

**PHILIPPINE ELECTRICITY MARKET CORPORATION, PETITIONER,
VS. THERMA MOBILE, INC., RESPONDENT.***G.R. No. 224341, November 10, 2025*

Ponente: SINGH, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-224341/>**SINGH, J.:**

This involves a Petition for Review on Certiorari under Rule 45 of the Rules of Court,[1] dated June 3, 2016, filed by the Philippine Electricity Market Corporation (PEMC) assailing the Decision,[2] dated December 14, 2015, and the Resolution,[3] dated April 22, 2016, of the Court of Appeals (CA) in CA-G.R. SP. No. 140177. The CA upheld the Decision,[4] dated April 1, 2015, of Branch 157, Regional Trial Court, Pasig City (RTC) in SP Proc. Case No. 12790, which enjoined PEMC from demanding and collecting financial penalties imposed on Therma Mobile, Inc. (TMO) for alleged violations of the rules of the wholesale electricity spot market.

The Facts

TMO is a corporation duly organized and existing under Philippine law. It owns and operates four barge-mounted bunker-fired diesel power generating and interconnection facilities at the Navotas Fishport, Manila.[5] These barges were previously owned by East Asia Diesel Power Corporation (East Asia) and Duracom Mobile Power Corporation (Duracom). Two out of the four were first commissioned in 1994, while the other two were commissioned in 1995 and 1996. These barges experienced several shutdowns in 2002, 2003, 2005 and were finally de-commissioned and placed on total shutdown by July 13, 2006 due to adverse economic conditions suffered by East Asia and Duracom.[6]

On May 27, 2011, TMO purchased the dilapidated power barges which have been non-operational for around five years. Following years of rehabilitation, the power barges comprising the TMO Power Plant became operational once more. However, the power barges remained in a constant state of conditioning and rehabilitation. Composed of new and old parts, TMO alleges in the Petition that the power barges only had a recommended maximum load capacity ranging from 70% to 100% and a safe load limit of only 85% to prevent irreparable damage. Thus, although the power barges had a total gross installed capacity of 242 megawatts (MW), and a net generation capacity of 234 MW, TMO states in its Petition that the barges only had a 100 MW maximum available net generation capacity from November to December 31, 2013.[7]

TMO registered as a generation company and became a direct member of the wholesale electricity spot market (WESM).[8] The WESM is administered and implemented by PEMC pursuant to Section 30 of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA) and Department of Energy (DOE) Circular No. 2002-06-2003, as amended.

On April 5, 2013, TMO and PEMC entered into a Market Participation Agreement (Market Participation Agreement).[9] TMO agreed to be bound by the WESM Rules, the WESM manuals, and the issuances, guidelines, and procedures approved by the Philippine Electricity Market Board (PEM Board).[10]

On September 27, 2013, TMO and Manila Electric Company (MERALCO) entered into a Power Supply

Agreement (PSA).[11] One of the primary objectives of the PSA is to provide continuous and reliable electricity for consumers in light of the Malampaya Gas Plant shutdown for scheduled maintenance from November 9, 2013 to December 8, 2013.[12]

Following its PSA with MERALCO, TMO began its commercial operations on November 12, 2013, initially producing 30 MW and later reaching a maximum dependable capacity of 100 MW out of a total gross capacity of 242 MW. The low production was attributed to the limitations of the old power barges, which were in various stages of repair, as well as the damaged transmission lines left behind by Typhoon Milenyo.[13]

The WESM Rules require generation companies, such as TMO, to declare and offer the maximum generating capacities of their plants to the WESM. This generation offer must be submitted at each hourly interval on every trading day of the week, following the WESM's timetable. This requirement is referred to as the Must-Offer Rule and it is found in Clauses 3.5.5.1, 3.5.5.2, and Appendix A1.1(c) of the WESM Rules:[14]

Clause 3.5.5.1 requires[:]

Each Scheduled Generation Company including Generation Companies with bilateral contracts shall submit a standing generation offer for each of its scheduled generating units for each trading interval in each trading day of the week in accordance with the timetable.

Clause 3.5.5.2, meanwhile, directs that[:]

Each generation offer shall include the information specified in Appendix A1.1 [...]

Appendix A1.1 (c) [provides:]

A1.1 Generation Offer

Generation offers:

....

(c) May include up to [10] energy offer blocks per (aggregate) unit. The maximum combined capacity of generation and reserve offers must not be less than the maximum available capacity of the generator[.][15]
(Emphasis supplied)

The Must-Offer Rule was established to ensure that all available capacity is visible and accessible to the market. This visibility enables PEMC, as the governance arm of the WESM,[16] to assess system conditions, prepare for contingencies, and prevent generation companies from withholding capacity to manipulate prices, create artificial scarcity, and induce power shortages.[17]

On March 3, 2014, the Energy Regulatory Commission (ERC) issued an Order[18] directing PEMC, through its Enforcement and Compliance Office (ECO), to investigate WESM members for possible violations of the Must-Offer Rule.[19]

Upon investigation by the PEMC-ECO, TMO was found to have violated the Must-Offer Rule for failing to offer at its registered gross and net capacities of 242.2 MW and 234 MW, respectively.[20]

On August 14, 2014, the PEM Board approved the imposition of penalties on TMO and transmitted the Investigation Reports to the ERC on August 19, 2014 and January 28, 2015.[21]

TMO was assessed PHP 234.9 million in financial penalty for 3,578 counts of breach.[22]

TMO requested for a reconsideration of the PEM Board's decision imposing the financial penalty.[23] In the hearing conducted on TMO's request for reconsideration, TMO presented the technical and mechanical constraints

of its power plant, the limitations of its transmission lines, and the details of the capability tests conducted by MERALCO on TMO's power plant showing that it was only capable of generating 100 MW from November 18, 2013 to December 25, 2013.[24] TMO argues that these are allowable limitations under the WESM Rules and should have been considered in determining TMO's maximum available capacity.[25] Nevertheless, the PEM Board denied TMO's request for reconsideration considering that the information on the constraints experienced by TMO were not submitted to PEMC.[26]

On January 30, 2015, the PEM Board issued a Notice of Approval of Financial Penalty[27] and TMO received said Notice on February 10, 2015.[28] The Notice of Approval of Financial Penalty confirmed PEMC's initial finding and denied TMO's request for reconsideration. On February 11, 2015, PEMC issued a Billing Statement for the collection of the entire financial penalty amounting to PHP 234.9 million due on February 25, 2015.[29]

On February 13, 2015, TMO sent a Notice of Dispute in accordance with the WESM Rules and the WESM Dispute Resolution Market Manual, along with a letter requesting the deferment of penalty collection pending the resolution of the dispute (Notice of Dispute).[30] In its Reply dated February 16, 2015, PEMC declined to defer the penalty collection, but allegedly proposed a negotiation meeting to explore possible ways to resolve the issue.[31]

Thus, on February 27, 2015, TMO and PEMC supposedly met and began the negotiation process to settle their dispute pursuant to the procedure under Clause 7.3.3.1 of the WESM Rules and Clause 7.1.1 of the Dispute Resolution Manual.[32]

Before this, however, on February 16, 2015, TMO filed an Urgent Petition for the Issuance of Interim Measures of Protection (For Issuance of a Writ of Preliminary Injunction with a prayer for a Temporary Order of Protection) before the RTC (Urgent Petition).[33] TMO prayed for the following reliefs:

WHEREFORE, premises considered, Petitioner TMO most respectfully prays that this Honorable Court:

1. Upon the filing of this Urgent Petition, issue ex-parte a [20]-day Temporary Order of Protection pursuant to Rule 5.9 of the Special ADR Rules preventing Respondent PEMC through the PEM Board, and/or any other person representing the Respondent or acting under their direction, from (a) demanding or collecting from Petitioner TMO the amount of [PHP] 234.9 [m]illion in financial penalty until the Dispute between Petitioner and Respondent is finally resolved, (b) charging interest on the financial penalty of [PHP] 234.9 [m]illion and having the same accrue, until the Dispute between Petitioner and Respondent is finally resolved, and (c) transmitting PEMC-ECOs' Investigation Report to the ERC;
2. Upon hearing, issue a Writ of Preliminary Injunction preventing Respondent PEMC, through the PEM Board, and/or any other person representing the Respondent or acting under their direction, from (a) demanding or collecting from Petitioner TMO the amount of [PHP] 234.9 [m]illion in financial penalty, (b) charging interest on the financial penalty of [PHP] 234.9 [m]illion and having the same accrue, and (c) transmitting PEMC-ECOs' Investigation Report to the ERC, until the Dispute between Petitioner and Respondent is finally resolved; and
3. Upon hearing, issue a Writ of Preliminary Injunction preventing PEMC, through the PEM Board, and/or any other person representing the Respondent or acting under their direction, from demanding or collecting from Petitioner TMO the amount of [PHP] 234.9 [m]illion in financial penalty or from imposing any penalties, sanctions or any other act which would essentially force or compel Petitioner TMO to pay the said amount until the Dispute between Petitioner and Respondent is finally resolved.
4. All other reliefs just and equitable under the premises are likewise prayed for.[34]

Ruling of the RTC

On February 24, 2015, the RTC issued an Order granting an immediately executory ex parte 20-day temporary order of protection in favor of TMO and requiring TMO to post a bond in the amount of PHP 234.9 million, pursuant to Rule 5.7[35] in relation to the third paragraph of Rule 5.9[36] of the Special Alternative Dispute Resolution Rules (ADR Rules). Further, the RTC ordered subsequent hearings regarding TMO's prayer for the issuance of a writ of preliminary injunction.[37]

