

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, PETITIONER, VS. CMC/MONARK/PACIFIC/HI-TRI JOINT VENTURE, RESPONDENT.

G.R. No. 179732. September 13, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

As the administrative agency tasked with resolving issues pertaining to the construction industry, the Construction Industry Arbitration Commission enjoys a wide latitude in recognition of its technical expertise and experience. Its factual findings are, thus, accorded respect and even finality, particularly when they are affirmed by an appellate court.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] dated September 20, 2007 in CA-G.R. SP Nos. 88953 and 88911, which affirmed the March 1, 2005 Award of the Construction Industry Arbitration Commission (CIAC).

On April 29, 1999, Republic of the Philippines, through the Department of Public Works and Highways (DPWH), and CMC/Monark/Pacific/Hi-Tri J.V. (the Joint Venture) executed "Contract Agreement for the Construction of Contract Package 6MI-9, Pagadian-Buug Section, Zamboanga del Sur, Sixth Road Project, Road Improvement Component Loan No. 1473-PHI"[3] (Contract) for a total contract amount of P713,330,885.28.[4]

Parts I (General Conditions with forms of tender + agreement) and II (Conditions of Particular Application + Guidelines for Preparation of Part II Clauses) of the "Conditions of Contract for Works of Civil Engineering Construction of the Federation International Des Ingenieurs - Conseils" (Conditions of Contract) formed. part of the Contract.[5] DPWH hired BCEOM French Engineering Consultants to oversee the project.[6]

On October 23, 2002, or while the project was ongoing, the Joint Venture's truck and equipment were set on fire. On March 11, 2003, a bomb exploded at Joint Venture's hatching plant located at Brgy. West Boyogan, Kumalarang, Zamboanga del Sur. According to reports, the bombing incident was caused by members of the Moro Islamic Liberation Front.[7]

The Joint Venture made several written demands for extension and payment of the foreign component of the Contract. There were efforts between the parties to settle the unpaid Payment Certificates amounting to P26,737,029.49. Thus, only the foreign component of US\$358,227.95 was up for negotiations subject to further reduction of the amount on account of payments subsequently received by the Joint Venture from DPWH.[8]

In a letter dated September 18, 2003, BCEOM French Engineering Consultants recommended that DPWH promptly pay the outstanding monies due the Joint Venture.[9] The letter also stated that the actual volume of the Joint Venture's accomplishment was "2,732m[2] of hardrock and 4,444m[3] of rippable rock," making the project 80% complete when it was halted.[10]

On March 3, 2004, the Joint Venture filed a Complaint[11] against DPWH before CIAC. Joint Venture' claims, which amounted to P77,206,047.88, were as follows:

CLAIMANT'S CLAIM

Foreign component of the project of

(US\$358,227.95 @Php34.90)

Php12,502,155.46

Interest as of December 3, 4003

(Computation for the damages & losses incurred:

Php10,297,090.42 + (US\$118,094.93@34.90)

Php14,418,603.47

Equipment and financial loses

5,080,000.00

Additional costs in the contract price under Clause 69.4

20,311,072.66

Adjustment in the contract price under Presidential Decree No. 1594

(9,313,402.91 in pesos and 266,859.68 in dollar)

18,626,805.81

Effect of the bombing incident

6,267,410.48

TOTAL CLAIMS

Php77,206,047.88[12]

Meanwhile, on July 8, 2004, the Joint Venture sent a "Notice of Mutual Termination of Contract",[13] to DPWH requesting for a mutual termination of the contract subject of the arbitration case. This is due to its diminished financial capability due to DPWH's late payments, changes in the project involving payment terms, peace and order problems, and previous agreement by the parties.

On July 16, 2004, then DPWH Acting Secretary Florante Soriquez accepted the Joint Venture's request for mutual termination of the contract.[14]

After hearing and submission of the parties' respective memoranda,[15] CIAC promulgated an Award[16] on March 1, 2005, directing DPWH to pay the Joint Venture its money claims plus legal interest. CIAC, however, denied the Joint Venture's claim for price adjustment due to the delay in the issuance of a Notice to Proceed under Presidential Decree No. 1594 or the "Policies, Guidelines, Rules, and Regulations for Government Infrastructure Contracts." [17] The dispositive portion of the Award read:

WHEREFORE, premises considered and in view of the resolution of the issues presented, an Award is hereby rendered ordering the Respondent DPWH to pay the Claimant the following:

1. Foreign Component of US\$358,227.95 plus legal interest of US\$18,313.79;
2. Equipment and Plant Losses of P5,080,000, plus legal interest of P464,298.08;
3. Additional Costs resulting from the Bombing of P6,267,410.48 plus legal interest of P320,410.63, and
4. Additional Costs in the contract price under Clause 69.4 of P20,311,072.66 plus legal interest of [P]1,038,368.78.

The claim of Claimant for adjustment under [Presidential Decree No.] 1594 of P18,626,805.81 is hereby denied.

Pursuant to the case of *Eastern Shipping Lines vs. Court of Appeals*, 234 SCRA 78, the foregoing monetary awards shall earn interest at the rate of 12% per annum from the date the Award becomes final and executor until its satisfaction.

SO ORDERED.[18]

DPWH and the Joint Venture filed their respective petitions for review before the Court of Appeals.[19]

The Court of Appeals in its Decision[20] dated September 20, 2007, sustained CIAC's Award with certain modifications and remanded the case to CIAC for the determination of the number of days' extension that the Joint Venture is entitled to and "the conversion rate in pesos of the awarded foreign exchange payments

stated."[21]

The Court of Appeals held that CIAC did not commit reversible error in not awarding the price adjustment sought by the Joint Venture under Presidential Decree No. 1594 since it was the Asian Development Bank's Guidelines on procurement that was applicable and not Presidential Decree No. 1594.[22]

The Court of Appeals also held that CIAC did not err in not awarding actual damages in the form of interest at the rate of 24% since there was no provision for such interest payment in the Contract. However, the Court of Appeals ruled that CIAC was correct when it awarded legal interest.[23]

The Court of Appeals sustained the Joint Venture's argument on the non-inclusion of a clear finding of its entitlement to time extensions in the dispositive portion of the CIAC Award.[24] The Court of Appeals held that CIAC did not clearly dispose of the matter:

Yet, a close scrutiny of the foregoing disposition shows that it does not refer to the 133 days as per Variation Order No. 2 since CIAC made mention that the project is already terminated and the entire volume under said Order "will not be consumed". Whether or not the Claimant then deserves to get the full 133 calendar days is a matter that has to be clearly resolved. On this, We hold that this Court is not prepared to engage into a technical bout that only the expertise of the CIAC can pass upon.[25]

On the other hand, the Court of Appeals did not accept DPWH's argument that the case was already moot and academic. According to the Court of Appeals, when the Joint Venture requested for the mutual termination of the Contract on July 8, 2004, it did not waive its right to be paid the amounts due to it.[26]

The Court of Appeals, however, raised a concern with regard to CIAC's order for DPWH to pay its liabilities in US dollars. It held that the parties have agreed that "all payments for works carried out after 31 May 2003 and related price escalation claims and retention releases in the contract will be in pesos only, therefore no foreign exchange payments." This was never contested by the Joint Venture; hence, it may be presumed that it acquiesced to the request of the DPWH.[27]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, the assailed Decision is hereby AFFIRMED with MODIFICATION to include the award to the Claimant of time extensions per: 1) delay in payment at One Hundred Eight (108) days, and 2) extension Twenty Nine (29) days due to peace and order situation.

