

**HANJIN HEAVY INDUSTRIES AND CONSTRUCTION CO., LTD.,
Petitioner, vs. DYNAMIC PLANNERS AND VELASCO, JR., and
CONSTRUCTION CORP., Respondent.**

G.R. Nos. 169408 & 170144. April 30, 2008

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-169408/>

VELASCO JR., J.:

Central to the dispute between petitioner Hanjin Heavy Industries and Construction Co., Ltd. (Hanjin), as contractor, and respondent Dynamic Planners and Construction Corporation (Dynamic), as subcontractor, is the Davao International Airport Project (Project). Hanjin seeks a reversal of the decision rendered by the Construction Industry Arbitration Commission (CIAC), as affirmed with modifications by the Court of Appeals (CA).

It is Hanjin's basic posture that Dynamic was in delay in the prosecution of, and eventually abandoned, the Project, prompting Hanjin to complete the same. Hanjin thus claims that Dynamic should not be entitled to the retention money and should instead be held liable for damages.

Dynamic denies having abandoned the Project, then nearing completion, some time in December 2002, but admits suspending work thereon on account of Hanjin's act of withholding the release of the down payment and the payment of its progress billing. Dynamic claims being entitled to the release of its retention money, to partial payment in foreign currency, and to payment for escalation costs.

The parties question certain items covered by the award, the corresponding amount due for each item, and the computations adopted first by the CIAC and then by the CA in arriving at a final award.

The Case

The instant Petitions for Review on Certiorari, both filed under Rule 45, arose from CIAC Case No. 07-2004 entitled Dynamic Planners & Construction Corporation v. Hanjin Heavy Industries & Construction Co., Ltd., a request for arbitration initiated by Dynamic before the CIAC. On September 7, 2004, the CIAC rendered a decision denominated as Final Award,[1] allowing and ordering payment of most of Dynamic's claims, albeit on lowered amounts. Therefrom, both parties appealed to the CA, Dynamic's appeal docketed as CA-G.R. SP No. 86641, while that of Hanjin's as CA-G.R. SP No. 86633. The separate appeals were eventually raffled to and resolved by different divisions of the CA.

On July 6, 2005, in CA-G.R. SP No. 86641, the CA rendered a Decision,[2] modifying the CIAC's decision, the modification favoring Dynamic. Hanjin's motion for reconsideration was denied by the CA per its Resolution dated August 31, 2005.[3] Hanjin thus filed the instant Petition for Review on Certiorari dated October 20, 2005 docketed as G.R. No. 169408, assailing the above CA decision and resolution.

Earlier, in CA-G.R. SP No. 86633, the CA issued a Decision dated January 28, 2005,[4] also modifying the CIAC Decision. Hanjin then sought reconsideration but the CA similarly denied the motion via a Resolution of October 14, 2005.[5] Hanjin then interposed a petition for review docketed as G.R. No. 170144, questioning the decision

and resolution of the CA.

The Facts

The facts, as found by the CIAC and the CA, are as follows:

On August 23, 1999, the Department of Transportation and Communications (DOTC) awarded to Hanjin the contract for the construction of the Project for the aggregate sum of PhP 1,701,353,495.92, 65% of which is payable in Philippine peso and the remaining 35% in US dollars at the stipulated exchange rate of PhP 34.10 to USD 1.[6] Thereafter, steps were taken and negotiations undertaken towards a sub-contracting arrangement between Hanjin and Dynamic.

On February 28, 2000, Hanjin and Dynamic executed a Subcontract Agreement over a 76.5% portion of the main contract for the price of PhP 924,670,819.[7] Among others, the subcontract contained provisions on down or advance payment and progress billing, the first item payable within 20 days from contract signing.[8] To note, progress billings represent claims for payment for works accomplished and materials delivered as construction progresses.

As drawn, the subcontract was a unit price, as distinguished from a lump sum, agreement. As such, the quantities specified therein and upon which the subcontract price was determined were provisional. Accordingly, after re-measuring and after determining actual quantities required for the works on the basis of changes in the specifications, the estimated quantities were substantially reduced. The reduction resulted in an adjustment of the subcontract price to PhP 714,868,129.[9]

As of January 2000, Dynamic already mobilized its equipment and manpower, albeit it has yet to receive a Notice to Proceed from Hanjin. This advance accommodating arrangement was made so that the mobilization would coincide with the Notice to Proceed that the DOTC issued to Hanjin. By March 2000, when it received a Notice to Proceed from Hanjin, Dynamic had already spent a tidy sum for mobilization purposes.

In a clear breach of the subcontract agreement which obligated Hanjin to give Dynamic an advance/down payment within 20 days from contract execution,[10] Hanjin paid Dynamic the stipulated down payment in 10 installments spread over a six-month period. Payments for Dynamic's progress billings likewise came late and also effected in installments, when the subcontract called for progress billing payment within seven working days from the payment by the client (DOTC) to the contractor (Hanjin).[11]

It may be stated at this stage that shortly after the subcontract signing, Dynamic secured a US dollar denominated loan from GRB Capital, Inc. (GRB) of California. As security for the loan, Dynamic agreed to assign its receivables from the Project to GRB, but Hanjin opposed the security arrangement on the ground that the assignment might interfere with Dynamic's performance.