On April 1, 2015, the RTC issued a Decision[38] preventing PEMC from demanding or collecting the financial penalties imposed on TMO, among others. The RTC likewise made a prima facie determination that an arbitration agreement exists between TMO and PEMC following Rules 2.4,[39] 3.8,[40] and 3.11[41] of the ADR Rules:[42]

WHEREFORE, after evaluating the Urgent Petition of TMO and the relevant provisions of the Special ADR Rules, the WESM Rules and DRM, and considering the factual circumstances, legal considerations and supporting jurisprudence to justify the Urgent Petition filed and the relief/s prayed for by Petitioner TMO which the Court finds to be clearly meritorious, not to mention the commencement of the dispute resolution process based on the negotiations conducted by the parties on February 27, 2015 and possible recourse, if necessary, to the subsequent phases of mediation and arbitration of the said dispute where a thorough discussion and consideration of the respective claims and counterclaims of the parties will best and fairly be ventilated and considered, and more importantly, to prevent an irretrievable damages and/or illusory, moot and academic reliefs which may inevitably result from premature actions made on matters under dispute prior to such bilateral dispute resolution process, this Court hereby GRANTS and ISSUES in favor of TMO,

1)

A writ of preliminary injunction preventing Respondent PEMC, through the PEM Board, and/or any other persons representing the Respondent or acting under their direction from (a) demanding or collecting for Petitioner TMO the amount of [PHP] 234.9 million in financial penalties, (b) charging interest on the financial penalties of [PHP] 234.9 million and having the same accrue, and (c) transmitting PEMC-ECO's investigation report to the ERC, until the aforementioned dispute between the Petitioner and Respondent is finally resolved through the dispute resolution process of the WESM Rules and Dispute Resolution Market Manual (DRM); and

2)

A [prima facie] determination that an arbitration agreement exists between Petitioner TMO and Respondent PEMC based on and in accordance with Rules 2.4, 3.8 and 3.11 of the Special ADR Rules.

Pursuant thereto, the parties are hereby directed to comply and continue with the dispute resolution process embodied under the WESM Rules and DRM which has already commenced by the negotiation meeting conducted by the parties on February 27, 2015 to settle their dispute.

SO ORDERED.[43] (Emphasis in the original)

As a preliminary issue to be resolved, the RTC determined that it had jurisdiction to hear TMO's Urgent Petition:

While the Supreme Court has strongly supported and reiterated this concept of primacy of the arbitration process in many of its decisions to the extent that it considered judicial review of an arbitration as more limited than a judicial review of a court trial, these judicial pronouncements are, however, not absolute and have exceptions where courts can intervene and exercise their jurisdiction and authority such as, where the arbitration is considered binding only to the extent and in the manner prescribed by the submission agreement of the parties; the grounds provided under [Republic Act No.] 875, the Model Law and the Special ADR Rules; Art. 2038, 2039 and 2040 of the Civil Code; if an examination of the records of the cases shows no support whatsoever for the arbitrator's determination of facts and/or law; and, if the award or action was made 'in manifest disregard of the law' (Asset Privatization Trust vs. CA, 300 SCRA 579; Equitable PCI Banking Corp.

vs RCBC Corp, 574 SCRA 859). In another case of an exception to the primacy of the arbitration process, the Supreme Court held that the 'adjudication of a case which necessarily involves the application of pertinent statutes and jurisprudence ... is more suited for a trial court to carry out after a full-blown trial than an arbitration body specifically devoted to construction contracts. (Fort Bonifacio Dev. Corp. vs. Sorongon, 587 SCRA 613; Romago vs. Siemens Bldg. Tech, Inc., 602 SCRA 656). Thus, under [Republic Act No.] 9285, Sec. 24 thereof, while courts have, in general, no jurisdiction over disputes subject to arbitration, the same is subject to judicial review by the court which can set aside, reject or vacate it. Even an arbitration clause which specifies that an arbitral award shall be final and binding does not oust the court of jurisdiction as an arbitral award is subject to judicial review pursuant to the provisions of Sec. 5 [Republic Act No.] 876. In fact, even prior to, or during the pendency or conclusion of an arbitration proceedings, courts have authority and jurisdiction to grant interim measure of protection or provisional reliefs. (Korea Tech. vs. Derma, 52 SCRA 1; ABS-CBN vs. World Interactive Network Systems, 544 SCRA 308). In proper cases, the power of judicial review is considered as inherent in courts and the same cannot be precluded through provisions of finality of award in arbitration cases (Adamson vs. CA, 232 SCRA 602).

Thus, PEMC's argument that the Court has no jurisdiction over this case or authority to grant and issue injunctive reliefs has no legal basis and is therefore, set aside.[44] (Emphasis supplied)

The RTC went on to discuss the applicability of the ADR Rules in response to PEMC's contention that said rules were inapplicable in the absence of an arbitration agreement between TMO and PEMC:

For obvious reasons, the Court has to set aside this argument considering that the WESM Rules and DISPUTE RESOLUTION MANUAL have clearly provided a graduated dispute resolution framework starting from a negotiation phase which the parties have already commenced on February 27, 2015; a mediation phase as the next level; [t]hen, capped by an arbitration phase in case negotiation and mediation fail. PEMC as administrator of the WESM Rules and TMO as a WESM member are bound by the WESM Rules and the elaborate dispute resolution framework embodied therein. The WESM Rules, therefore, are considered the dispute resolution agreement of the parties and based on which the Special ADR Rules are applicable.[45] (Emphasis supplied)

Regarding PEMC's allegation that it was improper for the RTC to issue the Order, dated February 24, 2015, granting ancillary injunctive relief to TMO absent a principal action, the RTC explained that a principal action or dispute has already been commenced arising from the supposed breach of the Must-Offer Rule and PEMC's imposition of financial penalty:

With respect to PEMC's argument on the alleged absence of a principal action initiated by TMO for which the ancillary injunctive relief may be granted, similarly, this contention has to be rejected for the obvious reason that the principal action or dispute has already commenced between the parties arising from the contested breach of the Must-Offer Rule under the WESM Rules as alleged by PEMC and its imposition and collection of an alleged financial penalty of [PHP] 234.9 million. For its part, TMO's Notice of Dispute regarding the same is tantamount to a commencement of WESM Rules Dispute Resolution Process; and, the commencement of the initial phase of such dispute resolution process based on PEMC's offer for negotiation discussion of such dispute which was actually conducted on February 27, 2015. Pending such dispute resolution process, PEMC's refusal to defer or suspend the collection of the alleged financial penalty of [PHP] 234.9 [m]illion triggered TMO's injunctive action or provisional relief. These developments are interconnected, with the on-going dispute resolution process under the WESM Rules providing the 'principal action' which is addressed by the ancillary injunctive action filed in this case. As earlier mentioned, courts have authority prior to or during the pendency or conclusion of dispute resolution process to assume jurisdiction and grant provisional injunctive reliefs. For these reasons, PEMC's arguments on this issue are hereby set aside.[46]

Lastly, on PEMC's contention that TMO failed to show irreparable injury with respect to the alleged breach of the Must-Offer Rule and collection of the PHP 234.9 million financial penalty, the RTC referred to its Order, dated

February 24, 2015, and highlighted that the collection of said financial penalty would partially or totally shut down TMO's operations, which would have dire consequences on the economy and the overall comfort and convenience of the general public.[47]

Aggrieved, PEMC elevated the case to the CA pursuant to Rule 19.14[48] of the ADR Rules.

In addition to reiterating the arguments it previously raised before the RTC, PEMC emphasized that TMO failed to prove the existence of a material threat and that it will suffer irreparable damage which necessitates the issuance of a writ of preliminary injunction. PEMC claims that courts cannot grant injunctions to prevent speculative injury, and that TMO cannot claim to be injured by the imposition of the financial penalty since it is a one hundred percent subsidiary of Aboitiz Power Corporation (APC) – a company with unappropriated retained earnings of PHP 46.174 billion at that time.[49]Ruling of the CA

On December 14, 2015, the CA issued a Decision[50] denying PEMC's Petition for Review:

WHEREFORE, in view of the foregoing, the petition is hereby DENIED. The Decision of the [Branch 157, Regional Trial Court, Pasig City], dated April 1, 2015 in SP Proc. No. 12790 is hereby AFFIRMED.

SO ORDERED.[51](Emphasis in the original)

In affirming the RTC's Decision, the CA clarified that, contrary to PEMC's assertion that there is no arbitration agreement between it and TMO, the Market Participation Agreement, dated April 5, 2013, signed by both PEMC and TMO, contains a dispute resolution mechanism. Specifically, Article V of said Agreement refers to Clause 7.3 (Dispute Resolution) of the WESM Rules as the governing procedure in the event of a conflict:[52]

Article V. DISPUTE RESOLUTION

Section 5.01 WESM Rule 7.3 applies to any dispute that arises under this Agreement and is incorporated by reference herein, with such modifications as the context may require.[53]

On the issuance of a writ of preliminary injunction, the CA explained that TMO has sufficiently established that it is not financially capable of settling the financial penalty. A financial penalty of PHP 234.9 million would threaten TMO's very existence.[54] Even if TMO is a wholly-owned subsidiary of APC, the CA determined that TMO maintained an independent and separate juridical personality from its parent company. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation, as well as the subsidiary, shall be confined to those arising from their respective businesses. As found by the CA, APC is not mandated by law to save TMO from bankruptcy in case the financial penalty is imposed.[55]

PEMC moved for reconsideration, but the CA denied it through a Resolution, dated April 22, 2016:

WHEREFORE, in view of the foregoing premises, the instant motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.[56] (Emphasis in the original)

Thus, PEMC filed this Petition before the Court assailing the CA's Decision and Resolution.

