

**CE CONSTRUCTION CORPORATION, PETITIONER, VS. ARANETA CENTER INC., RESPONDENT.***G.R. No. 192725. August 09, 2017*

Ponente: LEONEN, J.

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A tribunal confronted not only with ambiguous contractual terms but also with the total absence of an instrument which definitively articulates the contracting parties' agreement does not act in excess of jurisdiction when it employs aids in interpretation, such as those articulated in Articles 1370 to 1379 of the Civil Code. In so doing, a tribunal does not conjure its own contractual terms and force them upon the parties.

In addressing an iniquitous predicament of a contractor that actually renders services but remains inadequately compensated, arbitral tribunals of the Construction Industry Arbitration Commission (CIAC) enjoy a wide latitude consistent with their technical expertise and the arbitral process' inherent inclination to afford the most exhaustive means for dispute resolution. When their awards become the subject of judicial review, courts must defer to the factual findings borne by arbitral tribunals' technical expertise and irreplaceable experience of presiding over the arbitral process. Exceptions may be availing but only in instances when the integrity of the arbitral tribunal itself has been put in jeopardy. These grounds are more exceptional than those which are regularly sanctioned in Rule 45 petitions.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, praying that the assailed April 28, 2008 Decision[2] and July 1, 2010 Amended Decision[3] of the Court of Appeals in CA-G.R. SP No. 96834 be reversed and set aside. It likewise prays that the October 25, 2006 Decision[4] of the CIAC Arbitral Tribunal be reinstated.

The CIAC Arbitral Tribunal October 25, 2006 Decision awarded a total sum of P217,428,155.75 in favor of petitioner CE Construction Corporation (CECON). This sum represented adjustments in unit costs plus interest, variance in take-out costs, change orders, time extensions, attendance fees, contractor-supplied equipment, and costs of arbitration. This amount was net of the countervailing awards in favor of respondent Araneta Center, Inc. (ACI), for defective and incomplete works, permits, licenses and other advances.[5]

The assailed Court of Appeals April 28, 2008 Decision modified the CIAC Arbitral Tribunal October 25, 2006 Decision by awarding a net amount of P82,758,358.80 in favor of CECON.[6] The Court of Appeals July 1, 2010 Amended Decision adjusted this amount to P93,896,335.71.[7]

Petitioner CECON was a construction contractor, which, for more than 25 years, had been doing business with respondent ACI, the developer of Araneta Center, Cubao, Quezon City.[8]

In June 2002, ACI sent invitations to different construction companies, including CECON, for them to bid on a project identified as "Package #4 Structure/Mechanical, Electrical, and Plumbing/Finishes (excluding Part A Substructure)," a part of its redevelopment plan for Araneta Center Complex.[9] The project would eventually be

the Gateway Mall. As described by ACI, "[t]he Project involved the design, coordination, construction and completion of all architectural and structural portions of Part B of the Works[;] and the construction of the architectural and structural portions of Part A of the Works known as Package 4 of the Araneta Center Redevelopment Project." [10]

As part of its invitation to prospective contractors, ACI furnished bidders with Tender Documents, consisting of:

Volume I: Tender Invitation, Project Description, Instructions to Tenderers, Form of Tender, Dayworks, Preliminaries and General Requirements, and Conditions of Contract;

Volume II: Technical Specifications for the Architectural, Structural, Mechanical, Plumbing, Fire Protection and Electrical Works; and

Addenda Nos. 1, 2, 3, and 4 relating to modifications to portions of the Tender Documents. [11]

The Tender Documents described the project's contract sum to be a "lump sum" or "lump sum fixed price" and restricted cost adjustments, as follows:

#### 6 TYPE OF CONTRACT

##### 6.1

This is a Lump Sum Contract and the price is a fixed price not subject to measurement or recalculation should the actual quantities of work and materials differ from any estimate available at the time of contracting, except in regard to Cost-Bearing Changes which may be ordered by the Owner which shall be valued under the terms of the Contract in accordance with the Schedule of Rates, and with regard to the Value Engineering Proposals under Clause 27. The Contract Sum shall not be adjusted for changes in the cost of labour, materials or other matters. [12]

#### TENDER AND CONTRACT

##### Fixed Price Contract

- The Contract Sum payable to the Contactor is a Lump Sum Fixed Price and will not be subject to adjustment, save only where expressly provided for within the Contract Documents and the Form of Agreement.
- The Contract Sum shall not be subject to any adjustment "in respect of rise and fall in the cost of materials[,] labor, plant, equipment, exchange rates or any other matters affecting the cost of execution of Contract, save only where expressly provided for within the Contract Documents or the Form of Agreement.
- The Contract Sum shall further not be subject to any change in subsequent legislation, which causes additional or reduced costs to the Contractor. [13]

The bidders' proposals for the project were submitted on August 30, 2002. These were based on "design and construct" bidding. [14]

CECON submitted its bid, indicating a tender amount of P1,449,089,174.00. This amount was inclusive of "both the act of designing the building and executing its construction." Its bid and tender were based on schematic drawings, i.e., conceptual designs and suppositions culled from ACI's Tender Documents. CECON's proposal "specifically stated that its bid was valid for only ninety (90) days, or only until 29 November 2002." This tender proposed a total of 400 days, or until January 10, 2004, for the implementation and completion of the project. [15]

CECON offered the lowest tender amount. However, ACI did not award the project to any bidder, even as the validity of CECON's proposal lapsed on November 29, 2002. ACI only subsequently informed CECON that the

contract was being awarded to it. ACI elected to inform CECON verbally and not in writing.[16]

In a phone call on December 7, 2002, ACI instructed CECON to proceed with excavation works on the project. ACI, however, was unable to deliver to CECON the entire project site. Only half, identified as the Malvar-to-Roxas portion, was immediately available. The other half, identified as the Roxas to-Coliseum portion, was delivered only about five (5) months later.[17]

As the details of the project had yet to be finalized, ACI and CECON pursued further negotiations. ACI and CECON subsequently agreed to include in the project the construction of an office tower atop the portion identified as Part A of the project. This escalated CECON's project cost to P1,582,810,525.00.[18]

After further negotiations, the project cost was again adjusted to P1,613,615,244.00. Still later, CECON extended to ACI a P73,615,244.00 discount, thereby "reducing its offered project cost to P1,540,000.00.[19]

Despite these developments, ACI still failed to formally award the project to CECON. The parties had yet to execute a formal contract. This prompted CECON to write a letter to ACI, dated December 27, 2002,[20] emphasizing that the project cost quoted to ACI was "based upon the prices prevailing at December 26, 2002" price levels.[21]

By January 2003 and with the project yet to be formally awarded, the prices of steel products had increased by 5% and of cement by P5.00 per bag. On January 8, 2003, CECON again wrote ACI notifying it of these increasing costs and specifically stating that further delays may affect the contract sum.[22]

Still without a formal award, CECON again wrote to ACI on January 21, 2003[23] indicating cost and time adjustments to its original proposal. Specifically, it referred to an 11.52% increase for the cost of steel products, totalling P24,921,418.00 for the project; a P5.00 increase per bag of cement, totalling P3,698,540.00 for the project; and costs incurred because of changes to the project's structural framing, totalling P26,011,460.00. The contract sum, therefore, needed to be increased to P1,594,631,418.00. CECON also specifically stated that its tender relating to these adjusted prices were valid only until January 31, 2003, as further price changes may be forthcoming. CECON emphasized that its steel supplier had actually already advised it of a forthcoming 10% increase in steel prices by the first week of February 2003. CECON further impressed upon ACI the need to adjust the 400 days allotted for the completion of the project.[24]

On February 4, 2003, ACI delivered to CECON the initial tranche of its down payment for the project. By then, prices of steel had been noted to have increased by 24% from December 2002 prices. This increase was validated by ACI.[25]

Subsequently, ACI informed CECON that it was taking upon itself the design component of the project, removing from CECON's scope of work the task of coming up with designs.[26]

On June 2, 2003, ACI finally wrote a letter[27] to CECON indicating its acceptance of CECON's August 30, 2002 tender for an adjusted contract sum of P1,540,000.00 only:

Araneta Center, Inc. (ACI) hereby accepts the C-E Construction Corporation (CEC) tender dated August 30, 2002, submitted to ACI in the adjusted sum of One Billion Five Hundred Forty Million Pesos Only (P1,540,000,000.00), which sum includes all additionally quoted and accepted items within this acceptance letter and attachments, Appendix A, consisting of one (1) page, and Appendix B, consisting of seven (7) pages plus attachments, which sum of One Billion Five Hundred Forty Million Pesos Only (P1,540,000,000.00) is inclusive of any Government Customs Duty and Taxes including Value Added Tax (VAT) and Expanded Value Added Tax (EVAD, and which sum is hereinafter referred to as the Contract Sum.[28]

Item 4, Appendix B of this acceptance letter explicitly recognized that "all design except support to excavation

sites, is now by ACI."[29] It thereby confirmed that the parties were not bound by a design-and-construct agreement, as initially contemplated in ACI's June 2002 invitation, but by a construct-only agreement. The letter stated that "[CECON] acknowledge[s] that a binding contract is now existing."[30] However, consistent with ACI's admitted changes, it also expressed ACI's corresponding undertaking: "This notwithstanding, formal contract documents embodying these positions will shortly be prepared and forwarded to you for execution."[31]

Despite ACI's undertaking, no formal contract documents were delivered to CECON or otherwise executed between ACI and CECON.[32]

As it assumed the design aspect of the project, ACI issued to CECON the construction drawings for the project. Unlike schematics, these drawings specified "the kind of work to be done and the kind of material to be used."[33] CECON laments, however, that "ACI issued the construction drawings in piece-meal fashion at times of its own choosing."[34] From the commencement of CECON's engagement until its turnover of the project to ACI, ACI issued some 1,675 construction drawings. CECON emphasized that many of these drawings were partial and frequently pertained to revisions of prior items of work.[35] Of these drawings, more than 600 were issued by ACI well after the intended completion date of January 10, 2004: Drawing No. 1040 was issued on January 12, 2004, and the latest, Drawing No. 1675, was issued on November 26, 2004.[36]

Apart from shifting its arrangement with CECON from design-and--construct to construct only, ACI introduced other changes to its arrangements with CECON. CECON underscored two (2) of the most notable of these changes which impelled it to seek legal relief.

