. 1 to 5.[94]

In two letters, one dated 23 May 2002,[95] the other dated 6 June 2002,[96] both addressed to the NHA General Manager, FUCC appealed for help in the payment of these claims and proposed to procure an alternative surety bond from a private surety firm accredited by the Insurance Commission to secure the balance of the advance payment still to be recouped by NHA.[97]

As both letters drew no response from NHA, FUCC wrote a third letter dated 13 June 2002[98] reiterating its proposal to submit a bond from a private surety company instead of a renewed Payment Guarantee Bond from the GSIS. It wrote thus:

The unexpected termination of the contract has already caused untold injury to the contractor. May we request NHA not to add insult to the injury by allowing the private surety bond and by subsequently releasing our claim for price escalation.[99]

NHA finally replied[100] and acceded to FUCC's proposal provided that the private surety company was among the top five (5) firms as endorsed by the Insurance Commission.[101]

FUCC immediately wrote back[102] and provided NHA with a list of the top five non-life insurance companies as endorsed by the Insurance Commission, and sought approval to procure a surety bond from any one of the firms, but preferably from Malayan Insurance Company, Inc.[103]

The foregoing evidence of record indisputably establish that FUCC made the offer to submit a surety bond from a private surety company instead of a renewed Payment Guarantee Bond issued by the GSIS just so NHA would process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. This offer was contained in three (3) successive letters: the first dated 23 May 2002,[104] the second dated 6 June 2002,[105] and the third dated 13 June 2002.[106]

When NHA acceded to FUCC's proposal in the letter dated 24 June 2002,[107] it accepted FUCC's offer but qualified its acceptance by imposing the condition that the surety firm be among the top five surety firms as endorsed by the Insurance Commission. This qualified acceptance constituted a counter-offer[108] which FUCC immediately accepted by way of the letter dated 3 July 2002.[109] In that letter, FUCC submitted to NHA the names of the top five surety companies from where it intended to obtain the surety bond. Thus, a perfected agreement was reached between the parties, to wit: that FUCC would submit a surety bond from one of the top five private surety companies to secure the balance of the advance payment still to be recouped by NHA, while NHA would process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. There was a perfected agreement because the contractual elements of consent, object certain and cause had concurred.[110]

The evidence on record further show that the parties subsequently reconciled their computations and agreed on the

amount of P26,297,951.62 as payment for Price Escalation for Progress Billing Nos. 1 to 5.[111] In fact, in the letter dated 2 October 2002,[112] NHA advised FUCC that it would "proceed with the processing of the escalation payment subject to the submission [of] the Surety Bond covering the balance for the recoupment of the advanced payment for mobilization." [113] In response, FUCC wrote NHA a letter dated 4 October 2002[114] requesting that it be allowed to submit the surety bond "immediately before [the] release by NHA of the check for the price escalation," with the understanding that "until the bond is released and verified, NHA will hold the check," "owing to the unfavorable cash flow position of the project brought about by the untimely termination of the contract." [115] Since NHA did not respond to FUCC's request nor object thereto, respondent assumed that NHA had tacitly accepted the same,[116] a stance supported by the CIAC and affirmed by the Court of Appeals in this wise:

As found by CIAC, petitioner never responded to this request, giving rise to the presumption that it had not denied it. x x x This presumption holds considering that, even at this stage, petitioner never explained its inaction.[117]

Indeed, petitioner has not explained its inaction even in the instant petition. It merely posits that "its silence cannot give rise to the presumption that it had accepted the counter-proposal" of FUCC[118] (referring to the request contained in the letter of FUCC dated 4 October 2002),[119] which it claims to be "a counter-proposal to the counter-proposal of petitioner NHA" (referring to the letter dated 24 June 2002).[120]

But this stance is untenable. As discussed above, the letter of NHA dated 24 June 2002, containing a qualified acceptance of FUCC's offer to submit a surety bond from a private surety company, constituted a counter-offer or a "counter-proposal," if you will, which was already accepted by FUCC in the letter dated 3 July 2002.[121] Thus, when FUCC wrote NHA the letter dated 4 October 2002,[122] there was no more "counter-proposal" on the table to speak of. FUCC wrote that letter in response to the letter of NHA dated 2 October 2002[123] to make a reasonable request on a mere matter of procedure: that it be allowed to submit the surety bond only when the check payment for its claim for price escalation is about to be released, with the understanding that NHA will hold on to the check until it had received and verified the surety bond.

The intended purpose of the surety bond is self-evident: to ensure that NHA would be able to recover the unrecouped balance of the advance payment in the still substantial sum of P38 Million. Understandably, NHA wanted the surety bond posted before releasing further payments to FUCC. Clearly, therefore, for as long as the surety bond was to be posted and properly verified before any check payment to FUCC could be released, the bond would have served its purpose. This was precisely the arrangement sought by FUCC. Thus, NHA had no reason to refuse FUCC's request contained in the letter dated 4 October 2002,[124] which is presumably the reason why it remained silent and gave no response, giving rise to the correct presumption that it had tacitly agreed to FUCC's request.

Based on the foregoing disquisition, the Court cannot subscribe to the asseveration of petitioner that FUCC had no existing or accrued cause of action to compel NHA to pay its claims for payment of Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5 at the time it filed its Complaint since FUCC allegedly failed to comply with a condition precedent or sine qua non for the payment of said claims - the posting of the Payment Guarantee (or Performance) Bond.[125]

Cause of action is defined as an act or omission by which a party violates the right of another. A complaint is deemed to have stated a cause of action provided it has indicated the following: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or the omission of the defendant in violation of the said legal right.[126]

Respondent had the right to be paid its claim for Price Escalation for Progress Billing Nos. 1 to 5 after NHA recognized the validity of the claim and reconciled its computations with FUCC on the correct amount of price escalation to be paid. In fact, NHA had expressed readiness to process the payment of the claim. As regards Progress Billing No. 6, petitioner similarly recognized the validity of this claim. Indeed, petitioner does not contest the right of private respondent to be paid Progress Billing No. 6. What it contests is merely the amount thereof, insisting that FUCC is only entitled to an award of P6,496,926.29 as against the amount of P7,384,534.22 awarded by the CIAC.[127]

Petitioner's subsequent refusal to process and pay these claims despite FUCC's willingness to submit a surety bond to secure the balance of the advance payment still to be recouped by NHA - as the parties had agreed upon - which bond would be submitted when the check payment for the claim is about to be released, clearly constitutes a violation by NHA of FUCC's right to be paid these acknowledged and recognized claims. Thus, respondent had an accrued cause of action against petitioner for these claims at the time it filed its Complaint, the constitutive elements of which are clearly set forth therein.

There is nothing to support petitioner's stance that the "posting of the Payment Guarantee (or Performance) Bond is decidedly a condition precedent" or sine qua non for the payment of FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5.[128] The Court notes, upon a close examination of the Contract, that there is no provision therein that requires FUCC to post a Payment Guarantee Bond as an indispensable condition for the recognition of the validity of its claim for price escalation or for the processing and payment of its progress billings. Nor does the Contract refer to any other document from where such a condition may be inferred.

The source of FUCC's obligation to post a surety bond as a substitute for the GSIS-issued Payment Guarantee Bond is not the Contract but the subsequent agreement between the parties, to wit: that FUCC would submit a surety bond from one of the top five private surety companies to secure the balance of the advance payment still to be recouped by NHA, while NHA would process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. And the timing of the posting of the bond was, as requested by FUCC in the letter dated 4 October 2002,[129] tacitly agreed to by NHA: that FUCC would post the requisite bond only when the check payments for its acknowledged claims are about to be released, with the understanding that NHA will hold on to the checks until it had received and verified the surety bond.

Petitioner's reference to Article VII and VIII of the Contract to support its allegation that "(t)he procurement or posting of a Payment Guarantee (or Performance) Bond is a government requirement that cannot be excused under both law and Contract"[130] is misplaced. Article VII refers to the Performance Bond in the amount of P28,429,789.00 posted by FUCC to guarantee the faithful performance of its scope of work,[131] which is decidedly different from the Payment Guarantee Bond in the amount of P85.2 Million which NHA required FUCC to procure from GSIS and to post prior to the release of the advance payment in the amount of P85.2 Million. A reading of Article VIII entitled CONTRACTOR'S ALL RISKS INSURANCE, on the other hand, readily reveals that it has no relation at all to the Payment Guarantee Bond required by NHA to cover the recoupment of the advance payment to FUCC.[132]

It appears that petitioner pounced upon, and took out of context, the Court of Appeals ruling that "(w)ithout question, the filing of a bond is a condition for the payment of the foregoing claims of respondent" to argue that since FUCC "failed to comply with a condition precedent or sine qua non for the payment of said claims", FUCC had no cause of action against NHA at the time it filed the Complaint. Read in the proper context, the "payment" spoken of in the CA Decision actually pertains to the physical act of releasing the check payments of FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billings Nos. 1 to 5.

The word "payment" is a noun that is used in two (2) general senses: as "money paid," i.e. an amount of money that is paid or due to be paid; or as the "act of paying," i.e. the act of paying money, or fact of being paid.[133] In the case at bar, the word "payment" was obviously used by the Court of Appeals in the sense of the "act of paying," or more exactly, with respect to the mechanical act of releasing the check payments for FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. The Court of Appeals decreed that NHA may release the "payment" (meaning, the checks processed by NHA for FUCC's claims) provided FUCC would "post the requisite bond in the manner arranged by respondent with petitioner." [134]

The evidence on record indubitably show that even as FUCC was ready to post the requisite bond in the manner agreed upon by the parties, NHA still refused to process and pay FUCC's claims for Progress Billing No. 6 and for Price Escalation for Progress Billing Nos. 1 to 5. In fine, and for emphasis, FUCC had an accrued cause of action to compel NHA to pay these claims at the time it filed its Complaint.

II. Re: Amount of FUCC's Claim for Progress Billing No. 6

Petitioner ascribes grave error to the Court of Appeals for affirming the award made by CIAC for Progress Billing No. 6 in the amount of P7,384,534.22 when FUCC's claim for said billing was allegedly only P6,496,926.29.

Anent this alleged error by the appellate court, it appears that FUCC originally submitted to NHA an Abstract of Physical Accomplishment in support of Progress Billing No. 6, showing that its physical accomplishments during the period 1 July 2001 to 21 November 2001, amounted to P6,496,926.29.[135] However, what FUCC attached to its Complaint[136] was a different Abstract of Physical Accomplishment showing that its accomplished works under Progress Billing No. 6 totalled P7,384,534.22.[137]

According to petitioner, "(i)f ever [it] is legally liable to pay respondent FUCC for Progress Billing No. 6, it should pay only the amount of P6,496,926.29, and not P7,384,534.22,"[138] as the Abstract of Physical Accomplishments marked and offered as Exhibit "15" was submitted by FUCC itself, through its then authorized representative, Engineer Edgardo S. De la Cruz, who had affixed his conformity thereon, to support its claim for payments for the said accomplishments.[139] Petitioner also cites the direct testimony of its sole witness, Engr. Raner, to the effect that "(t)he only Abstract of Physical Accomplishment for Progress Billing No. 6 that was signed by FUCC and NHA is Exhibit `15,' in which the amount agreed by both parties was P6,496,926.29." According to Engr. Raner, "(t)he alleged `new Abstract of Physical Accomplishment for Progress Billing No. 6 could only be a fabricated document."[140]

The Court notes that a perusal of the Abstract of Physical Accomplishments offered in evidence by FUCC as Exhibit "IIII" reveals that it was also signed by both parties, just like the Abstract of Physical Accomplishments offered in evidence by NHA as Exhibit "15." In his testimony, FUCC's sole witness, Engr. Dumaliang, explained that many Abstracts for Physical Accomplishments were caused to be prepared by NHA with different reduced amounts reflected thereon, which explains the apparently oscillating figures for Progress Billing No. 6. Engr. Dumaliang admitted that FUCC might have indeed also signed Exhibit "15." [141] In short, FUCC does not disown Exhibit "15." It is FUCC's stance that both Exhibit "IIII" and Exhibit "15" are duly executed documents but Exhibit "IIII," which it alleges was submitted later, supersedes Exhibit "15" and contains the correct amount of FUCC's accomplished works under Progress Billing No. 6.[142]

These conflicting claims between the parties - as to the correct amount that petitioner is legally liable to pay respondent for Progress Billing No. 6 - was resolved by the CIAC in favor of FUCC. The CIAC found that "the amount of P7,384,534.22 governs over the claim of NHA in its Exhibit "15" for the amount of P6,496,926.29." According to the CIAC, both Exhibit "IIII" and Exhibit "15" were signed by the representatives of FUCC and NHA. However, below the signatures in Exhibit "15" are handwritten notations saying that "such document is not

final but conditional." The pertinent portion of the CIAC Decision reads thus:

The Arbitral Tribunal finds the abstract of Physical Accomplishment for Progress Billing No. 6 in Exhibit "IIII" submitted by FUCC in the amount of P7,384,534.22 governs over the claim of NHA in its Exhibit "15" for the amount of P6,496,926.29 (see Stipulated Facts No. 25.1.2).