Re 1) the award of time extension per Variation Order No. 2-as stated earlier elsewhere in the Decision, the CIAC must make a vivid presentation of the number of calendar days the Claimant is entitled to, and 2) the conversion rate in pesos of the awarded foreign exchange payments states, supra, in the assailed Decision, these matters are hereby REMANDED to the CIAC for proper disposition. Accordingly, the rest of the challenged Decision STANDS.

SO ORDERED.[28] (Emphasis in the original)

Petitioner DPWH filed the present Petition for Review[29] assailing the Court of Appeals Decision. In a Resolution[30] dated January. 28, 2008, this Court required respondent Joint Venture to file its Comment.

On March 27, 2008, respondent filed its comment/opposition.[31] Petitioner thereafter filed its Reply[32] on September 3, 2008.

The issues for resolution in this case are:

First, whether or not the case has become moot and academic due to the parties' mutual termination of the Construction Contract;

Second, whether or not the case is premature due to Joint Venture's non-compliance with the doctrine of exhaustion of administrative remedies;

Third, whether or not the Joint Venture is entitled to the foreign component of the Project in the amount of US\$358,227.95;

Fourth, whether or not the Joint Venture is entitled to time extensions due to Variation Order No. 2, peace and order problems, and delay in payment;

Fifth, whether or not the Joint Venture is entitled to a price adjustment due to the delay of the issuance of the Notice of the Proceed;

Sixth, whether or not the Asian Development Bank Guidelines on Procurement or Presidential Decree 1594 applies with regard to once adjustments due to the delay of the issuance of the Notice to Proceed;

Seventh, whether or not the Joint Venture is entitled to its claim for equipment and financial losses due to peace and order situation (additional costs);

Eighth, whether or not the Joint Venture is entitled to actual damages and interest on its claims; and

Finally, whether or not the Joint Venture should be paid in local currency or in U.S. dollars.

I

According to respondent Joint Venture, the Petition suffers from a fatal defect in its certification against non-forum shopping. The verification and certification against non-forum shopping was signed only by petitioner's counsel, Atty. Mary Jean D. Valderama, from the Office of the Solicitor General.[33]

This Court has long enforced the strict procedural requirement of verification and certification against non-forum shopping.[34] It is settled that certification against forum shopping must be executed by the party or principal and not by counsel.[35] In *Anderson v. Ho*,[36] this Court explained that it is the party who is in the best position to know whether he or she has filed a case before any courts.[37] It is clear in this case that counsel for petitioner, Atty. Valderama, was not clothed with authority to sign on petitioner's behalf.

In Resolution[38] dated December 10, 2007, this Court noted petitioner's Manifestation that after the petition was posted, the verification page signed by DPWH Secretary Hermogenes E. Ebdane was submitted to the Office of the Solicitor General. In the same Resolution, this Court granted the Office of the Solicitor General's motion to admit the attached verification and to substitute and attach it to the petition.

This Court ruled before that: "the lack of a certification against forum shopping, unlike that of verification, is generally not cured by its submission after the filing of the petition." [39] Nevertheless, exceptions[40] exist, as in the case at bar, and it is more prudent to resolve the case on its merits than dismiss it on purely technical grounds.[41]

II

In the assailed Decision, the Court of Appeals held that the mutual termination of the Contract by the parties did not render the case moot and academic.[42] Accordingly, when respondent requested for the mutual termination of the Contract, it did not waive its right to be paid the amounts due to it as shown in its letter:

In view of the above considerations, we hereby respectfully request for MUTUAL TERMINATION of our Contract. Our availment of this remedy does not mean though that we are waiving our rights (1) to be paid for any and all monetary benefits due and owing to us under the contract such as but not limited to payments for

works already done, materials delivered on site which are intended solely for the construction and completion of the project, price escalation, etc., (2) and without prejudice to our outstanding claims and entitlements that are lawfully due to us.[43] (Emphasis supplied)

Petitioner argues that the Court of Appeals erred in rendering the assailed Decision, considering that the case is already moot and academic. Petitioner insists that "the parties' mutual termination of their contract prior to the adjudication of this case by the CIAC on March 1, 2005, rendered the proceedings before CIAC moot and academic." [44]

According to petitioner, the principle of unjust enrichment does not apply in this case "because respondent has incurred negative slippage/delay in carrying out their contractual obligations due to reasons attributable to it. Moreover, the parties' mutual termination of the contract rendered the proceedings before the CIAC moot because there was no more contract to be enforced." [45]

Petitioner's argument is untenable.

Indeed, the rule is that courts will not rule on moot cases.[46] However, the moot and academic principle is "not a magical formula that can automatically dissuade the courts in resolving a case." [47] Exceptions exist that would not prevent a court from taking cognizance of cases seemingly moot and academic.[48]

In *Carpio v. Court of Appeals*, [49] this Court held that a case could not be deemed moot and academic when there remains an unresolved justiciable controversy. In that case, this Court affirmed the Court of Appeals' assailed resolutions, which denied petitioner's prayer for dismissal based on the argument that the Sheriff's execution pending appeal of the trial court's decision rendered the case moot and academic. This Court held that:

[I]t is obvious that there remains an unresolved justiciable controversy in the appealed case for *accion publiciana*. In particular, did respondent-spouses Oria really encroach on the land of petitioner? If they did, does he have the right to recover possession of the property? Furthermore, without preempting the disposition of the case for *accion publiciana* pending before the CA, we note that if respondents built structures on the subject land, and if they were builders in good faith, they would be entitled to appropriate rights under the Civil Code. This Court merely points out that there are still issues that the CA needs to resolve in the appealed case before it.

Moreover, there are also the questions of whether respondents should be made to pay back monthly rentals for the alleged encroachment; and whether the reward of attorney's fees, which are also being questioned, was proper. The pronouncements of the CA on these issues would certainly be of practical value to the parties. After all, should it find that there was no encroachment, for instance, respondents would be entitled to substantial relief. In view of all these considerations, it cannot be said that the main case has become moot and academic.[50] (Emphasis supplied.)