First, on January 30, 2003, ACI issued Change Order No. 11,[37] which shifted the portion identified as Part B of the project from reinforced concrete framing to structural steel framing. Deleting the cost for reinforced concrete framing meant removing P380,560,300.00 from the contract sum. Nevertheless, replacing reinforced concrete framing with structural steel framing "entailed substitute cost of Php217,585,000, an additional Php44,281,100 for the additional steel frames due to revisions, and another Php1,950,000 for the additional pylon."[38]

Second, instead of leaving it to CECON, ACI opted to purchase on its own certain pieces of equipment-elevators, escalators, chillers, generator sets, indoor substations, cooling towers, pumps, and tanks-which were to be installed in the project. This entailed "take-out costs"; that is, the value of these pieces of equipment needed to be removed from the total amount due to CECON. ACI considered a sum totalling P251,443,749.00 to have been removed from the contract sum due to CECON. This amount of P251,443,749.00 was broken down, as follows:

- (a) For elevators/escalators, PhP106,000,000;
- (b) For Chillers, PhP41,152,900;
- (c) For Generator Sets, PhP53,040,000;
- (d) For Indoor Substation, PhP23,024,150;
- (e) For Cooling Towers, PhP5,472,809; and
- (f) For Pumps and Tanks, PhP22,753,890.[39]

CECON avers that in removing the sum of P251,443,749.00, ACI "simply deleted the amount in the cost breakdown corresponding to each of the items taken out in the contract documents."[40] ACI thereby disregarded that the corresponding stipulated costs pertained not only to the acquisition cost of these pieces of equipment but also to so-called "builder's works" and other costs relating to their preparation for and installation in the project. Finding it unjust to be performing auxiliary services practically for free, CECON proposed a reduction in the take-out costs claimed by ACI. It instead claimed P26,892,019.00 by way of compensation for the work that it rendered.[41]

With many changes to the project and ACI's delays in delivering drawings and specifications, CECON

increasingly found itself unable to complete the project on January 10, 2004. It noted that it had to file a total of 15 Requests for Time Extension from June 10, 2003 to December 15, 2003, all of which ACI failed to timely act on.[42]

Exasperated, CECON served notice upon ACI that it would avail of arbitration. On January 29, 2004, it filed with the CIAC its Request for Adjudication.[43] It prayed that a total sum of P183,910,176.92 representing adjusted project costs be awarded in its favor.[44]

On March 31, 2004, CECON and ACI filed before the CIAC a Joint Manifestation[45] indicating that some issues between them had already been settled. Proceedings before the CIAC were then suspended to enable CECON and ACI to arrive at an amicable settlement.[46] On October 14, 2004, ACI filed a motion before the CIAC noting that it has validated P85,000,000.00 of the total amount claimed by CECON. It prayed for more time to arrive at a settlement.[47]

In the meantime, CECON completed the project and turned over Gateway Mall to ACI.[48] It had its blessing on November 26, 2004.[49]

As negotiations seemed futile, on December 29, 2004, CECON filed with the CIAC a Motion to Proceed with arbitration proceedings. ACI filed an Opposition.[50]

After its Opposition was denied, ACI filed its Answer dated January 26, 2005.[51] It attributed liability for delays to CECON and sought to recover counterclaims totalling P180,752 297.84. This amount covered liquidated damages for CECON's supposed delays, the cost of defective works which had to be rectified, the cost of procuring permits and licenses, and ACI's other advances.[52]

On February 8, 2005, ACI filed a Manifestation and Motion seeking the CIAC's clearance for the parties to enter into mediation. Mediation was then instituted with Atty. Sedfrey Ordonez acting as mediator.[53]

After mediation failed, an arbitral tribunal was constituted through a March 16, 2005 Order of the CIAC. It was to be composed of Dr. Ernesto S. De Castro, who acted as Chairperson with Engr. Reynaldo T. Viray and Atty. James S. Villafranca as members.[54]

ACI filed a Motion for Reconsideration of the CIAC March 16, 2005 Order. This was denied in the Order dated March 30, 2005.[55]

In the Order dated April 1, 2005, the CIAC Arbitral Tribunal set the preliminary conference on April 13, 2005.[56]

At the preliminary conference, CECON indicated that, the total sum it was entitled to recover from ACI needed to be adjusted to P324,113,410.08. The CIAC Arbitral Tribunal, thus, directed CECON to file an Amended Request for Adjudication/Amended Complaint.[57]

Following the filing of CECON's Amended Request for Adjudication/Amended Complaint and the ensuing responsive pleadings, another preliminary conference was set on May 13, 2005. The initial hearing of the case was then set on June 10, 2005.[58]

At the initial hearing, the CIAC Arbitral Tribunal resolved to exclude the amount of P20,483,505.12 from CECON's claims as these pertained to unpaid accomplishments that did not relate to the issue of cost adjustments attributed to ACI, as originally pleaded by CECON.[59]

Following the conduct of hearings, the submission of the parties' memoranda and offers of exhibits, the CIAC Arbitral Tribunal rendered its Decision on October 25, 2006. It awarded a total of P229,223,318.69 to CECON,

inclusive of the costs of arbitration. It completely denied ACI's claims for liquidated damages, but awarded to ACI a total of P11,795,162.93 on account of defective and rectification works, as well as permits, licenses, and other advances.[60] Thus, the net amount due to CECON was determined to be P217,428,155.75.

The CIAC Arbitral Tribunal noted that while ACI's initial invitation to bidders was for a lump-sum design-and-construct arrangement, the way that events actually unfolded clearly indicated a shift to an arrangement where the designs were contingent upon ACI itself. Considering that the premise for CECON's August 30, 2002 lump-sum offer of P1,540,000.00 was no longer availing, CECON was no longer bound by its representations in respect of that lump-sum amount. It may then claim cost adjustments totalling P16,429,630.74, as well as values accruing to the various change orders issued by ACI, totalling P159,827,046.94.[61]

The CIAC Arbitral Tribunal found ACI liable for the delays. This entitled CECON to extended overhead costs and the ensuing extension cost of its Contractor's All Risk Insurance. For these costs, the CIAC Arbitral Tribunal awarded CECON the total amount of P16,289,623.08. As it was ACI that was liable for the delays, the CIAC Arbitral Tribunal ruled that ACI was not entitled to liquidated damages.[62]

The CIAC Arbitral Tribunal ruled that CECON was entitled to a differential in take out costs representing builder's works and related costs with respect to the equipment purchased by ACI. This differential cost was in the amount of P15,332,091.47.[63] The CIAC Arbitral Tribunal further noted that while ACI initially opted to purchase by itself pumps, tanks, and cooling towers and removed these from CECON's scope of work, it subsequently elected to still obtain these through CECON. Considering that the corresponding amount deducted as take-out costs did not encompass the overhead costs and profits under day work, which should have accrued to CECON because of these equipment, the CIAC Arbitral Tribunal ruled that CECON was entitled to 18% day work rate or a total of P21,267,908.00.[64]

The CIAC Arbitral Tribunal also found that, apart from adjusted costs incurred on account of ACI's own activities, it also became necessary for CECON, as main contractor, to continue extending auxiliary services to the project's subcontractors because of the delays. Thus, the CIAC Arbitral Tribunal awarded CECON attendance fees-the main contractor's mark-up for auxiliary services extended to subcontractors - totalling P14,335,674.88. This amount was lower than the original amount prayed for by CECON (i.e., P19,544,667.81)[65] as the CIAC Arbitral Tribunal ruled that CECON may not claim attendance fees pertaining to subcontractors which directly dealt with ACI.[66]

Considering that CECON's predicament was borne by ACI's fault, the CIAC Arbitral Tribunal saw it fit to award to CECON the costs of arbitration totalling P1,083,802.58.[67]

While mainly ruling in CECON's favor, the CIAC Arbitral Tribunal found CECON liable for discolored and mismatched tiles. It noted that CECON had engaged the services of a subcontractor for the installation of tiles, for which it claimed attendance fees. Thus, it awarded P7,980,000.00 to ACI.[68] In addition, it found CECON liable to ACI for amounts paid in advance for permits and licenses for the additional office tower, electrical consumption, and garbage collection. Thus, it awarded another P3,815,162.93 to ACI.[69]

The dispositive portion of the CIAC Arbitral Tribunal Decision read:

WHEREFORE, Respondent is hereby ordered to pay the Claimant the amount of PESOS TWO HUNDRED SEVENTEEN MILLION, FOUR HUNDRED TWENTY-EIGHT THOUSAND, ONE HUNDRED FIFTY[--]FIVE PESOS AND SEVENTY[--]FIVE CENTAVOS (Php217,428,155.75) within thirty (30) days upon promulgation of the award. Interest 6% per annum shall be imposed on the award for any balance remaining from the promulgation of the award up to the time the award becomes final and executory. Thereafter, interest of 12% per annum shall be imposed on any balance of the award until fully paid.

SO ORDERED.[70]

On December 4, 2006, ACI filed before the Court of Appeals a Petition for Review[71] under Rule 43 of the 1997 Rules of Civil Procedure.