PEMC submits that the CA erred in ruling that there was an agreement of arbitration between PEMC and TMO.[57]

Assuming arguendo that the Market Participation Agreement or the WESM Rules constitutes the arbitration agreement between PEMC and TMO, PEMC argues that a violation of the Must-Offer Rule and the subsequent imposition of a financial penalty are not arbitrable issues.[58]

Lastly, PEMC maintains that the issuance of a writ of preliminary injunction preventing PEMC from collecting the financial penalty from TMO is bereft of any legal and factual basis.[59]

On November 14, 2016, TMO filed a Comment[60] to the Petition (Comment). TMO submits that the Petition is violative of Rule 3.11[61] of the ADR Rules considering that the prima facie determination by the RTC upholding the existence, validity or enforceability of an arbitration agreement should not have been subject to appeal. Further, TMO argues that the Petition must be dismissed for raising questions of fact.[62]

In response, PEMC filed a Reply to Comment,[63] dated December 9, 2016, refuting TMO's arguments.

The Issue

Did the CA commit reversible error when it affirmed the RTC's Decision, dated April 1, 2015, preventing PEMC from demanding and collecting financial penalties from TMO?

Ruling of the Court

The Petition is meritorious.

Pursuant to the Market Participation Agreement, the dispute resolution mechanism under the WESM Rules binds both PEMC and TMO. This constitutes the arbitration agreement between them.

However, TMO's alleged violation of the Must-Offer Rule is not a dispute covered by the dispute resolution process under the WESM Rules. Instead of submitting a Notice of Dispute to PEMC, TMO should have filed a petition for certiorari under Rule 65 before the CA, assailing the PEM Board's decision on its request for reconsideration.

Notwithstanding, in the interest of justice, the Court finds it proper to remand the issue of TMO's alleged violation of the WESM Rules to the CA for prompt disposition.

The WESM bind TMO and PEMC through the Market Participation Agreement

By entering into the Market Participation Agreement, TMO agreed to participate in the WESM, be a WESM Member, and be bound by the rules governing the same.

Article II, Section 2.01 of the Market Participation Agreement provides:

Article II. COMPLIANCE WITH THE WESM RULES AND MARKET DOCUMENTS

Section 2.01 Compliance Obligation. Applicant hereby agrees to be bound by and to comply with all of the provisions of the WESM Rules as well as of WEMS manuals, guidelines and procedures approved by the PEM Board (referred to as "Market Documents"), as such WESM Rules and Market Documents may be amended from time to time in accordance with its provisions, and as far as they are applicable to the Applicant once it has been registered as a WESM Member.[64] (Emphasis supplied)

With this, TMO was bound to comply with all of the provisions of the WESM Rules, including the Must-Offer Rule.

As pointed out by the CA in its Decision, Article V, Section 5.01 of the Market Participation Agreement states that any dispute which may arise under said Agreement will be governed by Clause 7.3 of the WESM Rules:[65]

Article V. DISPUTE RESOLUTION

Section 5.01 WESM Rule 7.3 applies to any dispute that arises under this Agreement and is incorporated by

reference herein, with such modifications as the context may require.[66]

Clause 7.3 governs the dispute resolution procedures relating to or in connection with transactions in the WESM between or among the following:

- (a) The Market Operator;
- (b) The System Operator;
- (c) The Governance Arm (As amended by DOE DC No. 2022-06-0021 dated 20 June 2022);
- (d) WESM Members;
- (e) Intending WESM Members;

. . . .

The aforementioned parties shall bind themselves with the effect of submitting any dispute, controversy or claim arising out of or relating to, a WESM transaction to which they are or will be a party for settlement by arbitration in accordance with the dispute resolution provisions provided herein. (As amended by DOE DC No. 2012-02-0001 dated [February 15,] 2012)[67] (Emphasis supplied)

The WESM Rules' Foreword recognizes PEMC as the Governance Arm of the WESM. It states:

For this purpose, all references to the Market Operator in these Rules shall be understood to refer to the IMO. Likewise, all references to the Governance Arm of the WESA1 shall be understood to refer to the PEMC (Added per DOE DC No. 2020-10-0021 dated [October 22,] 2020).[68] (Emphasis supplied)

With this, and considering that TMO is a WESM Member, disputes between them relating to any transaction in the WESM fall squarely under Clause 7.3.

Thus, as found by the RTC, there is a dispute resolution mechanism which allows for the submission of disputes to arbitration between PEMC and TMO.[69]

To bind parties to an arbitration agreement, Section 4 of Republic Act No. 876, or The Arbitration Law, provides that the agreement be in writing and subscribed by the party sought to be charged, or by their lawful agent:

SEC. 4. Form of arbitration agreement. — A contract to arbitrate a controversy thereafter arising between the parties, as well as a submission to arbitrate an existing controversy shall be in writing and subscribed by the party sought to be charged, or by his lawful agent.

When PEMC and TMO signed the Market Participation Agreement, they not only bound themselves to the dispute resolution process under Clause 7.3 for resolving disputes arising from the Agreement, but also bound TMO to the terms of the WESM Rules and other market documents.

WESM Clause 7.3 on Dispute Resolution and the WESM Dispute Resolution Market Manual (Dispute Resolution Manual) specifically provide for dispute resolution mechanisms for those who are in the WESM. As pointed out by the CA, the dispute resolution process under the WESM Rules generally consists of three stages – good faith negotiation, mediation, and/or arbitration.[70]

For disputes involving a WESM Member and the PEMC acting as the Governance Arm of the WESM, the dispute resolution process can be found in Sections 7.3.3 to 7.3.5 of the WESM Rules:

7.3.3 Dispute Management Protocol (As amended by DOE DC No. 2012-02-0001 dated [February 15,] 2012)

7.3.3.1 Prior to the referral of a dispute to the DRA, a dispute management protocol (DMP) shall first be

implemented by all parties covered by the WESM dispute resolution process. The DMP is a system to be followed by the disputing parties and shall form part of the negotiation stage of the WESM dispute resolution framework. The goal of the DMP is to allow the parties to negotiate through designated DMP contact persons within a period of [45] days from the time a formal notice is received by the Market Operator or a WESM Member[.]

7.3.4 Accreditation and Selection of Mediators and Arbitrators

(Added as per DOE DC No. 2012-02-0001 dated [February 15,] 2012)

. . . .

7.3.4.2 In case of failure of the negotiation process and upon a preliminary determination by the Dispute Resolution Administrator that the dispute falls under the WESM dispute resolution process, the DRA shall provide the parties with a list of accredited mediators together with their respective expertise. (Added as per DOE DC No. 2012-02-0001 dated [February 15,] 2012)

7.3.4.3 In the event of failure of the mediation process, the DRA shall provide the parties with a list of accredited arbitrators together with their respective expertise. (Added as per DOE DC No. 2012-02-0001 dated [February 15,] 2012)

7.3.5 Dispute Resolution Process

7.3.5.1 If a dispute arises to which the dispute resolution procedures under this clause 7.3 apply, the parties to the dispute shall act in good faith and use all reasonable endeavors to resolve the dispute through the procedures and alternative dispute mechanisms which are available to the parties through their dispute management system.

7.3.5.2 If the parties to the dispute are unable to resolve the dispute in accordance with clause 7.3.4.1, any party who is involved in the dispute can refer the dispute to the Dispute Resolution Administrator in accordance with clause 7.3.4.3.

7.3.5.3 If a party wishes to refer a dispute to the Dispute Resolution Administrator under clause 7.3.4.2, that party shall notify in writing the Dispute Resolution Administrator and all of the other parties to the dispute of which the party is aware:

(a)

Of the existence of a dispute; and

(b)

Setting out a brief history of the dispute including:

(1)

The names of the parties to the dispute;

(2)

The grounds of the dispute; and

(3)

The results of any previous dispute resolution processes undertaken pursuant to the WESM Rules in respect of the dispute; and

(4)

The listing of all unresolved issues and detail description thereof.

7.3.5.4 If the Dispute Resolution Administrator receives a notice of a dispute under clause 7.3.4.3, the Dispute Resolution Administrator shall notify all other relevant parties of the dispute and shall request from those other parties their own short written history of the dispute or any relevant associated written comments and if the Dispute Resolution Administrator requests such information from a party to the dispute, that information shall be provided by that party within ten business days.

7.3.5.5 If a matter has been referred to the Dispute Resolution Administrator under clause 7.3.4.2, then before taking any action to resolve the dispute, the Dispute Resolution Administrator shall determine whether it is reasonable that the dispute is one to which this clause 7.3 applies and shall advise the parties in writing of its decision.

7.3.5.6 If the Dispute Resolution Administrator is not reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the Dispute Resolution Administrator shall issue a written order stating that the claim is not a dispute covered under clause 7.3.1.1. (As amended by DOE DC No. 2012-02-0001 dated [February 15,] 2012)

7.3.5.7 If the Dispute Resolution Administrator is reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the Dispute Resolution Administrator shall issue a written direction stating preliminarily that the claim falls under the WESM dispute resolution process. (As amended by DOE DC No. 2012-02-0001 dated [February 15,] 2012) (Emphasis supplied)

Through the WESM Rules, PEMC and TMO can freely negotiate, mediate, and/or arbitrate transactions and disputes which may arise in the WESM.