Prior to the start of the construction works, Dynamic engaged the services of Gregorio E. Origenes, a structural engineer with 38-years experience behind him, to check on the designs of the Project. After examining the plans and specifications for the Project, Origenes found that "[t]he depth of the girder was undersigned [sic] considering the length of the beam and considering further that no post tensioning cables were provided; and [t]he framing system of the beams and girders was poorly designed."[12]

Dynamic called Hanjin's attention to such design deficiency. But upon the prodding of Hanjin which relied on a contrary assessment of the Davao Airport Consultants (DAC), Dynamic nonetheless proceeded with the construction as designed. The flawed design would later, however, manifest themselves by cracks appearing in the beams to the second floor slab in the Passenger Terminal Building. Initially, Hanjin considered such defects as

construction in nature attributable to Dynamic, not design defects. However, the Association of Structural Engineers of the Philippines, Task Force Davao International Airport, upon investigation, discovered no evidence of deviation from the design plans and specifications, and stated the opinion that there is a failure of structural design for some of the beams and girders of Passenger Terminal Buildings 1 and 2.[13]

To address the adverted design defect, Dynamic recommended post-tensioning. However, Hanjin balked at this recommendation. Eventually, Hanjin and the DAC approved the use of carbon fiber as post-tensioning material of the structures to be used by a new subcontractor, the Composite Technology Corporation.[14]

On December 31, 2000, the parties executed a modificatory Supplementary Agreement[15] in a bid to ensure the timely completion of the Project, with Hanjin assisting Dynamic in the scheduled works. Under this supplementary contract, Hanjin would, among other things, take over the responsibility for canvassing of quotations, procurement, and delivery of materials and installation works. Dynamic would still provide for temporary facilities, such as scaffoldings, formwork materials, and the like.[16]

As of April 2002, 89% of the Project had been finished. Hanjin would, however, inform Dynamic that no progress billing payment would be forthcoming after April 2002. As of that time, a total of 20 progress billings were submitted to Hanjin in the total amount of PhP 582,103,359.35, 10% of which, or over PhP 58.2 million, was retained by Hanjin.[17] By December 2002, when project works had reached a 94% completion level, Hanjin took over the Project for the reason of alleged abandonment.[18] Dynamic was thus impelled to demand payment from Hanjin for work done on the Project, which then went unheeded.

Such was the state of things when Dynamic submitted its claim against Hanjin for arbitration to the CIAC. In its Answer, Hanjin made counterclaims, such as costs of takeover, contractual negative balance, and damages.

At the CIAC, the parties entered into a Terms of Reference whereby the issues they raised were embodied, viz:

- Is Claimant [Dynamic] entitled to the release of its retention amounting to P58,210,336.00 when DOTC released to the Respondent [Hanjin] the retained amount of P89,492,594.56?
- Is Claimant entitled to its claim for payment of escalation cost and/or price adjustment amounting to P60,000,000.00?
- Is Claimant entitled to its claim for payment of a foreign currency adjustment in the amount of P160,688,069.00?
- Is Claimant entitled to its claim for payment of its work accomplishments valued at P27,790,675.00?
- Whether or not Claimant is entitled to claim payment at 40% mark-up of the following variation orders: (1) Variation Order amounting to P219,171,878.00 x 40% = P87,668,722.00; (2) Variation Order amounting to P60,923,533.00 x 40% = P24,369,413.20?
- Is Claimant entitled to its claim for payment for the installation of three systems of arrival carousel in the amount of P34,297,691.91?
- x x x x
- Is Claimant entitled to its claim for payment for interest computed at the rate of 12% per annum in the amount of P51,288,786.36?
- Was respondent guilty of bad faith and deceit in its dealings with the Claimant when (a) it released the down payment in installments; x x x (c) it delayed payment of progress billings; (d) it refused to release to the Claimant 35% of the foreign currency portion of its contract with DOTC; x x x (f) it overpriced the materials it purchased for the Claimant under the Supplementary Agreement between the parties, and claimed

reimbursement for materials for which it failed to produce supporting receipts and also claimed reimbursement for transporting materials from abroad using unreasonable and unacceptable method of transporting materials?

- Were there deductions from the work accomplishments of Claimant, which were unauthorized and undue? Did the Claimant abandon the works? If it did, is the Claimant liable to Respondent for additional expenses it incurred in completing the work in the aggregate amount of P107,459,925.51?

- Is Claimant liable for the claim x x x, for the cost of the supplies, materials and equipment, inclusive of taxes and customs duties, supplied by the Respondent x x x for the performance of the Subcontracted Works? If so, how much of this claim is Respondent entitled to x x x ?

- Was the Claimant (i) mismanaged, (ii) lacking in capacity to perform the Subcontracted Works, (iii) lacking in technical Know-how x x x (iv) lacking in expert engineers and qualified manpower x x x (v) financially incapable of accomplishing the Subcontracted Works x x x ?