The Arbitral Tribunal's finding is based on the signature by a representative of FUCC in Exhibit "IIII" together with that of NHA representative (Mr. Borlagdan, Head Tech. Staff of FVRP), while in Exhibit "15" the signatures of both the NHA and FUCC representatives had handwritten notations below their respective signatures, both signifying that such document is not final but conditional. Exhibit "15" therefore is not controlling because of the signatures therein with handwritten conditions signifying further claims. [143]

As this finding of fact by the CIAC was affirmed by the Court of Appeals, and it being apparent that the CIAC arrived at said finding after a thorough consideration of the evidence presented by both parties, the same may no longer be reviewed by this Court. The all too-familiar rule is that the Court will not, in a petition for review on certiorari, entertain matters factual in nature, save for the most compelling and cogent reasons, like when such factual findings were drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd.[144] This conclusion is made more compelling by the fact that the CIAC is a quasi-judicial body whose jurisdiction is confined to construction disputes.[145] Indeed, settled is the rule that 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.[146]

III. Re: Award for Cost of Materials, Equipment and Facilities

Petitioner questions the propriety of the award for Cost of Materials, Equipment and Facilities in the amount of P4,677,680.00.

This award has two components: (1) an award in the amount of P132,470.00 representing the cost of materials delivered by FUCC to the project site but were not utilized due to the termination of the Contract; and (2) an award in the amount of P4,545,182.82 representing the pro-rated cost of the facilities constructed by FUCC to support field operations for the FVR Project.[147]

Central to the resolution of the question raised by petitioner is Exhibit "19,"[148] an NHA 'Internal Routing Slip' dated 17 November 1997 transmitted by the Manager of the Southern Luzon and Bicol (SLB) Region to the Chairman of NHA's PBAC, which reads as follows:

"INTERNAL ROUTING SLIP

SUBJECT: MINIMUM REQUIRED OWNED EQUIPMENT AND KEY STAFF

RE: LAND DEVELOPMENT OF FREEDOM VALLEY
RESETTLEMENT PROJECT (PHASE 1), SITIO BOSO-BOSO, BGY.
SAN JOSE, ANTIPOLLO, RIZAL

FOR/TO

:

FROM

:

DATE

:

SIGNATURE

The Chairman

:

The Manager

:

17 November

:

PBAC

:

SLB

:

1997

:

NEOFITO A. HERNANDEZ

Submitted herewith is a listing of the minimum required owned equipment and key staff for the Land Development of Freedom Valley Resettlement Project (Phase I) located at Sitio Boso-Boso, Bgy. San Jose, Antipolo, Rizal.

A.

EQUIPMENT

NO. OF EQUIPMENTS

1. Tractors, crawler-type with dozer

6

2. Loaders, crawler-type

3

3. Grader, motorized

6

4. Road Roller, vibratory, smooth drum

6

5. Plate Compactor, vibratory

3

6. Backhoe, hydraulic, crawler-mounted

6

7. Slipform Concrete Paver

1

8. Wet-mix Concrete Batching Plant

1

9. Concrete Vibrator

6

10. Dump Trucks

8

11. Air compressor, portable

1

12. Pneumatic Breakers, hand held

2

13. Water Pump

3

14. Generator Sets, 500 KVA, total

1

15. Welding Machines

2

16. Water Trucks

3

17. Chain Saw

2

18. Concrete Cutter

1

19. Concrete Mixer, one bagger

1

20. Service Vehicles

4

21. Cranes

4

22. Transit Mixers

4

23. Total Stations

1

TOTAL

75

B.

KEY STAFF

NO. OF MANPOWER

1. Project Manager

1

2. Project Engineers

3

3. Field Engineers

10

4. Sanitary Engineer

1

5. Electrical Engineer

1

6. Mechanical Engineer

1

7. Geodetic Engineer

1

8. Architects

2

9. Draftsmen

2

10. Foremen

6

11. Administrative Officer

1

12. Finance Officer

1

13. Liaison Officer

1

14. Purchasing Officer

1

15. Warehouseman

1

16. Clerk Typist

1

17. Drivers

4

18. Heavy Equipment Operators

25

19. Utilitymen

2

20. Heavy Equipment Mechanics

4

21. Instrument Men

3

22. Survey Aides

9

TOTAL

81"

According to the Court of Appeals, this Internal Memo shows that NHA itself "determined the minimum equipment and key staff to be mobilized for the project," and since "the project was pre-terminated, respondent is justified in seeking recovery of a portion of the costs already incurred." Thus:

x x x. Petitioner's own Exh. `19' shows that it determined the minimum equipment and key staff to be mobilized for the project x x x. It is implicit in these requirements that the infrastructure to house such equipment and personnel (including NHA personnel) and facilitate their mobilization within the project site were also expected to be provided by respondent. Hence, when respondent invested into such infrastructure, it did so with the expectation to recover such costs at the end of the project. As the project was pre-terminated, respondent is justified in seeking recovery of a portion of the costs already incurred.[149]

The appellate court thus affirmed the award made by the CIAC to FUCC in the amount of P4,545,182.82 representing the pro-rated cost of the facilities constructed by FUCC to support its field operations for the FVR Project (i.e.; the second component under the award for Cost of Materials, Equipment and Facilities, and for Disengagement Costs). The appellate court also affirmed the award in the amount of P132,470.00 representing cost of materials delivered by FUCC to the project site but were not utilized due to the termination of the Contract (i.e.; the first component under the award for Cost of Materials, Equipment and Facilities, and for Disengagement Costs), upon the finding that NHA was solely to be blamed for the lack of inventory of the unutilized materials.[150]

Petitioner disputes the holding of the Court of Appeals and maintains in the instant petition that it is not legally liable to pay FUCC for Cost of Materials, Equipment and Facilities, and for Disengagement Costs because NHA could not have dictated upon FUCC what equipment and key staff to mobilize in the FVR Project, as it was FUCC, logically being the contractor, which determined the kind and number of equipment that should be deployed for the Project.[151] According to petitioner, Exhibit "19" was transmitted by the Manager of the SLB Region to the PBAC Chairman in preparation for the public bidding of the FVR Project. The SLB Manager listed "the minimum required equipment and key staff that a participating contractor should own (as contradistinguished from `mobilize')" to insure that no "fly-by-night" or puny contractor would participate in the bidding, as "(t)he capability of the contractor to build the Project is known by the equipment he owns." [152]

In short, it is petitioner's submission that Exhibit "19" was not meant to dictate - and could not have dictated - the kind and number of equipment and key staff that FUCC should mobilize and/or actually mobilized for the FVR Project. It was issued by the Manager of the SLB Region to the PBAC Chairman merely to serve as a checklist on the minimum required number of equipment and key staff that a would-be contractor for the Project should own. Petitioner claims that there is a "whale of difference" between "owning" and "mobilizing," and that this difference "completely escaped" the Court of Appeals when it scrutinized Exhibit "19." [153] Since NHA had allegedly nothing to do with the deployment of FUCC's equipment and machineries for the FVR Project, it should not be made accountable for the dire consequences, if any, of FUCC's business decision or judgment in procuring, maintaining, constructing or dismantling these equipment and facilities, etc.[154]

Petitioner's arguments fail to persuade. The Court subscribes to the view expressed by private respondent that in a government infrastructure project, the department or agency that owns the project dictates not only what facilities, equipment and key technical staff the contractor should mobilize, it dictates as well the financial resources the

contractor should muster for the project, the bonds, guarantees and sureties it should put up, the plans, specifications, schedule, and the manner by which it should prosecute the contract works, how it should bill for completed works, how it should document and claim variation orders, etc.[155]

Indeed, this appears to be so in the case of the FVR Project. The very Contract entered into by the parties (which appears to be a standard form contract with the blank spaces appropriately filled up) specifies the duration of the contract works and the bonds, guarantees and sureties to be put up by FUCC,[156] and expressly states that, among other documents, the following shall form part of the Contract, to wit: plans, specifications, certificate of availability of funds, concurrence of lending institutions, duly approved program of work and cost estimates, PERT/CPM or equivalent schedule of work, etc.,[157] all of which demonstrate that NHA, as the owner of the FVR Project, had full control over its implementation. This would certainly have included dictating or imposing, as it were, the minimum equipment and key staff that had to be mobilized by FUCC to undertake the contract works. Otherwise, NHA would have been remiss in its duty to ensure that the Project would be implemented properly and the people's money spent wisely. Indeed, there are rules and guidelines for the implementation of government contracts[158] that procuring entities must follow to promote transparency and ensure that all contracts are performed strictly according to specifications.[159]

Be that as it may, even if Exhibit "19" was indeed issued merely to serve as a checklist on the minimum required number of equipment and key staff that a would-be contractor for the FVR Project should own, the document indubitably establishes that FUCC - which was awarded the Contract for the Project - could not have but assembled and mobilized a huge complement of men, materials and equipment to be able to undertake the FVR Project consisting, at the very least, of the equipment and key staff listed in said Exhibit "19," which were the "minimum required" by NHA. Whether FUCC owned the equipment or merely rented them does not alter the fact that it had to provide the infrastructure to house such equipment and key personnel within the project site to support its field operations. FUCC undoubtedly poured in money to put up such infrastructure, with the expectation that it would be able to recover the costs thereof at the end of the Project. Thus, when the FVR Project was terminated due to no fault of FUCC, respondent was eminently "justified in seeking recovery of a portion of the costs already incurred"[160] for such infrastructure, as correctly held by the Court of Appeals.

The Court notes that in ruling as it did, the Court of Appeals merely affirmed the finding of the CIAC that "(w)hen the whole amount of the contract for facilities is not paid due to the termination of said contract which is caused not at contractor's fault, the Contractor should be paid the pro-rated balance having prepared the facilities for the whole project." [161] The Court further notes that the amount of this award for the pro-rated cost of the facilities constructed by FUCC to support its field operations for the FVR Project - P4,545,182.82; as well as the amount of the award for the cost of the unutilized materials delivered by FUCC to the project site - P132,470.00, were not plucked out of thin air. They were meticulously derived by the CIAC based on the evidence submitted to the Arbitral Tribunal, as is readily apparent from the following pertinent portion of the CIAC Decision:

The work item in the contract for facilities had the corresponding amount. When the whole amount of the contract for facilities is not paid due to the termination of said contract which is caused not at contractor's fault, the Contractor should be paid the pro-rated balance having prepared the facilities for the whole project. These are consequences made in good faith and for usage in the project.

The construction facilities to support field operations are mandatory and necessary in the implementation of the project where the contract usually provides in a form of mobilization at the project start, and those needed during the full operation stage, e.g. laboratory, etc., and demobilization at the close of the project.

In the claim of FUCC, it included the Land Development of Heavy Equipment Yard, Office and Model Houses, Container Vans, Warehouse, Barracks, Shops, Working Areas, Water Supply and Electrical Works.

This involves the total amount of P12,297,722.46.

The FUCC is asking the pro-rated amount of this P12,297,722.46 computed as follows:

Balance of Works, divided by the cost of the whole works, multiplied by the cost of facilities, thus;

P568,595,780.00 less P358,445,341.30 x P12,296,722.46

P568,595,780.00

This will result to P4,545,182.82 which the Arbitral Tribunal supports as the valid claim of FUCC for component b) of its claim, or for facilities.