The record does not clearly show whether the parties have concluded negotiations, entered into mediation, or directly submitted the dispute to arbitration. What is clear, however, is that TMO submitted a Notice of Dispute to PEMC on February 13, 2015 and, later on, filed the Urgent Petition on February 16, 2015 seeking interim measures of protection.

Under Rule 5 of the ADR Rules, a party to an arbitration agreement may petition the court for interim measures of protection.[71]

Considering that there is a dispute resolution mechanism between TMO and PEMC, it was not improper for TMO to petition the courts for interim measures of protection. Consequently, the RTC correctly confirmed the existence of an arbitration agreement between PEMC and TMO – the WESM Rules.

Procedural rules and the need to uphold substantial justice.

Before proceeding to discuss the remaining substantive issues raised in the Petition, the Court will first resolve two procedural issues raised by TMO.

TMO faults PEMC for elevating the issue on the existence of an arbitration agreement before the CA and, subsequently, before the Court.[72] TMO argues that Rule 3.11 of the ADR Rules proscribes parties from assailing the prima facie determination by the RTC upholding the existence, validity or enforceability of an arbitration agreement through a motion for reconsideration, appeal or certiorari:

Rule 3.11. Relief against court action. – Where there is a prima facie determination upholding the arbitration

agreement. – A prima facie determination by the court upholding the existence, validity or enforceability of an arbitration agreement shall not be subject to a motion for reconsideration, appeal or certiorari.

Such [prima facie] determination will not, however, prejudice the right of any party to raise the issue of the existence, validity and enforceability of the arbitration agreement before the arbitral tribunal or the court in an action to vacate or set aside the arbitral award. In the latter case, the court's review of the arbitral tribunal's ruling upholding the existence, validity or enforceability of the arbitration agreement shall no longer be limited to a mere prima facie determination of such issue or issues as prescribed in this Rule, but shall be a full review of such issue or issues with due regard, however, to the standard for review for arbitral awards prescribed in these Special ADR Rules. (Emphasis supplied)

It is worth emphasizing that TMO's Urgent Petition was filed under Rule 5 of the ADR Rules on Interim Measures of Protection and not under Rule 3 on the Judicial Relief Involving the Issue of Existence, Validity and Enforceability of the Arbitration Agreement. Rules 3 and 5 of the ADR Rules outline specific courses of action which the RTC may take under either case.[73] Although Rule 3.10[74] of the ADR Rules recognizes the cross-cutting application of the ADR Rules, the Urgent Petition was not intended to determine the existence of an arbitration agreement between PEMC and TMO. This issue only became apparent as the proceedings progressed, through the responsive pleadings filed by PEMC before the RTC.

As a matter of fact, the second paragraph of Rule 3.11 acknowledges that any prima facie determination made by the RTC on the existence of an arbitration agreement will not prejudice the right of any party to question the existence of the arbitration agreement before the arbitral tribunal or in subsequent judicial proceedings. Evidently, the RTC's prima facie determination, based on its first impression, may be subject to modification.

TMO likewise challenges the propriety of the issues raised in the Petition. TMO submits that the Petition raised questions of fact which are improper under Rule 45.[75] In particular, TMO argues that the following factual findings are no longer subject for review:

- a. The existence of an arbitration agreement through the Market Participation Agreement dated 5 April 2013 where both TMO and PEMC are signatories. (Quite notably, after PEMC received TMOs' Notice of Dispute on [February 13,] 2015, PEMC did not file a petition to question the existence, validity and/or enforceability of the arbitration agreement under Rule 3.3 of the Special ADR Rules. Instead, petitioner and TMO went through a process of negotiation which, in fact, initiates the arbitration proceeding.)
- b. The existence of arbitrable disputes between TMO and PEMC.
- c. The pendency of the Dispute Resolution Proceeding between TMO and PEMC.
- d. The Notice of Dispute on [February 13,] 2015 by TMO to PEMC constitutes the commencement of the Dispute Resolution Proceeding under the WESM Rules.
- e. The necessity of the issuance of the writ of preliminary injunction to avoid irreparable injury pending the controversy in this case:
 - e.1. TMO is not financially capable to settle the financial penalty
 - e.2. Payment of the enormous penalty would be a threat to TMOs' existence
- f. TMO has an independent and separate juridical personality from APC.[76]

In response, PEMC submits that the only issues being raised in the Petition are:

(a)

Whether a contract of arbitration binds TMO and PEMC to arbitrate and settle TMOs' violations of the MUST OFFER RULE;

(b)

Whether the "Market Participation Agreement" in the WESM Rules is the contract of arbitration between TMO and PEMC;

(c)

Whether violations of the MUST OFFER RULE are arbitrable or subject to arbitration.[77]

It may appear that the issues have both factual and legal dimensions, depending on how each party frames them. However, from the Court's perspective, they center on questions concerning the nature and terms of the Market Participation Agreement, the WESM Rules, and other market documents. At its core, the dispute relates to the arbitrability of the alleged violations of the Must-Offer Rule, which the Court views as a purely legal question.

These considered, the Court has, on numerous occasions relaxed procedural rules in order to facilitate the dispensation of substantial justice.[78] In this case, although the Court agrees with the RTC and the CA on the applicability of the WESM Rules to PEMC and TMO, the Court diverges in so far as the lower courts determined that the issue at hand may be subject to the dispute resolution process found in the WESM Rules. In distinguishing between arbitrable and non-arbitrable issues, the Court hopes to provide guidance on how dispute resolution mechanisms can facilitate the orderly disposition of disputes in the WESM.

An alleged violation of the Must-Offer Rule cannot be properly submitted to the dispute resolution mechanism under the WESM Rules.

Alternative dispute resolution (ADR) refers to a method of resolving disputes other than by adjudication of a presiding judge of a court or an officer of a government agency.[79] In their stead, a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.[80]

The Arbitration Law of 1953 first introduced the use of arbitration in civil disputes in the country. Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004, expanded the scope of the Arbitration Law and institutionalized legislation on mediation, international commercial arbitration, domestic arbitration, arbitration of construction disputes, and judicial review of arbitral awards.

To reinforce the role of the judiciary in ADR, the Court, on September 1, 2009, promulgated Administrative Matter No. 07-11-08-SC or the ADR Rules. In promoting the use of various modes of ADR, the Court recognized party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts.[81]

Building on these, Chapter 7 of the WESM Rules on Enforcement and Disputes lays down the principles of self-governance and the expeditious, just and least expensive disposition of breaches and disputes of the WESM Rules.[82]

To address breaches of the WESM Rules, Clause 7.2 provides guidelines and procedures for carrying out enforcement proceedings, which include compliance monitoring and assessment and investigation and review, and for implementing the enforcement actions.[83] On the other hand, Clause 7.3 sets out the dispute resolution procedures which apply to all disputes relating to or in connection with transactions in the WESM.[84]

On June 20, 2018, the Dispute Resolution Manual was published to supplement WESM Clause 7.3, setting out the

detailed procedures and requirements for the resolution of WESM-related disputes.[85] On October 22, 2021, the Penalty Manual was published, expanding on the penalty systems applied in cases of breach of the WESM Rules and their implementing Market Manuals (Penalty Manual).[86]

PEMC asserts that the current dispute relating to TMO's supposed violation of the Must-Offer Rule is not within the ambit of the dispute resolution mechanism of the WESM Rules. Being a breach of a regulatory rule, PEMC submits that violations of WESM Rules cannot be the subject of arbitration.[87]

TMO contests this by arguing that "PEMC's erroneous finding that the offers or transactions made by TMO constitute a breach of the Must Offer Rule is the main source of the dispute between the parties." [88] TMO avers that "[t]his baseless characterization of TMO's transaction as a breach is precisely what TMO challenges." [89] Essentially, TMO contends that PEMC's erroneous interpretation of TMO's transactions as violations of the Must-Offer Rule brings the current dispute within the scope of the dispute resolution mechanism under the WESM Rules.

TMO is reaching.

As previously explained, Chapter 7 of the WESM Rules distinguishes between breaches and disputes. This distinction determines whether the provisions on enforcement proceedings or the dispute resolution mechanism apply.

A dispute is ordinarily defined as a conflict or controversy, a conflict of claims or rights, or an assertion of a right, claim, or demand by one party met by contrary claims or allegations from another. It essentially involves a disagreement on a point of law or fact, a conflict of legal views, or a conflict of interests between two or more parties.[90] Meanwhile, a breach generally refers to a violation of a law, obligation, or agreement. It signifies a failure to fulfill one's duties or obligations under a legal agreement or a law. This can involve failing to perform as promised, interfering with another party's performance, or indicating an unwillingness to perform.[91]

These concepts, though distinct from one another, do not exist in isolation. They may overlap and even give rise to one another. For instance, a breach may lead to a dispute, particularly when there are differing views on the nature of the breach and whether it actually constitutes a violation of a rule, duty, or agreement.

Such is the situation in this case.

TMO takes issue with PEMC's assertion that the supposed violation of the Must-Offer Rule is non-arbitrable, arguing that the transaction which gave rise to the supposed breach is a "dispute" within the ambit of Clause 7.3 and Dispute Resolution Manual.

To recall, Clause 7.3.1.1 of the WESM Rules states that the dispute resolution procedures applies to all "disputes relating to or in connection with transactions in the WESM."