- Did Claimant discover the deficiency in the structural design of the buildings to be constructed by it, namely: (i) the Passenger Terminal Building, (ii) the ATC-Administration Building, and (iii) the Central Plant Building? If so, did it call the attention of the Respondent to this deficiency? Did the Respondent instruct the Claimant to proceed with the construction of the shop drawings and the construction of the buildings? Did cracks occur in the concrete beams of the buildings causing the DOTC through its consultant to provide procedures for correction of the defects and determine their cause? x x x Who between Claimant and Respondent is liable for the cost of retrofitting the cracked slabs and beams?

- Is the Claimant liable for the claims of Respondent, described generally as "Contractual Negative Balance" x x x ?

- Is Claimant liable to Respondent for delay x x x ?

- Is the Claimant liable to the Respondent for x x x moral damages x x x and attorney's fees x x x ?

- Is Claimant entitled to its claim for payment of attorney's fees in the amount of P25,554,857.55?[19]

The following is a summary of the parties' claims and counterclaims submitted before the CIAC:

[DYNAMIC'S CLAIMS:]

Retention Money P

58,210,336.00

Escalation Cost/Price Adjustment

60,000,000.00

Foreign Currency Adjustment

60,688,069.00

Work Accomplishments

27,790,675.00

Variation Orders

53,119,284.73

Interest for Late Payments

51,288,786.36

Attorney's Fees

_____25,554,857.55

P

536,652,008.64

[HANJIN'S COUNTERCLAIMS:]

Contractual Negative Balance

P

121,273,314.00

Increase Manpower

81,486,997.00

Equipment

635,500.00

Electrical Consumption

419,939.16

Miscellaneous Materials

481,734.81

Liquidated Damages

12,600,000.00

Expenses for Preparation of Final Drawing

11,705,354.12

Miscellaneous Expenses of Claimant's Subcontractors

130,500.00

Moral Damages

1,000,000.00

Exemplary Damages

1,000,000.00

Attorney's Fees

_____2,000,000.00

P 232,733,339.51[20]

Thereafter, the CIAC issued a Final Award awarding the following amounts for the items as indicated:

The total credits to Dynamic are:

Adjusted Subcontract Price

P

1,028,932,282.36

Share in Profit in VOs

9,295,667.94

Materials Over-purchased

_____54,847,739.30

TOTAL

P

1,093,075,739.30

The total deductions are:

Payment, Progress Billings Nos. 1-20 P

582,103,359.35

Net Cost to Complete 368,578,828.92

Repayment Un-recouped

Advance Payment _____

_____16,398,419.74

TOTAL P _____

_____967,080,608.01

x x x x

BALANCE P

125,995,131.29[21]

Following the denial of Dynamic's Motion to Correct Award per the CIAC's Order of September 24, 2004,[22] both parties appealed to the CA.

The Rulings of the Court of Appeals

In CA-G.R. SP No. 86633, the CA rendered the first appealed Decision dated January 28, 2005, veritably affirming the factual findings of the CIAC, but nonetheless modified the latter's ruling insofar only as the award of attorney's fees, rate of interest imposable, and liability for arbitration fees were concerned. The fallo of the

January 28, 2005 CA Decision reads:

WHEREFORE, the assailed CIAC Final Award dated September 7, 2004 is MODIFIED and/or RECTIFIED as follows: (a) to order the parties to equally share the costs of arbitration conformably with Article 24 of their Subcontract Agreement; (b) to delete the award of attorney's fees in favor of respondent [Dynamic]; and, (c) to reduce the rate of interest imposable after the finality of the award from 15% to 12% per annum. The rest is AFFIRMED in toto.[23]

The CA would subsequently deny Hanjin's motion for reconsideration in its Resolution of October 14, 2005.

On the other hand, the appellate court's Decision dated July 6, 2005 in CA-G.R. SP No. 86641 dispositively reads:

Foregoing premises considered we vote to GRANT the instant petition. The Final Award dated September 7, 2004 in CIAC Case No. 07-2004 is hereby MODIFIED; the net award shall be computed as follows:

Original Subcontract Price

PhP

714,868,129.00

Foreign Currency Adjustment

131,338,674.80

Price Escalation

48,171,585.32

Variation Orders

_____156,786,932.62

Adjusted Subcontract Price

PhP

1,051,165,321.74

x x x x

Share in Profit in VOs

61,400,096.07

Materials Over-Purchased

_____54,847,789.94

Total

PhP

1,167,413,207.75

Less: Total Deductions

Progress Billings Nos. 1-20

net of retention money

523,893,023.35

Net Cost to Complete

368,578,828.92

Repayment, Unrecouped

Advance Payment

__16,398,419.74

908,870,252.01

Net Award

PhP

258,542,935.74

=====

=====

The net award in favor of petitioner Dynamic x x x shall be [PhP 258,542,935.74] plus attorney's fees of [PhP 500,000]. Respondent Hanjin x x x is hereby ordered to pay petitioner corporation the amount of [PhP 259,042,935.74]; plus interest at 12% per annum from the promulgation of the assailed Final Award on September 7, 2004, until paid. The cost of arbitration, however, should be equally borne by the parties in accordance with Article 24 of the Subcontract Agreement.