In the meantime, on December 28, 2006, the CIAC Arbitral Tribunal issued an Order[72] acknowledging arithmetical errors in its October 25, 2006 Decision. Thus, it modified its October 25, 2006 Decision, indicating that the net amount due to CECON was P231,357,136.72, rather than P217,428,155.75.[73]

In its assailed April 28, 2008 Decision,[74] the Court of Appeals reduced the award in favor of CECON to P114,324,605.00 and increased the award to ACI to P31,566,246.20.[75]

The Court of Appeals held as inviolable the lump-sum fixed price arrangement between ACI and CECON. It faulted the CIAC Arbitral Tribunal for acting in excess of jurisdiction as it supposedly took it upon itself to unilaterally modify the arrangement between ACI and CECON.[76]

Thus, the Court of Appeals deleted the CIAC Arbitral Tribunal's award representing cost adjustments. However, the Court of Appeals also noted that in ACI's and CECON's March 30, 2004 Joint Manifestation before CIAC, ACI conceded that P10,266,628.00 worth of cost adjustments was due to CECON and undertook to pay CECON that amount. The Court of Appeals, hence, maintained a P10,266,628.00 award of cost adjustment in favor of CECON.[77]

On the cost increases borne by Change Order No. 11-the shift from reinforced concrete to structural steel framing-and by transitions from schematic diagrams to construction drawings, the Court of Appeals dismissed the CIAC Arbitral Tribunal's award to CECON as arising from "pity" and unwarranted by the lump-sum, fixed-price arrangement.[78]

The Court of Appeals held ACI liable to CECON for the sum of P12,672,488.36 for miscellaneous change orders, which it construed to be "separate contracts that have been entered into at the time [ACI] required them." [79] It likewise held ACI liable for P1,132,946.17 representing the balance of 12 other partially paid change orders.[80]

The Court of Appeals noted that CECON was not entitled to time extensions because the arrangement between ACI and CECON had never been altered. Consequently, it was not entitled to acceleration costs, additional overhead, and reimbursement for extending the Contractor's All Risk Insurance.[81] Conversely, the Court of Appeals held CECON liable for delays thereby entitling ACI to liquidated damages corresponding to 10% of the supposed contract sum of P1,540,000,000.00, or P15,400,000.00.[82]

Also on account of the supposed lump-sum arrangement, the Court of Appeals held that CECON was not entitled to attendance fees on contract amounts increased by change order works.[83] It also stated that the rate for attendance fees, overhead, and profit for subcontractors' works remained subject to the original contract documents based on ACI's original invitation to bidders and had never been altered.[84]

Regarding attendance fees, the Court of Appeals proffered that the work attributed to subcontractors was merely work done by CECON itself, thereby negating the need for attendance fees.[85]

Concerning take-out costs, the Court of Appeals stated that CECON was in no position to propose its own take-out costs as the tender documents issued along with ACI's invitation to bidders stated that take-out costs must be based exclusively on the rates provided in the Contract Cost Breakdown. Nevertheless, as ACI had previously undertaken to pay the variance in take-out costs amounting to P3,811,289.70, the Court of Appeals concluded that an award for take-out costs in that amount was proper.[86]

On the CIAC Arbitral Tribunal's award for overhead costs and profits under day work, the Court of Appeals held

that it was improper to grant this award based on stipulations on day works pertaining "only to 'materials' and not to equipment." [87]

Finally, the Court of Appeals held that CECON was not entitled to costs of litigation considering that "no premium is to be placed on the right to litigate" [88] and since ACI could not be faulted for delays.

The dispositive portion of the assailed Court of Appeals April 28, 2008 Decision read:

WHEREFORE, based on all the foregoing, the Decision of the Arbitral Tribunal is modified as follows:

a. AWARD TO CECON

NO.

ISSUE

Pesos (PHP)

1

Cost Adjustment

10,266,628.00

2

Take Out Cost of Equipment

3,811,289.70

3

Change Orders

99,119,200.09

a. Approved Change Orders

1,132,946.17

b. [Schematic Drawings] to [Construction Drawings]

80,108,761.60

c. Miscellaneous Change Orders

12,672,488.30

d. Change Order No. 11

5,205,004.02

[4]

Equipment Supplied by Owner

1,127,486.50

Total

114,324,605.00 (sic)

**b. AWARD TO ARANETA**

NO.

ISSUE

Pesos (PHP)

[5]

Liquidated Damages

15,400,000.00

[6]

Defective and Incomplete Works

3,000,000.00

Bookmarking Granite Tiles

6,980,000.00

[7]

Permits, Licenses and Other Advances

6,186,246.23

Total

31,566,246.20 (sic)

In addition, CECON is directed to submit all required. close-out documents within thirty (30) days from receipt of this Decision.

The parties shall bear their own costs of arbitration and litigation.

**SO ORDERED.[89]**

Acting on CECON's Motion for Reconsideration, the Court of Appeals issued its Amended Decision on July 1, 2010.[90] This Amended Decision increased the award for miscellaneous change orders to P27,601,469.32; reinstated awards for undervalued works in supplying and installing G.I. sheets worth P1,209,782.50[91] and for the drilling of holes and application of epoxy worth P4,543,456.00;[92] and deleted the award for take-out costs.[93]

The dispositive portion of the assailed Court of Appeals July 1, 2010 Amended Decision read:

WHEREFORE, Our Decision dated 28 April 2008 is hereby modified as follows:

I - AWARD:

a. AWARD TO CE CONSTRUCTION, INC.

NO.

ISSUE

PESOS (PhP)

1

Additional costs spent on rebars.

10,266,628.00

2

Increase in the costs of cement and formworks falling under cost-bearing change.

5,205,004.02

3

Representing undervaluation of respondent's works in the supply and installation of G.I. sheets.

1,209,782.50

4

Representing Miscellaneous Change Orders.

27,601,469.32

5

Drilling of Holes

4,543,450.00

6

[Schematic Drawings] to [Construction Drawings]

80,108,761.60

[7]

Installation of equipment supplied by owner.

1,127,486.50

TOTAL

130,062,581.94

**b. AWARD TO ARANETA CENTER, INC.**

1

Liquidated Damage (sic)

20,000,000.00

2

Defective and Incomplete Works

3,000,000.00

3

Bookmarking Granite Tiles

6,980,000.00

4

Permits, Licenses and other Advances

6,186,246.23

TOTAL

36,166,246.23

**II - COMPUTATION:****AWARD TO CE CONSTRUCTION, INC.**

130,062,581.94

**LESS****AWARD TO ARANETA CENTER, INC.**

36,166,246.23

**BALANCE PAYABLE BY ARANETA TO CECON**

93,896,335.71

**SO ORDERED.[94]**

Aggrieved at the Court of Appeals' ruling, CECON tiled the present Petition insisting on the propriety of the CIAC Arbitral Tribunal's conclusions and findings.[95] It prays that the assailed Court of Appeals decisions be reversed and that the CIAC Arbitral Tribunal October 25, 2006 Decision, as modified by its December 28, 2006 Order, be reinstated.[96]

ACI counters that the Court of Appeals July 1, 2010 Amended Decision must be upheld.[97]

ACI insists on the inviolability of its supposed agreement with CECON, as embodied in the contract documents delivered to contractors alongside the original offer to bid. It cites specific provisions of these documents such as valuation rules and required notices for extensions and changes, reckoning of losses and expenses, the ensuing liquidated damages for defects, cost-bearing changes and provisional sums,[98] which define parameters for permissible changes and for reckoning corresponding costs and liabilities. However, it did not attach any of these documents to its Comment or Memorandum. It also cites statutory provisions-Articles 1715[99] and 1724[100] of the Civil Code-on CECON's liabilities and the primacy of stipulated contract prices.[101]

By the inviolability their agreement, ACI insists on the supposed immutability of the stipulated contract sum and on the impropriety of the CIAC Arbitral Tribunal in writing its own terms for ACI and CECON to follow.[102] It faults the CIAC Arbitral Tribunal for erroneously reckoning the sums due to CECON, particularly in relying on

factual considerations that run afoul of contractual stipulations and on bases such as industry practices and standards, which supposedly should not have even been considered as the parties have already adduced their respective evidence.[103] It insists upon CECON's fault for delays and defects, making it liable for liquidated damages.[104]

Though nominally modifying the CIAC Arbitral Tribunal October 25, 2006 Decision, the Court of Appeals actually reversed it on the pivotal matter of the characterization of the contract between CECON and ACI. Upon its characterization of the contract as one for a lump-sum fixed price, the Court of Appeals deleted much of the CIAC Arbitral Tribunal's monetary awards to CECON and awarded liquidated damages to ACI.

On initial impression, what demands resolution is the issue of whether or not the Court of Appeals erred in characterizing the contractual arrangement between petitioner CE Construction Corporation and respondent Araneta Center, Inc. as immutably one for a lump-sum fixed price.

However, this is not merely a matter of applying and deriving conclusions from cut and dried contractual provisions. More accurately, what is on issue is whether or not the Court of Appeals correctly held that the CIAC Arbitral Tribunal acted beyond its jurisdiction in holding that the price of P1,540,000,000.00 did not bind the parties as an immutable lump--sum. Subsumed in this issue is the matter of whether or not the Court of Appeals correctly ruled that CECON was rightfully entitled to time extensions and that intervening circumstances had made ACI liable for cost adjustments, increases borne by change orders, additional overhead costs, extended contractor's all risk insurance coverage, increased attendance fees vis-a-vis subcontractors, and arbitration costs which it awarded to CECON.

This Court limits itself to the legal question of the CIAC Arbitral Tribunal's competence. Unless any of the exceptional circumstances that warrant revisiting the factual matter of the accuracy of the particulars of every item awarded to the parties is availing, this Court shall not embark on its own audit of the amounts owing to each.

## I

This Court begins by demarcating the jurisdictional and technical competence of the CIAC and of its arbitral tribunals.

### I.A

The Construction Industry Arbitration Commission was a creation of Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.[105] At inception, it was under the administrative supervision of the Philippine Domestic Construction Board[106] which, in turn, was an implementing agency of the Construction Industry Authority of the Philippines (CIAP).[107] The CIAP is presently attached to the Department of Trade and Industry.[108]

The CIAC was created with the specific purpose of an "early and expeditious settlement of disputes"[109] cognizant of the exceptional role of construction to "the furtherance of national development goals."[110]

Section 4 of the Construction Industry Arbitration Law spells out the jurisdiction of the CIAC:

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.

Though created by the act of a Chief Executive who then exercised legislative powers concurrently with the Batasang Pambansa, the creation, continuing existence, and competence of the CIAC have since been validated by acts of Congress,

Republic Act No. 9184 or the Government Procurement Reform Act, enacted on January 10, 2003, explicitly recognized and confirmed the competence of the CIAC:

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)

Arbitration of construction disputes through the CIAC was formally incorporated into the general statutory framework on alternative dispute resolution through Republic Act No. 9285, the Alternative Dispute Resolution Act of 2004 (ADR Law). Chapter 6, Section 34 of ADR Law made specific reference to the Construction Industry Arbitration Law, while Section 35 confirmed the 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 Construction 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, fabricator, project manager, design professional, consultant, 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.

### I.B

The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates authoritative dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation

of components and equipment."[111]

Jurisprudence has characterized the CIAC as a quasi-judicial, administrative agency equipped with technical proficiency that enables it to efficiently and promptly resolve conflicts;

[The CIAC] is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.[112]

The most recent jurisprudence maintains that the CIAC is a quasi-judicial body. This Court's November 23, 2016 Decision in *Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific*[113] distinguished construction arbitration, as well as voluntary arbitration pursuant to Article 219(14) of the Labor Code,[114] from commercial arbitration. It ruled that commercial arbitral tribunals are not quasi-judicial agencies, as they are purely ad hoc bodies operating through contractual consent and as they intend to serve private, proprietary interests.[115] In contrast, voluntary arbitration under the Labor Code and construction arbitration operate through the statutorily vested jurisdiction of government instrumentalities that exist independently of the will of contracting parties and to which these parties submit. They proceed from the public interest imbuing their respective spheres:

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.[116] (Emphasis supplied, citations omitted)

Consistent with the primacy of technical mastery, Section 14 of the Construction Industry Arbitration Law on the qualification of arbitrators provides:

Section 14. Arbitrators. - A sole arbitrator or three arbitrators may settle a dispute.