Section 2.1(nn) of the Dispute Resolution Manual defines a "WESM dispute" as a "dispute of a category and between or among parties mentioned in Section 3.1 of this Manual, or ones relating to or in connection with transactions in the WESM within the context of [Clause] 7.3.1.1 of the WESM Rules."

Although the WESM Rules and the related market documents do not specifically define "dispute," the Court resolves to adopt its ordinary meaning to facilitate the resolution of this issue. Similarly, although "transactions" is not defined, when contextualized within the WESM, the term can be interpreted to refer to any business dealing conducted between members and other participants in the WESM.[92]

Thus, for a "dispute" to fall under the dispute resolution procedure of the WESM Rules, it must involve a conflict or controversy, or an assertion of a right, claim, or demand by one party, met with contrary claims or allegations

from another, relating to any business dealing in the WESM.

To highlight which matters are covered by the dispute resolution procedure under Clause 7.3 of the WESM Rules, Section 1.1.3 of the Dispute Resolution Manual defines "breach" as follows:

1.1.3. For the purpose of this Manual, any act, omission, conduct or behavior and the like contrary to or in non-compliance with the WESM Rules, its Market Manuals, the WESM Objectives, rules and regulations, regarding the WESM Rules, shall be considered a breach. (Emphasis supplied)

Section 5 of the Penalty Manual provides the Schedule of Breach and Penalties and presents a non-exhaustive list of possible breaches of the WESM Rules along with their corresponding penalties.

The first penalty listed is the "[f]ailure of [a] generation company to submit valid generation and/or reserve offers, or failure to submit valid generation and/or reserve offers that is equivalent to the registered maximum available capacity of their generating units at any dispatch interval[.]"[93]

Evidently, a violation of the Must-Offer Rule constitutes a breach of the WESM Rules, as provided in the Penalty Manual. Although the basis for the finding of a breach may be "disputed" by the concerned party, this does not alter the nature of the violation. Such a breach falls under Clause 7.2 of the WESM Rules on enforcement proceedings, not under Clause 7.3.

In defining the scope of the WESM's dispute resolution procedure, it is equally prudent to define the counterfactual — that is, what cannot be the subject of the dispute resolution procedure under the WESM Rules.

Section 4.1.8 of the Penalty Manual proscribes the application of the dispute resolution procedure in the WESM Rules to the imposition of penalties under the Penalty Manual:

4.1.8 No dispute resolution. The imposition of penalties under this Manual cannot be subject to dispute resolution under the provisions of the Market Rules and other relevant laws, rules and regulations on alternative dispute resolution. However, a WESM Member may avail of the remedies for seeking a reconsideration and appeal under Section 4.12 of this Manual. (Emphasis supplied)

Thus, the imposition of financial penalties against TMO cannot be the subject of the dispute resolution mechanism under Clause 7.3 of the WESM Rules and the Dispute Resolution Manual. Instead, the aggrieved WESM Member may avail of the remedies under Section 4.12 (Request for Reconsideration and Appeal Proceedings) of the Penalty Manual:

4.12.2 Under Investigation Proceedings

4.12.2.1 Ground for Filing a Request for Reconsideration. A WESM Member that is penalized under Section 4.1.3 of this Manual may submit a request for reconsideration of the PEM Board decision on the investigation on the following grounds –

a)

Review of the findings of facts of the Enforcement and Compliance Office or for consideration of additional data that was already existing at the time of the original investigation but was not presented during such investigation due to justifiable reasons; or

b)

Legal issues, including but not limited to issues on the conclusions of the Enforcement and Compliance Office or the Compliance Committee, but does not require review of factual findings, or the propriety of the penalty or other measures approved to be imposed by the PEM Board.

4.12.2.2 Form and Contents. The request for reconsideration shall:

a)

clearly state the grounds for the request for reconsideration and the findings of facts or the conclusions or resolution that are sought to be reviewed and reconsidered. The request shall be accompanied by supporting data and affidavits; and

b)

be submitted at PEMC Office within [15] Business Days from receipt of the notice of the PEM Board action. The request shall be in writing and shall be submitted to the PEM Board, through the Office of the Corporate Secretary. No submission by email shall be allowed.

All requests that were timely filed will be immediately endorsed to the Enforcement and Compliance Office for further investigation.

4.12.2.3 Reconsideration Proceedings.

a)

The Enforcement and Compliance Office shall evaluate the endorsed request and carry out further investigations. In conducting further investigations, the Enforcement and Compliance Office may require submission of additional information or obtain information from parties other than the requesting party, or conduct a conference with the requesting party or other relevant parties, or carry out ocular inspections of relevant facilities.

b)

Within [30] Business Days from endorsement of the request for reconsideration, the Enforcement and Compliance Office shall submit a report to the PEM Board containing the additional findings of fact, assessment and recommendations.

4.12.2.4 Resolution on the Request for Reconsideration.

a)

The PEM Board shall decide on the request for reconsideration within [30] business days from receipt of the case review report submitted by the Enforcement and Compliance Office.

b)

Where penalties and other mitigation measures are approved, the Enforcement and Compliance Office shall cause the issuance of the appropriate notices.

4.12.2.5 Effect of PEM Board Decision. The decision of the PEM Board on the request for reconsideration shall be final and executory upon receipt of the same by the concerned trading participant. No further request for reconsideration shall be allowed. (Emphasis supplied)

As shown in TMO's Comment on PEMC's Petition before the Court, TMO requested reconsideration of the PEM Board's decision imposing financial penalties on it:

2.46. Thus, on [September 5,] 2014, TMO filed a Request for Reconsideration of the findings of PEMC-ECO in the Investigation Report and PEM Board's approval of the same. A panel was constituted by the PEM Board to review TMOs' appeal.

2.47. On [February 10,] 2015, TMO received a Notice of Approval of Financial Penalties dated [January 30,]

2015 ("Notice of Approval of Financial Penalties") from PEMC setting out the findings of PEMC-ECO, the relevant parts of which read: We wish to inform you that the PMI Board has deliberated on your request for reconsideration in its Regular Meeting held on [December 1,] 2014 and has decided to confirm its original decision. Thus, the findings of breach and imposition of penalties as approved by the PEM Board in its meeting held on [August 14,] 2014 stands. This is for 3,578 counts of breach WESM Rules clauses 3.5.5.1 and 3.5.5.2 in relation to Appendix A1.1, collectively known as the "Must Offer Rule"

....

Pursuant to Section 1.3.4 of the MSCEM Manual Annex B, the financial penalties will be collected from Therma Mobile, Inc. through the WESM settlement processes. The amount due will be deducted from any settlement amount payable by PEMC to TMO, and if insufficient, the remaining amount shall be collected from your company following the usual PEMC billing procedures for WESM settlements. Your company will be receiving the relevant statement of account from PEMC in due time.

2.48. The complete absence of any explanation why PEMC denied TMOs' request for reconsideration shows the arbitrary and despotic manner by which PEMC decided TMOs' fate. The penalty of Two Hundred Thirty-Four Million Nine Hundred Thousand Pesos ("[PHP] 234.9 [m]illion"), that could put TMO out of business, was almost casually approved without passing upon the evidence submitted by TMO in support of its request for reconsideration.

2.49. Immediately thereafter or on [February 11,] 2015, PEMC issued a Billing Statement for the collection of the financial penalty in the entire amount of [PHP] 234.9 [m]illion with due date on [February 25,] 2015. The billing was hastily sent to TMO, giving TMO only two [] weeks to pay the amount.

2.50 After the receipt of the Notice of Approval of Financial Penalties and of the Billing Statement, TMO referred the dispute to the dispute resolution process under the WESM Rules and the WESM Dispute Resolution Market Manual (DRMM). Thus, pursuant thereto, TMO sent a Notice of Dispute to PEMC on [February 13,] 2015[.][94] (Emphasis supplied; citations omitted)

After the denial of its request for reconsideration, TMO sent PEMC a Notice of Dispute under the erroneous premise that the matter could be subject to Clause 7.3 of the WESM Rules. As previously mentioned, however, pursuant to Section 4.1.8 of the Penalty Manual, the imposition of financial penalties against a WESM Member cannot be the subject of dispute resolution under the WESM Rules and the Dispute Resolution Manual.

The Notice of Dispute was doubly improper, as the decision of the PEM Board on the request for reconsideration became final and executory upon TMO's receipt thereof.[95]

Given this, TMO's recourse should have been to file a petition for certiorari under Rule 65 assailing the PEM Board's decision denying their request for reconsideration before the CA.

A petition for certiorari under Rule 65 is the proper remedy to assail the PEM Board's action on TMO's request for reconsideration

Sections 9(1) and (3) of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, recognizes the CA's exclusive appellate jurisdiction over all decisions of quasi-judicial agencies, instrumentalities, boards, or commissions and its original jurisdiction to issue writs of certiorari, whether or not in aid of its appellate jurisdiction:

Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:

1)

Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

2)

Exclusive original jurisdiction over actions for annulment of judgment of Regional Trial Courts; and

3)

Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three [] months, unless extended by the Chief Justice. (Emphasis supplied)

Acting as the regulatory body authorized to determine violations of the WESM Rules and impose corresponding penalties, the PEM Board found TMO in violation of the Must-Offer Rule and imposed financial penalties totaling PHP 234.9 million. This investigatory and sanctioning authority has been recognized by the Court in *PSALM v. ERC and PEMC*:^[96]

[The] EPIRA empowered the Department of Energy, together with the industry participants, to develop the governance structure of Wholesale Electricity Spot Market. This structure, as laid down in the [WESM] Rules, empowered the Philippine Electricity Market Corporation to investigate breaches of the [WESM] Rules and act accordingly to ensure the members comply with them. The Philippine Electricity Market Corporation is likewise vested with the power to resolve disputes between market participants and the market operator and provide adequate sanctions in case of breaches of the Rules.