In this case, issues arising from the mutually terminated Contract are not moot and academic. As the Court of Appeals found, there are actual substantial reliefs that respondent is entitled to. There is a practical use or value to decide on the issues raised by the parties despite the mutual termination of the Contract between them. These issues include the determination of amounts payable to respondent by virtue of the time extensions, respondent's entitlement to price adjustments due to the delay of the issuance of the Notice to Proceed, additional costs, actual damages, and interest on its claims. The agreement to mutually terminate the Contract did not wipe out petitioner's obligation to pay respondent on works done before the Contract's termination on October 27, 2004.

III

According to petitioner, the filing of the claim before CIAC was premature, since under CIAC rules, there must be an exhaustion of administrative remedies first before government contracts are brought to it for arbitration.[51]

Respondent, on the other hand, denies violating the rule on exhaustion of administrative remedies. It claims that it sent at least 17 demand letters to petitioner, four (4) of which were sent to the DPWH Secretary directly.[52]

Petitioner's argument fails to convince.

The case is not premature. The pertinent provision on available administrative remedies can be found in Sub-Clause 67.1 of the Conditions of Contract:

Settlement of Disputes

Engineer's Decision 67.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.[53] (Emphasis supplied)

Under the doctrine of exhaustion of administrative remedies, the concerned administrative agency must be given the opportunity to decide a matter within its jurisdiction before an action is brought before the courts, otherwise, the action will be declared premature.[54]

In this case, CIAC found and correctly ruled that respondent had duly complied with the contractual obligation to exhaust administrative remedies provided for under sub-clause 67.1 of the Conditions of Contract before it brought the case before the tribunal:

The Claimant further alleged that, despite of such knowledge, no relief from the Secretary was forthcoming. It

would therefore be an exercise in futility if Claimant, after it had sent respondent the seventeen (17) demand letters and despite the unequivocal admission by Respondent's foreign consultant in charge of the project of respondent's liability and failure to pay (Annex C of the Complaint), will further be required to undergo another series of presentation and exchange of documentation. Moreover, Respondent has not indicated any practical benefit of resending the demand to the Secretary nor any prejudice for not doing so.

In this particular contract project, the procedural requirements governing the Settlement of Disputes is specifically provided under Clause 67 of the Conditions of the Contract which Claimant has complied with pursuant to the first paragraph of its letter dated September 10, 2004 (annex R) pertinent provisions thereof is read, as follows:

"Pursuant to the provision of Clause 67.1 of the conditions of contracts, we are formally referring to your good office several office several [sic] points of disagreement between the position you have taken and the position we have argued for. These were already the subject of voluminous correspondence between your good self and our company but no clear-cut resolution of the issues raised was ever made."

In the last paragraph of the letter on September 10, 2004 (Annex "R"), Claimant has requested Respondent for a definitive ruling on the disputes which were enumerated therein so that Claimant could avail of the remedies given to it by the aforesaid Clause 67.1. In spite of Claimant's request, respondent DPWH did not act on the same.

The evidence also disclosed that as far as delayed payments are concerned, Claimant made various verbal and written demands for payment as evidenced by Exhibits "E" to "E-16" or starting December 5, 2000. The demands were not heeded.[55]

A total of 17 demand letters were sent to petitioner to no avail. To require respondent to wait for the DPWH Secretary's response while respondent continued to suffer financially would be to condone petitioner's avoidance of its obligations to respondent. Hence, even assuming that sub-clause 67.1 was not applicable, the case would still fall within the exceptions to the doctrine of exhaustion of administrative remedies[56] since strict application of the doctrine will be set aside when requiring it would only be unreasonable under the circumstances.[57]

IV

Petitioner avers that the Court of Appeals gravely erred in rendering the assailed decision because it completely ignored, overlooked, or misappreciated facts of substance, which, if duly considered, would materially affect the outcome of the case. Petitioner argues that the present case is an exception to the rule that only questions of law may be raised in a Petition for Review under Rule 45 of the Rules of Court.[58]

Before delving into the issues raised, it is imperative to understand CIAC's role as the arbitral tribunal at the center of this dispute.

CIAC was created under Executive Order No. 1008, or the "Construction Industry Arbitration Law." It was originally under the administrative supervision of the Philippine Domestic Construction Board[59] which, in turn, was an implementing agency of the Construction Industry Authority of the Philippines.[60] The Construction Industry Authority of the Philippines is presently a part of the Department of Trade and Industry as an attached agency.[61]

CIAC's specific purpose is the "early and expeditious settlement of disputes"[62] in the construction industry as a recognition of the industry's role in "the furtherance of national development goals." [63]

Section 4 of the Construction Industry Arbitration Law lays out CIAC's jurisdiction:

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 dispute arises 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 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.

Republic Act No. 9184 or the "Government Procurement Reform Act," recognized CIAC's competence in arbitrating over contractual disputes within the construction industry:

Section 59. Arbitration, Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution. (Emphasis supplied)

CIAC's authority to arbitrate construction disputes was then incorporated into the general statutory framework on alternative dispute resolution through Republic Act No. 9285, the "Alternative Dispute Resolution Act of 2004". Section 34 of Republic Act No. 9285 specifically referred to the Construction Industry Arbitration Law, while Section 35 confirmed CIAC's jurisdiction:

CHAPTER 6 - ARBITRATION OF CONSTRUCTION DISPUTES

Section 34. Arbitration of Construction Disputes: Governing Law. - The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Constitution Industry Arbitration Law.

Section 35. Coverage of the Law. - Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

As a general rule, findings of fact of CIAC, a quasi-judicial tribunal which has expertise on matters regarding the construction industry, should be respected and upheld. In *National Housing Authority v. First United Constructors Corp.*,^[64] this Court held that CIAC's factual findings, as affirmed by the Court of Appeals, will not be overturned except as to the most compelling of reasons:

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. This conclusion is made more compelling by the fact that the CIAC is a quasi-judicial body whose jurisdiction is confined to construction disputes. 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.[65] (Emphasis supplied)

In distinguishing between commercial arbitration, voluntary arbitration under Article 219(14) of the Labor Code,[66] and construction arbitration, *Freuhauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific*[67] ruled that commercial arbitral tribunals are purely ad hoc bodies operating through contractual consent, hence, they are not quasi-judicial agencies. In contrast, voluntary arbitration under the Labor Code and construction arbitration derive their authority from statute in recognition of the public interest inherent in their respective spheres. Furthermore, voluntary arbitration under the Labor Code and construction arbitration exist independently of the will of the contracting parties:

Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law.

Unlike purely commercial relationships, the relationship between capital and labor are heavily impressed with public interest. Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority.

On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers.

Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators.