For the two components a) and b) for materials and facilities, NHA should pay FUCC the total of P132,498.00 plus P4,545,182.82 or the total of P4,677,680.00 and not P4,801,992.82 as previously claimed by FUCC.[162]

It must be pointed out that nowhere in the instant petition does petitioner contest the foregoing formula and the figures used by the CIAC or the amounts of the awards derived therefrom. Petitioner merely proffers the argument that NHA had nothing to do with the deployment of equipment and machineries and, hence, should not be made accountable for the consequences of FUCC's business judgment or decisions as regards their procurement, mobilization or maintenance. But both the CIAC and the Court of Appeals have spoken. And the CIAC's factual finding that FUCC ought to be paid the total amount of P4,677,680.00 for the Cost of Materials, Equipment and Facilities remains uncontested. This factual finding, which was affirmed by the Court of Appeals, must be accorded respect and finality by this Court, consistent with the settled rule that 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.[163]

IV. Re: Award for Idle Equipment

Petitioner asseverates that the award for Idle Equipment in the amount of P131,948,674.56 "is not legally owing" to FUCC and will "unjustly enrich FUCC at the expense of petitioner NHA" because no "perdition [was] suffered by respondent FUCC from idle equipment," as there was allegedly "no actual or physical suspension of the contract works that occurred." [164]

Verily, the determination of whether or not FUCC is entitled to an award for Idle Equipment hinges on a factual issue: whether or not there was actual or physical suspension of the contract works at the FVR Project.

The CIAC Arbitral Tribunal found that there was such actual or physical suspension of the contract works - a finding not disturbed by the Court of Appeals. This Court could very well just simply say that there is no cause to review, must less overturn this finding of fact, invoking the established rule that in petitions for review on certiorari, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record, or the assailed judgment is based on a misapprehension of facts.[165]

But considering that the award for Idle Equipment involves a substantial sum - P131,948,674.56 - and if only to ascertain that the factual findings of the CIAC are indeed not devoid of support by the evidence on record, the Court shall examine at length the nature of this award and the bases of the findings of the CIAC Arbitral Tribunal and the judgment of the Court of Appeals.

First, it must be emphasized that FUCC's claim for Idle Equipment is limited to the period from 10 June 1998, when NHA issued Partial Suspension Order No. 1, up to 15 March 1999, the original expiration date of the Contract. This time frame is clearly defined in FUCC's Complaint.[166] The same time frame is also

acknowledged by the CIAC as the period circumscribed by FUCC's claim for Idle Equipment.[167]

To support its claim for Idle Equipment, FUCC attached to its Complaint a Summary (marked and offered in evidence as Exhibit "QQQQQ") showing the equipment that were rendered idle and unproductive during the period 10 June 1998 to 15 March 1999, the duration of their idleness, their rates per hour, and the cost of idleness per kind of equipment. The cost of idle equipment added up to a total of P142,780,800.00.[168]

In its Answer, NHA sought to defeat FUCC's claim by interposing the defense that there is no basis for the award of Idle Equipment because there was no actual or physical suspension of the contract works as shown allegedly by the Abstracts of Physical Accomplishment for Progress Billings Nos. 1, 2, 3, 4 and 5 of FUCC.[169]

During the presentation of evidence, FUCC's sole witness, Engr. Ben S. Dumaliang testified that Partial Suspension Order No. 1 was never lifted because NHA was not able to fully address the farmers'/planters' demands and/or contain their resistance; and that although Partial Suspension Order No. 1 mentions only the suspension of works at Cluster 2, it effectively stopped all contract works in both Clusters 1 and 2, allowing FUCC to prosecute the FVR Project only in Cluster 3. According to Engr. Dumaliang, he "saw with [his] own two eyes in [his] thrice a week visits to the project site that there was practically no contract works going on in Clusters 1 and 2." [170] Thus:

"Q : The parties have stipulated that all works at Cluster 2 were suspended effective 10 June 1998 due to the continued resistance of farmers/planters and other residents within the area to the FVR Project, under Partial Suspension Order No. 1. When was this suspension lifted?

A : It was never lifted because the NHA was never able to fully address the demands and/or contain the resistance of the farmers/planters and other residents within the area.

Q : What contract works were affected by this suspension?

A : Although Partial Suspension Order No. 1 only mentions the suspension of works at Cluster 2, it effectively stopped all contract works in both Clusters 1 and 2, allowing FUCC to prosecute the FVR Project only in Cluster 3.

Q : According to the NHA, even with the issuance of Partial Suspension Order No. 1, there was no actual or physical suspension of the contract works, particularly in Clusters 2 and 3. What can you say about this?

A : That is not true. There was actual suspension of contract works in Clusters 1 and 2. I know this of my own personal knowledge being the Project Director of FUCC for the FVR Project. As I said earlier, FUCC was able to prosecute the project only in Cluster 3. I saw with my own two eyes in my thrice a week visits to the project site that there was no [sic] practically no contract works going on in Clusters 1 and 2.

Q : But FUCC collected from and was paid the amount of P52.2 M for works done during the period supposedly covered by Partial Suspension Order No. 1. According to the NHA, this shows that there was no actual or physical suspension of the works. What can you say about this claim?

A : This P52.2 M was payment made by NHA to FUCC under Progress Billing No. 1 for works actually accomplished during the period 16 March up to 30 June 1998. Partial Suspension Order No. 1 became effective only on 10 June 1998. By that time, FUCC had been working for almost three (3) months and had accomplished a lot. Hence, the fact that it was paid P52.2M under Progress Billing No. 1 does not prove that there was no actual or physical suspension of the contract works because of Partial Suspension Order No. 1." [171]

NHA's sole witness, Engr. Mariano E. Raner III, on the other hand, testified that Partial Suspension Order No. 1 was lifted on 13 June 1999.[172] Engr. Raner reiterated NHA's stance that there was no actual or physical

suspension of the contract works as shown by the Abstracts of Physical Accomplishment submitted by FUCC in support of its Progress Billings Nos. 1, 2, 3 and 4.[173]

The CIAC Arbitral Tribunal found for FUCC and in the Decision dated 7 January 2004 rendered an award for Idle Equipment in the amount of P131,948,674.56.

The CIAC Arbitral Tribunal debunked NHA's proposition that the Abstracts of Physical Accomplishments and the payments made to FUCC under the Progress Billings show that there was no actual or physical suspension of the contract works by pointing out: (1) that the work accomplishments under Progress Billing No. 1 were done during the first three (3) months of the Contract (i.e. from 16 March 1998 up to June 1998) or before the issuance of Partial Suspension Order No. 1 on 10 June 1998; (2) that the work items covered by Progress Billing No. 2 were mostly for slope protection, which were also partially done before the issuance of Partial Suspension Order No. 1; and (3) that the accomplishments under Progress Billing No. 3 also consisted of slope protection and other items of work that did not involve the use of the equipment that went idle. The CIAC Arbitral Tribunal also gave credence to the testimony of Engr. Dumaliang that he saw with his own eyes that there was no equipment activity for the period 10 June 1998 to 15 March 1999.[174] The pertinent portions of the CIAC Decision dated 7 January 2004 are reproduced hereunder as follows:

NHA on the other hand contested the claim for payment of Idle Equipment with the principal reason that there was no actual or physical suspension of the contract works during the Partial Suspension Order No.1, which was proven by the payments of Progress Billings Nos. 1, 2, 3, 4, and 5, showing the items of works done in the Abstract of Accomplishment, supporting the said Billings. x x x

In the Affidavit of the NHA's lone witness, Mr. Raner III, it stated that the alleged 25 February 1999 meeting was "a blatant lie," because there was never a meeting on such date, more so that there was no agreement to pay the Idle Equipment claims. This allegations of the lone witness for NHA had been addressed and countered in the various letters that were never denied by the various officials of NHA who received the letters without any question, x x x except by the lone witness who only call it a blatant lie during the pendency of this case.

Upon perusal of the records in this case, it showed that in Admitted Fact No. 21, the period[s] for each billings [sic], are as follows;

Billing No. 1 - 16 March 1998 to 30 June 1998
Billing No. 2 - 01 July 1998 to 31 December 1998
Billing No. 3 - 01 January 1999 to 15 October 1999
Billing No. 4 - 16 October 1999 to 31 January 2001
Billing No. 5 - 31 January 2001 to 31 June 2001

Gleaned from this data, only Billings [sic] Nos. 1, 2, and 3 are affected in the claims for payment of Idle Equipment. However, in Billing No. 1, the period from 16 March 1998 to June 1998 is not affected in the claim for payment of Idle Equipments. Likewise, in Billing No. 3, the period from 15 March 1999 (original contract expiry date) to 15 October 1999 is also not affected in the claim for payment of Idle Equipment. This is because the claims for payment of Idle Equipment is from 10 June 1998 to 15 March 1999.

It was alleged by NHA's lone witness, that there were works in Billings [sic] Nos. 1 to 5 described in the Abstract of Accomplishments attached therein, showing activities during the Partial Suspension period of 10 June 1998 to 15 March 1999.

This allegation of NHA was countered by the lone witness of FUCC that the Billing No. 1 were [sic] accomplishments for the first three years of the contract, done long before the issuance of Partial Suspension order No. 1. And that Billing No. 2 were [sic] composed of work items for slope protections, also partially done before

the issuance of Partial Suspension No. 1. For Billing No. 3, the accomplishments, as records will bear, are mostly slope protections and other work items not involving the use of equipments.

Further, the lone witness for the FUCC testified categorically that he had visited the project thrice a week for the whole contract duration, and saw from [sic] his own eyes that there was no equipment activity for the period 10 June 1998 to 15 March 1999.

The above facts had been addressed in sufficient details regarding the issue as to whether there was actual or physical suspension of works for the period covered by the Partial Work Suspension Order No. 1. To discuss activities within the other Suspension Orders is immaterial to the issue.[175]

After ruling that there was actual or physical suspension of contract works in the FVR Project that left idle the large complement of hardware, machinery, tools and equipment mobilized by FUCC, the CIAC Arbitral Tribunal then proceeded to derive the value of the award for Idle Equipment in this wise:

It is noted that the period from 10 June 1998 when Suspension Order No. 1 was in effect, to 15 March 1999 when the original contract expired, is 278 days that FUCC claimed for payment of the Idle Equipment.

In the claim of payment for Idle Equipment for the 278 day period, FUCC listed 12-Bulldozers, 6-Backhoes, 2-Payloaders, 3-Graders, 3-Roadrollers, 4-Dump Trucks, 1-Water Truck, 1-Conc. Batching Plant, and 3-Transit Mixers, all working at the average of 2.224 hours per day for 278 days. The respective modified ACEL rates in Exhibit "TTTTT" was [sic] applied for the corresponding equipment, such that the total claims amounted to P142,780,800.00 (Exhibit "QQQQQ").[176]

x x x

Perusal of the records in this case showed that the listed equipment and number of units in the claim for payment of Idle Equipment, are far below the "Minimum Required Owned Equipment x x x", as listed during the bidding, except that of the Bulldozers. Instead of only six (6) bulldozers required, the claim for payment of Idle Equipment had twelve (12) bulldozers (see Exhibit "19").

The Arbitral Tribunal concluded that the claim for payment of Idle Equipment by FUCC is meritorious, except the 12 bulldozers which should be reduced to 6 bulldozers in the computations of the payment. This is because the increase of bulldozers from 6 to 12 is a business discretion of FUCC, decided at the start of the project, which does not bind the Owner, especially that it resulted to non-use for almost one year.

The corresponding amount for the excess six bulldozers to be deducted is equal to 6 bulldozers multiplied by 298 days and by the rental rate of P2920.00 per hour, further multiplied by 2.224 hours per day will result to P10,832,125.44. This should be deducted from the claimed total of P142,780,800.00 and will result to P131,948,674.56.[177]

It cannot be gainsaid that the CIAC Arbitral Tribunal sifted through the evidence presented by both parties before making the finding of fact that there was actual or physical suspension of the contract works that rendered the huge complement of FUCC's machineries and equipment idle and unproductive during the period 10 June 1998 up to 15 March 1999. Further, the CIAC Arbitral Tribunal painstakingly scrutinized the documents submitted by FUCC to support its claim for Idle Equipment before arriving at the amount of P131,948,674.56 as its award for Idle Equipment, which is less than FUCC's claim of P142,780,800.00. Clearly, the factual findings of the CIAC are based on substantial evidence on record, which are referred to in the CIAC Decision.