....

The act of investigating and sanctioning breaches of the [WESM] Rules may be considered related to Section 43(r) of EPIRA, under which respondent Energy Regulatory Commission has the responsibility to act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act.

However, while Section 43(r) states that respondent Energy Regulatory Commission is responsible for this key function in the restructured industry, it does not mandate it to perform all functions related to this responsibility by itself. The Commission may therefore exercise these functions concurrently with the Philippine Electricity Market Corporation.^[97] (Emphasis supplied; citations omitted)

The PEMC, particularly the PEM Board, undoubtedly wields quasi-judicial powers. These powers pertain to the actions or discretion of public administrative officers or bodies tasked to investigate or ascertain facts, hold hearings, and draw conclusions from those facts as the basis for official action, thereby exercising discretion of a judicial nature.[98]

It is well-settled that a Rule 65 petition is the proper recourse when a higher court needs to review the actions of a lower court, tribunal, or quasi-judicial body, and no other plain, speedy and adequate remedy is available.[99] Since the WESM Rules do not provide a remedy for a final and executory finding of the PEM Board on a motion for reconsideration, the only recourse available is a petition for certiorari under Rule 65. Such petition must be filed with the CA pursuant to Rule 65, Section 4 of the Rules of Court:

Section 4. When and where to file the petition. – The petition shall be filed not later than [60] days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than [60] days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (Emphasis supplied)

Further, the doctrine of the hierarchy of courts designates the CA as the proper forum for filing an action against an adverse finding of the PEM Board. The rationale for this is explained in the Court's ruling in *St. Martin Funeral Home v. National Labor Relations Commission (NLRC)*:[100]

Therefore, all references in the amended Section 9 of [Batas Pambansa] No. 129 to supposed appeals from the NLRC to the Supreme Court are interpreted and hereby declared to mean and refer to petitions for certiorari under Rule 65. Consequently, all such petitions should hence forth be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.

Apropos to this directive that resort to the higher courts should be made in accordance with their hierarchical order, this pronouncement in *Santiago vs. Vasquez, et al.* should be taken into account: One final observation. We discern in the proceedings in this case a propensity on the part of petitioner, and, for that matter, the same may be said of a number of litigants who initiate recourses before us, to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court despite the fact that the same is available in the lower courts in the exercise of their original or concurrent jurisdiction, or is even mandated by law to be sought therein. This practice must be stopped, not only because of the imposition upon the precious time of this Court but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We, therefore, reiterate the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.[101] (Emphasis supplied; citations omitted)

The Court in *St. Martin* tackled the issue of the proper remedy to assail decisions of the NLRC. This issue arose from the perceived ambiguity as to which forum has appellate jurisdiction over NLRC decisions. In ruling that the CA has exclusive appellate jurisdiction over such decisions, the Court considered the intent of the legislators, who

explained that the purpose of the amendment was to ease the Court's workload by transferring the review of factual issues to the CA.[102]

In this case, it is not necessary to examine the intent of the drafters of the WESM Rules, as the rules themselves recognize the final and executory nature of the PEM Board's decision on a request for reconsideration. Being final, no statutory or remedial relief is provided in the WESM Rules. Rather, the proper remedy is provided in Rule 65, Section 4 of the Rules of Court.

Thus, instead of filing a Notice of Dispute, TMO should have filed a special civil action for certiorari under Rule 65 with the CA within 60 days from receipt of the PEM Board's resolution on its request for reconsideration.

In clarifying this now, the Court deems it proper to remand the issue on TMO's supposed violation of the Must-Offer Rule to the CA.

In situations where procedural errors or missteps have occurred, the Court has remanded cases to the lower courts on the belief that the interests of justice would be better served by allowing the court a quo to review the case on its merits.[103]

Cognizant of the financial penalty involved, the Court deems it proper to reopen the primordial issue of this dispute and allow a judicious review of the circumstances of each party.

This is further necessitated by a cursory review of the PEM Board's issuances on TMO's liability, which do not show the factual and legal basis for its findings.

The PEM Board's action on the PEM-ECO's Investigation Report,[104] dated August 20, 2014, only states:

We are writing to inform you of the results of the evaluation by the WESM Market Surveillance Committee (MSC) and the final action by the Philippine Electricity Market Board (PEM Board) on the investigation in the above-captioned case.

We wish to inform you that, in its meeting held on [August 14,] 2014, the PEM Board approved the imposition of penalties on your Company for breach of the must offer rule (i.e., WESM Rules clause 3.5.5 in relation to Appendix A1.1 and the WESM Dispatch Protocol) in respect to the transactions of the above-mentioned facility. The details of the breach and approved penalties are summarized in the following table. A copy of the certification of by [sic] the Office of the Corporate Secretary of the PEM Board resolution is attached to this letter for your reference. Please note that financial penalties for breach occurring prior to [December 1,] 2013 are capped at a maximum of [PHP 3 million].

Facility/Unit

Period

Number of Breach

Approved Penalty

Therma Mobile, Inc.

October 26 to December 25, 2013

3578

[PHP] 234.9 [m]illion

In compliance with the directive of the Energy Regulatory Commission in its Order dated [March 3,] 2013 in

ERC Case No. 2014-21MC, the ECO notified the Commission of the PEM Board action.

We are writing only to inform you of the decision of the PEM Board. A separate notice will be issued by PEMC on the implementation and/or collection of the approved penalty.

...

While, the Notice of Approval of Financial Penalties,[105] dated January 30, 2015, is as follows:

Gentlemen,

We write with regard to the final disposition by the Philippine Electricity Market Board (PEM Board) of the request for reconsideration submitted by your company for the above-mentioned case.

We wish to inform you that the PEM Board has deliberated on your request for reconsideration in its Regular Meeting held on [December 1,] 2014 and has decided to confirm its original decision. Thus, the findings of breach and imposition of penalties as approved by the PEM Board in its meeting held on [August 14,] 2014 stands. This is for 3,578 counts of breach WESM Rules clauses 3.5.5.1 and 3.5.5.2 in relation to Appendix A1.1, collectively known as the "Must Offer Rule". The PEM Board has approved the imposition of financial penalties amounting to [PHP 234.9 million]. Please note that the financial penalties imposed already considered the cap of [PHP 3 million] previously approved by the PEM Board for breach incurred prior to [December 1,] 2013.[106]

The record is silent on how the PEM Board appreciated and responded to TMO's defenses, especially as regards the supposed technical limitations of its power barges.

As these involve factual and technical matters, the Court is not the proper forum to address them. The Court is not a trier of facts.[107] Such issues fall within the competence of the CA, which has the power to hear cases, receive evidence, and take all necessary actions to resolve factual issues within its original and appellate jurisdiction.

The issuance of a writ of preliminary injunction is best left to the CA's discretion

With the remand of the issue on TMO's alleged violation of the Must-Offer Rule, the Court deems it proper to defer judgment on the propriety of the RTC's issuance of the writ of preliminary injunction to the sound determination of the CA.

For a writ of preliminary injunction to be issued, the applicant must have a clear and unmistakable right to be protected, that is a right in esse; there must be a material and substantial invasion of such right; there is an urgent need for the writ to prevent irreparable injury to the applicant; and, no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[108]

In the Urgent Petition, TMO argues that the enforcement and collection of the PHP 234.9 million financial penalty would directly threaten its operations and survival.[109] Claiming a right to continue its operations as a member of the WESM, TMO asserts that there is an urgent and paramount necessity for the issuance of a writ of preliminary injunction to prevent grave injustice and irreparable injury.[110]

It bears emphasizing that TMO's membership and participation in the WESM is not an absolute right but a privilege—one that is necessarily conditioned on full compliance with the WESM Rules. This covenant is expressly embodied in Article II of the Market Participation Agreement. A member's failure to abide by these rules is not without consequence: it constitutes a breach that exposes the member to penalties, including

suspension and even deregistration from the market.[111]

Although membership in the WESM grants WESM members the right to submit disputes to the dispute resolution mechanism, the WESM Rules do not deem this submission as a concession of the arbitrability of a matter. As discussed, breaches are beyond the ambit of Clause 7.3. In fact, before a matter can be referred to the dispute resolution mechanism, the Dispute Resolution Administrator is authorized to determine whether the dispute can fall under the procedure laid down in Clause 7.3.

The WESM Rules provide:

7.3.5.5 If a matter has been referred to the Dispute Resolution Administrator under clause 7.3.4.2, then before taking any action to resolve the dispute, the Dispute Resolution Administrator shall determine whether it is reasonable that the dispute is one to which this clause 7.3 applies and shall advise the parties in writing of its decision.

7.3.5.6 If the Dispute Resolution Administrator is not reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the Dispute Resolution Administrator shall issue a written order stating that the claim is not a dispute covered under clause 7.3.1.1. (As amended by DOE DC No. 2012-02-0001 dated [February 15,] 2012)

7.3.5.7 If the Dispute Resolution Administrator is reasonably satisfied that the dispute is one to which clause 7.3.1.1 applies, the Dispute Resolution Administrator shall issue a written direction stating preliminarily that the claim falls under the WESM dispute resolution process. (As amended by DOE DC No. 2012-02-0001 dated [February 15,] 2012)

Assuming, arguendo, that breaches of the WESM Rules are subject to the dispute resolution process under Clause 7.3, the Dispute Resolution Manual itself provides that the initiation of dispute resolution does not stay the collection of the financial penalty.