Notably, the other arbitration body listed in Rule 43 - the Construction Industry Arbitration Commission (CIAC) - is also a government agency attached to the Department of Trade and Industry. Its jurisdiction is likewise conferred by statute. By contrast, the subject- matter jurisdiction of commercial arbitrators is stipulated by the parties.[68] (Emphasis supplied)

V

Petitioner argues that respondent is not entitled to US\$358,227.95, as the foreign component of the Contract, because it is not yet legally demandable.[69] In declaring that petitioner should pay the amount as the foreign component of the project, CIAC held that petitioner did not deny said amount in its answer and that respondent's failure to renew its Letter of Credit does not justify petitioner's act in withholding the dollar component of the project.[70]

Petitioner maintains that the delay in payment was due to the negative slippage incurred by respondent and its failure to renew its Letter of Credit. Petitioner argues that under Clause 60.11 of the Conditions of the Contract, Part II, an irrevocable standby letter of credit is required before petitioner can release the advance payment.[71] Petitioner states:

In this case, respondent does not deny that its LC No. OIDS-00022-00027-0 issued by the United Coconut Planters Bank (UCPB) expired on October 15, 2003. Petitioner reminded respondent several times on the

imperative need for the renewal of its LC to avoid delay in the processing of its billing. The purpose of said LC is to guarantee the return of the advance payment by petitioner to respondent.[72]

Hence, petitioner claims that respondent cannot compel the payment of the foreign component of the Contract because it did not comply with the letter of credit requirement. Moreover, petitioner asserts that "In directing petitioner to pay the said award to respondent without the latter posting the said letter of credit, the CIAC and the Court of Appeals effectively amended the stipulation thereon in the contract which is legally impermissible." [73]

For respondent's part, it argues that it was impossible to renew the Letter of Credit. It explained that banks refused the renewal of the Letter of Credit since the original contract period had already expired and petitioner did not act on respondent's requests for extension.[74] In addition, evidence shows that "the main reason of the non-payment of dollar component was due to unresolved issues, the right of way acquisition problem between ADB and the [government], wherein ADB was forced to suspend the loan disbursement for the entire 6[th] Road Improvement Project effective 01 June 2003 due to this conflict." [75] Nevertheless, respondent admitted that the mutual termination of the Contract rendered the requirement of a Letter of Credit for the release of the \$358,227.95 moot and academic.[76]

This Court affirms the findings of CIAC and the Court of Appeals that respondent is entitled to the foreign component of the Contract.

CIAC found that petitioner was not justified in withholding the payment for the dollar component of the Contract.[77] Further, it found that respondent was justified and not at fault for not reviewing the Letter of Credit. It held that:

The Arbitral Tribunal is persuaded that the main reason for the non-payment of the dollar component was due to the unresolved issues (right of way acquisition) between the ADB and the Government of the Philippines where the Loan Disbursement was suspended by ADB for the 61 Road Improvement Project effective 01 June 2003 . . . The foreign Consultant even admonished Respondent DPWH and reiterated that it should take prompt action to effect payment of outstanding monies due, and nothing was ever mentioned of the failure to renew the Letter of Credit. (paragraph 3.2 of affidavit by Ferdinand Mariano)

Moreover, Claimant explained to the Respondent why the Letter of credit could not be renewed in its letter of 01 and 15 March 2004 (Exh. "C-16" and "C-17"). It appears that one of the bank's requirements for issuance of the Letter of Credit was the approved time extension and the extension of the contract, but Respondent refused to issue any document extending the contract.

On the other hand, the Respondent's justification was only based on its accounting requirement. It asserted that the LC guaranteed the advance payment as well as the work completion. It further stated that the LC was a requirement by the funding bank (By Subair S. Diron, paragraph 3.1.1 of Joint Affidavit by Heinz Reister, Diron and Pandapatan)[78] (Emphasis supplied)

In *National Housing Authority v. First United Constructors Corp.*, [79] this Court held that the respondent contractor was entitled to the payment of its claims, as the non-posting of the required Payment Guarantee Bond was due to the inaction of petitioner National Housing Authority:

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.[80] (Emphasis supplied)

In the present case, the renewal of the Letter of Credit hinged on the extension of the contract period. Despite notice by respondent of the bank's requirement for the renewal of the Letter of Credit, petitioner chose to ignore respondent's requests for time extensions. Therefore, petitioner cannot shift the blame to respondent and claim that the Letter of Credit was a condition sine qua non for the payment of the dollar component of the project.

VI

Petitioner also assails the findings of the Court of Appeals with regard to the time extensions respondent is entitled to. Petitioner argues that both the CIAC and the Court of Appeals failed to consider the subsequent payments made to respondent after the conclusion of the arbitration hearings. Thus, the tribunal's finding that petitioner still owes respondent US\$358,227.95 is factually erroneous.

Petitioner claims that "respondent failed to prove that it is entitled to the time extensions of: (1) 133 calendar days in addition to the 144-calendar days previously agreed by the parties and (2) 108-calendar days due to delayed payments." [81]

On the other hand, respondent argues that it is entitled to time extensions in addition to the 144 calendar days granted to it under Variation Order No. 2. [82] Respondent claims it is entitled to a total of 277 calendar days based on the approved revised Project Evaluation Review Tracking- Critical Path Method (PERT-CPM) diagram and S-Curve, [83] As explained by witness Engr. Reyes, rock excavation requires special skills, equipment, and explosives. These factors were not considered when the original contract schedule was prepared. [84]

Respondent further claims that it is entitled to another time extension due to the delay in payment. Respondent maintains that it infused more than double the 10% credit line amounting to P157,747,945.00. [85] Respondent also claims that it had already mobilized working and state-of-the-art equipment. [86]

The DPWH Bureau of Construction evaluated respondent's request for time extension and recommended its approval to the Secretary. [87] However, the recommendation was withdrawn "on the pretext that said DPWH guidelines for computation of time extension due to delayed payments [were] revised and modified." [88]

Respondent points out that petitioner, through Engr. Pierre Castelli, had acknowledged that the delayed payment had greatly affected respondent's cash flow. [89]

Respondent likewise asserts that it is entitled to a time extension due to peace and order problems. Petitioner did not object to respondent's entitlement to an extension due to the peace and order situation. Hence, the only thing required is to determine the number of calendar days' extension respondent is entitled to based on the circumstances. [90]

Chief Resident Engineer Andre Drockur of BCEOM French Engineering Consultant recommended a time extension of 29 calendar days due to the peace and order situation. While respondent did not agree with the consultant's recommendation, it still adopted such recommendation to expedite the computation of time extension due to peace and order problems. [91]

According to CIAC, respondent was entitled to time extensions in addition to the 144-calendar day extension agreed upon by the parties, as per Variation Order No. 2:

The Arbitral tribunal finds that the computation presented by the Claimant based from the approved revised PERT/CPM and S-Curve is acceptable and the 277 calendar days should have been granted by the Respondent or an additional of 133 calendar days. However, the project is now terminated. The actual accomplishment as per letter of [Chief Resident Engineer] to DPWH dated September 18, 2003 shows that the actual volume of accomplishment was only 2,732 m² of hardrock and 4,444 m³ of rippable rock. Thus, the entire volume

under Change Order #2 [or Variation Order No. 2] will not be consumed as the work is no 80% complete[.][92]

The Court of Appeals affirmed that respondent was entitled to a 133-day time extension in addition to the 144 calendar days under Variation Order No. 2.[93] However, the Court of Appeals noted that CIAC did not specify whether respondent was entitled to the full 133 days' extension, considering that it found that the entire volume in Variation Order No. 2 will not be fully used up due to respondent's 80% accomplishment.[94]

CIAC also held that respondent was entitled to a time extension of 108 calendar days due to petitioner's delayed payments[95] and another time extension of 29 calendar days due to the peace and order situation in the project area.[96]

This Court sees no reason to deviate from the findings of both CIAC and the Court of Appeals with regard to respondent's entitlement to time extensions: 1) under Variation Order No. 2; 2) due to the delay in payment; and 3) due to the peace and order situation, since these are supported by the evidence on record.

To reiterate, findings of fact of administrative agencies and quasi-judicial bodies are entitled to great respect and even finality when affirmed by the appellate court,[97] In this case, the Court of Appeals found that respondent was entitled to the time extensions as evaluated by CIAC, the agency tasked to resolve issues regarding the construction industry. Both tribunal found that respondent was entitled to the extensions due to petitioners delayed payments, peace and order situation, and Variation Order No. 2. These findings are clearly supported by the facts on record.

However, in light of the mutual termination of the Contract, the remand of the case to CIAC will serve no practical purpose and is, therefore, unnecessary.

VII

According to respondent the delay in the issuance of the Notice to Proceed entitles it to a price adjustment under Presidential Decree No. 1594. Bidding was conducted in January 1998 and respondent was declared the winning bidder. The Contract was signed on April 29, 1999. However, the Notice to Proceed was issued on May 5, 1999, or after a delay of more than 120 days from the bidding date, which entitles the bidder to an adjustment in the contract unit price under Presidential Decree No. 1594.[98]

On the other hand, petitioner claims that respondent did not question the findings of the Court of Appeals regarding price adjustment and claim for actual damages. Hence, it should not be allowed to assail the Court of Appeals' ruling on this issue before this Court.[99]

Both CIAC and the Court of Appeals found that respondent was not entitled to a price adjustment:

As to the first issue raised by the Claimant, this Court finds that the CIAC committed no reversible error in not awarding the price adjustment being sought by the Claimant under P.D. 1594, finding as flawed its claim based on the alleged DPWH's delay in the issuance of the notice to proceed.

We quote with approval the pertinent ratiocination of the CIAC on this point, thus:

....

However, the Claimant is not entitled to a price adjustment under P.D. 1594 because it is the ADB Guideline[s] on Procurement which should be followed, and not the provisions on P.D. 1594. In fact the bid of the Contractor was awarded despite its being above the approved Agency Estimates (AAE), based on the ADB guidelines, and against the provisions of P.D. 1594 (paragraph 7.2 of Joint Affidavit by Heinz Reister, Diron and Pandapatan).

The Arbitral Tribunal finds that the Guidelines of the Asian Development Bank govern this subject Project. Moreover, P.D. 1594 honors the treaties and international or executive agreements to which the Philippine Government is a signatory. Loan agreements such as those entered into with international funding institutions like ADB are considered to be within the ambit of DOJ opinion No. 46, S. 1987 and are therefore exempt from the application of P.D. No. 1594 as amended (Paragraph 7.1.1 of Joint Affidavit by Heinz Reister, Diron and Pandapatan).

....

If the Claimant's bid was awarded despite its being above the approved Agency Estimates based on the ADB guidelines, and against the provisions of P.D. 1594, We cannot see the rationale on why the Claimant now refuses to abide by the ADB guidelines on procurement. After the claimant was benefited by the approved bid at the inception of the project, We hold that it is unjustified for the Claimant not to be bound by the ADB guidelines under the pretext that it fails to get the supposed price adjustment.[100] (Emphasis supplied)

While respondent did not appeal the Court of Appeals' ruling with regard to its entitlement to a price adjustment under Presidential Decree No. 1594, for purposes of clarity and to finally settle the matter, this Court affirms the findings of CIAC and the Court of Appeals.

This Court has held that a foreign loan agreement with international financial institutions, such as a multilateral lending agency organized by governments like the Asian Development Bank, is an executive or international agreement contemplated by our government procurement system.[101]

In *Abaya v. Ebdane, Jr.*, [102] this Court upheld the applicability of the Japan Bank for International Cooperation's Procurement Guidelines to the implementation of the projects to be undertaken pursuant to the loan agreement between the Republic of the Philippines and Japan Bank for International Cooperation.[103]

While the Implementing Rules and Regulations[104] of Presidential Decree No. 1594 provide the formula for price adjustment in case of delay in the issuance of a notice to proceed, the law does not proscribe parties from making certain contractual stipulations. In this case, the Construction Contract is clear that in case of price adjustments, Clause 70 of the Conditions of Contract will apply:

3. That computation and payment of contract prices adjustment will be applied in accordance with Clause 70 of the Conditions of Contract;[105]

It is unclear from the records, however, whether the Asian Development Bank Guidelines was substantially the same as Clause 70 of the Conditions of Contract. Nevertheless, as in the *Abaya* case, it should be the guidelines that the parties have agreed upon, i.e., the Asian Development Bank Guidelines, that should govern in case of issues arising from the contract. Respondent failed to proffer evidence on what the Asian Development Bank Guidelines provide, if any, in the event of a delay in the issuance of a Notice to Proceed.

VIII

Petitioner argues that "CIAC and the Court of Appeals grossly erred in awarding P5,080,000.00, plus legal interest of P464,298.08 for the alleged equipment and financial losses; and additional cost resulting from the alleged bombing incident of P6,267,410.48, plus legal interest of P320,410.63." [106]

Furthermore, petitioner asserts that "the award to respondent of additional costs in the contract price under Clause 69.4 of the General Conditions of the Contract in the amount of P20,311,072.66, plus legal interest of P1,038,368.78 is improper." [107] Petitioner maintains that the award to respondent of additional costs in the contract price under Clause 69.4 of the General Conditions of Contract was baseless, since the Engineer had not

yet consulted with the parties to determine the amount of additional costs.[108]

In contrast, respondent claims that it is entitled to equipment and financial losses due to the peace and order situation.[109]

Petitioner's arguments are untenable.