For example, the CIAC refers to the testimony of FUCC's sole witness, Engr. Dumaliang, to support its finding that the physical accomplishments subject of Progress Billing No. 1 were actually done during the first 3 months of the works contract (from March to June 1998), or before the issuance of Partial Suspension Order No. 1 on 10

June 1998,[178] which testimony is un rebutted.

Reference is also made to the following testimony of Engr. Dumaliang, which is similarly un rebutted, pertaining to the physical accomplishments under Progress Billing Nos. 2 and 3, which belies the stance of NHA that there was no actual or physical suspension of the contract works, to wit:

"Q: Again, the NHA claims that even with the issuance of Suspension Order No. 1 due to the CDO issued by the DENR, no actual or physical suspension of works was implemented. In fact, according to the NHA, FUCC collected and was paid P16.1 M under Progress Billing No. 2 for the period 01 July to 31 December 1998 and P57 M under Progress Billing No. 3 for the period 01 January to 15 October 1999, or during the supposed period of the suspension order. What is your reaction to this?

A : For a period of almost one year, or from 31 July 1998 up to 15 June 1999, all of the contract works were actually and physically suspended because of Suspension Order No. 1. However, FUCC was allowed to do mitigating slope protection and drainage works in Cluster 3. The amount of P16.1 M paid to FUCC under Progress Billing No. 2 was payment for: (1) works accomplished before the suspension which were not paid under Progress Billing No. 1; and (2) for slope protection and drainage works which were allowed by the CDO issued by the DENR. Upon the other hand, the amount of P57 M paid to FUCC under Progress Billing No. 3 was payment for: (1) slope excavation and drainage works done before the suspension but which were not paid because the covering variation order (Variation Order No.1) had not yet been issued then; and (2) for slope protection works, consisting of gabions and riprap, which were necessary to prevent further damage to the project while the suspension was in effect. Verily, these payments do not prove that there was no actual or physical suspension of the contract works because of Suspension Order No. 1." [179]

It thus comes as no surprise that the Court of Appeals affirmed the award of the CIAC for Idle Equipment in its Decision dated 1 August 2006,[180] where the appellate court additionally pointed out that petitioner had in fact acknowledged its liability to FUCC for standby cost. Thus:

Petitioner further disclaims liability for the amount of P131,948,674.56 awarded to respondent as payment for idle equipment. It argues that there is nothing in the contract or in PD 1594 and its implementing rules which allows such award.

We are inclined, however, to agree with respondent that petitioner had acknowledged its liability for standby cost. Its officer-in-charge Engr. Raner wrote in his 8 June 1999 Memorandum regarding the fact-finding being conducted by the Office of Ombudsman, thus:

There is another compelling reason for the expeditious resumption of the works. The contractor is claiming compensation for the large fleet of equipment, plant and facilities rendered idle and unproductive due to suspension. The contractor has billed us some P142 M for the period June 1998 to March 1999.

This claim is of course subject to evaluation of its merits, but under the General Conditions of the contract, the contractor may be entitled to such compensation.' x x x

Engr. Raner affirmed the foregoing statement when he testified on 9 December 2003.[181] x x x

The Court notes that Engr. Raner did affirm the recommendation contained in his Compliance Report to the Ombudsman[182] when he testified on cross-examination during the hearing before the CIAC Arbitral Tribunal held on 9 December 2003. Thus:

"ATTY. ALMADRO:

You recall, Mr. Witness, that the Ombudsman fact-finding report focused on the fact that there was a delay in the project and that the Ombudsman wanted it immediately [resumed] because the FVR Project was a funded project of the government and the Ombudsman felt that every day of delay was causing so much cost to the

government and reflecting a poor administration of a ...project and in your report, one of your recommendations was, in fact, to make sure that works would actually resume immediately, is that correct?

ENGR. RANER III:

Yes.

ATTY. ALMADRO:

In fact, in Item 1 again of this report, there is a paragraph here and I would like to quote for the record, "there is another compelling reason for the expeditious resumption of the works. The contractor is claiming compensation for the large fleet of equipment, plant and facilities rendered idle unproductive due to suspension. The contractor has billed us P142 M for the period June 1998 to March 1999. This claim is of course subject to evaluation of its merits, but under the general conditions of the contract, the contractor may be entitled to such compensation." So you were well aware that there was a claim amounting to P142 Million as of June 1999 in connection with the idle equipment of the contractor?

ENGR. RANER III:

The claim that was expressed, we were informed at that time verbally.

ATTY. ALMADRO:

So you became aware at that time that is why it is your sentiments ...

ENGR. RANER III:

Yes.

ATTY. ALMADRO:

And you stated here that the contractor may be entitled to such compensation, at that time you felt there was a basis for this claim.

ENGR. RANER III:

Yes. At that time, I felt there was a need to address the claim but as far as my level of position in the project is concerned, my authority is but to recommend. If there will be recommendations that I'll be submitting, of course, that will be subject to evaluation by management." [183]

Citing the case of *Public Estates Authority vs. Elpidio Uy, et al.*, [184] where this Court affirmed the disputed arbitral award of CIAC (a portion of which was for payment of the standby or idle time of equipment), the Court of Appeals sustained the award for Idle Equipment and held that payment for standby time due to prolonged work suspension is legally tenable.

This Court cannot but agree with the holding of the Court of Appeals. More so because the CIAC - which carefully considered the conflicting claims of the parties and painstakingly scrutinized both the oral and documentary evidence of record - possesses the required expertise in the field of construction arbitration, as we had pointed out in the cited case of *Elpidio Uy*. In that case, as in this case, we find no ground to disturb the arbitral award of the CIAC. Settled is the rule that 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. [185] Whatever questions there may be regarding the legality of an award for "standby time" or Idle Equipment is put to rest by the case of *Elpidio Uy*.

In the instant petition, NHA reiterates and insists that FUCC does not deserve an award for Idle Equipment because FUCC was "actually and continuously performing contract works" on the FVR Project from 16 March 1999 to 21 November 2001; that its equipment "never went idle"; and that it was paid for its contract works during this period.[186]

As heretofore shown, this stance of NHA was found to be untenable by the CIAC Arbitral Tribunal whose factual findings were affirmed by the Court of Appeals. Further, the argument that FUCC continuously performed contract works on the FVR Project from 16 March 1998 to 21 November 2001 so that its equipment never went idle is flawed because FUCC's claim for Idle Equipment is circumscribed within the period from 10 June 1998 to 15 March 1999 only. Quite obviously, works performed before 16 March 1998 and after 15 March 1999 are of no moment and are totally irrelevant to FUCC's claim for Idle Equipment.

Petitioner dwells at length on the Batching Plant of FUCC to show that FUCC's machineries and equipment never went idle.[187] But this is woefully misplaced because, and this bears repeating: FUCC's claim for Idle Equipment is only for the period 10 June 1998, when the contract works were first suspended by Partial Suspension Order No. 1, up to 15 March 1999, the original expiry date of the Contract, and not from 16 March 1998 to 21 November 2001, as petitioner adamantly insists in the present petition. Therefore, and as correctly pointed out by respondent, even if FUCC had in fact used its machinery and equipment after 15 March 1999 for other endeavors, it would not in any way affect the validity of FUCC's claim for Idle Equipment.

V. Re: Whether or Not Claims for Cost of

Materials, Equipment and Facilities,
Disengagement Costs and Idle Equipment
are Arbitrable by the CIAC

The CIAC granted an award to FUCC for Disengagement Costs in the total amount of P65,842,309.72. This award has 3 components, to wit:

(1) Foregone Equipment Rental

P34,216,692.90

(2) Extended Overhead Costs

10,541,872.27

(3) Foregone Income

21,083,744.55

TOTAL

P65,842,309.72[188]

Foregone Equipment Rental was derived by the CIAC by multiplying the equipment hours and rate of rental per hour, and further multiplying by the number of equipment for each respective type of equipment mobilized by

FUCC for FVR Project, as presented in Exhibit "NNNNN".[189] The equipment hours is an estimate of the number of hours each of the equipment would still be used to construct the remaining works of the Project had the Contract not been terminated. Thus, the reckoning point of Foregone Equipment Rental is the date of termination of the Contract, or as of 17 October 2001. For had the Contract not been terminated, FUCC would have used the equipment listed in Exhibit "NNNNN" to complete the Project and would have been paid therefor. Gone therefore was that payment which should have been income for FUCC.

As explained by respondent, Foregone Equipment Rental is different from the award for Idle Equipment, which pertains to the recovery of the huge loss incurred by FUCC when a large part of its complement of machinery and equipment were rendered idle during the period from 10 June 1998, when the contract works were first suspended, up to 15 March 1999, the original expiry date of the contract. The two items of award - Idle Equipment and Foregone Equipment Rental - are not only of different natures, their reckoning periods are not the same. Hence, they cannot overlap.[190]

FUCC sought to be paid P47,400,000.00 for Foregone Equipment Rental, but after assessment and appraisal, the CIAC Arbitral Tribunal awarded only the amount of P34,216,692.90 for this claim.[191]

With regard to Extended Overhead Costs, the CIAC awarded to FUCC the amount of P10,541,872.27, which it derived by multiplying the value of the remaining contract works for the FVR Project (which the CIAC determined to be P210,837,445.49) by 5%, the standard rate of overhead used in the industry. Thus: $P210,837,445.49 \times .05 = P10,541,872.27$. [192]

Extended Overhead Costs cover costs and expenses for manpower, utilities, and other similar services or resources that were already committed, delivered, paid for or expended for the totality of the FVR Project, but which can no longer be recovered because of the termination of the Contract.[193] It is different from the Cost of Facilities and Equipment, which pertains to the prorated cost of the facilities FUCC constructed to support the field operations for the entire FVR Project (i.e.; the heavy equipment yard, office and model houses, container vans/warehouses, shops, kitchen and other working areas, etc.) that it also expected to recover at the end of the project, but which similarly can no longer be recovered because of the termination of the Contract.[194]

For the award of Foregone Income, the CIAC multiplied the value of the remaining contract works (P210,837,445.49) by 10%, instead of using the usual rate of profit in the industry, which is 12% for contracts not exceeding P100,000,000.00. The CIAC justified the applied 10% rate of profit since it is also an industry practice that a lesser percentage of profit is allowed for bigger projects. Under the circumstances this is fair enough. Thus: $P210,837,445.49 \times .10 = P21,083,744.55$. [195] Foregone Income represents the profit that FUCC would still have earned had the FVR Project been completed - now gone.[196]

In the Decision dated 1 August 2006, the Court of Appeals affirmed the CIAC's award for Foregone Income, but remanded to the CIAC for re-computation the awards for Foregone Equipment Rental and Extended Overhead Costs.[197] It remanded the award for Foregone Equipment Rental because "it is not shown how CIAC or respondent arrived at the correct number of hours each type of equipment is still subject to rent." Also, the appellate court wanted to make sure that the period subject to Foregone Equipment Rental "already excluded the period subject to standby cost"[198] or, in short, that the award for Idle Equipment and the award for Foregone Equipment Rental did not overlap.

In the Compliance dated 17 August 2006,[199] the CIAC emphasized that NHA never disputed FUCC's claim for Foregone Equipment Rental[200] and disclosed that "(i)n preparation of the CIAC's decision, the members of the arbitral tribunal lengthily deliberated the disengagement issue, more importantly in the correct number of hours each type of equipment which [sic] is still subject to rental, and the possibility of overlapping the dates of the

rental claimed for idle period with the claim for the period in the foregone equipment rental." [201] According to the CIAC, "it was well noted at the outset, that the claim for rental of idle equipment for the period 10 June 1998 to 15 March 1999 x x x could never overlap with the claim for foregone rental of equipment in the claim for disengagement costs, which period will be reckoned starting from the date of contract termination x x x until the project should have been completed, if not terminated." [202] The CIAC then proceeded to show exactly how it computed and arrived at P34,216,692.90 as the correct amount of the award for Foregone Equipment Rental.