Section 4.1.1 of the Dispute Resolution Manual states:

4.1.1. The initiation of a dispute resolution process shall not stay the payment or recovery of monetary amounts due under the WESM Rules and the payment of monetary amount shall continue to be due and payable at the time specified for payment under the WESM Rules until the dispute is resolved otherwise. (Emphasis supplied)

The resolution of the CA on whether TMO breached the Must-Offer Rule is pivotal, as it will ultimately determine PEMC's authority to collect the financial penalty. The issuance of an injunction, after all, demands a factual inquiry into whether a right has indeed been violated and whether exigent circumstances justify relief. These are matters best left to the sound judgment and discernment of the CA.

The nullity of the ERC Order, dated March 3, 2014, does not invalidate PEMC's investigation in this case

The Court takes judicial notice that its ruling in *Colmenares v. ERC*[112] nullified the Order dated March 3, 2014 of the ERC, which, among others, tasked PEMC to investigate WESM members for possible violations of the Must-Offer Rule.

This, however, does not alter the Court's present ruling.

The investigatory and enforcement powers of PEMC do not hinge upon prior authorization from the ERC. Accordingly, the investigation undertaken by PEMC into possible violations of the Must-Offer Rule remains valid notwithstanding the ERC's Order dated March 3, 2014.

As discussed earlier, the WESM Rules vest PEMC with authority to monitor, investigate, and regulate the conduct of WESM members. Consistent with the EPIRA and DOE Circular No. 2002-06-2003, Clause 1.4.5.2(d) of the WESM Rules expressly affirms PEMC's enforcement powers:

1.4.5.2

The Governance Arm, through the PEM Board shall have the following powers and duties:

(a)

Oversee and monitor the activities of the Market Operator and the System operator to ensure that they fulfill their responsibilities under the WESM Rules, and acting in a manner consistent with the WESM Rules;

(b)

Form Committees in accordance with clause 1.4.6;

(c)

Oversee and monitor the activities of the working groups established under clause 1.4.6 to ensure that they fulfill their responsibilities under and in accordance with the WESM Rules; [and]

(d)

In conjunction with the Compliance Committee and the Enforcement and Compliance Office, enforce the WESM Rules and Market Manuals in accordance with Clause 7.2[.] (As amended by DOE DC No. 2020-10-0021 dated [October 22,] 2020)[.] (Emphasis supplied)

Pursuant to Clause 1.4.5.2(c), as quoted above, PEMC, through the PEM Board, formed its Enforcement and Compliance Office, or the ECO, to monitor compliance and oversee the investigation of breaches of the WESM Rules and other market documents.

Noticeably, the ERC's directive to PEMC to conduct an investigation through the Order dated March 3, 2014 relies on Section 2.4 of the Protocol adopted in the Memorandum of Agreement between the ERC and PEMC, dated January 31, 2008 (Protocol):

Within a period of no less than [90] days from receipt of this Order, PEMC is further directed to conduct an investigation on the possible breach of Must-Offer Rule pursuant to Section 2.4 of the Protocol adopted in the Memorandum of Agreement between the Commission and PEMC dated January 31, 2008. Thereafter, the result of the investigation (Investigation Report) of the Enforcement and Compliance Office (ECO) shall be submitted directly to the Commission containing the recommended sanctions and penalties, as the case may be.

SO ORDERED.[113] (Emphasis supplied)

The Protocol was adopted to balance the ERC's authority to penalize market abuses, specifically anti-competitive behavior, with PEMC's self-governance under the WESM Rules. No statute or rule grants the ERC appellate authority over decisions of the PEMC or PEM Board in the exercise of their enforcement powers over breaches of the WESM Rules. As discussed earlier, only the CA, through a petition under Rule 65 of the Rules of Court, may review the findings of the PEM Board.

To realize this balance, the Protocol itself recognizes PEMC's jurisdiction over breaches of WESM Rules and the ERC's jurisdiction over acts amounting to anti-competitive behavior:

2.2.

Matters Pertaining to Breach of WESM Rules and WESM Manuals.

Under Section 43(c) of the EPIRA, the ERC is responsible for enforcing the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market. On the other hand, Chapter 7 of the WESM Rules lays down the procedures on how an alleged Breach is to be investigated and sanctioned by PEMC.

For orderly procedure, Breaches shall be investigated and penalized as follows:

PEMC, through the ECO, shall have the authority to initially investigate and resolve cases involving Breach. Upon completion of ECO's investigation and after PEMC shall have imposed the proper sanctions and penalties, if any, pursuant to the WESM Rules and the relevant WESM Market Manuals, PEMC shall furnish the ERC a copy of its investigation and its conclusions thereon.

Any complaint received by the ERC involving Breach shall, at the first instance, be referred to the ECO for investigation and resolution. The ERC shall correspondingly inform the complainant of said action.

As a result of its monitoring activities, should the ERC find any irregular act or behavior which, it has reasonable ground to believe, involves a Breach, it shall refer the same to PEMC for investigation and resolution.

2.3

Matters Pertaining to Conduct of Anti-Competitive Behavior.

PEMC shall refrain from taking cognizance of a case involving Anti-Competitive Behavior unless it has been directed by the ERC to do so, or has been expressly or impliedly allowed by the ERC to conduct, an investigation of the case.

If upon complaint of a WESM member or as a result of the monitoring functions of the PEMC, there is sufficient ground to believe that conduct constituting Anti-Competitive Behavior has been committed, the PEMC shall issue a Notice of Possible Commission of Anti-Competitive Behavior (the "Notice") and transmit the same to the ERC, together with the complaint and such other relevant documents that may aid the ERC in its investigation. The ERC shall, within [10] business days from receipt of the said Notice, communicate to PEMC its decision to either a.) take cognizance of the investigation or b.) on a "no objection basis," direct PEMC to investigate the matter. Unless it issues an Order declaring otherwise, ERC's failure to communicate its decision within the aforestated period shall be deemed to be a consent for PEMC to proceed with its investigation.

Upon conclusion of its investigation, and if it finds reasonable ground to believe that an Anti-Competitive Behavior has been committed, PEMC shall issue a Resolution to such effect including its recommendation to the ERC on the appropriate fines and penalties that should be imposed, if any.

2.4

Matters Pertaining to Acts that Constitute both a Breach and Anti-Competitive and Anti-Competitive Behavior. For avoidance of doubt, if an act or omission constitutes both a Breach an (sic) Anti-Competitive Behavior, PEMC shall have the authority to investigate the Breach but shall refrain from investigating the alleged Anti-Competitive Behavior unless the ERC has consented/directed otherwise. Upon completion of its investigation, the PEMC shall impose the appropriate sanctions and penalties on the Breach, pursuant to the relevant provisions of the WESM Rules and/or the WESM Market Manuals.[114]

The ERC and PEMC exercise their respective jurisdictions with relative independence from one another. In issuing the Order dated March 3, 2014, the ERC merely operated within the framework of the Protocol by referring potential violations of the WESM Rules to the PEMC-ECO for investigation. Crucially, PEMC's investigatory authority does not hinge on the ERC's endorsement; it retains the power to act on its own against

WESM members, such as TMO. Hence, the nullification of the ERC Order does not curtail PEMC's authority to investigate breaches of the WESM Rules.

ACCORDINGLY, the Petition for Review on Certiorari under Rule 45 of the Rules of Court is GRANTED. The Decision dated December 14, 2015 and the Resolution dated April 22, 2016 of the Court of Appeals in CA-G.R. SP. No. 140177 are REVERSED. The issue of Therma Mobile, Inc.'s alleged violation of the Must-Offer Rule is REMANDED to the Court of Appeals for further proceedings to determine whether the Philippine Electricity Market Board committed grave abuse of discretion in holding Therma Mobile, Inc. liable.

SO ORDERED.

Caguioa (Chairperson), Inting, Gaerlan, and Dimaampao, JJ., concur.

[1] Rollo, pp. 40-78.

[2] Id. at 12-33. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Jose C. Reyes, Jr. (a retired Member of the Court) and Associate Justice Jhosep Y. Lopez (now a Member of the Court) of the Special Fifth Division, Court of Appeals, Manila.

[3] Id. at 35-36.

[4] Id. at 251-260. Penned by Presiding Judge Gregorio L. Vega, Jr.

[5] Id. at 267.

[6] Id.

[7] Id. at 177. Note that in TMO's Urgent Petition before the RTC, TMO stated that it had a maximum net generation capacity of 100 MW from November 2013 to January 15, 2014.

[8] Id. at 13.

[9] Id. at 600-609.

[10] Id. at 13-14.

[11] Id. at 732-779.

[12] Id. at 780.

[13] Id. at 14.

[14] Id. at 268.

[15] Id. at 849-850.

[16] See Wholesale Electricity Spot Market Rules (WESM Rules), p. 262.

[17] See DOE Circular No. DC2024-01-0003 issued on January 12, 2024.

[18] Rollo, pp. 814-846.

[19] Id. at 15 & 46.

[20] Id. at 15 & 47.

[21] Id. at 47.

[22] Id.

[23] Id. See also id. at 870.

[24] Id. at 177. Note that in TMO's Urgent Petition before the RTC, TMO stated that it only had a maximum net generation capacity of 100 MW from November 2013 to January 15, 2014.