....

Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. They shall not be permanently employed with the CIAC. Instead, they shall render services only when called to arbitrate. For each dispute they settle, they shall be given fees.

Section 8.1 of the Revised Rules of Procedure Governing Construction Arbitration establishes that the foremost qualification of arbitrators shall be technical proficiency. It explicitly enables not only lawyers but also "engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry" to serve as arbitrators:

Section 8.1 General Qualification of Arbitrators. - The Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. They shall be technically qualified to resolve any construction dispute expeditiously and equitably. The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes. (Emphasis supplied)

Of the 87 CIAC accredited arbitrators as of January 2017, only 33 are lawyers. The majority are experts from construction-related professions or engaged in related fields.[117]

Apart from arbitrators, technical experts aid the CIAC in dispute resolution. Section 15 of the Construction Industry Arbitration Law provides:

Section 15. Appointment of Experts. - The services of technical or legal experts may be utilized in the settlement of disputes if requested by any of the parties or by the Arbitral Tribunal. If the request for an expert is done by either or by both of the parties, it is necessary that the appointment of the expert be confirmed by the Arbitral Tribunal.

Whenever the parties request for the services of an expert, they shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required.

## II

Consistent with CIAC's technical expertise is the primacy and deference accorded to its decisions. There is only a very narrow room for assailing its rulings.

Section 19 of the Construction Industry Arbitration Law establishes that CIAC arbitral awards may not be assailed, except on pure questions of law:

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

Rule 43 of the 1997 Rules of Civil Procedure standardizes appeals from quasi-judicial agencies.[118] Rule 43, Section 1 explicitly lists CIAC as among the quasi judicial agencies covered by Rule 43.[119] Section 3 indicates that appeals through Petitions for Review under Rule 43 are to "be taken to the Court of Appeals ... whether the affoeal involves questions of fact, of law, or mixed questions of fact and law." [120]

This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry

Arbitration Law, any appeal from CIAC arbitral tribunals must remain limited to questions of law.

*Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*[121] explained the wisdom underlying the limitation of appeals to pure questions of law:

Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court - which is not a trier of facts - in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.[122]

Consistent with this restrictive approach, this Court is duty-bound to be extremely watchful and to ensure that an appeal does not become an ingenious means for undermining the integrity of arbitration or for conveniently setting aside the conclusions arbitral processes make. An appeal is not an artifice for the parties to undermine the process they voluntarily elected to engage in. To prevent this Court from being a party to such perversion, this Court's primordial inclination must be to uphold the factual findings of arbitral tribunals:

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[123] (Emphasis supplied, citations omitted)

Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the narrowest of grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, not even on the already exceptional grounds traditionally available in Rule 45 Petitions.[124] Rather, factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled. In *Spouses David v. Construction Industry and Arbitration Commission*: [125]

We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[126] (Citation omitted)

Guided by the primacy of CIAC's technical competence, in exercising this Court's limited power of judicial review, this Court proceeds to rule on whether or not the Court of Appeals erred in its assailed decisions.

### III

Properly discerning the issues in this case reveals that what is involved is not a mere matter of contractual interpretation but a question of the CIAC Arbitral Tribunal's exercise of its powers.

#### III.A

F.F. Cruz v. HR Construction[127] distinguished questions of law, properly cognizable in appeals from CIAC arbitral awards, from questions of fact:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[128]

It further explained that an inquiry into the true intention of the contracting parties is a legal, rather than a factual, issue:

On the surface, the instant petition appears to merely raise factual questions as it mainly puts in issue the appropriate amount that is due to HRCC. However, a more thorough analysis of the issues raised by FFCCI would show that it actually asserts questions of law.

FFCCI primarily seeks from this Court a determination of whether [the] amount claimed by HRCC in its progress billing may be enforced against it in the absence of a joint measurement of the former's completed works. Otherwise stated, the main question advanced by FFCCI is this: in the absence of the joint measurement agreed upon in the Subcontract Agreement, how will the completed works of HRCC be verified and the amount due thereon be computed?

The determination of the foregoing question entails an interpretation of the terms of the Subcontract Agreement vis-a-vis the respective rights of the parties herein. On this point, it should be stressed that where an interpretation of the true agreement between the parties is involved in an appeal, the appeal is in effect an inquiry of the law between the parties, its interpretation necessarily involves a question of law.

Moreover, we are not called upon to examine the probative value of the evidence presented before the CIAC. Rather, what is actually sought from this Court is an interpretation of the terms of the Subcontract Agreement as it relates to the dispute between the parties.[129] (Emphasis supplied)

Though similarly concerned with "an interpretation of the true agreement between the parties,"[130] this case is not entirely congruent with *F.F. Cruz*.

In *F.F. Cruz*, the parties' agreement had been clearly set out in writing. There was a definitive instrument which needed only to be consulted to ascertain the parties' intent:

In resolving the dispute as to the proper valuation of the works accomplished by HRCC, the primordial consideration should be the terms of the Subcontract Agreement. It is basic that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[131]

Thus, this Court concluded:

Pursuant to the terms of payment agreed upon by the parties, FFCCI obliged itself to pay the monthly progress billings of HRCC within 30 days from receipt of the same. Additionally, the monthly progress billings of HRCC should indicate the extent of the works completed by it, the same being essential to the valuation of the amount that FFCCI would pay to HRCC.[132]

### III.B

In this case, there is no established contract that simply required interpretation and application.

The assailed Court of Appeals April 28, 2008 Decision implies that all that had to be done to resolve the present controversy was to apply the supposedly clear and unmistakable terms of the contract between ACI and CECON. It even echoes the words of *F.F. Cruz*:

It is a legal principle of long standing that when the language of the contract is explicit, leaving no doubt as to the intention of the parties, the courts may not read into it any other intention that would contradict its plain import. The clear terms of the contract should never be the subject matter of interpretation. Neither abstract justice nor the rule of liberal interpretation justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract or obligation not assumed simply or merely to avoid seeming hardships. Their true meaning must be enforced, as it is to be presumed that the contracting parties know their scope and effects.

....

The Contract Documents expressly characterize the construction contract between [ACI] and CECON as "lump-sum" and "fixed price" in nature. As a consequence, the Contract Documents expressly prohibit any adjustment of the contract sum due to any changes or fluctuations in the cost of labor, materials or other matters.[133] (Citations omitted)

Upon its characterization of the contract as one for the lump-sum, fixed price of P1,540,000,000.00, the Court of Appeals faulted the CIAC Arbitral Tribunal for acting in excess of jurisdiction as it supposedly countermanded the parties' agreement, or worse, conjured its own terms for the parties' compliance.[134]

It was the Court of Appeals, not the CIAC Arbitral Tribunal, that committed serious error.

To rule that the CIAC Arbitral Tribunal modified the parties' agreement because it was indisputably one for a lump-sum, fixed price of P1,540,000,000.00 is begging the question. The Court of Appeals used a conclusion as a premise to support itself. It erroneously jumped to a conclusion only to plead this conclusion in support of points that should have made up its anterior framework, points that would have been the ones to lead to a conclusion. It then used this abortive conclusion to injudiciously dispose of the case.

The Court of Appeals took the parties' contractual relation as a revealed and preordained starting point. Then, it

dismissed every prior or subsequent detail that contradicted this assumption. It thereby conveniently terminated the discussion before it even began.

### III.C

There was never a meeting of minds on the price of P1,540,000,000.00. Thus, that stipulation could not have been the basis of any obligation.

The only thing that ACI has in its favor is its initial delivery of tender documents to prospective bidders. Everything that transpired after this delivery militates against ACI's position.

Before proceeding to a consideration of the circumstances that negate a meeting of minds, this Court emphasizes that ACI would have this Court sustain claims premised on supposed inviolable documents. Yet, it did not annex copies of these documents either to its Comment or to its Memorandum.

ACI leaves this Court compelled to rely purely on their packaged presentation and in a bind, unable to verify even the accuracy of the syntax of its citations. This Court cannot approve of this predicament. To cursorily acquiesce to ACI's overtures without due diligence and substantiation is being overly solicitous, even manifestly partisan.

ACI and its counsel must have fully known the importance of equipping this Court with a reliable means of confirmation, especially in a case so steeped in the sway of circumstances. ACI's omission can only work against its cause.

By delivering tender documents to bidders, ACI made an offer. By these documents, it specified its terms and defined the parameters within which bidders could operate. These tender documents, therefore, guided the bidders in formulating their own offers to ACI, or, even more fundamentally, helped them make up their minds if they were even willing to consider undertaking the proposed project. In responding and submitting their bids, contractors, including CECON, did not preemptorily become subservient to ACI's terms. Rather, they made their own representations as to their own willingness and ability. They adduced their own counter offers, although these were already tailored to work within ACI's parameters.

These exchanges were in keeping with Article 1326 of the Civil Code:

Article 1326. Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.

The mere occurrence of these exchanges of offers fails to satisfy the Civil Code's requirement of absolute and unqualified acceptance:

Article 1319. 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.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (Emphasis supplied)

Subsequent events do not only show that there was no meeting of minds on CECON's initial offered contract sum of P1,449,089,174.00 as stated in its August 30, 2002 bid. They also show that there was never any meeting of minds on the contract sum at all.

In accordance with Article 1321 of the Civil Code,[135] an offeror may fix the time of acceptance. Thus, CECON's August 30, 2002 offer of P1,449,089,174.00 "specifically stated that its bid was valid for only ninety

(90) days, or only until 29 November 2002." [136] November 29, 2002 lapsed and ACI failed to manifest its acceptance of CECON's offered contract sum.

It was only sometime after November 29, 2002 that ACI verbally informed CECON that the contract was being awarded to it. Through a telephone call on December 7, 2002, ACI informed CECON that it may commence excavation works. However, there is no indication that an agreement was reached on the contract sum in any of these conversations. ACI, CECON, the CIAC Arbitral Tribunal, and the Court of Appeals all concede that negotiations persisted.