SO ORDERED.[24]

Upon motion for reconsideration filed by both parties, the CA recomputed and came up with a higher net award as set forth in its Resolution of August 31, 2005 in CA-G.R. SP No. 86641, disposing as follows:

Due to the complexity of the computations involved, We deem it wise to RESTATE Our Decision. The net award shall be recomputed as follows:

Original Subcontract Price

PhP

714,868,129.00

Foreign Currency Adjustment

131,338,674.80

Price Escalation

53,744,697.39

Variation Orders (VOs)

141,535,238.92

Adjusted Subcontract Price

PhP

1,041,486,740.11

Share in Profit in VOs

9,295,667.94

Materials Over-Purchased

54,847,789.94

Total

PhP

1,105,630,197.99

Less, Total Deductions

Progress Billings Nos. 1-20

net of retention money

523,893,023.35

Unadjusted Net Cost to Complete

470,183,498.41

Plus: Mech. Works (EFQ)

7,776,735.77

Less: Amount to be reimbursed

to [Dynamic]

(3,338,736.57)

Disallowed items

(93,983,040.38)

Additional disallowed

(8,381,856.00)

Overcharging of Materials for VOs

(104,208,856.26)

Amended Cost to Complete

271,386,481.54

Repayment, Un-recouped

Advance Payment

16,398,419.74

811,677,924.63

Net Award

PhP

293,952,273.36

=====

=====

The net award in favor of petitioner [Dynamic] shall be [PhP 293,952,273.36] plus attorney's fees of [PhP 500,000]. Respondent [Hanjin] is hereby ordered to pay petitioner x x x the amount of [PhP 293,952,273.36] plus interest at 12% per annum from the promulgation of the assailed Final Award on September 7, 2004, until paid. Hanjin is likewise ordered to release to [Dynamic] the retention money in the amount of PhP 58,210,336.00, plus interest at 12% per annum from the time the Request for Arbitration was filed with the CIAC on February 20, 2004, until fully paid. The cost of arbitration, however, should be equally borne by the parties in accordance with Article 24 of the Subcontract Agreement.

SO ORDERED.[25]

From the CA Decision in CA-G.R. SP No. 86633, Hanjin has come to this Court on a Petition for Review on Certiorari, the same docketed as G.R. No. 170144. And from the more adverse CA Resolution in CA-G.R. SP No. 86641, Hanjin also filed a similar petition, docketed as G.R. No. 169408.

In a Resolution dated February 28, 2007,[26] this Court consolidated the above cases.

The Issues

Hanjin raises identical issues in both of its petitions, to wit:

I

WHETHER A REVIEW OF THE INSTANT CASE BY WAY OF THE INSTANT PETITION FOR REVIEW IS WARRANTED

II

WHETHER THE [CA] ERRONEOUSLY READ INTO THE SUBCONTRACT AGREEMENT EXTRANEOUS AND CONTRACTUALLY INEXISTENT TERMS AND CONDITIONS TO LAMELY JUSTIFY ITS AWARD TO RESPONDENT DYNAMIC OF PAYMENT IN FOREIGN CURRENCY

III

WHETHER THE [CA'S] AWARD OF PRICE ESCALATION IN FAVOR OF RESPONDENT DYNAMIC IS WITH LEGAL BASIS

IV

WHETHER THE [CA'S] IMPOSITION OF CERTAIN ITEMS, PERCENTAGES AND AMOUNTS IN

RESPONDENT DYNAMIC'S CLAIM TO VARIATION ORDERS IS WITH LEGAL BASIS

V

WHETHER THE [CA] WAS LEGALLY JUSTIFIED IN ITS COMPUTATION WITH REGARD TO THE ITEMS ON COSTS TO COMPLETE IN FAVOR OF PETITIONER HANJIN

VI

WHETHER THE [CA] COMMITTED REVERSIBLE ERROR WHEN IT DISREGARDED THE EVIDENCE ESTABLISHED ON RECORD BY REWARDING RESPONDENT DYNAMIC PAYMENT OF RETENTION MONEY DESPITE ITS ABANDONMENT OF THE SUBCONTRACTED WORKS

VII

WHETHER PETITIONER HANJIN IS LEGALLY ENTITLED TO REIMBURSEMENT OF THE COST OF ATTORNEY'S FEES, MORAL AND EXEMPLARY DAMAGES

VIII

WHETHER THERE WAS LEGAL BASIS FOR THE [CA'S] RULING THAT RESPONDENT DYNAMIC IS ENTITLED TO INTEREST PAYMENT[27]

The Ruling of the Court

The Propriety of the Petitions for Review

Dynamic maintains that the issues Hanjin raised in its petitions are factual in nature and are, therefore, not proper subject of review under Section 1 of Rule 45, prescribing that a petition under the said rule, like the one at bench, "shall raise only questions of law which must be distinctly set forth."