As regards the award for Extended Overhead Costs, the Court of Appeals ordered a remand for itemization and re-computation to "guard against a possible double claim," referring to cost of facilities and equipment which, according to the appellate court, "does not seem to be any different from respondent's claim for extended overhead costs." [203]

In the Compliance dated 17 August 2006, [204] the CIAC explained that "(i)n the construction industry practice, overhead cost is 5% of the project cost." [205] Since the final contract amount for the FVR Project was P488,393,466.98 and the amount already paid by NHA to FUCC was P271,207,922.18, then the balance of the contract works still to be done to complete the Project at the time of termination, according to the CIAC, was P217,185,544.80. Therefore, the Extended Overhead Costs should be 5% of P217,185,544.80, or P10,859,274.24, [206] which is slightly different from the original figure of P10,541,872.27, owing to the re-computed value of the remaining contract works, which became P217,185,544.80 instead of P210,837,445.49.

The Court of Appeals did not order the remand and re-computation of the third component, Foregone Income, but since the value of the remaining contract works was re-computed by CIAC to be P217,185,544.80 instead of P210,837,445.49, then Foregone Income, which was derived by the CIAC by multiplying the value of the remaining contract works by 10%, should be: $P217,185,544.80 \times .10 = P21,718,554.48$.

In this regard, we note that the CIAC - as pointed out by respondent - indeed committed a glaring typographical error in the Compliance dated 17 August 2006 when it wrote that the award for Foregone Income is P25,300,493.46. [207] This is a wrong figure. The correct figure for Foregone Income should be P21,718,554.48.

Therefore, as re-computed by the CIAC pursuant to the remand orders contained in the Decision of the Court of Appeals dated 1 August 2006, and taking note that the correct figure for Foregone Income is P21,718,554.48, not P25,300,493.46, the total amount of the award to FUCC for Disengagement Costs is P66,794,521.62, itemized as follows:

(4) Foregone Equipment Rental

P34,216,692.90

(5) Extended Overhead Costs

10,541,872.27

(6) Foregone Income

21,083,744.55

TOTAL**P65,842,309.72[188]**

The record shows that after the CIAC submitted its Compliance on 17 August 2006, NHA filed an Omnibus Motion dated 22 August 2006[208] that incorporated its Motion for Reconsideration of the Decision dated 1 August 2006, and its Motion to Require the CIAC to Explain and to Hold in Abeyance the Re-Computation of Award.

The Court examined the record and notes that petitioner had not, either in its petition with the Court of Appeals, or in the Omnibus Motion, or in the instant petition, assailed the correctness of the amounts of the award for the three components of the Disengagement Costs derived by CIAC. As the CIAC itself emphasized, NHA never disputed FUCC's claim for Foregone Equipment Rental and the amount of award thus reached by the CIAC.

What petitioner questioned before the Court of Appeals - in its Omnibus Motion - was merely the legal basis of the award for Disengagement Costs, reiterating the argument that NHA could not have dictated what equipment and key staff to mobilize for the FVR Project, as it was FUCC alone which determined the kind and number of equipment to be deployed for the Project.[209] But the Omnibus Motion was denied by the Court of Appeals in the Resolution dated 31 January 2007.[210]

This Court, therefore, finds no cogent reason to disturb the total amount of the award for Disengagement Costs derived and re-computed by the CIAC, as summarized and shown above.

The Court is aware that in the Resolution dated 31 January 2007, the Court of Appeals did not act upon the Compliance submitted by the CIAC on 17 August 2006 as it "was made by only two arbitrators." According to the Court of Appeals, it "cannot be considered an award of the Arbitral Tribunal," citing Section 16.2 of the Revised Rules of Procedure Governing Construction Arbitration (the "Revised CIAC Rules"), in relation to Section 10.4 thereof.[211]

We do not agree with the Court of Appeals in this regard. The Compliance is not an award, let alone the "Final award" spoken of in Section 16.2 of the Revised CIAC Rules. The CIAC Arbitral Tribunal already rendered a "Final award" in the Decision dated 7 January 2004. The Compliance merely clarifies and presents a re-computation of some items of the "Final award." It does not alter or supersede the "Final award" nor purport to be a new award. Further, Section 10.4 of the Revised CIAC Rules states that in case any Arbitrator should resign, etc., the "CIAC may, within five days from the occurrence of a vacancy x x x, appoint a substitute(s) to be chosen." The use of the permissive "may," rather than the mandatory "shall" indicates that the appointment of a third member of the CIAC Arbitral Tribunal is not indispensable for the tribunal to discharge its functions. The records show that a vacancy in the Arbitral Tribunal occurred with the demise of Lauro M. Cruz. Nothing in the Revised CIAC Rules prevents the remaining two members - who constitute a majority - from complying with the remand orders of the Court of Appeals. The Court thus gives imprimatur and deems as approved the Compliance submitted by the CIAC. We find that it sufficiently complies with the remand orders contained in the CA Decision dated 1 August 2006 and presents a correct method of computation of the arbitral award.

In the present petition, the sole issue presented by petitioner against the award for Disengagement Costs is that Disengagement Costs, like the Cost of Materials, Equipment and Facilities, and Idle Equipment are business losses which were non-arbitrable under the CIAC Rules of Procedure Governing Construction Arbitration, which was in place at the time FUCC filed its Complaint on 17 July 2003. According to petitioner, the Court of Appeals

gravely erred when it sustained the CIAC (which ruled that there is no basis to exclude claims for business losses), and held in the Decision dated 1 August 2006 as follows:

We agree with CIAC. In fact, we need not indulge in hair-splitting anymore. In *Gammon Philippines, Inc. versus Metro Rail Transit* (G.R. No. 144792, January 31, 2006), the Supreme Court held that there is no basis for the exclusion of claims for business losses from the jurisdiction of CIAC. It explained:

Relevantly, while the above-quoted provision of the Rules of Procedure Governing Construction Arbitration lists as non-arbitrable issues claims for opportunity/business losses and attorney's fees, this provision was not carried over to the Revised Rules of Procedure Governing Construction Arbitration which was approved on November 19, 2005. Such omission is not without good reason. EO 1008 itself excludes from the coverage of the law only those disputes arising from employer-employee relationships which are covered by the Labor Code, conveying an intention to encompass a broad range of arbitrable issues within the jurisdiction of CIAC. (Emphasis added)

Moreover, as pointed out by respondent, the second paragraph of Sec. 2 allows claims for unrealized expected profits and those arising from the rescission or termination of a contract. x x x (pp. 1576-1577, Rollo) Certainly, the claims sought to be satisfied in this case arose from the early termination of the Contract which deprived respondent of the prospect to make profit out of the investment it had already poured into the venture. It makes sense that respondent should be allowed to recover what opportunity it may have lost, especially when it was not to blame for the aborted contract.[212]

We need not belabor this issue any further. As the appellate court correctly points out, we have already categorically ruled in *Gammon Philippines, Inc. vs. Metro Rail Transit*,[213] that there is no basis for the exclusion of claims for business losses from the jurisdiction of CIAC because Executive Order No. 1008 (EO 1008), the law that created the CIAC, "excludes from the coverage of the law only those disputes arising from employer-employee relationships which are covered by the Labor Code, conveying an intention to encompass a broad range of arbitrable issues within the jurisdiction of CIAC."

The nature and bases of the awards for Disengagement Costs consisting of three components, namely: Foregone Equipment Rental, Extended Overhead Costs and Foregone Income; and the awards for Cost of Materials, Equipment and Facilities, and Idle Equipment have been discussed at length. They are either business or opportunity losses or foregone profits that resulted from, or are the necessary consequences of, the termination of the Contract. They arose from and are inextricably linked to the construction dispute between NHA and FUCC that was the subject of arbitration proceedings before the CIAC. We find and so hold that they are arbitrable claims within the ambit of Section 4 of EO 1008, which defines the jurisdiction of the CIAC. Thus:

SECTION 4. Jurisdiction.--The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises [sic] before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Section 4 provides that "(t)he jurisdiction of the CIAC may include but is not limited to x x x," underscoring the expansive character of the CIAC's jurisdiction. Very clearly, the CIAC has jurisdiction over a broad range of issues and claims arising from construction disputes, including but not limited to claims for unrealized profits and opportunity or business losses. What EO 1008 emphatically excludes is only disputes arising from employer-employee relationships.

Section 2, Article IV of the previous CIAC Rules of Procedure Governing Construction Arbitration cited by petitioner, which purports to exclude claims for business losses,[214] contravenes EO 1008 and is a patent nullity; it is void ab initio. In legal contemplation, that section of the previous CIAC Rules never acquired force and effect and cannot be applied to this case. What applies is Section 2.1 of the Revised Rules of Procedures Governing Construction Arbitration that was promulgated on 19 November 2005. Indeed, and as pointed out by the Court of Appeals in the Resolution dated 31 January 2007, CIAC Resolution No. 02-2006 ("Defining the Coverage of the Revised Rules of Procedure Governing Construction Arbitration") states that "the Revised Rules shall be applicable to all pending cases upon its effectivity on 15 December 2005 and all cases which are to be filed thereafter." [215] This case was filed on 17 July 2003 and was pending as of 15 December 2005.

But even granting for the moment that Section 2, Article IV of the previous CIAC Rules is a valid provision that may be applied to the case at bar, still the CIAC was eminently correct in ruling that under the first paragraph of Section 2, Article IV, only "opportunity/business losses in addition to liquidated damages" are not arbitrable. When the opportunity/ business losses are sought independently of liquidated damages, as in the instant case, they are perforce arbitrable.[216] This ruling of the CIAC was upheld by the Court of Appeals in the Decision dated 1 August 2006. The Court sees no reason to hold otherwise.

VI. Re: Whether or Not the Termination of

Contract for FVR Project was Unilateral

Was the termination of the Contract for the FVR Project a unilateral act of NHA?

"Without doubt", said the Court of Appeals, thusly:

"This brings us to the next assigned error. Petitioner insists that it should not be made to bear all the consequence of the termination of the project for respondent consented to it. It gave its tacit consent by not protesting the termination. x x x Moreover, even if it were true that the termination was unilateral on the part of petitioner, the latter is excused from any liability because the termination was due to reasons beyond its control. x x x.

Such argument is futile. Respondent could not have consented, tacitly or otherwise, to the termination of the project because that decision was made entirely by petitioner's board of directors. Its September 25, 2001 Resolution No. 4450, reclassifying the project into a mixed-market site and services project, is clear evidence that respondent had no participation whatsoever in the formulation of the decision. Without doubt, the termination of the project was unilateral.

It was also due to factors well within the control of petitioner. While geological or geophysical conditions in the project site rendered work difficult, the Mines and Geosciences Bureau (MGB) investigated landslides in the area merely for revision of the design plan of the project. x x x Petitioner, however, did not act on this recommendation despite repeated requests by respondent." [217]

We find no cogent reason to disturb this finding of the Court of Appeals. The evidence on record plainly reveals that the decision to terminate the Contract and to redraft the FVR Project as a mixed-use development under a joint venture scheme with interested parties was made by NHA's Board of Directors - alone. There is no showing - and petitioner does not allege - that FUCC's consent was sought by the Board of Directors directly or indirectly,

through responsible officers of NHA, before Resolution No. 4450[218] was passed. Neither is there any showing - and petitioner does not allege - that NHA made formal representations with FUCC to negotiate the termination of the Contract for the FVR Project.