Still without settling on a contract sum, even the object of the contract was subjected to multiple modifications. Absent a concurrence of consent and object, no contract was perfected. [137]

An office tower atop Part A was included in CECON's scope of works and the contract sum increased to P1,582,810,525.00. Price fluctuations were conceded after this and the project cost was again adjusted to P1,613,615,244.00. Thereafter, CECON agreed to extend a discount and reduced its offered project cost to P1,540,000,000.00. [138]

After all these, ACI demurred on the terms of its own tender documents and changed the project from one encompassing both design and construction to one that was limited to construction.

Though not pertaining to the object of the contract itself but only to one (1) of its many facets, ACI also removed from CECON's scope of works the acquisition of elevators, escalators, chillers, generator sets, indoor substations, cooling towers, pumps, and tanks. However, much later, ACI reneged on its own and opted to still obtain pumps, tanks, and cooling towers through CECON.

It is ACI's contention that the offered project cost of P1,540,000,000.00 is what binds the parties because its June 2, 2003 letter indicated acceptance of this offered amount.

This is plain error.

CECON was never remiss in impressing upon ACI that the P1,540,000,000.00 offer was not perpetually availing. Without ACI's timely acceptance, on December 27, 2002, CECON wrote to ACI emphasizing that the quoted sum of P1,540,000,000.00 was "based [only] upon the prices prevailing at December 26, 2002" levels. [139] On January 8, 2003, CECON notified ACI of further increases in costs and specifically stated that "[f]urther delay in the acceptance of the revised offer and release of the down payment may affect the revised lump sum amount." [140] Finally, on January 21, 2003, CECON wrote again to ACI, [141] stating that the contract sum had to be increased to P1,594,631,418.00. CECON also specifically stated, consistent with Article 1321 of the Civil Code, that its tender of this adjusted price was valid only until January 31, 2003, as further price changes may be forthcoming. CECON also impressed upon ACI that the 400 days allotted for the completion of the project had to be adjusted. [142]

When ACI indicated acceptance, CECON's P1,540,000,000.00 offer had been superseded. Even CECON's subsequent offer of P1,594,631,418.00 had, by then, lapsed by more than four (4) months. Apparently totally misinformed, ACI's acceptance letter did not even realize or remotely reference CECON's most recent P1,594,631,418.00 stipulation but insisted on the *passé* offer of P1,540,000,000.00 from the past year.

ACI's supposed acceptance was not an effective, unqualified acceptance, as contemplated by Article 1319 of the Civil Code. At most, it was a counter-offer to revert to P1,540,000,000.00.

ACI's June 2, 2003 letter stated an undertaking: "This notwithstanding, formal contract documents embodying these positions will shortly be prepared and forwarded to you for execution." [143] Through this letter, ACI not

only undertook to deliver documents, it also admitted that the final, definitive terms between the parties had yet to be articulated in writing.

ACI's delivery, CECON's review, and both parties' final act of formalizing their respective consent and affixing their respective signatures would have established a clear point in which the contract between ACI and CECON has been perfected. These points, i.e. ACI's delivery, CECON's review, and parties' formalization, too, would have validated the Court of Appeals' assertion that all that remained to be done was to apply unequivocal contractual provisions.

ACI would fail on its own undertaking.

### III.D

Without properly executed contract documents, what would have been a straightforward exercise, akin to the experience in *F.F. Cruz*, became a drawn-out fact-finding affair. The situation that ACI engendered made it necessary for the CIAC Arbitral Tribunal to unravel the terms binding ACI to CECON from sources other than definitive documents.

It is these actions of the CIAC Arbitral Tribunal that raise an issue, purely as a matter of law, now the subject of this Court's review; that is, faced with the lacunae confronting it, whether or not the CIAC Arbitral Tribunal acted within its jurisdiction.

## IV

The CIAC Arbitral Tribunal did not act in excess of its jurisdiction. Contrary to the Court of Appeals' and ACI's assertions, it did not draw up its own terms and force these terms upon ACI and CECON.

### IV.A

The CIAC Arbitral Tribunal was not confronted with a barefaced controversy for which a formulaic resolution sufficed. More pressingly, it was confronted with a state of affairs where CECON rendered services to ACI, with neither definitive governing instruments nor a confirmed, fixed remuneration for its services. Thus, did the CIAC Arbitral Tribunal go about the task of ascertaining the sum properly due to CECON.

This task was well within its jurisdiction. This determination entailed the full range of subjects expressly stipulated by Section 4 of the Construction Industry Arbitration Law to be within the CIAC's subject matter jurisdiction.

Section 4. Jurisdiction. - ....

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.

CECON raised the principal issue of the payment due to it on account, not only of fluctuating project costs but more so because of ACI's inability to timely act on many contingencies, despite proper notice and communication from and by CECON. Thereby, at the heart of the controversy was the "interpretation and/or application of contractual time and delays." ACI's counter-arguments, too, directly appealed to CIAC's subject matter jurisdiction. ACI countered by asserting that sanctioning CECON's claims was tantamount to violating the terms of their agreement. It further claimed liability on CECON's part for "maintenance and defects," and for "violation of specifications for materials and workmanship."

ACI and CECON voluntarily submitted themselves to the CIAC Arbitral Tribunal's jurisdiction. The contending parties' own volition is at the inception of every construction arbitration proceeding.[144] Common sense dictates that by the parties' voluntary submission, they acknowledge that an arbitral tribunal constituted under the CIAC has full competence to rule on the dispute presented to it. They concede this not only with respect to the literal issues recited in their terms of reference, as ACI suggests,[145] but also with respect to their necessary incidents. Accordingly, in delineating the authority of arbitrators, the CIAC Rules of Procedure speak not only of the literally recited issues but also of "related matters":

SECTION 21.3 Extent of power of arbitrator - The Arbitral Tribunal shall decide only such issues and related matters as are submitted to them for adjudication. They have no power to add, to subtract from, modify, or amend any of the terms of the contract or any supplementary agreement thereto, or any rule, regulation or policy promulgated by the CIAC.

To otherwise be puritanical about cognizable issues would be to cripple CIAC arbitral tribunals. It would potentially be to condone the parties' efforts at tying the hands of tribunals through circuitous, trivial recitals that fail to address the complete extent of their claims and which are ultimately ineffectual in dispensing an exhaustive and dependable resolution. Construction arbitration is not a game of guile which may be left to ingenious textual or technical acrobatics, but an endeavor to ascertain the truth and to dispense justice "by every and all reasonable means without regard to technicalities of law or procedure." [146]

#### IV.B

Two (2) guiding principles steered the CIAC Arbitral Tribunal in going about its task. First was the basic matter of fairness. Second was effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation. In Section 1.1 of the CIAC Rules of Procedure:

SECTION 1.1 Statement of policy and objectives - It is the policy and objective of these Rules to provide a fair and expeditious resolution of construction disputes as an alternative to judicial proceedings, which may restore the disrupted harmonious and friendly relationships between or among the parties. (Emphasis supplied)

CECON's predicament demanded compensation. The precise extent may yet to have been settled; yet, as the exigencies that prompted CECON to request for arbitration unraveled, it became clear that it was not for the CIAC Arbitral Tribunal to turn a blind eye to CECON's just entitlement to compensation.

Jurisprudence has settled that even in cases where parties enter into contracts which do not strictly confirm to standard formalities or to the typifying provisions of nominate contracts, when one renders services to another, the latter must compensate the former for the reasonable value of the services rendered. This amount shall be fixed by a court. This is a matter so basic, this Court has once characterized it as one that "springs from the fountain of good conscience":

As early as 1903, in *Perez v. Pomar*, this Court ruled that where one has rendered services to another, and these services are accepted by the latter, in the absence of proof that the service was rendered gratuitously, it is but just that he should pay a reasonable remuneration therefore because "it is a well known principle of law, that no one should be permitted to enrich himself to the damage of another." Similarly in 1914, this Court declared that in this jurisdiction, even in the absence of statute, "... under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of land sold as the property of the judgment debtor after it has been made to appear that the judgment debtor had no title to the land and that the purchaser had failed to secure title thereto . . ." The foregoing equitable principle which springs from the fountain of good conscience are applicable to the case at bar.[147]

Consistent with the Construction Industry Arbitration Law's declared policy,[148] the CIAC Arbitral Tribunal

was specifically charged with "ascertain[ing] the facts in each case by every and all reasonable means." [149] In discharging its task, it was permitted to even transcend technical rules on admissibility of evidence. [150]

#### IV.C

The reality of a vacuum where there were no definite contractual terms, coupled with the demands of a "fair and expeditious resolution" of a dispute centered on contractual interpretation, called into operation Article 1371 of the Civil Code:

Article 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (Emphasis supplied)

Article 1379 of the Civil Code invokes principles from the Revised Rules on Evidence. By invoking these principles, Article 1379 makes them properly applicable in every instance of contractual interpretation, even those where the need for interpretation arises outside of court proceedings:

Article 1379. The principles of interpretation stated in Rule 123 of the Rules of Court shall likewise be observed in the construction of contracts.

As with Article 1371, therefore, the following principles from the Revised Rules on Evidence equally governed the CIAC Arbitral Tribunal's affairs:

##### 4. Interpretation of Documents

Section 12. Interpretation according to intention; general and particular provisions. - In the construction of an instrument, the intention of the parties is to be pursued; and when a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Section 13. Interpretation according to circumstances. - For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret.

Within its competence and in keeping with basic principles on contractual interpretation, the CIAC Arbitral Tribunal ascertained the true and just terms governing ACI and CECON. Thus, the CIAC Arbitral Tribunal did not conjure its own contractual creature out of nothing. In keeping with this, the CIAC Arbitral Tribunal found it proper to sustain CECON's position. There having been no meeting of minds on the contract sum, the amount due to CECON became susceptible to reasonable adjustment, subject to proof of legitimate costs that CECON can adduce.

#### V

Unravelling the CIAC Arbitral Tribunal's competence and establishing how it acted consistent with law resolves the principal legal issue before us. From this threshold, the inquiry transitions to the matter of whether or not the conclusions made by the CIAC Arbitral Tribunal were warranted.

They were. Far from being capricious, the CIAC Arbitral Tribunal's conclusions find solid basis in law and evidence.