Dynamic's contention is valid to point as, indeed, the matters raised by Hanjin are factual, revolving as they do on the entitlement of Dynamic to the awards granted and computed by the CIAC and the CA. Generally, this would be a question of fact that this Court would not delve upon. *Imperial v. Jaucian* suggests as much. There, the Court ruled that the computation of outstanding obligation is a question of fact:

Arguing that she had already fully paid the loan x x x, petitioner alleges that the two lower courts misappreciated the facts when they ruled that she still had an outstanding balance of P208,430.

This issue involves a question of fact. Such question exists when a doubt or difference arises as to the truth or the falsehood of alleged facts; and when there is need for a calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[28] (Emphasis supplied.)

The rule, however, precluding the Court from delving on the factual determinations of the CA, admits of several exceptions. In *Fuentes v. Court of Appeals*, we held that the findings of facts of the CA, which are generally deemed conclusive, may admit review by the Court in any of the following instances, among others:

- (1) when the factual findings of the [CA] and the trial court are contradictory;
- (2) when the findings are grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the [CA] from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) when there is grave abuse of discretion in the appreciation of facts;

- (5) when the [CA], in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) when the judgment of the [CA] is premised on a misapprehension of facts;
- (7) when the [CA] fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
- (8) when the findings of fact are themselves conflicting;
- (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and
- (10) when the findings of fact of the [CA] are premised on the absence of evidence but such findings are contradicted by the evidence on record.[29]

Significantly, jurisprudence teaches that mathematical computations as well as the propriety of the arbitral awards are factual determinations.[30] And just as significant is that the factual findings of the CIAC and CA--in each separate appealed decisions--practically dovetail with each other. The perceptible essential difference, at least insofar as the CIAC's Final Award and the CA Decision in CA-G.R. SP No. 86641 are concerned, rests merely on mathematical computations or adjustments of baseline amounts which the CIAC may have inadvertently utilized.

At any rate, the challenge hurled by Hanjin against the merits of the CA's findings, particularly those embodied in its Decision in CA-G.R. SP No. 86641, must fail, such findings being fully supported by, or deducible from, the evidence on record.

Issue of Payment in Foreign Currency

Hanjin argues that there is no provision in the subcontract agreement, as supplemented, for the partial payment of the contract price in foreign currency.

Hanjin is wrong, a peso-dollar payment mix being effectively contemplated in the subcontract. In construing a contract, the provisions thereof should not be read in isolation, but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved.[31] Thus, Article 1374 of the Civil Code provides that "the various stipulations of a contract shall be interpreted together attributing to the doubtful ones that sense which result from all of them taken jointly."

In other words, the stipulations in a contract and other contract documents should be interpreted together with the end in view of giving effect to all.[32] The CA, as did the CIAC, found the Hanjin-Dynamic Subcontract Agreement as including and incorporating the provisions of other agreements entered into by and between the parties respecting the Project. They appropriately cited Art. 1 of the Subcontract Agreement, stating:

ARTICLE 1. SUBCONTRACT DOCUMENTS

1.1) The following documents shall be deemed to form and be read and be construed as an integral part of the Subcontract Agreement in the same order of precedence as below:

a)

Subcontract Agreement No. DAV-2-Sub-A-OO 1

b)

Special Conditions as the Annex 1

- c) General Conditions of the Main Contract
- d) Technical Specifications of the Main Contract
- e) Tender Drawings
- f) Priced Bill of Quantities as the Annex 2.

1.2) The Subcontractor is deemed to have examined and fully understood the aforesaid Subcontract Agreement Documents.[33] (Emphasis supplied.)

It is abundantly clear from the emphasized portions of the aforequoted provision that the DOTC-Hanjin Main Contract forms as "an integral part of the Subcontract Agreement." It is settled that if the terms of a contract leave no doubt as to the parties' intention, the literal meaning of its stipulations should control.[34] The categorical finding of the CA, affirmatory of that of the CIAC, was that "the Subcontract is a back-to-back contract with Hanjin's contract with DOTC." Under the Main Contract, DOTC undertook to pay Hanjin 35% of the contract price in US dollars. Be that as it may, and on the postulate that the Main Contract is an integral part of the Subcontract Agreement, it behooves Hanjin to extend to Dynamic the same benefits otherwise accruing to Hanjin under the Main Contract. Apart from dollar payment, other benefits contemplated include the payment of price adjustment or escalation. An application of the "back-to-back" arrangement between Hanjin and Dynamic to the contrary would be tantamount to a construction against the terms of the Subcontract Agreement.

Before the CIAC, Hanjin argued that Dynamic's entitlement to a share in the foreign currency portion of the contract price is conditioned on the completion of the Project by April 2002.[35] The CIAC, however, correctly made short shrift of this argument, tagging the condition to be an impossible one and noting that Hanjin's very act of releasing advance payments to Dynamic in trickles, rather than in one full payment, as agreed upon, and delaying payments for approved progress billings ensured that Dynamic would not meet the April 2002 deadline. The CA, it bears to stress, echoed these CIAC findings, and stated the observation that Hanjin's actions not only delayed the Project, but also rendered its completion on the date imposed by Hanjin impossible. Hanjin, therefore, cannot plausibly fault and penalize Dynamic for not meeting the imposed deadline, the latter having in its favor Art. 1186 of the Civil Code, which says that "[t]he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment."