It has been sufficiently established that a peace and order problem arose at the project site:

The Arbitral Tribunal was persuaded by the fact that six (6) named persons and four (4) John Does were accused of Destructive Arson in the Municipal Circuit Trial Court of Dumalinao Zamboanga del Sur for feloniously setting on fire simultaneously one (1) unit of Kumatsu Payloader amounting to Php3,000,000.00 and one (1) unit Isuzu 10 Wheeler Dump Truck amounting to Php800,000.00, both belonging to the Claimant. The accused are believed NP's with motives of hatred due to vain collection of revolutionary taxes from Claimant (Exh. "C-5").

The burning of the Payloader and Dump Truck, subject of the criminal case (Exh. "C-5") was corroborated in its entirety by the testimony of Pedrito G. Palancos, operator of the burnt Payloader in his affidavit, paragraph 6.6 to 6.9, part of the records of this case.

The Chief of Police of Kumalarang, Zamboanga del Sur submitted a Special Written Report to the PNP Provincial Director, regarding the bombing at Claimant's hatching plant in Boyugan, Kumalarang, del Sur on 11 March 2003.

The bombing incident revealed that it resulted in conflagration causing damage to the Generator Set, Caterpillar Brand KVA 180-180 and the Conveyor, with total estimated cost of Php7,300,000.00.

Intelligence Action Agent gathered information that MILF Members, all armed with undetermined numbers, but believed to be under Commander Susob Edris, were sighted by the barangay officials and the neighbor of the Plant location, when the incident occurred. (Exh. "C-9").

The two incidents described above, one costing approximately Php3,800,000.00 and the other costing approximately Php7,300,000.00, will have a total of approximately Php11,100,000.00 or Php11,347,410.48 to be exact. This is the amount that Claimant is entitled due to the peace and order situation at the Project site.[110]

This Court finds that CIAC and the Court of Appeals did not err when they found that respondent was entitled to its claim for equipment and financial losses. The situation was an assumed risk of petitioner as employer and is, thus, compensable under Clause 20.4 of the Conditions of Contract, which lists the Employer's risks as:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio- active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works,
- (f) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract,

(g) loss or damage to the extent that it is due to the design of the Works, other any part of the design provided by the Contractor or for which the Contractor is responsible,

(h) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.[111] (Emphasis supplied)

It is clear from the above provision that the assumed risks of the employer under Clause 20.4 of the Conditions of Contract include rebellion, revolution, insurrection, or military or usurped power, or civil war.

Petitioner further insists that respondent is not yet entitled to the claim because there is no determination by the Engineer of the costs incurred, as required under Clause 69.4 of the Conditions of Contract.[112]

In its Answer before CIAC, petitioner denied respondent's claims for additional costs under Clause 69.4. Petitioner stated that its denial will be explained more specifically in its Affirmative Defenses:

6. DENIES the allegations in paragraphs 12, 13, 14, 15 and 16 of the complaint for being preposterous, misleading and patently without legal and factual basis, the truth being that as per the Conditions of Contract, complainant is not entitled to the payment of additional cost on slowdown or suspension of work on the project, reimbursement for alleged equipment losses and additional time extensions to complete the project specifically stated/discussed in the Affirmative Defenses hereof.[113] (Emphasis supplied)

However, a perusal of petitioner's Affirmative Defenses reveals that no such qualification was made.

Under Rule 8, Section 10 of the Rules of Court, the "defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." There are three (3) modes of specific denial provided for under the Rules:

1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.[114]

In *Aquintey v. Spouses Tibong*,[115] this Court held that using "specifically" in a general denial does not automatically convert that general denial to a specific one. The denial in the answer must be definite as to what is admitted and what is denied, such that the adverse party will not have to resort to guesswork over "what is admitted, what is denied, and what is covered by denials of knowledge as sufficient to form a belief." [116]

The petitioner only tackled the issue on the claim for additional costs in the Joint Affidavit of petitioner's witnesses Heinz Reister, Subair S. Diron, and Abdulfatak A. Pandapatan:

Issue No. 9. Is claimant entitled to additional cost under Clause 69.4 of the General Conditions of Contract? If so, how much?

Subair S. Diron and Abdulfatak A. Pandapatan testifying:

9.1

Q: Is claimant entitled to additional cost/charges under Clause 69.4 of the General Conditions of Contract?

A: Not yet, the claimant should establish that it is allowed.[117]

This Court finds that petitioner failed to specifically deny the claims of respondent and had, therefore, admitted such claims. This Court agrees that respondent was able to establish its claims before the CIAC. This Court notes that the project was in Mindanao, and mobilization of workers and equipment is not an easy feat and not without

cost. Respondent believed that the suspension would only be temporary and work could resume at any time once petitioner settled its obligation. Petitioner must compensate respondent for the costs it incurred without any fault on respondent's part.

IX

During the arbitration hearing before the CIAC, respondent itself admitted that there was no provision in the Conditions of Contract for interest at the rate of 24% per annum on delayed payments.[118]

Respondent tries to excuse the lack of contractual stipulations by claiming that the amount of 24% interest is payment for actual damages and not stipulated interest.[119]

Respondent claims that petitioner is liable for the amounts respondent owes its creditors in the total amounts of P10,297,090.42 and USD\$118,094.93. In addition, respondent avers that petitioner should pay it 6% interest per annum computed from the receipt of the first demand letter for payment sent by respondent, as a result of delay in the payment for work accomplished.[120]

The Court is not convinced.

It is fundamental that a contract is the law between the parties and, absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts.[121]

Respondent was not able to establish the basis of its claim that it is entitled to an award of 24% interest. Moreover, as found by the Court of Appeals and CIAC, the parties had agreed to delete the provision on interest on delayed payments, since the project was funded by the Asian Development Bank.[122]

There is also no basis to award respondent 24% interest as actual damages for the additional expenses it incurred due to petitioner's delayed payments.

Before actual damages may be awarded, it is imperative that the claimant proves its claims first. The issue on the amount of actual or compensatory damages is a question of fact,[123] and except as provided by law or by stipulation, one is entitled to adequate compensation only for pecuniary loss duly proven.[124]

In this case, respondent has not sufficiently shown how awarding it 24% interest per annum on delayed payments corresponds to the actual damages it allegedly suffered. Respondent failed to show a causal relation between the alleged losses and the injury it suffered from petitioner's actions.