## V.A

The tender documents may have characterized the contract sum as fixed and lump-sum, but the premises for this arrangement have undoubtedly been repudiated by intervening circumstances.

When CECON made its offer of P1,540,000,000.00, it proceeded from several premises. First, ACI would timely respond to the representations made in its bid. Second, CECON could act on the basis of prices prevailing then. Third, the subject matter of the contract was the entire expanse of design and construction covering all elements disclosed in the tender documents, nothing more and nothing less. Fourth, the basic specifications for designing and building the Gateway Mall, as stated in the tender documents, would remain consistent. Lastly, ACI would timely deliver on its concomitant obligations.

Contrary to CECON's reasonable expectations, ACI failed to timely act either on CECON's bid or on those of its competitors. Negotiations persisted for the better part of two (2) calendar years, during which the quoted contract sum had to be revised at least five (5) times. The object of the contract and CECON's scope of work widely varied. There were radical changes like the addition of an entire office tower to the project and the change in the project's structural framing. There was also the undoing of CECON's freedom to design, thereby rendering it entirely dependent on configurations that ACI was to unilaterally resolve. It turned out that ACI took its time in delivering construction drawings to CECON, with almost 38% of construction drawings being delivered after the intended completion date. There were many other less expansive changes to the project, such as ACI's fickleness on which equipment it would acquire by itself. ACI even failed to immediately deliver the project site to CECON so that CECON may commence excavation, the most basic task in setting up a structure's foundation. ACI also failed to produce definite instruments articulating its agreement with CECON, the final contract documents.

With the withering of the premises upon which a lump-sum, fixed price arrangement would have been founded, such an arrangement must have certainly been negated:

[T]he contract is fixed and lump sum when it was tendered and contracted as a design and construct package. The contract scope and character significantly changed when the design was taken over by the Respondent. At the time of the negotiation and agreement of the amount of Php1.54 billion, there were no final plans for the change to structural steel, and all the [mechanical, electrical and plumbing] drawings were all schematics.

[I]t is apparent to the Tribunal that the quantity and materials at the time of the P1.54B agreement are significantly different from the original plans to the finally implemented plans. The price increases in the steel products and cement were established to have already increased by 11.52% and by P5.00 per bag respectively by January 21, 2003. The Tribunal finds agreement with the Claimant that it is fairer to award the price increase.

....

It should also be mentioned that Respondent had changed the scope and character of the agreement. First, there were major changes in the plans and specifications. Originally, the contract was for design and construct. The design was deleted from the scope of the Claimant. It was changed to a straight construction contract. As a straight construction contract, there were no final plans to speak of at the time of the instructions to change. Then there was a verbal change to structural steel frame. No plans were available upon this instruction to change. Next, the [mechanical, electrical and plumbing] plans were all schematics. It is therefore expected that changes of plans are forthcoming, and that changes in costs would follow ...

....

It has been established that the original tender, request for proposal and award is for a design and construct contract. The contract documents are therefore associated for said system of construction. When Respondent

decided to change and take over the design, such as the change from concrete to structural steel framing, "take-out" equipment from the contract and modify the [mechanical, electrical and plumbing w]orks, the original scope of work had been drastically changed. To tie down the Claimant to the unit prices for the proposal for a different scope of work would be grossly unfair. This Tribunal will hold that unit price adjustment could be allowed but only for change orders that were not in the original scope of work, such as the change order from concrete to structural framing, the [mechanical, electrical and plumbing w]orks, [schematic drawings to construction drawings] and the Miscellaneous Change Order Works.[151]

## V.B

Contrary to ACI's oft-repeated argument,[152] the CIAC Arbitral Tribunal correctly found that ACI had gained no solace in statutory provisions on the immutability of prices stipulated between a contractor and a landowner. Article 1724 of the Civil Code reads:

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties.

Article 1724 demands two (2) requisites in order that a price may become immutable: first, there must be an actual, stipulated price; and second, plans and specifications must have definitely been agreed upon.

Neither requisite avails in this case. Yet again, ACI is begging the question. It is precisely the crux of the controversy that no price has been set. Article 1724 does not work to entrench a disputed price and make it sacrosanct. Moreover, it was ACI which thrust itself upon a situation where no plans and specifications were immediately agreed upon and from which no deviation could be made. It was ACI, not CECON, which made, revised, and deviated from designs and specifications.

## V.C

The CIAC Arbitral Tribunal also merely held ACI to account for its voluntarily admitted adjustments. The CIAC Rules of Procedure permit deviations from technical rules on evidence, including those on admissions. Still, common sense dictates that the principle that "[t]he act, declaration or omission of a party as to a relevant fact may be given in evidence against him"[153] must equally hold true in administrative or quasi-judicial proceedings as they do in court actions. Certainly, each must be held to account for his or her own voluntary declarations. It would have been plainly absurd to disregard ACI's renegeing on its own admissions:

Respondent has agreed to the price increase in structural steel and after some negotiation paid the agreed amount. Respondent also agreed to the price increase in the reinforcing bars and instructed the Claimant to bill it accordingly. To the Tribunal, such action is an acknowledgment of the price increase. Respondent can make the case that said agreement is conditional, i.e., the Complaint must be withdrawn. To the Tribunal, the conditionality falls both ways. The Claimant has as much interest to agree to a negotiated price increase so that it can collect payments for the claims. The conditionalities do not change the basis for the quantity and the amount. The process of the negotiation has arrived at the price difference and quantities. The Tribunal finds the process in arriving at the Joint Manifestation, a fair determination of the unit price increase. This holding will render the discussions on Exhibit JJJJ, and the demand of the burden of proof of the Respondent superfluous.[154]

This absurdity is so patent that the Court of Appeals was still compelled to uphold awards premised on ACI's admissions, even as it reversed the CIAC Arbitral Tribunal decision on the primordial issue of the characterization of the contractual arrangement between CECON and ACI:

As stated, the contract between [ACI] and CECON has not been amended or revised. The Arbitral Tribunal had no power to amend the contract to provide that there be allowed price and/or cost adjustment removing the express stipulation that the Project is for a lump sum or fixed price consideration. Accordingly, this Court removes the award for additional costs spent by CECON on cement and formworks due to price increases or removing the award for these items in the total amount of PhP5,598,338.20. Since CECON is not entitled to its claim for price increase, it is likewise not entitled to the award of the interest rate of 6% per annum.

With regard however to the additional costs for the rebars due to price increases, this Court finds that CECON is entitled to the amount of PhP10,266,628.00 representing the additional costs spent by CECON for rebars due to price increases, notwithstanding the Arbitral Tribunal's excess of jurisdiction in amending the contract between the parties because [ACI] and CECON had in fact agreed that CECON was entitled to such an amount and that [ACI] would pay the same. This agreement was made in the parties' Joint Manifestation of Compliance dated March 30, 2004 which they filed with the Arbitral Tribunal ("Joint Manifestation").[155]

No extraordinary technical or legal proficiency is required to see that it would be the height of absurdity and injustice to insist on the payment of an amount the consideration of which has been reduced to a distant memory. ACI's invocation of Article 1724 is useless as the premises for its application are absent. ACI's position is an invitation for this Court to lend its imprimatur to unjust enrichment enabled by the gradual wilting of what should have been a reliable contractual relation. Basic decency impels this Court to not give in to ACI's advances and instead sustain the CIAC Arbitral Tribunal's conclusion that the amount due to CECON has become susceptible to reasonable adjustment.

## VI

The Arbitral Tribunal's award must be reinstated.

### VIA

With the undoing of the foundation for the Court of Appeal's fallacious, circular reasoning, its monetary awards must also necessarily give way to the reinstatement of the CIAC Arbitral Tribunal's awards.

The inevitable changes borne by ACI's own trifling actions justify, as a consequence, compensation for cost adjustments and the ensuing change orders, additional overhead costs for the period of extension, extended coverage for contractor's all-risk insurance, and attendance fees for auxiliary services to subcontractors whose functions were also necessarily prolonged. ACI's frivolity on the acquisition of elevators, escalators, chillers, generator sets, indoor substations, cooling towers, pumps, and tanks also vindicates compensation for the works that remained under CECON's account. ACI's authorship of the causes of delay supports time extensions favoring CECON and, conversely, discredits liquidated damages benefitting ACI.

This Court upholds the Arbitral Tribunal's awards on each of the items due to CECON, as well as on its findings relating to CECON's countervailing liabilities.

In fulfilling its task, the CIAC Arbitral Tribunal was equipped with its technical competence, adhered to the rigors demanded by the CIAC Rules of Procedure, and was endowed with the experience of exclusively presiding over 19 months of arbitral proceedings, examining object and documentary evidence, and probing witnesses.

## VI.B

Within the CIAC Arbitral Tribunal's technical competence was its reference to prevailing industry practices, a much-bewailed point by ACI.[156] This reference was made not only desirable but even necessary by the absence of definitive governing instruments. Moreover, this reference was made feasible by the CIAC Arbitral Tribunal's inherent expertise in the construction industry.

This reference was not only borne by practical contingencies and buttressed by recognized proficiency, it was also sanctioned by the statutory framework of contractual interpretation within which the CIAC Arbitral Tribunal operated. Thus, the following principles governed the interpretation of the change orders, requests, and other communications, which had effectively been surrogates of a single definite instrument executed by the parties.

From the Civil Code:

Article 1375. Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract.

Article 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

From the Revised Rules on Evidence, the following have been made applicable even outside regular litigation by Article 1379 of the Civil Code:

Section 14. Peculiar signification of terms. - The terms of a writing are presumed to have been used in their primary and general acceptance, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

....

Section 19. Interpretation according to usage. - An instrument may be construed according to usage, in order to determine its true character.[157] (Emphasis supplied)

Equally availing is the following principle. This is especially true of the remuneration due to CECON, considering that stipulations for remuneration are devised for the benefit of the person rendering the service:

Section 17. Of two constructions, which preferred. - When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made.[158]

## VI.C

In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. The CIAC Arbitral Tribunal perused each of the parties' voluminous pieces of evidence.[159] Its members personally heard, observed, tested, and propounded questions to each of the witnesses. Having been constituted solely and precisely for the purpose of resolving the dispute between ACI and CECON for 19 months, the CIAC Arbitral Tribunal devoted itself to no other task than resolving that controversy. This Court has the benefit neither of the CIAC Arbitral Tribunal's technical competence nor of its irreplaceable experience of hearing the case, scrutinizing every piece of evidence, and probing the witnesses.