Given the above perspective, the condition imposed for Dynamic's entitlement to a share in Hanjin's foreign currency receipts is, for the nonce, deemed fulfilled. Accordingly, there is no legal obstacle to the award of a foreign currency adjustment to Dynamic. Furthermore, Hanjin's admission before the CIAC that Dynamic is entitled to a foreign currency portion of the subcontract price veritably placed Hanjin in estoppel from claiming otherwise. Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[36]

Issue of Computation of Foreign Currency Adjustment

As to the amount of foreign currency adjustment due Dynamic, the CIAC arrived at the figure PhP 131,338,674.80. The CA agreed with the CIAC's computation and the ratiocination therefor. We reproduce with approval what the CIAC wrote:

Dynamic's Subcontract Price of P714,868,129.00 is 76% of what Hanjin will derive from DOTC for the Subcontract Works. 35% of this amount represents the foreign currency portion of the Subcontract Price. This amounts to P250,203,845.00. At the exchange rate of Hanjin which is P34.10: US\$1, this amount of P250,203,845.00 is equivalent to US\$7,337,356.15. Converted again into its value in pesos at the time when the Subcontract was performed which ranged from P50.00 to P54.00 to US\$1, or an average rate of P52.00:

US\$1, its peso equivalent is P381,542,519.80. This is the rate used by Hanjin in charging Dynamic for the peso value of the importation of foreign materials. The difference between P381,542,519.80 and P250,203,845.00 is P131,338,674.80. We award to Dynamic as its share of the foreign currency portion of the Subcontract Price the amount of P131,338,674.80 which shall be added to the Subcontract Price.[37]

Issue of Applicable Exchange Rate

Hanjin questions the PhP 52: USD 1 exchange rate adopted by the CA and by the CIAC earlier, asserting that what is applicable is the PhP 34.10: USD 1 exchange rate, the same being stipulated in the DOTC-Hanjin Main Contract.

Hanjin's assertion may be accorded some cogency but for the fact that, as the CA and the CIAC found, Hanjin charged Dynamic for all the costs related to the importation of raw materials to be used in the Project at the average exchange rate of PhP 52.00: USD 1. And as the CA aptly observed, the "Subcontract called for the importation of a substantial amount of equipment and materials for the project." We need not belabor the iniquitousness of the lopsided formula foisted by Hanjin and the undue enrichment resulting therefrom.

Issue of Computation of Total Escalation

Hanjin assails the CA for failing to use the 52 formulas and price indexes from the National Statistics Office and the National Statistical Coordination Board in computing the escalation cost or price adjustment. Alternatively, it argues that if Dynamic is indeed entitled to any price escalation, then the applicable figure is 35% of price index only. Notably, Hanjin admitted before the CIAC that Dynamic is entitled to price escalation of PhP 25,938,545.94 for the local portion,[38] which amount the CIAC awarded to Dynamic. In view of such admission, Hanjin's arguments contesting the award for price escalation are puerile.

As against, however, the CIAC's computation of escalation cost which the CIAC predicated on works accomplished as of April 2002 and covered by the 20 progress billings, the Court is inclined to sustain the CA's computation of the price escalation as summarized in its Resolution of August 31, 2005 in CA-G.R. SP No. 86641, for the CA rightfully took into account Dynamic's accomplishment after April 2000 but before Hanjin took over the Project, thus:

x x x. In Our assailed Decision [of July 6, 2005], We granted [Dynamic] additional escalation as to the "local portion" i.e., on 65% of [Dynamic] billings based on the formula: [Dynamic] Billing multiplied by 65% of the said billing, multiplied by the percentage of the escalation. However, We computed escalation of the total amount of PhP 545,162,305.61 because the CIAC computed escalation up to this extent only. It appears that a total of twenty (20) progress billings have been submitted by [Dynamic] to Hanjin because it was advised that no payments were forthcoming for subsequent progress billings.

x x x x

This being the case, We have no recourse but to limit the award of escalation only up to the period covered by Progress Billing No. 20 or up to April 2002 as the value of all subsequent accomplishments remained undetermined. It appears however, that the total amount billed up to the time was PhP 582,103,359.35. We have computed escalation only up to the PhP 545,162,035.61 or short as to PhP 36,941,052.74. Applying the formula mentioned above, an additional [PhP 5,573,112.07] is due [Dynamic] as escalation computed: PhP 36,941,053.74 x 65% x 0.2321, over and above PhP 22,233,039.38, so that a total of [PhP 27,806,151.45] is due [Dynamic] as additional escalation over and above that computed by the CIAC.[39]

As it were, the records do not show that Hanjin presented any of the supposed 52 formulas and price indexes, the utilization of which would have resulted, so it claims, in a more exact price escalation figure. Hanjin did not adduce any evidence to provide legal support to its assertion that the price escalation portion to which Dynamic is

entitled to is 35% of the price index only. The Court agrees with the CA that, in computing price escalation, the allowable escalation is to be pegged on the local portion, that is, on 65% of the Dynamic billing multiplied by 100% price index, because Dynamic is entitled to both price adjustment and price escalation under the Subcontract Agreement.