X

Respondent claims that it should be paid in U.S. dollars as specified in the Contract.[125] It argues that the present case is an exception to the general rule that obligations should be paid in Philippine currency.[126]

The Court of Appeals held that the parties subsequently agreed that payments made after March 31, 2003 shall be in pesos only:

However, one aspect in the CIAC decision is shrouded with cloud. This concerns CIAC's order to DPWH to pay its alleged liability to the Claimant in US dollars. It is worthy to note that aside from the agreement of the parties - particularly in paragraph 5 of the contract, *supra*, to fix the exchange rate at P34.9 for every US\$1.00, the Claimant itself has acknowledged in its request that it was advised by the DPWH per its letter dated 13 August 2003 that all payments for works earned out after 31 March 2003 and related price escalation claims and retention releases in the contract will be in pesos only, therefore no foreign exchange payments. This fact

was never contested by the Claimant thereby creating a presumption that it has acquiesced to the request of the DPWH. Thus, We cannot see Our way through on why the CIAC has still to make a ruling on the Interest Computation of Delayed Payment at 6% Per Annum at US\$45,206.14 as well as the Foreign Component of US\$358,227.95 plus legal interest at US\$18,313.79 citing the exemption of transactions where the funds involved are the proceeds of loans or investments made through bona fide intermediaries or agents, by foreign government and banking institutions such as the Asian Development Bank (ADB) from the coverage of Republic Act 529 otherwise known as "An Act to Assure Uniform Value to Philippine Coin and Currency". Worse, there was no mention about the subsequent notice by the DPWH to the Claimant, supra about their subsequent understanding on "no foreign exchange payments". This is indeed one dubious area that needs to be clarified by no less than the CIAC itself. (Emphasis supplied)

Again, considering that respondent did not appeal the Court of Appeals decision, the appellate court's ruling on this issue is deemed final as to respondent, and there is no need to remand this issue to the CIAC. Issues not raised on appeal are already final and cannot be disturbed.[128]

XI

CIAC imposed legal interest in its Award as follows:

In view of the foregoing, the Claimant is entitled to payment of legal interest of 6% per annum from the receipt of its extrajudicial demand.

Thus, under Issue No. 3 where the Claimant was awarded US\$358,227.95, the Claimant is entitled to legal interest of 6% per annum commencing from 2 March 2004 up to this date (or 311 days) in the amount of US\$18,313.79.

Under Issue No. 8 where the Claimant was awarded P11,347,410.48, the Claimant is entitled to legal interest of 6% per annum for the Equipment and Plant of P5,080,000.00 commencing from 1 July 2003 (or 556 days) in the amount of P464,298.08 and for the resulting Additional Expenses of P6,267,410.48 commencing from 2 March 2004 (or 311 days) in the amount of P320,410.63.

Under Issue No. 9 where the Claimant was awarded P20,311,072.66, the Claimant is entitled to legal interest of 6% per annum for Additional Cost under 69.4 of the Conditions of Contract commencing from 2 March 2004 (or 311 days) in the amount of P1,038,368.78.

Under Issue No. 10 with respect to the delayed payment of billings for various amounts and on various dates, the Claimant is entitled to legal interest of 6% per annum as detailed in Attachment 1, in the amount of US\$45,206.14 and P2,175,516.63.

However, pursuant to the *Eastern Shipping Lines vs. Court of Appeals*, 234 SCRA 78 (1994), a monetary award shall earn interest at the rate of 12% per annum from the date when the award becomes final and executory until its satisfaction.[129]

On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas issued Resolution No. 796, which revised the interest rate to be imposed on the loan or forbearance of any money, goods, or credits. This was implemented in Bangko Sentral ng Pilipinas Circular No. 799[130] Series of 2013, which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed

in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 43058.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

Nacar v. Gallery Frames[131] then laid down the guidelines for the imposition of legal interest:

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi--contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

- When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.[132]

Before *Nacar* and *Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796* dated May 16, 2013, the rate of legal interest was pegged at 12% per annum from finality of judgment until its satisfaction, "this interim period being deemed to be by then an equivalent to a forbearance of credit." [133]

With this Court's pronouncement in *Nacar*, the rate of interest imposed should be modified. The monetary awards, as computed by the CIAC, should earn legal interest at the rate of 12% per annum until June 30, 2013, after which, it shall earn legal interest at the rate of 6% per annum until full satisfaction.

The other issues raised by the parties were no longer discussed due to the mutual termination of the Contract by parties, which rendered them moot and academic.

WHEREFORE, the Petition is DENIED. The Court of Appeals Decision dated September 20, 2007 in CA-G.R. SP Nos. 88953 and 88911 is AFFIRMED with MODIFICATION as follows: (1) that the order remanding the case to the Construction Industry Arbitration Commission for proper disposition is REVERSED for being moot and academic; and (2) that the legal interest rate is pegged at twelve percent (12%) per annum until June 30, 2013, and then at six percent (6%) per annum until full satisfaction.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Martires, and Gesmundo, JJ., concur.

December 1, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 13, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on December 1, 2017 at 10:20 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 398-463.

[2] Id. at 464-480. The Decision was penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose C. Reyes, Jr. and Japar B. Dlnaampao of the Special Eighth Division, Court of Appeals, Manila.

[3] Id. at 481-485.

[4] Id. at 482.

[5] Id. at 401. The "Conditions of Contract for Works of Civil Engineering Construction" is a standard contract form prepared by the Federation International Des Ingenieurs - Conseils (FIDIC). The standard contract is recommended for general use for the purpose of construction of such works where tenders are invited on an international basis. The Conditions of Contract are also equally suitable for use on domestic contracts. It is commonly referred to as the Red Book in the construction industry. Available at <<http://fidic.org/bookshop/about-bookshop/which-fidic-contract-should-i-use>> (last accessed on September 4, 2017)

[6] Id.

[7] Id. at 491-492, Joint Venture's Complaint before the CIAC and pp. 742-744, CIAC Award.

[8] Id. at 728, CIAC Award.

[9] Id.

[10] Id. at 740.

[11] Id. at 486-500.

[12] Id. at 732, CIAC Award.

[13] Id. at 553-555.

[14] Id. at 338-339.

[15] Id. at 733, CIAC Award.

[16] Id. at 726-751.

[17] Id. at 741-742 (CIAC Award).

[18] Id. at 750-751.

[19] Id. at 78-79.

[20] Id. at 464-480.

[21] Id. at 480.

[22] Id. at 473-474.

[23] Id. at 474-475.

[24] Id. at 475-476.

[25] Id. at 477.

[26] Id. at 477-478.

[27] Id. at 479.

[28] Id. at 479-480.

[29] Id. at 398-463.

[30] Id. at 779.

[31] Id. at 785-815.

[32] Id. at 823-852.

[33] Id. at 461.

[34] *Anderson v. Ho*, 701 Phil. 6, 13-15 (2013) [Per J. Del Castillo, Second Division]; *Clavecilla v. Quitain*, 518 Phil. 53, 62-64 (2006) [Per J. Austria-Martinez, First Division].

[35] *Agustin v. Cruz-Herrera*, 726 Phil. 533, 542-543 (2014) [Per J. Reyes, First Division], *Mariveles Shipyard*

Corp. v. Court of Appeals, 461 Phil. 249, 263 (2003) [Per J. Quisumbing, Second Division].

[36] 701 Phil. 6 (2013) [Per J. Del Castillo, Second Division].

[37] Id. at 14.

[38] Id. at 396-A.