What the records reveal, according to the CIAC, is that "(i)n a letter dated 16 October 2001, a Memorandum by the OIC of the FVR Project, recommended for the termination of the Contract. The approval of this Memorandum was recommended by Neofito A. Hernandez, NHA Manager for Southern Luzon/Bicol, and was approved by Edgardo D. Pamintuan, NHA General Manager (Exhibit "1"). The following day, 17 October 2001, the NHA General Manager advised FUCC of the termination of the Contract, citing among others that FUCC should 'x x x immediately stop the ongoing works and avoid further expenses including the provision of vehicles and other services for the NHA Project Team'." [219]

The foregoing findings of the CIAC support the stance of respondent that NHA unilaterally terminated the Contract; that FUCC was presented with a fait accompli, and there was nothing more that it could do to stop the unilateral termination of the Contract. [220]

Moreover, as aptly held by the Court of Appeals, the termination was "due to factors well within the control of petitioner." [221] Hence, NHA cannot invoke Clause 3.04.06 of the General Conditions of the Contract, which provides that "(t)he Authority may terminate the Contract upon (10) days written notice to the Contractor, if it is found that reasons beyond the control of either the Authority or Contractor make it impossible or against the Authority's interest to complete the work." [222]

Petitioner argues in the instant petition that "(t)he geological or geographical make up of the Project site is one reason that made it physically difficult - if not impossible - to pursue the FVR Project," and that "(i)t was precisely for this reason that the Project was re-classified from a resettlement to a mixed-used [sic] project." [223]

But as correctly observed by respondent, NHA, as Project owner, was supposed to have known the geological or geographical make-up and the potential hazards of the project site, and should have taken these into account in the original development plan for the FVR Project. It appears that NHA failed to conduct a complete feasibility study and comprehensive technical evaluation of the FVR Project before embarking thereon. Thus, it had to suspend the project and revise the development plans in the middle of the contract works to avert a tragedy, in light of the findings of the MGB, and eventually had to abandon the project. [224]

Further, while petitioner now claims that the geological or geographical make up of the Project site made it physically difficult - if not impossible - to pursue the FVR Project, which reason is allegedly beyond its control, this reason was never articulated in the letter dated 17 October 2001. In that letter, the NHA General Manager simply advised FUCC of the termination of the Contract and directed that FUCC should immediately stop the ongoing works and avoid further expenses.

It would appear to the Court that this pretended reason was belatedly and purposely foisted to place the termination within the ambit of the cited Clause 3.04.06. But not only is the reason unavailing, it is utterly misplaced because the letter dated 17 October 2001 does not comply with the 10 day written notice to the contractor required by the very Clause 3.04.06 that petitioner invokes. This letter-notice of NHA imposes an immediate termination with its stern admonition that FUCC should "immediately stop the ongoing works and avoid further expenses including the provision of vehicles and other services for the NHA Project Team."

In *Home Development Mutual Fund vs. Court of Appeals*, G.R. No. 118972, 3 April 1998, the Court held that requirements of contracts as to notice - as to the time of giving, form, and manner of service thereof - must be strictly observed because in an obligation where a period is designated, it is presumed to have been established for

the benefit of both the contracting parties. Thus:

The law mandates that Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

Did petitioners comply with their contractual obligation in good faith, when they served the requisite written notice to private respondents nine (9) days after the expiration of the Agreement? The answer to this crucial question is in the negative.

The second clause of the contractual provision in dispute is to the effect that written notice of termination should be served at least thirty (30) days in advance. As a rule, the method of terminating a contract is primarily determined by the stipulation of the parties. Thus, the requirements of contracts as to notice - as to the time of giving, form, and manner of service thereof - must be strictly observed because in an obligation where a period is designated, it is presumed to have been established for the benefit of both the contracting parties. Thus, the unilateral termination of the contract in question by the herein petitioners is violative of the principle of mutuality of contracts ordained in Art. 1308 of the New Civil Code. (Emphasis supplied)

Indeed, even if NHA is permitted to invoke Clause 3.04.06 of the General Conditions of the Contract, its own failure to comply with the notice requirement thereof - being violative of the principle of mutuality of contracts - resulted in the unilateral termination of the Contract.

In any case, and quite importantly, NHA failed to present evidence to buttress its stance that the termination of the Contract was due to factors beyond its control as to justify the application of Clause 3.04.06. On the contrary, the fact that the NHA Board resolved to redraft the FVR Project as a mixed-use development under a joint venture scheme with interested parties shows that NHA had other options at hand and could have chosen to negotiate with FUCC to amend the Contract instead of deciding to terminate the same. The conclusion is ineluctable: the termination of the Contract was well within the control of NHA, as correctly held by the Court of Appeals.

Petitioner posits that the letter of FUCC to NHA dated 27 August 2001[225] reveals that FUCC explicitly, if not expressly, welcomed or accepted the termination of the FVR Project with alacrity.[226] The letter reads thus:

May we formally inform you that we have refrained from implementing the works under our FVR contract pursuant to your instructions that our contract will be terminated and that project costs should now be contained.

We were advised that NHA has found FVR to be unsuitable for squatter settlement owing to its unfavorable geology and terrain. It is therefore being redrafted for mixed-use development on a joint venture scheme.

This was conveyed to us by the Office of the General Manager and the same was confirmed by the SLB Manager and the FVR Officer-in-Charge.

Indeed, several prospective parties have inspected the site for a possible joint venture engagement with National Housing Authority.[227]

The Court does not agree. We believe that the letter cannot be read in isolation but should be understood in relation to the situation of the parties and juxtaposed against the contemporaneous events then affecting the FVR Project. The records show that at the time the letter was sent, FUCC had pending claims against NHA. It had a pending claim for payment of Idle Equipment in the amount of P142,780,800.00,[228] and a pending claim for payment of Price Adjustment in the amount of P15 Million.[229]

According to respondent, NHA wanted FUCC to resume the contract works for the FVR Project full blast but FUCC refused citing as reason NHA's failure to settle its pending claims, particularly its claim for Price Adjustment. During this time, talk was rife that NHA would terminate the contract and redraft the FVR Project as

a mixed-use development under a joint venture with interested parties. In late August 2001, FUCC was verbally instructed to refrain from implementing the contract works as the termination of the Contract was imminent. It was at this point that FUCC wrote the letter dated 27 August 2001 advising NHA that it had "refrained from implementing" the contract works "pursuant to your instructions that our contract will be terminated and that project costs should now be contained." [230]

Respondent explains that it wrote the letter to put on record an added justification for its earlier refusal to resume the contract works full blast. Since there was already a verbal instruction to refrain from implementing the contract works as the termination of the Contract was purportedly imminent, it simply did not make sense for FUCC to be spending more for the FVR Project which would only end up as an added claim against NHA, with no clear prospects of being immediately paid. [231]

Viewed in this light, i.e.: that FUCC indeed had pending claims with NHA for the payment of substantial amounts that had remained unpaid despite repeated follow-ups, FUCC's "immediately stopping the contract works even before its receipt of the Notice of Termination" [232]- as petitioner puts it - does not show tacit consent on the part of FUCC to the termination of the Contract.

VII. Re: Errors in Computation

In its Comment, respondent pointed out that errors were committed by the CIAC when it complied with the remand orders of the Court of Appeals in the Decision dated 1 August 2006. One such error, as earlier noted, is the amount of the award for Foregone Income. Instead of the correct amount of P21,718,554.48, what appears in the Compliance is the wrong figure of P25,300,493.46. [] This error appears to be purely typographical.

Respondent identified another error: an error of omission relating to the computation of interest on the other items of award granted to FUCC. The Compliance shows that the CIAC Arbitral Tribunal correctly re-computed the 6% interest on Foregone Equipment Rental using as reckoning dates: (1) 9 January 2002, the date of demand by FUCC against NHA for the claim, as the beginning date; and (2) 1 August 2006, or the day of the promulgation of the Decision of the Court of Appeals, as the final date, as this was the day the final arbitral award in favour of FUCC became executory. [233]

But the CIAC Arbitral Tribunal inadvertently omitted to re-compute the 6% interest on each of the other awards using the same final date of 1 August 2006. We refer specifically to: (1) the 6% interest on the award for Progress Billing No. 6; (2) the 6% interest on the award for Cost of Materials, Equipment, Facilities, etc.; (3) the 6% interest on the award for Price Escalation; 4) the 6% interest on the award for Price Adjustment; and (5) the 6% interest on the award for Idle Equipment.

As reflected in the CIAC Decision dated 7 January 2004, the 6% interest on each of these awards was reckoned by the CIAC from the date of demand up to 1 December 2003 only. [234] In light of the CA Decision dated 1 August 2006, the CIAC should have re-computed the 6% interest on each of these awards from the date of demand up to 1 August 2006. In short, the CIAC inadvertently omitted to account for the 6% interest accruing from an additional period of 973 days (i.e.; there are 973 days from 1 December 2003 up to 1 August 2006) for each of these awards.

The Court takes judicial notice that Mathematics is an exact science. [235] As the aforesaid error of omission is susceptible of correction using a straightforward mathematical formula already laid down by the CIAC in its Decision, [236] which formula has never been questioned by petitioner, and considering further that petitioner has not interposed any objection to the proposition of respondent that the oversight committed by the CIAC in the Compliance ought to be corrected, the Court shall no longer remand this case to the CIAC for re-computation but

shall proceed to re-compute the same. Needless to state, such a remand would not serve any useful purpose but will only delay the final disposition of this case.

Based on the mathematical formula already laid down by the CIAC:

(1) the 6% interest on the award for Progress Billing No. 6 is re-computed as follows:[237]

$$\frac{815 + 973 \times P7,384,534.22 \times .06}{365} = P2,170,446.11$$

(2) the 6% interest on the award for Cost of Materials, Equipment, Facilities, etc. is re-computed as follows:[238]

$$\frac{541 + 973 \times P4,677,680.00 \times .06}{365} = P1,164,165.62$$

(3) the 6% interest on the award for Price Escalation is re-computed as follows:[239]

$$\frac{431 + 973 \times P26,297,951.62 \times .06}{365} = P6,069,423.14$$

(4) the 6% interest on the award for Price Adjustment is re-computed as follows:[240]

$$\frac{761 + 973 \times P14,768,770.22 \times .06}{365} = P4,209,706.45$$

(5) the 6% interest on the award for Idle Equipment is re-computed as follows[241]:

$$\frac{1689 + 973 \times P131,948,674.56 \times .06}{365} = P57,739,293.97$$

WHEREFORE, the petition is DENIED for lack of merit. The Decision of the Court of Appeals dated 1 August 2006, which upheld with modification the Decision of the Construction Industry Arbitration Commission in CIAC Case No. 14-2003, and the Resolution dated 31 January 2007, as modified with the pronouncement that the Compliance submitted by the CIAC on 17 August 2006 is deemed approved, are AFFIRMED. The final arbitral award in favour of FUCC as re-computed and corrected in accordance with the remand orders of the Court of Appeals, to summarized hereunder, to wit:

(1)

Award for Progress Billing No. 6, P7,384,534.22;

(2)

6% Interest on Award for Progress Billing No. 6, P2,170,446.11;

(3)

Award for Cost of Materials, Equipment, Facilities, etc. P4,677,680.00;

(4)

6% Interest on Award for Cost of Materials, Equipment, Facilities, etc., P1,164,165.62;

(5)

Award for Price Escalation, P26,297,951.62;

(6)

6% Interest on Award for Price Escalation, P6,069,423.14;

(7)

Award for Price Adjustment, P14,768,770.22;

(8)

6 % Interest on Award for Price Adjustment, P4,209,706.45;

(9)

Award for Idle Equipment, P131,948,674.56;

(10)

6% Interest on Award for Idle Equipment, P57,739,293.97;

(11)

Award for Disengagement Costs, P70,376,467.60;[242]

(12)

6% Interest on Award for Foregone Equipment Rental, P19,238,797.99[243]

With costs against petitioner.

SO ORDERED.

Carpio, (Chairperson), Brion, Peralta,[*] and Bersamin,**] JJ., concur.

[*] Associate Justice Diosdado M. Peralta is designated Additional Member as per Special Order No. 1074 dated 6 September 2011.

**] Associate Justice Lucas P. Bersamin is designated Additional Member as per Special Order No. 1066-A dated 23 August 2011.

[1] Penned by Associate Justice Godardo A. Jacinto with Associate Justices Edgardo P. Cruz and Jose Catral Mendoza (now a member of this Court), concurring; rollo, pp. 85-109.

[2] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Jose C. Mendoza (now a member of this Court) and Myrna Dimaranan Vidal, concurring; Annex "B" of Petition; id. at 110-116.

[3] Id. at 944-979, Annex "X" of Petition. Records, Folder no. 2, Expanding Envelope no. 3.

[4]Id., Composed of Atty. Jacinto M. Butalid, Chairman, and Ms. Felicitas A. Pio Roda and Mr. Lauro M. Cruz, Members.

[5] Id. at 16-77.

[6] Id. at 1195-1285.

[7] Id., Vol II, pp. 2-23.

[8] Id., Vol. I, pp. 84-1179; 1287-1360, Annexes "A" to "EE" of Petition and Annexes "1" to "13" of Comment.

[9] Annex "Q" of Petition, id. at 428-510.