As may be noted, the CA initially followed the baseline amount used by the CIAC in computing the amount of price escalation at PhP 545,162,305.61. However, after another look at the case, the CA found the CIAC to have erred in starting at the figure of PhP 582,103,359.35 as the baseline amount which, as earlier indicated, represented the total billing as of April 2002. Accordingly, the CA granted a total award of PhP 27,806,151.45 by adding the amount of PhP 5,573,112.07 to its previous award of PhP 22,233,039.38 to Dynamic based on the corrected computation. At bottom then, the CA merely corrected its own computation error, a process which it can undoubtedly do as long as jurisdiction over the matter has not been lost, as here.[40]

Issue of Computation of Variation Order

Hanjin also challenges the CA's computation of Dynamic's share in the profit in the Variation Orders (VOs). The CA, in its July 6, 2005 Decision in CA-G.R. SP No. 86641, found the amount of Dynamic's share in the VOs to be PhP 61,400,096.07, up from the PhP 9,295,667.94 awarded by the CIAC. On reconsideration, the CA returned to the original CIAC figure. Instead, in its August 31, 2005 Resolution, the appellate court deducted the whole amount of PhP 104,208,856.26 from Hanjin's Net Cost to Complete Claim. This amount represented the cost of materials with the overcharge component passed by Hanjin to Dynamic. The CA arrived at the figure of PhP 104,208,856.26 after a painstaking, itemized comparison of the items and amounts common in the Tables of Variance submitted by the parties in the two tables.

We see no reason to disturb the CA's findings which appear to be supported by the evidence on record. The computation of awards is, to stress, purely factual which the Court, not being a trier of facts, need not evaluate and analyze all over again.

On another point, Hanjin argues that the original contract price on the items subject to VOs should be added to the DOTC-approved amount for the same items. And from this sum total should be deducted the amount representing what the CA considered as overcharging Hanjin passed onto Dynamic. According to Hanjin, the amount it was charging Dynamic represents the actual cost of work done on the items subject to VOs. Hanjin's posture would necessarily diminish the amount allegedly overcharged by Hanjin to Dynamic.

The Court is not convinced. At the outset, we find Hanjin's presentation of a partial list[41] in its Memorandum of the items each party is charging the other quite disturbing. As the petitioner in this case, Hanjin is charged with the burden of establishing the grave error allegedly committed by the CA in its computation of the overcharged amount. Its failure to provide a complete and clear computation of what it considers as the correct one militates against the supposed merit of its argument.

Hanjin's own annexes to its Petition indicate the deleted items from the original subcontract price of PhP 924,670,819, as follows:

Original Subcontract Price

PhP 924,670,819.00

Deleted after re-measurement

PhP 118,338,206.31

Deleted due change of

specifications subject to VOs

91,464,481.64

209,802,687.95

PhP 714,868,129.05[42]

=====

Also pertinent is a list of VOs[43] approved by the DOTC with an aggregate amount of PhP 37,326,381.54,[44] corresponding to the same items previously deleted, as shown above, amounting to PhP 91,464,481.64.

Hanjin presently asks the Court to add the original subcontract price of the items subject to VOs, that is, PhP 91,464,481.64, to the DOTC- approved amount for the corresponding VOs in the amount of PhP 37,326,381.54, the sum of which to be deducted from the amount of PhP 141,535,238.92[45] which Hanjin is charging Dynamic to arrive at the amount of the overcharge.

Hanjin knows fully well that the amount of PhP 91,464,481.64 covers items deleted from the contract price by reason of the VOs. Such deleted items lowered the original aggregate subcontract price from PhP 924,670,819 to PhP 714,868,129. The amount of PhP 91,464,481.64, representing items already deleted by reason of VOs, has been superseded by the succeeding changes in specifications which the DOTC approved in the amount of PhP 37,326,381.54. Hence, only the amount approved by the DOTC for the items actually installed should be the subject of computation. The amounts representing items already deleted should necessarily be excluded from the computation.

From the foregoing consideration, it is unreasonable for Hanjin to charge Dynamic the amount of PhP 141,535,238.92 for the items subject to VOs when DOTC actually approved only PhP 37,326,381.54 for the same items. And lest it be overlooked, Dynamic was credited only the amount approved by DOTC at PhP 37,326,381.54 of the subject VOs. To charge Dynamic more than the approved amount for the VOs would result in an overcharging on the part of Hanjin.

Issue on Computation of Hanjin's Net Cost to Complete

As regards the issue of disallowed deductions from Hanjin's Net Cost to Complete, the CA, in its underlying decision in CA-G.R. SP No. 86641, included the amount of PhP 8,558,652.78 and PhP 1,257,417.30, being not properly receipted, as additional disallowed deductions to the CIAC's figure of PhP 84,166,970.47[46] or a total disallowable deduction of PhP 93,983,040.38.[47] We agree and thus affirm the CA's holding that when expenses or offered deductions are not properly documented, such deductions should not be allowed, such deductions being in the nature of actual damages. To be recoverable, actual damages must be pleaded and adequately proven in court. An award thereof cannot be predicated on flimsy, remote, speculative, and insubstantial proof.[48] Again, we see no reason to deviate from the CA's findings on the matter of how much Hanjin expended to complete the Project.