[39] Clavecilla v. Quitain, 518 Phil. 53, 63 (2006) [Per J. Austria-Martinez, First Division].

[40] Donato v. Court of Appeals, 462 Phil. 676, 690 (2003) [Per J. Austria-Martinez, Second Division]; Spouses Wee v. Galvez, 479 Phil. 737, 749 (2004) [Per J. Quisumbing, First Division].

[41] See Diamond Taxi v. Llamas, Jr., 729 Phil. 364, 379 (2014) [Per J. Brion, Second Division].

[42] Rollo, pp. 477-478.

[43] Id. at 555.

[44] Id. at 426.

[45] Id. at 414.

[46] Pasig Printing Corp. v. Rockland Construction Co., Inc., 726 Phil. 256, 265 (2014) [Per J. Mendoza, Third Division].

[47] David v. Macapagal-Arroyo, 522 Phil. 705, 754 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[48] Id. at 754.

[49] 705 Phil 153 (2013) [Per C.J. Sereno, First Division].

[50] Id. at 164.

[51] Rollo, pp. 426-427.

[52] Id. at 793-794.

[53]

<http://www.quantumconsult.org/wp-content/uploads/2012/01/2927771-FIDIC-for-civil-engineeing-construction-1987.pdf> (Accessed on September 4, 2017)

[54] See University of Santo Tomas v. Sanchez, 640 Phil. 189, 194-195 (2010) [Per J. Del Castillo, First Division].

[55] Rollo, p.735.

[56] Paat v. Court of Appeals, 334 Phil. 146, 153 (1997) [Per J. Torres, Jr., Second Division].

[57] Information Technology Foundation of the Phils. v. Commission on Elections, 464 Phil. 173, 207 (2004) [Per J. Panganiban, En Banc].

[58] Rollo, pp. 430-431.

[59] Exec. Order No. 1008, sec. 3.

[60] Exec. Order No. 1008, 4[th] Whereas Clause.

[61] <http://www.dti.gov.ph/about/the-organization/attached-agencies>

[62] Exec. Order No. 1008, Sec. 2.

[63] Exec. Order No. 1008, 3[rd] Whereas Clause.

[64] 672 Phil. 621 (2011) [Per J. Perez, Second Division].

[65] Id. at 658.

[66] LABOR CODE, art. 212(14) provides; Article 212. Definitions. -

....

14. "Voluntary Arbitrator" means any person accredited by the Board as such or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.

[67] G.R. No. 204197, November 23, 2016, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/204197.pdf>> [Per J. Brion, Second Division].

[68] Id. at 15-16.

[69] Id. at 431-435.

[70] Id. at 738-739.

[71] Id. at 432-433.

[72] Id. at 433-434.

[73] Id. at 434.

[74] Id. at 798.

[75] Id.

[76] Id. at 798-799.

[77] Id. at 738.

[78] Id. at 739.

[79] 672 Phil. 621 (2011) [Per J. Perez, Second Division].

[80] Id. at 653.

[81] Id. at 435.

[82] Id. at 799-801.

[83] Id. at 800.

[84] Id.

[85] Id. at 801.

[86] Id. at 802.

[87] Id. at 802.

[88] Id.

[89] Id. at 803.

[90] Id. at 803-805.

[91] Id. at 805.

[92] Id. at 740.

[93] Id. at 477.

[94] Id. at 476-477.

[95] Id. at 740-741.

[96] Id. at 741.

[95] See *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corp.*, 695 Phil. 169, 194 (2012) [Per J. Mendoza, En Banc].

[98] Rollo, pp. 806-807.

[99] Id. at 845-848.

[100] Id. at 473-474.

[101] *Department of Budget and Management Procurement Service (DBM-PS) v. Kolonwel Trading*, 551 Phil. 1030, 1049 (2007) [Per J. Garcia, En Banc] This case applied the provisions of Rep. Act No. 9184 or the Government Procurement Reform Act which came into effect in 2003.

[102] 544 Phil. 645 (2007) [Per J. Callejo, Sr., Third Division].

[103] Id. at 687.

[104] IB 10.10 - ISSUANCE OF NOTICE TO PROCEED

1. The concerned government office/agency/corporation should issue the Notice to Proceed (NTP) to the successful bidder not later than fifteen (15) calendar days from the date of approval of the contract by the concerned/authorized government official. The effectivity date of the NTP shall be specified by the agency concerned.

2. For projects whereby the Notice to Proceed (NTP) is issued after 120 calendar days from the bidding date, the awarded bidder may request for a contract unit price adjustment using the parametric formulae updated to the month of the NTP. Computation of the unit price adjustment shall be the original contract unit price multiplied by the fluctuation factor K without deducting the 5%. Such updated unit prices shall be used as basis for computing the regular progress billings, and price escalation for work accomplishment shall be calculated using the parametric formulae herein prescribed as applied to the updated unit prices reckoned from the month of the NTP. Adjustment of unit prices shall be made within fourteen (14) calendar days from the date the required indices are available/issued by the appropriate government agency.

[105] Rollo, p. 482.

[106] Id. at 442.

[107] Id. at 447.

[108] Id. at 449-450.

[109] Id. at 807.

[110] Id. at 742-743.

[111] Id. at 530. See
<<http://www.quantumconsult.org/wp-content/uploads/2012/01/2927771-FIDIC-for-civil-engineeing-construction-1987.pdf>> (last accessed on September 4, 2017).

[112] Id. at 449-450.

[113] Id. at 503.

[114] Philippine Bank of Communications v. Spouses Go, 658 Phil. 43, 57 (2011) [Per J. Mendoza, Second Division].

[115] 540 Phil. 422 (2006) [Per J. Callejo, Sr., First Division].

[116] Id. at 441.

[117] Rollo, p. 579.

[118] Id. at 747.

[119] Id. at 813.

[120] Id.

[121] Stronghold Insurance Co., Inc. v. Interpacific Container Services, 762 Phil. 483, 491 (2015) [Per J. Perez, First Division].

[122] Rollo, pp. 474-475.

[123] City of Dagupan v. Maramba, 738 Phil. 71, 96 (2014) [Per J. Leonen, Third Division].

[124] CIVIL CODE, art. 2199.

[125] Id. at 813-814.

[126] Id. at 814.

[127] Id. at 478-479 (Court of Appeals Decision).

[128] See A.C. Ransom Labor Union-CCLU v. National Labor Relations Commission, 226 Phil. 199, 204 (1986) [Per J. Melencio-Herrera, First Division].

[129] Rollo, p. 749.

[130] The subject of Bangko Sentral ng Pilipinas Circular No. 799 dated June 21, 2013 is the "[r]ate of interest in the absence of stipulation."

[131] Nacar v. Gallery Frames, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

[132] Id. at 281-283.

[133] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236, 254 (1994) [Per J. Vitug, En Banc].

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