True, the inhibition that impels this Court admits of exceptions enabling it to embark on its own factual inquiry. Yet, none of these exceptions, which are all anchored on considerations of the CIAC Arbitral Tribunal's integrity and not merely on mistake, doubt, or conflict, is availing.

This Court finds no basis for casting aspersions on the integrity of the CIAC Arbitral Tribunal. There does not appear to have been an undisclosed disqualification for any of its three (3) members or proof of any prejudicial misdemeanor. There is nothing to sustain an allegation that the parties' voluntarily selected arbitrators were corrupt, fraudulent, manifestly partial, or otherwise abusive. From all indications, it appears that the CIAC Arbitral Tribunal extended every possible opportunity for each of the parties to not only plead their case but also to arrive at a mutually beneficial settlement. This Court has ruled, precisely, that the arbitrators acted in keeping with their lawful competencies. This enabled them to come up with an otherwise definite and reliable award on the controversy before it.

Inventive, hair-splitting recitals of the supposed imperfections in the CIAC Arbitral Tribunal's execution of its tasks will not compel this Court to supplant itself as a fact-finding, technical expert.

ACI's refutations on each of the specific items claimed by CECON and its counterclaims of sums call for the point by point appraisal of work, progress, defects and rectifications, and delays and their causes. They are, in truth, invitations for this Court to engage in its own audit of works and corresponding financial consequences. In the alternative, its refutations insist on the application of rates, schedules, and other stipulations in the same tender documents, copies of which ACI never adduced and the efficacy of which this Court has previously discussed to be, at best, doubtful.

This Court now rectifies the error made by the Court of Appeals. By this rectification, this Court does not open the doors to an inordinate and overzealous display of this Court's authority as a final arbiter.

Without a showing of any of the exceptional circumstances justifying factual review, it is neither this Court's business nor in this Court's competence to pontificate on technical matters. These include things such as fluctuations in prices of materials from 2002 to 2004, the architectural and engineering consequences - with their ensuing financial effects - of shifting from reinforced concrete to structural steel, the feasibility of rectification works for defective installations and fixtures, the viability of a given schedule of rates as against another, the audit of changes for every schematic drawing as revised by construction drawings, the proper mechanism for examining discolored and mismatched tiles, the minutiae of installing G.I. sheets and sealing cracks with epoxy sealants, or even unpaid sums for garbage collection.

The CIAC Arbitral Tribunal acted in keeping with the law, its competence, and the adduced evidence; thus, this Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards.

## VII

It does not escape this Court's attention that this controversy has dragged on for more than 13 years since CECON initially sought to avail of arbitration.

The CIAC Arbitral Tribunal noted that ACI consumed a total of 840 days filing several motions and manifestations, including at least eight (8) posturings at pursuing settlement.[160] It added, however, that ACI repeatedly failed to respond to CECON's claims during meetings thereby constraining CECON to file motions to proceed after repeatedly being dangled hope of an early resolution.[161] It appeared that ACI was more interested in buying time than in effecting a consummate voluntary settlement.

The CIAC Arbitral Tribunal October 25, 2006 Decision should have long brought this matter to an end. This

Court does not fault ACI for availing of remedies. Yet, this Court also notes that even in proceedings outside of the CIAC Arbitral Tribunal, ACI seems to not have been sufficiently conscientious of time.

In this Court alone, ACI sought extensions to file its Comment no less than five (5) times.[162] It sought several other extensions in the filing of its Memorandum.[163]

It also does not escape this Court's attention that while ACI's arguments have perennially pleaded the supposed primacy and immutability of stipulations originally articulated in the tender documents, it never bothered to annex any of these documents either to its Comment or to its Memorandum. Without these and other supporting materials, this Court is left in the uneasy predicament of merely relying on ACI's self-stated assertions and without means of verifying even the syntax of its citations.

While presumptions of good faith may be indulged, the repercussions of ACI's vacillation cannot be denied.

Even if this Court were to ignore the delays borne by ACI's procedural posturing, this Court is compelled to hearken to ACI's original faults. These are, after all, what begot these proceedings. These are the same original faults which so exasperated CECON; it was left with no recourse but to seek the intervention of CIAC.

These faults began as soon as bidders responded to ACI's invitation. In CECON's case, its communicated time for the validity of its offer lapsed without confirmation from ACI. ACI only verbally responded and only after CECON's communicated timeframe. It told CECON to commence excavation works but failed to completely deliver the project site until five (5) months later. It engaged in protracted negotiations, never confirming acceptance until the tenth month, after bidders had submitted their offers. By then, ACI's supposed acceptance could not even identify CECON's most recent quoted price. It undertook to process and deliver formal documents, yet this controversy already reached this Court and not a single page of those documents has seen the light of day. It has repeatedly added and taken from CECON's scope of works but vigorously opposed adjustments that should have at least been given reasonable consideration, only to admit and partially stipulate on them. In taking upon itself the task of designing, it took its time in delivering as many as 1,675 construction drawings to CECON, more than 600 of which were not delivered until well after the project's intended completion date.

This Court commenced its discussion by underscoring that arbitration primarily serves the need of expeditious dispute resolution. This interest takes on an even greater urgency in the context of construction projects and the national interest so intimately tied with them. ACI's actions have so bogged down its contractor. Nearing 13 years after the Gateway Mall's completion, its contractor has yet to be fully and properly compensated. Not only have ACI's actions begotten this dispute, they have hyper-extended arbitration proceedings and dragged courts into the controversy. The delays have virtually bastardized the hopes at expeditious and effective dispute resolution which are supposedly the hallmarks of arbitration proceedings.

For these, in addition to sustaining each of the awards due to CECON arising from the facets of the project, this Court also sustains the CIAC Arbitral Tribunal's award to CECON of arbitration costs. Further, this Court imposes upon respondent Araneta Corporation, Inc. the burden of bearing the costs of what have mutated into a full-fledged litigation before this Court and the Court of Appeals.

WHEREFORE, the Petition is GRANTED. The assailed April 28, 2008 Decision and July 1, 2010 Amended Decision of the Court of Appeals in CA-G.R. SP No. 96834 are REVERSED and SET ASIDE. The Construction Industry Arbitration Commission Arbitral Tribunal October 25, 2006 Decision in CIAC Case No. 01-2004 is REINSTATED.

Legal interest at the rate of six percent (6%) per annum is imposed on the award from the finality of this Decision until its full satisfaction.

Costs against respondent.

**SO ORDERED.**

Carpio, (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

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[1] Rollo, pp. 153-268.

[2] Id. at 11-85. The Decision was penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo of the Sixteenth Division, Court of Appeals, Manila.

[3] Id. at 87-137. The Amended Decision was penned by Presiding Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid, Francisco P. Acosta, and Michael P. Elbinias, and dissented in by Associate Justice Sesinando E. Villon of the Former Special Sixteenth Division of Five, Court of Appeals, Manila.

[4] Id. at 3762-4029. The Arbitral Tribunal is composed of Ernesto S. De Castro as Chairman and James S. Villafranca and Reynaldo T. Viray as members.

[5] Id. at 4028-4029.

[6] Id. at 84-85.

[7] Id. at 136-137.

[8] Id. at 6221, CECON's Memorandum; and rollo, p. 6372, ACI's Memorandum.

[9] Id. at 12.

[10] Id. at 6373, ACI's Memorandum.

[11] Id.

[12] Id. at 6374, Conditions of Contract, Clause 6.0. Reproduced in ACI's Memorandum.

[13] Id. Preliminaries and General Requirements, Section 4.0. Reproduced in ACI's Memorandum.

[14] Id. at 3773.

[15] Id. at 6222, CECON's Memorandum.

[16] Id. at 6223, CECON's Memorandum.

[17] Id.

[18] Id.

[19] Id. at 6224 CECON's Memorandum.

[20] Id. at 549-553, Annex P to CECON's Petition.

[21] Id. at 549.

[22] Id. at 554-555, Annex E to CECON's Petition

[23] Id. at 556 557, Annex "F" to CECON's Petition.

- [24] Id. at 556.
- [25] Id. at 3786 and 6225.
- [26] Id. at 6225.
- [27] Id. at 558-560, Annex G of CECON's Petition.
- [28] Id. at 558.
- [29] Id.at641
- [30] Id. at 560, Annex G to CECON's Petition.
- [31] Id.
- [32] Id. at 6227, CECON's Memorandum.
- [33] Id.
- [34] Id.
- [35] Id.
- [36] Id. at 6228, CECON's Memorandum.
- [37] Id. at 663-669, Annex H to CECON's Petition; and, 6228, CECON's Memorandum.
- [38] Id. at 6229, CECON's Memorandum.
- [39] Id.
- [40] Id. at 6229.
- [41] Id. at 6230, CECON's Memorandum.
- [42] Id.
- [43] Id. at 670-673, Annex 1 to CECON's Petition.
- [44] Id. at 673.
- [45] Id. at 3763.
- [46] Id. at 6231, CECON's Memorandum.
- [47] Id. at 3764.
- [48] Id. at 6231.
- [49] Id. at 3764.
- [50] Id. at 3765.
- [51] Id.
- [52] Id.
- [53] Id. at 3765, CECON's Memorandum
- [54] Id. at 3765 and 4029,

[55] Id. at 3766, CECON's Memorandum.

[56] Id.

[57] Id.

[58] Id. at 3767-3769.

[59] Id. at 3768-3769.

[60] Id. at 4028-4029.

[61] Id. at 3811-3813, and 3882-3888.

[62] Id. at 3940-3943.

[63] Id. at 3832-3833.

[64] Id. at 3954-3955.

[65] Id. at 3768.

[66] Id. at 3980-3990.

[67] Id. at 4027-4028.

[68] Id. at 3997-3998.

[69] Id. at 4012-4014.

[70] Id. at 4029.

[71] Id. at 4030-4881.

[72] Id. at 4882-4887.

[73] Id. at 4886.

[74] Rollo, pp. 11-85.

[75] Id. at 85.

[76] Id. at 32-34.

[77] Id. at 84-85.

[78] Id. at 50.

[79] Id. at 50.

[80] Id. at 52.

[81] Id. at 54-56.

[82] Id. at 56-59.

[83] Id. at 72-73.

[84] Id. at 70-72.

[85] Id. at 69.

[86] Id. at 42-45.

[87] Id. at 62-63.

[88] Id. at 83.

[89] Id. at 84-85.

[90] Id. at 87-137.