[25] Id. at 17.

[26] Id. at 15.

[27] Id. at 47.

[28] Id. at 293-294.

[29] Id. at 16.

[30] Id. at 868-873.

[31] Id.

[32] Id. at 181.

[33] Id. at 261-288.

[34] Id. at 286-287.

[35] Rule 5.7. Dispensing with prior notice in certain cases. – Prior notice to the other party may be dispensed with when the petitioner alleges in the petition that there is an urgent need to either (a) preserve property, (b) prevent the respondent from disposing of, or concealing, the property, or (c) prevent the relief prayed for from becoming illusory because of prior notice, and the court finds that the reason/s given by the petitioner are meritorious.

[36] Rule 5.9. Court action. – ...

In cases where, based solely on the petition, the court finds that there is an urgent need to either (a) preserve property, (b) prevent the respondent from disposing of, or concealing, the property, or (c) prevent the relief prayed for from becoming illusory because of prior notice, it shall issue an immediately executory temporary order of protection and require the petitioner, within five [] days from receipt of that order, to post a bond to answer for any damage that respondent may suffer as a result of its order. The ex-parte temporary order of protection shall be valid only for a period of [20] days from the service on the party required to comply with the order. Within that period, the court shall:

- Furnish the respondent a copy of the petition and a notice requiring him to comment thereon on or before the day the petition will be heard; and

- Notify the parties that the petition shall be heard on a day specified in the notice, which must not be beyond the [20] day period of the effectivity of the ex-parte order.

The respondent has the option of having the temporary order of protection lifted by posting an appropriate counter-bond as determined by the court.

[37] Rollo, p. 18.

[38] Id. at 251-260.

[39] Special Rules of Court on Alternative Dispute Resolution, A.M. No. 07-11-08-SC, September 1, 2009 (ADR Rules). Rule 2.4:

Policy implementing competence-competence principle. – The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues.

Where the court is asked to make a determination of whether the arbitration agreement is null and void, inoperative or incapable of being performed, under this policy of judicial restraint, the court must make no more than a prima facie determination of that issue.

[40] ADR Rules, Rule 3.8:

Court action. – In resolving the petition, the court must exercise judicial restraint in accordance with the policy set forth in Rule 2.4, deferring to the competence or jurisdiction of the arbitral tribunal to rule on its competence or jurisdiction.

[41] ADR Rules, Rule 3.11:

Relief against court action. – Where there is a prima facie determination upholding the arbitration agreement. A prima facie determination by the court upholding the existence, validity or enforceability of an arbitration agreement shall not be subject to a motion for reconsideration, appeal or certiorari.

Such prima facie determination will not, however, prejudice the right of any party to raise the issue of the existence, validity and enforceability of the arbitration agreement before the arbitral tribunal or the court in an action to vacate or set aside the arbitral award. In the latter case, the court's review of the arbitral tribunal's ruling upholding the existence, validity or enforceability of the arbitration agreement shall no longer be limited to a mere prima facie determination of such issue or issues as prescribed in this Rule, but shall be a full review of such issue or issues with due regard, however, to the standard for review for arbitral awards prescribed in these Special ADR Rules.

[42] Rollo, pp. 257 & 260.

[43] Id. at 260.

[44] Id. at 20-21.

[45] Id. at 21.

[46] Id. at 21-22.

[47] Id. at 23-24.

[48] ADR Rules, Rule 19.14:

When to appeal. – The petition for review shall be filed within [15] days from notice of the decision of the Regional Trial Court or the denial of the petitioner's motion for reconsideration.

[49] Rollo, p. 28.

[50] Id. at 12-33.

[51] Id. at 33.

[52] Id. at 28-29.

[53] Id. at 29.

[54] Id.

[55] Id. at 32-33.

[56] Id. at 36.

[57] Id. at 52-53.

[58] Id. at 53-67.

[59] Id. at 68-72.

[60] Id. at 163-226.

[61] ADR Rules, Rule 3.11:

Relief against court action. – Where there is a prima facie determination upholding the arbitration agreement. – A prima facie determination by the court upholding the existence, validity or enforceability of an arbitration agreement shall not be subject to a motion for reconsideration, appeal or certiorari.

Such prima facie determination will not, however, prejudice the right of any party to raise the issue of the existence, validity and enforceability of the arbitration agreement before the arbitral tribunal or the court in an action to vacate or set aside the arbitral award. In the latter case, the court's review of the arbitral tribunal's ruling upholding the existence, validity or enforceability of the arbitration agreement shall no longer be limited to a mere prima facie determination of such issue or issues as prescribed in this Rule, but shall be a full review of such issue or issues with due regard, however, to the standard for review for arbitral awards prescribed in these Special ADR Rules.

[62] Rollo, p. 185.

[63] Id. at 1818-1839.

[64] Id. at 601.

[65] Id. at 28-29.

[66] Id. at 604.

[67] Id. at 29.

[68] WESM Rules, Foreword.

[69] Rollo, p. 21.

[70] Id. at 31.

[71] ADR Rules, Rules 5.1 & 5.2:

Rule 5.1. Who may ask for interim measures of protection. – A party to an arbitration agreement may petition the court for interim measures of protection.

Rule 5.2. When to petition. – A petition for an interim measure of protection may be made (a) before arbitration is commenced, (b) after arbitration is commenced, but before the constitution of the arbitral

tribunal, or (c) after the constitution of the arbitral tribunal and at any time during arbitral proceedings but, at this stage, only to the extent that the arbitral tribunal has no power to act or is unable to act effectively.

[72] Rollo, pp. 187-189.

[73] See ADR Rules, rules 3.8 and 5.9.

[74] ADR Rules. Rule 3.10:

Application for interim relief. – If the petitioner also applies for an interim measure of protection, he must also comply with the requirements of the Special ADR Rules for the application for an interim measure of protection.

[75] Rollo, pp. 189-217.

[76] Id. at 190.

[77] Id. at 1831-1832.

[78] See *Avanceña v. Commission on Audit*, 955 Phil. 559, 573 (2024) [Per J. Singh, En Banc].

[79] Republic Act No. 9285 (2004), The Alternative Dispute Resolution Act of 2004, sec. 3(a).

[80] Id.

[81] ADR Rules, Rule 2.1.

[82] WESM Rules, Clause 7.1.

[83] Id. at Clause 7.2.1.2

[84] Id. at 7.3.1.1.

[85] WESM Manual, Dispute Resolution (Dispute Resolution Manual), Title page

[86] WESM Manual, Penalty Manual (Penalty Manual), Title page.

[87] Rollo, p. 42.

[88] Id. at 199.

[89] Id.

[90] BLACK'S LAW DICTIONARY, "dispute," available at <https://thelawdictionary.org/dispute/#:~:text=Definition%20and%20Citations%3A,Disqualify> (last accessed on July 17, 2025). See also *Slaven v. Wheeler*, 58 Tex. 25; *Keith v. Levi* (C. C.), 2 Fed. 745; *Ft. Pitt Gas Co. v. Borough of Sewickley*, 198 Pa. 201, 47 Atl. 957; *Railroad Co. v. Clark*, 92 Fed. 968, 35 C. C. A. 120.

[91] BLACK'S LAW DICTIONARY, "breach," available at <https://thelawdictionary.org/breach-of-contract/> (last accessed on July 17, 2025).

[92] Legal Information Institute, Cornell Law School, available at <https://www.law.cornell.edu/wex/transaction#:~:text=In%20business%20law%2C%20a%20transaction,of%20an%20obligation%20or%20contract> (last accessed on July 17, 2025).

[93] WESM Manual, Penalty Manual (Penalty Manual), sec. 5. (Emphasis supplied)

[94] Rollo, pp. 180-181.

[95] See Penalty Manual, sec. 4.12.2.5.

[96] 940 Phil. 391 (2023) [Per J. Leonen, Second Division].

[97] *Id.* at 402-404.

[98] Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform, 635 Phil. 283, 304 (2010) [Per J. Perez, First Division].

[99] RULES OF COURT, rule 65, sec. 1. See Bureau of Customs Employees Association v. Biazon, 925 Phil. 623, 629 (2022) [Per J. Rosario, En Banc], citing Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc., 802 Phil. 116, 167 (2016) [Per J. Brion, En Banc].

[100] 356 Phil. 811 (1998) [Per J. Regalado, En Banc].

[101] *Id.*

[102] *Id.*

[103] See *Malixi v. Baltazar*, 821 Phil. 423 (2017) [Per J. Leonen, Third Division] and *Heirs of Olarte v. Office of the President*, 499 Phil. 562 (2005) [Per J. Ynares-Santiago, First Division].

[104] *Rollo*, pp. 858-859.

[105] *Id.* at 293-294.

[106] *Id.* at 293.

[107] See *Lopez v. Saludo, Jr.*, 910 Phil. 600, 607 (2021) [Per J. Hernando, Second Division].

[108] See *Bureau of Customs v. CA*, 900 Phil. 11, 24 (2021) [Per J. Hernando, Third Division]. See also *DPWH v. City Advertising Ventures Corporation*, 799 Phil. 47, 63 (2016) [Per J. Leonen, Second Division].

[109] *Rollo*, p. 283.

[110] *Id.*

[111] Penalty Manual, secs. 4.7 to 4.11.

[112] 909 Phil. 138 (2021) [Per J. J. Lopez, En Banc].

[113] *Rollo*, p. 846.

[114] *Id.* at 144-145.

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