[10] Annex "S" of Petition, id. at 518-686.

[11] Annex "C" of Petition, id. at 117-142.

[12] Annex "E" of Petition, id. at 149-152.

[13] Annex "F" of Petition, id. at 153.

[14] Annex "C" of Petition, id. at 118.

[15] Id.

[16] Id. at 118-119.

[17] Id. at 119, Item 3.1 of the Joint Stipulations, presents a summary of the bids, as follows:

FUCC

P 568,595,780.00

New San Jose Builders

P 569,234,466.00

Atlantic Erectors/ Consuelo/ Linear

P 612,933,834.26

R-II Builders

P 619,934,334.00

FF Cruz & Co.

P 699,888,000.00

[18] Annex "C" of Petition, id. at 119.

[19] Annex "G" of Petition, id. at 157-159.

[20] Annex "F" of Petition, id. at 153-156.

[21] Article III of Contract, id at 154.

[22] Annex "C" of Petition, id. at 120.

[23] The CIAC record shows that NHA issued Partial Suspension Order No. 1 dated 23 June 1998 (Cf. Expanding Envelope no. 1, 2[nd] folder of 4 Annex "K" of Complaint); Suspension Order No. 1 dated 31 July 1998 (Cf. Annex "O" of Complaint); and Suspension Order No. 2 dated 13 October 1999 (Cf. Annex "V" of Complaint).

Partial Suspension Order No. 1 was issued due to the continued resistance of farmers/planters and other residents in the area of the FVR Project (See also Item No. 12.1.1 of Joint Stipulations, rollo, Vol. I, pp. 122-123).

Suspension Order No. 1 came after the DENR issued a cease and desist order effective until an Environmental Compliance Certificate for the Project could be secured by NHA (See also Items Nos. 12.2.1 and 12.2.2 of Joint Stipulations, rollo, Vol. I, p. 123).

Suspension Order No. 2 was issued to stop the works and development of Cluster 3 until revisions of the plans could be made to avoid the occurrence of an incident similar to the Cherry Hills landslide, in light of the report submitted by the Geohazard Assessment Team of the Mines and Geosciences Bureau (MGB) after heavy rains triggered landslides at Cluster 3 (See also Items Nos. 12.3.1, 12.3.2 and 12.3.3 of Joint Stipulations, rollo, Vol. I, pp. 124 and 126).

[24] Rollo, Vol. I, issued on 15 September 1999; Annex "I" of Petition, pp. 163-171.

[25] Issued on 4 December 2000; Annex "I-1" of Petition, id. at 172-176.

[26] Annex "I-1" of Petition, id. at 174.

[27] Annex "H" of Petition, id. at 160.

[28] Annex "H-1" of Petition, id. at 161.

[29] Annex "H-2" of Petition, id. at 162.

[30] Annex "H-2" of Petition, id. at 162.

[31] Annex "K" of Petition, id. at 180.

[32] Annex "K-1" of Petition, id. at 197.

[33] Annex "K-2" of Petition, id. at 213.

[34] Annex "K-3" of Petition, id. at 233.

[35] Annex "K-4" of Petition, id. at 244.

[36] Records, Annex "ZZZ" of Complaint, 3[rd] folder of four, Expanding Envelope No. 1, Resolution No. 4450.

[37] Rollo. See Letter of NHA dated 17 October 2001, Annex "L" of Petition, p. 256.

[38] Id.

[39] Id. Clause 3.04.06 of the General Conditions covering Termination of Contract by the Authority (Contractor not at fault) provides: "The Authority may terminate the Contract upon ten (10) days written notice to the Contractor, if it is found that reasons beyond the control of either the Authority or Contractor make it impossible or against the Authority's interest to complete the work."

[40] See paragraph 1.2 of FUCC's Complaint, id. at 433.

[41] Records, 1[st] Expanding Envelope, Folder no. 2, Article XVII provides thus: "Should there be any dispute or controversy in connection with this Contract or difference between the parties arising from the interpretation of this Contract, the Parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to the Construction Industry Arbitration Commission (CIAC) created by Executive Order No. 1008, implementing Presidential Decree No. 1746 and R.A. 876, as amended, however (sic), that the arbitration proceedings shall be without prejudice to the right of the AUTHORITY to rescind, or terminate this Contract in accordance with provisions of the following paragraph."

- [42] Rollo, pp. 428-509.
- [43] See Prayer, Complaint in Arbitration, id. at 507-509.
- [44] Annex "R" of Petition, id. at 512-516.
- [45] CA rollo, Vol. II, pp 729-730. Records, Expanding Envelope no. 3, Folder no. 1.
- [46] Rollo, pp. 556-561.
- [47] Annex "D" of Petition, id. at 143.
- [48] Annex "E" of Petition, id. at 149-152.
- [49] Annex "C" of Petition, id. at 117-142.
- [50] See p. 1 of Supplemental Terms of reference, id. at 149.
- [51] Pages 2 to 3 of Terms of Reference and p. 1 of Supplemental Terms of Reference, id. at 144-145 and 149.
- [52] [Annex "U" of Petition, id. at 692-805.
- [53] See p. 19 of Petition, id. at 34.
- [54] Id.
- [55] Annex "V" of Petition, id. at 806-819.
- [56] See p. 20 of Petition, id. at 35.
- [57] Annexes "W" to "W-20" of Petition, id. at 820-943.
- [58] Id. at 945-979.
- [59] See pp. 36 to 37 of CIAC Decision dated 7 January 2004, id. at 978-979.
- [60] Annex "Y" of Petition, id. at 980-1024.
- [61] See p. 22 of Petition, id. at 37.
- [62] CA rollo, Vol II, pp. 1355-1366.
- [63] Rollo, Annex "Z" of Petition, pp. 1026-1033.
- [64] Id.
- [65] See pp. 8 to 9 of CA Decision, id. at 92-93.
- [66] CA rollo, Vol. IV, pp. 2449-2452.
- [67] Rollo, p. 94.
- [68] Id. at 85-109.
- [69] Id. at 945-979.
- [70] See p. 10 of CA Decision, id. at 94.
- [71] Annex "BB" of Petition, id. at 1034-1041.
- [72] Page 25 of Petition and p. 85 of Comment, id. at 40 and 1279.

[73] Annex "CC" of Petition, id. at 1056-1087.

[74] See p. 26 of Petition, id. at 41.

[75] Id.

[76] Id. at 111-116.

[77] See p. 6 of CA Resolution, id. at 116.

[78] Id.

[79] See p. 27 of Petition, id. at 42.

[80] See pp. 27-28 of Petition, id. at 42-43.

[81] See pp. 28-29 of Petition, id. at 43-44.

[82] Pages 14-15 of CA Decision, id. at 98-99.

[83] See pp. 29-30 of Petition, id. at 44-45.

[84] See p. 32 of Petition, id. at 47.

[85] See p. 30 of Petition, id. at 45.

[86] See Paragraph 16.1 of Comment, id. at 1208.

[87] See Paragraph 16.3 of Comment, id. at 1209-1210.

[88] See Paragraph 16.2 of Comment, id. at 1209.

[89] See Paragraph 16.3 of Comment, id. at 1209-1210.

[90] See Paragraph 16.1 of Comment; and p. 34 of Petition, id. at 49 and 1208.

[91] In Paragraph 16.1 of its Comment, respondent alleges as follows: The bond spoken of in the questioned Decision of the Court of Appeals is the Payment Guarantee Bond which the NHA required FUCC to post at the inception of the FVR Project to secure the liquidation or recoupment of the advance payment for mobilization in the amount of P85.2 Million (equivalent to 15 % of the contract cost) that FUCC received from the NHA. The bond was a condition for the release of the advance payment to FUCC. As agreed upon between the parties, the advance payment was to be recouped by taking partial amounts from the progress payments to FUCC. But nowhere in the contract documents does it state that the Payment Guarantee Bond is a requirement for the processing or release of FUCC's Progress Billings, id. at 1208.

The following allegation appears in page 33-34 of NHA's Petition; id. at 48-49: "x x x As earlier stated, the procurement or posting of a Payment Guarantee (or Performance) Bond is both a legal and contractual requirement that cannot be excused nor waived, least of all by an entity - like petitioner NHA - performing a vital governmental mandate or function and publicly accountable for every single cent spent in its operations. Such bond, to put it curtly, is a safety net mechanism to ensure recovery of NHA's P38 Million claim for recoupment, which represents the remaining portion of the P85.2 Million (equivalent to 15% of the contract cost) advance payment for mobilization that it still had to recover from or apply to the project billings (See Par. 54 of Affidavit dated 2 December 2003 of Engr. Mariano E. Raner III, id. at 816.

[92] See page 34 of Petition, id. at 49.

[93] See Paragraph 16.2 of Comment, id. at 1209.

[94] See Paragraph 16.3 of Comment, id. at 1209-1210.

[95] Annex "1" of Comment; (Note: The existence and/or due execution and authenticity of this letter is admitted by the NHA [Cf. Paragraph 31 of the Joint Stipulations] and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), id. at 1287.

[96] Annex "2" of Comment; (Note: The existence and/or due execution and authenticity of this letter is likewise admitted by the NHA [Cf. Paragraph 31 of the Joint Stipulations] and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), id. at 1288.

[97] See Paragraphs 16.4 and 16.5 of Comment, id. at 1210-1211.

[98] Annex "3" of Comment; (Note: The existence and/or due execution and authenticity of this letter is also admitted by the NHA [Cf. Paragraph 31 of the Joint Stipulations] and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), id. at 1289.

[99] See Paragraph 16.6 of Comment, id. at 1211-1212.

[100] See Letter of NHA GM dated 24 June 2002, Annex "M" of Petition, id. at 257.

[101] See Paragraph 16.6 of Comment, id. at 1211-1212.

[102] See FUCC's letter to NHA dated 03 July 2002, Annex "4" of Comment; (Note: The existence and/or due execution and authenticity of this letter and NHA's receipt thereof was duly established by the testimony of Engr. Dumaliang), id. at 1290.

[103] See Paragraph 16.6 of Comment, id. at 1211-1212.

[104] Id. at 1287.

[105] Id. at 1288.

[106] Id. at 1289.

[107] Id. at 257.

[108] See Art. 1319 of the Civil Code, which provides as follows: "Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer."

[109] Rollo, p. 1290.

[110] Pursuant to Article 1318 of the Civil Code which provides thus:

"Art. 1318 There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established."

[111] Rollo. See Letter of FUCC to NHA dated 25 September 2002, Annex "6" of Comment, and letter of NHA to FUCC dated 2 October 2002, Annex "7" of Comment, confirming that the computations for FUCC's claim for Price Escalation had already been completed and resulted to the gross amount of P26,297,951.62. See also Paragraph 19 of Comment, pp. 1292-1293 and 1222-1223.

[112] Annex "N" of Petition, id. at 258.

[113] Id.[]

[114] Annex "DD" of Petition, id. at 1178.

[115] See Paragraph 21 of Comment, id. at 1223.

[116] See p. 94 of the Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang, id. at 783.

[117] See p. 14 of the CA Decision, id. at 98.

[110]See p. 35 of Petition, id. at 50.

[119] Id. at 1178.

[120] Id. at 257.

[121] Id. at 1290.

[122] Id. at 1178.

[123] Id. at 258.

[124] Id. at 1178.

[125] See p. 30 of Petition, id. at 45.

[126] Philrock, Inc. v. Construction Industry Arbitration Commission, 412 Phil. 236, 247 (2001).

[127] Rollo. See p. 36 of Petition, p. 51.

[128] See p. 30 of Petition, id. at 45.

[129] Id. at 1178.

[130] See p. 32 of Petition, id. at 47.

[131] See Article VII of Contract, id. at 154.

[132] See Article VIII of Contract, id. at 155.

[133] Microsoft Encarta Dictionary, 2006 Edition.

[134] Rollo, vol. I, Annex "A" of Petition, CA Decision, pp. 98-99.

[135] Exhibit "15" of NHA attached as Annex "W-14" of Petition, id. at 917-925.

[136] As Annex "IIII" of the Complaint. Annex "IIII" was later marked and offered as Exhibit "IIII" for FUCC, id. at 1294-1303.

[137] Id., Exhibit "IIII" of FUCC attached as Annex "8" of Comment.