[91] Id. at 105-106.

[92] Id. at 107.

[93] Id. at 104.

[94] Id. at 136-137.

[95] Id. at 153-268.

[96] Id. at 263-264.

[97] Id. at 6098.

[98] Id. at 5914-5929 and 5934-5936.

[99] CIVIL CODE, art. 1715 provides:

Article 1715. The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply with this obligation, the employer may have the defect removed or another work executed, at the contractor's cost.

[100] CIVIL CODE, art. 1724 provides:

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties.

[101] Rollo pp. 5930-5933.

[102] Id. at 5893. ACI's Comment states, "the Arbitral Tribunal significantly modified and amended the clear terms of the parties' contract documents by rewriting their construction agreement and unilaterally imposing upon ACI newly-created obligations, notwithstanding that there was no issue on the exact terms of the contract documents and the intent of the parties in executing the same."

[103] Id. at 5894-5895.

[104] Id. at 5897-5898.

[105] Though nominally an "executive order" the Construction Industry Arbitration Law is a statute.

Jurisprudence has clarified that, in exercising legislative powers, then President Marcos did not only use the modality of presidential decrees, but also of executive orders and letters of instruction. Though, this is not to say that all executive orders and letters of instruction issued by him are statutes.

In *Parong, et al. v. Enrile*, 206 Phil. 392428 (1983) [Per J. De Castro, En Banc]:

To form part of the law of the land, the decree, order or [letter of instruction] must be issued by the President in the exercise of his extraordinary power of legislation as contemplated in Section 6 of the 1976 amendments to the Constitution, whenever in his judgment, there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasan[g] Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action.

In *Irene B. Cortes, Executive Legislation: The Philippine Experience*; 55 PHIL. L.J. 1, 27-29 (1979) Associate Justice Irene Cortes noted that certain executive orders and letters of instruction have indeed been on par with President Marcos' more commonly used mode of legislation (i.e., presidential decrees):

Another problem arises from lack of precision in the appropriate use of one form of issuance as against another. A presidential decree is equivalent to a statute enacted by the legislature, and is thus superior to implementing rules issued as executive orders or letter of instructions. But, it is not unheard of for an executive order to amend or repeal a presidential decree or a letter of instructions to amend an executive order, or lay down a rule of law.

Associate Justice Cortes specifically cited as an example Exec. Order No. 543 (1979), which abolished the Philippine Center for Advanced Studies, a creation of Pres. Decree No. 342 (1973). In disproving that Exec. Order No. 543 was issued merely as an implementing rule, she explained that its object a state university - could not have fallen under the scope of the President's reorganization powers, for which an executive order issued merely as an implementing rule was sufficient.

The Construction Industry Arbitration Law's own nomenclature reveals the intent that it be a statute. Its whereas clauses and declaration of policy reveal the urgency that impelled immediate action for the President to exercise his concurrent legislative powers.

Any doubt on the statutory efficacy of the Construction Industry Arbitration Law is addressed by Congress' own, voluntary and repeated reference to and affirmation of it as such a law. (See Rep. Act No. 9184 and Rep. Act No. 9285). Rep. Act No. 9285 did not only validate the Construction Industry Arbitration Law, it also incorporated it into the general statutory framework of alternative dispute resolution.

Jurisprudence, too, has repeatedly and consistently referred to it as such a "law." See, for example, *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362 (1999) [Per C.J. Davide, Jr., First Division]; *Metropolitan Cebu Water District v. Mactan Rock Industries, Inc.*, 690 Phil. 163 (2012) [Per J. Mendoza, Third Division]; and *The Manila Insurance Co., Inc. v. Spouses Amurao*, 701 Phil. 557 (2013) [Per Del Castillo, Second Division].

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

[107] *Id.*, 4[th] Whereas Clause.

[108] See Department of Trade and Industry, Attached Agencies, (last visited on August 8, 2017).

[109] Exec. Order No. 1008, sec. 2.

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

[111] *Fort Bonifacio Development Corp. v. Sorongon*, 605 Phil. 689, 696 (2009) [Per J. Tinga, Second Division].

[112] Metro Construction, Inc. v. Chatham Properties, Inc., 418 Phil. 176, 202-203 (2001) [Per C.J. Davide, Jr., First Division], citing The Presidential Anti-Dollar Salting Task Force v. Court of Appeals, 253 Phil. 344 (1989) [Per J. Sarmiento, En Banc]; Tropical Homes v. National Housing Authority, 236 Phil. 580 (1987) [Per J. Gutierrez, Jr., En Banc]; Antipolo Realty Corp. v. NHA, 237 Phil. 389 (1987) [Per J. Feliciano, En Banc]; and Solid Homes, Inc. v. Payawal, 257 Phil. 914 (1989) [Per J. Cruz, First Division].

[113] 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].

[114] LABOR CODE, art. 219 provides:

Article 219. 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.

[115] Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific, G.R. No. 204197, November 23, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/204197.pdf>> 11-12 [Per J. Brion, Second Division]. It stated:

Quasi-judicial or administrative adjudicatory power is the power: (1) to hear and determine questions of fact to which legislative policy is to apply, and (2) to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. Quasi-judicial power is only exercised by administrative agencies - legal organs of the government.

Quasi-judicial bodies can only exercise such powers and jurisdiction as are expressly or by necessary implication conferred upon them by their enabling statutes. Like courts, a quasi-judicial body's jurisdiction over a subject matter is conferred by law and exists independently from the will of the parties. As government organs necessary for an effective legal system, a quasi-judicial tribunal's legal existence continues beyond the resolution of a specific dispute. In other words, quasi-judicial bodies are creatures of law.

As a contractual and consensual body, the arbitral tribunal does not have any inherent powers over the parties. It has no power to issue coercive writs or compulsory processes. Thus, there is a need to resort to the regular courts for interim measures of protection and for the recognition or enforcement of the arbitral award.

The arbitral tribunal acquires jurisdiction over the parties and the subject matter through stipulation. Upon the rendition of the final award, the tribunal becomes *functus officio* and - save for a few exceptions - ceases to have any further jurisdiction over the dispute. The tribunal's powers (or in the case of *ad hoc* tribunals, their very existence) stem from the obligatory force of the arbitration agreement and its ancillary stipulations. Simply put, an arbitral tribunal is a creature of contract. (Citations omitted)

[116] *Id.* at 15-16.

[117] Construction Arbitration and Mediation, CONSTRUCTION INDUSTRY AUTHORITY OF THE PHILIPPINES, available at <<http://www.ciap.dti.gov.ph/content/construction-arbitrationmediation>> (last visited

on August 8, 2017).

[118] See *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176 (2001) [Per C.J. Davide, Jr., First Division].

[119] RULES OF COURT, Rule 43, sec. 1 provides:

Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

[120] RULES OF COURT, Rule 43, sec. 3 provides:

Section 3. Where to appeal. - An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

[121] 298-A Phil. 361 (1993) [Per J. Feliciano, Third Division].

[122] *Id.* at 372.

[123] *Id.* at 373-374.

[124] In *Marasigan v. Fuentes*, G.R. No. 201310, January 11, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/201310.pdf>> 5-6 [Per J. Leonen, Second Division];

It is basic that petitions for review on certiorari under Rule 45 may only raise pure questions of law and that findings of fact are generally binding and conclusive on this court. Nevertheless, there are recognized exceptions that will allow this court to overturn the factual findings confronting it. These exceptions are the following:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) When the findings are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Citations omitted)

[125] 479 Phil. 578 (2004) [Per J. Puno, Second Division].

[126] Id. at 590.

[127] 684 Phil. 330 (2012). [Per J. Reyes, Second Division].

[128] Id. at 346, citing *Vda. De Formoso v. Philippine National Bank*, 665 Phil. 174 (2011) [Per J. Mendoza, Second Division].

[129] Id. at 346-347, citing *Philippine National Construction Corporation v. Court of Appeals*, 541 Phil. 658 (2007) [Per J. Chico-Nazario, Third Division].

[130] Id.

[131] Id. at 347-348, citing CIVIL CODE, art. 1370.

[132] Id. at 349.

[133] Rollo, pp. 32-37.

[134] Id. at 32-33.

[135] CIVIL CODE, art. 1321 provides:

Article 1321. The person making the offer may fix the time, place, and manner of acceptance, all of which must be complied with.

[136] Rollo, p. 6222, CECON's Memorandum.

[137] CIVIL CODE, art. 1318 provides:

Article 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.

[138] Rollo, pp. 6224-6225 and 6383.

[139] Id. at 549 and 6224.

[140] Id. at 3773 and 6225.

[141] Id. at 556-557.

[142] Id. at 556 and 6224-6225.

[143] Id. at 560.

[144] Exec. Order No. 1008, Section 4 states, among others, that, "the parties to a dispute must agree to submit the same to voluntary arbitration."

[145] Rollo, pp. 6454-6461.

[146] CIAC RULES OF PROCEDURE, sec. 1.3.

[147] Pacific Merchandising Corp. v. Consolacion Insurance & Surety Co., Inc., 165 Phil. 543, 553-554 (1976) [Per J. Antonio, Second Division] citing Perez v. Pomar, 2 Phil. 682 (1903) [Per J. Torres, En Banc]; and Bonzon v. Standard Oil Co. and Osorio, 27 Phil. 141 (1914) [Per J. Carson, First Division]. Fn 16

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

[149] CIAC RULES OF PROCEDURE, Rule 1, sec. 1.3 provides:

Section 1.3 Judicial rules not controlling - In any arbitration proceedings under these Rules, the judicial rules of evidence need not be controlling, and it is the spirit and intention of these Rules to ascertain the facts in each case by every and all reasonable means without regard to technicalities of law or procedure.

[150] CIAC RULES OF PROCEDURE, Rule 1, sec. 1.3.

[151] Rollo pp. 3812-3813 and 3884.

[152] Id. at 6483-6487.

[153] RULES OF COURT, Rule 130, sec. 26.

[154] Id. at 3812.

[155] Id. at 38-39.

[156] Id. at 5894-5895.

[157] RULES OF COURT, Rule 130, sec. 14 and 19.

[158] RULES OF COURT, Rule 130, sec. 17.

[159] Rollo, p. 3771. Exhibits were so voluminous, markings such as "BBBBB" and "MMMMM" were necessary.

[160] Id. at 4027.

[161] Id. at 4027-4028.

[162] Id. at 6127.

[163] Id. at 6656.

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