[138] See p. 36 of Petition, id. at 51.

[139] Id.

[140] See p. 11 of Affidavit of Engr. Mariano E. Raner III dated 2 December 2003, id. at 816.

[141] See pp. 82 to 83 of the Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang, id. at 772-773.

[142] See p. 38 of Comment, id. at 1232.

[143] See p. 18 of CIAC Decision dated 7 January 2004, id. at 962.

[144] R-II Builders, Inc. v. Construction Industry Arbitration Commission, 511 Phil. 523, 534 (2005) citing Sunshine Finance and Investment Corp. v. IAC, G.R. Nos. 74070-71, 28 October 1991, 203 SCRA 210 and Go v. Court of Appeals and Moldex Products, G.R. No. 158922, 28 May 2004, 430 SCRA 358.

[145] See Section 4 of E.O. No. 1008, dated 4 February 1985.

[146] Public Estates Authority v. Elpidio Uy, 423 Phil. 407, 416 (2001) citing Cagayan Robina Sugar Milling Co v. Court of Appeals, 396 Phil. 830, 840 (2000).

[147] Rollo, Vol. I. See p. 15 of CA Decision, p. 99.

[148] Annex "W-18" of Petition, id. at 940-941.

[149] See p. 16 of CA Decision dated 1 August 2006, id. at 100.

[150] Id. at 99

[151] See p. 40 of Petition, id. at 55.

[152] See p. 39 of Petition, id. at 54.

[153] See p. 39 to 40 of Petition, id. at 54-55.

[154] See p. 41 of Petition, id. at 56.

[155] See pp. 43 to 44 of Comment, id. at 1237-1238.

[156] Refer to Articles VII, VIII and IX of the Contract, id. at 154-155.

[157] Refer to Article XI of the Contract, id. at 155.

[158] See Section 42 of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act," and the Implementing Rules and Regulations promulgated pursuant to Section 75 of said Republic Act No. 9184.

[159] See Section 3 (a) and (e) of the Implementing Rules and Regulations of RA 9184.

[160] See p. 16 of CA Decision dated 1 August 2006, Annex "A" of Petition, rollo, Vol. I, p. 100.

[161] Rollo. See p. 21 of CIAC Decision dated 7 January 2004, p. 965.

[162] Id.

[163] Public Estates Authority v. Elpidio Uy, Supra note 146.

[164] Rollo. See p. 41 of Petition, p. 56.

[165] Calang v. People, G.R. 190696, 3 August 2010, 626 SCRA 679, 682-683.

[166] Rollo, pp. 498-499 and 501. See Paragraph 4.35 of Complaint, which contains the following allegation: "As heretofore shown, the FVR Project was subjected to work suspensions and suffered various delays all traceable to the faults and/or acts or omissions of the NHA, to the gross negligence, plain incompetence or simple lack of concern of its officials, and to the abject refusal of its technical team to cooperate with FUCC on the field. Because of these work suspensions and delays, a large part of FUCC's huge assembly of plant, equipment, tools, materials and manpower were rendered idle and unproductive since 10 June 1998. FUCC incurred a huge cost for

its idle equipment which, as of 15 March 1999 - the original expiry date of the contract - amounted to P142,780,800.00 x x x."

See also Paragraph 4.40 that alleges as follows: "In the meantime, the original contract period for the FVR Project expired on 15 March 1999. On 12 April 1999, FUCC wrote the NHA a letter and appended thereto a summary of the cost of its idle equipment from 10 June 1998, when Partial Suspension Order No. 1 was issued, suspending all works at Cluster 2, up to 15 March 1999, the expiry date of the original contract period. The total cost of idle equipment as of 15 March 1999 amounted to P142,780,800.00. x x x."

[167] Records. See p. 28 of CIAC Decision dated 7 January 2004, Folder no. 2, Expanding Envelope no. 3, where the following appears: "The claims of FUCC for payment of idle equipment pertains to the equipments rendered idle due to the Partial Suspension Order No. 1, effective 10 June 1998 and until the original contract time expiration on 15 March 1999. x x x The total claim by FUCC for payment of Idle Equipment was P142,780,800.00."

[168] Rollo. See Paragraph 4.35 of Complaint, pp. 498-499.

[169] See Paragraph 96 of Answer, id. at 550.

[170] Id. at 696.

[171] See p. 4 of Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, id. at 696.

[172] See paragraph 16, p. 3 of Affidavit of Engr. Mariano E. Raner III dated 2 December 2003, id. at 808.

[173] See paragraph 59, p. 12 of Affidavit of Engr. Mariano E. Raner III dated 2 December 2003, id. at 817.

[174] Records. See pp. 29 to 30 of CIAC Decision dated 7 January 2004, Expanding Envelope no. 3, Folder no. 2.

[175] Id. at 30.

[176] See p. 28 of CIAC Decision, dated 7 January 2004, Expanding Envelope No. 3, Folder no. 2, id.

[177] Rollo. See p. 30 of CIAC Decision dated 7 January 2004, p. 972.

[178] See p. 4 of Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, id. at 696.

[179] See p. 6 of Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, id. at 698.

[180] Id. at 85-109.

[181] See pp. 16 to 17 of CA Decision dated 1 August 2006, id. at 100-101.

[182] See Exhibit "HHHHHH," Annex "9" of Comment, id. at 1304-1308.

[183] See pp. 11 to 12 of TSN of the hearing held on 9 December 2003 attached as Annex "10" of Comment, id. at 1319-1320.

[184] Supra note 146.

[185] Id.

[186] Rollo. Annexes "K", "K-1", "K-2", "K-3" and "K-4" thereof, pp. 56-58; 180; 197; 213; and 244.

- [187] See pp. 43 to 51 of Petition, *id.* at 58-66.
- [188] See p. 27 of CIAC Decision dated 7 January 2004, *id.* at 971.
- [189] See p. 26 of CIAC Decision dated 7 January 2004, *id.* at 970.
- [190] See pp. 66 to 67 of Comment, *id.* at 1260-1261.
- [191] See p. 26 of CIAC Decision dated 7 January 2004, *id.* at 970.
- [192] See p. 27 of CIAC Decision dated 7 January 2004, *id.* at 971.
- [193] See p. 65 to 66 of Comment, *id.* at 1259-1260.
- [194] *Id.*
- [195] See p. 27 of CIAC Decision dated 7 January 2004, *id.* at 971.
- [196] See p. 66 of Comment, *id.* at 1260.
- [197] See dispositive portion of CA Decision dated 1 August 2006, *id.* at 107-108.
- [198] See p. 19 of CA Decision dated 1 August 2006, *id.* at 103.
- [199] *Id.* at 1034.
- [200] See p. 5 of Compliance dated 17 August 2006, *id.* at 1038.
- [201] See p. 3 of Compliance dated 17 August 2006, *id.* at 1036.
- [202] *Id.*
- [203] See p. 20 of CA Decision dated 1 August 2006, *id.* at 104.
- [204] *Id.* at 1034.
- [205] See p. 5 of Compliance dated 17 August 2006, *id.* at 1038.
- [206] *Id.*
- [207] *Id.*
- [208] *Id.* at 1056.
- [209] See pp. 26 to 27 of Omnibus Motion dated 22 August 2006, *id.* at 1080-1081.
- [210] *Id.* at 111-116.
- [211] See p. 4 of Resolution dated 31 January 2007, *id.* at 114.

Section 16.2 of the Revised Rules of Procedure Governing Construction Arbitration provides as follows:

"SECTION 16.2. Form of Award - The Final Award shall be in writing and signed by the Arbitral Tribunal. A dissent from the decision of the majority or a portion thereof shall be in writing and signed by the dissenting member."

Section 10.4 reads thus:

"SECTION 10.4. Vacancies - If any Arbitrator should resign, be incapacitated, refuse or be unable, or be disqualified for any reason to perform the duties of his office, CIAC may, within five (5) days from the

occurrence of a vacancy or refusal/inability to accept appointment, appoint a substitute(s) to be chosen."

[212] See pp. 12 to 13 of CA Decision dated 1 August 2006, id. at 96-97.

[213] G.R. No. 144792, 31 January 2006, 481 SCRA 209, 224.

[214] Section 2 of the previous CIAC Rules of Procedure Governing Construction Arbitration provides as follows:

"Sec. 2. Non-arbitrable Issues - Pursuant to Section 4 of Executive Order no. 1008, claims for moral damages, exemplary damages, opportunity / business losses in addition to liquidated damages and attorney's fees are not arbitrable except when the parties acquiesce or mutually agree to submit the same for arbitration and to abide by the decision of the arbitrator thereon.

Claims for unrealized expected profits (built-in in the contract price) and issues on rescission or termination of a contract, however, are arbitrable."

[215] Rollo. See p. 2 of Resolution dated 31 January 2007, p. 112.

[216] See p. 20 of CIAC Decision dated 7 January 2004, id. at 964.

[217] CA Decision, pp. 20-21 dated 1 August 2006, id. at 104-105.

[218] [] Supra note 28.

[219] Rollo. See pp. 33 to 34 of CIAC Decision dated 7 January 2004, pp. 975-976.

[220] See Affidavit in Question-and-Answer Form of Engr. Ben S. Dumaliang dated 4 November 2003, id. at 692-805.

[221] See p. 20 of CA Decision dated 1 August 2006, id. at 104.

[222] See p. 34 of CIAC Decision dated 7 January 2004, id. at 976.

[223] See p. 59 of Petition, id. at 74.

[224] See pp. 83 to 84 of Comment, id. at 1277-1278.

[225] Annex "EE" of Petition, id. at 1179.

[226] See p. 57 of Petition, id. at 72.

[227] Id.

[228] The record shows that as early as 19 June 1998, FUCC already advised NHA that its bulldozers and other equipment had been rendered idle because of the suspension of the contract works. On 3 March 1999, FUCC requested a partial payment by way of compensation for its idle resources. On 12 April 1999, FUCC wrote NHA a letter with a summary of the cost of its idle equipment in the amount of P142,780,800.00 as of 15 March 1999. On 28 April 1999, FUCC wrote another letter following up its claim for Idle Equipment. This was followed by the letter dated 3 August 1999, and then another letter dated 28 October 1999 (See pp. 68 to 72 of Complaint), id. at 499-503.

[229] The record shows that on 13 June 2000, FUCC requested NHA for the adjustment of contract prices which was later formalized in a letter dated 11 August 2000. In a Memorandum dated 22 February 2001, Engr. Raner recommended the approval of the claim but the recommendation was not acted upon. FUCC followed up this claim for Price Adjustment in the letters dated 17 April 2001, 23 May 2001 and 22 June 2001 (See pp. 45 to 48 of

Complaint), id. at 476-479.

[230] See pp. 76 to 77 of Comment, id. at 1270-1271.

[231] See p. 77 of Comment, id. at 1271.

[232] See p. 57 of Petition, id. at 72.

[233] See p. 6 of Compliance dated 17 August 2006, id. at 1039.

[234] See pp. 19, 22-23, 25 and 31 of CIAC Decision dated 7 January 2004, id. at 963; 966-967; 969 and 973.

[235] The Supreme Court held that things of common knowledge, of which courts take judicial notice of, are matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. [See *Expert Travel & Tours, Inc. v. Court of Appeals*, 498 Phil. 191, 206 (2005)].

[236] Rollo. A common formula was used by the CIAC in computing the interest on the various awards as may be gleaned from the computation shown on pp. 19, 22-23, 25 and 31 of CIAC Decision dated 7 January 2004, pp. 963; 966-967; 969 and 973.

[237] Compare to the computation on p. 19 of CIAC Decision dated 7 January 2004, id. at 963.

[238] Compare to the computation on p. 22 of CIAC Decision dated 7 January 2004, id. at 966.

[239] Compare to the computation on p. 23 of CIAC Decision dated 7 January 2004, id. at 967.

[240] Compare to the computation on p. 25 of CIAC Decision dated 7 January 2004, id. at 969.

[241] Compare to the computation on p. 31 of CIAC Decision dated 7 January 2004, id. at 973.

[242] Please refer to pp. 5-6 of Compliance dated 17 August 2006, id. at 1038-1039.

[243] Please refer to p. 7 of Compliance dated 17 August 2006, id. at 1040.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.