To be sure, the Court cannot close its eyes to the consistent findings of the appellate court, affirmatory of that of the CIAC, that Hanjin padded expenses chargeable against Dynamic. Consider the following apt observations of the CIAC on the computation of deductions Hanjin charged Dynamic under "Net Cost to Complete":

The Dynamic Summary is divided into two parts: The first part covered all purchases, payments to subcontractors and all expenses deducted from Dynamic's progress billings nos. 1 to 20. We reviewed the Dynamic Summary to ascertain the expenses that are questioned. We assume that those not questioned are admitted to be proper expenses and are deductible from the [adjusted subcontract price]. We agree with

Dynamic that we should disallow certain items for the following reasons:

- The expense is outside the scope of work of Dynamic;
- The expense relates to an item that is subject to a prior deduction; in other words, in the cases of double deduction.
- The expense is undocumented.

We came across a substantial number of imported items where there was a material variance between the value of an imported item as reflected in a Customs declaration and the value reflected in private documents. The value reflected in the Bureau of Customs declaration is less, in some cases, substantially less than that reflected in other documents. We chose to rely on the value in the Bureau of Customs declaration. First, because it is a public document. Second, because if the case is one in which Hanjin undervalued the imported goods, which is a criminal act, we will not allow it to profit from its own wrong.[49]

Issue of Dynamic's Abandonment of Work

Hanjin claims as being entitled to other costs which it incurred when Dynamic later abandoned the subcontracted works in December 2002. Both the issues of "other costs" and "abandonment" are factual matters settled in the proceedings below. The CIAC findings argue against the notion of abandonment on the part of Dynamic. Wrote the CIAC:

Even if it were true, as argued by Hanjin, that there were other aspects of the work that could have been aggressively pursued by Dynamic, it could have given the guarantee requested by Dynamic that it will be paid even if DOTC does not in turn pay Hanjin for the same work. Moreover, the admission by Hanjin that after the April 2002 progress billings, it did not pay Dynamic for work it had accomplished, in our view, provides sufficient legal justification for not continuing with the work. Article 1169 [of the] Civil Code, invoked by Dynamic provides:

ART. 1169. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills the obligation, delay by the other begins.

Under the Subcontract, Dynamic agreed to perform the Subcontract Works in consideration for which Hanjin agreed to pay Dynamic the stipulated Subcontract Price in accordance with the terms and conditions of the Subcontract. The payment for performing the Subcontract Works consisted of an advance payment exclusively to cover the costs of mobilization and monthly progress payments within seven (7) days after DOTC pays Hanjin. [Hanjin has not argued] that DOTC was remiss in the payment of Hanjin's progress billings. Clearly, therefore, there was failure on the part of Hanjin to comply with its obligation to pay Dynamic. Thus, we hold that x x x Dynamic did not abandon the Works. As will be shown later, Dynamic was squeezed out of the Subcontract and was rendered by Hanjin incapable of performing its obligations therein. Under Article 1186 of the Civil Code, "The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment." [50] (Emphasis supplied.)

In its Resolution dated August 31, 2005, the CA sustained the CIAC's finding on non-abandonment, as follows:

[T]he CIAC found that [Dynamic] did not abandon the subcontract works, but that it was squeezed out of the Subcontract and was rendered by Hanjin incapable of performing the obligations therein. It found certain circumstances to justify the suspension of work by [Dynamic], to wit: that [Dynamic] was forced to de-mobilize because it was not being paid for work undertaken; that the issue of retrofitting had not been resolved; and that the manner of retrofitting still had to be decided upon. Despite the same, [Dynamic] continued with the work not affecting the retrofitting work, but Hanjin terminated the Subcontract. The CIAC

thus held that Hanjin, the obligor, in voluntarily preventing the fulfillment by [Dynamic], the obligee, of its obligation, the condition was deemed fulfilled.[51]

It cannot be overemphasized that conclusions arrived at on factual issues by the CIAC, when affirmed by the CA, are accorded great respect and even finality, if supported by substantial evidence.[52] In the instant case, both the CIAC and the CA found more than ample evidence to support Dynamic's disclaimer of having abandoned the Project.

The Court concurs with the parallel findings of the CIAC and the CA on the issue of abandonment. Indeed, Hanjin, by its unjustifiable and unfair actions, veritably forced Dynamic out of the Project at a time when the subcontract works were already 94% complete. In net effect, Hanjin accepted the benefits arising from the subcontract agreement without as much as asking Dynamic to finish its part of the bargain. Under Art. 1235 of the Civil Code, the obligation is deemed fully complied with when an obligee accepts the performance thereof knowing its incompleteness or irregularity, and without expressing any protest or objection. An obligee is deemed to have waived strict compliance by an obligor with an obligation when the following elements are present: (1) an intentional acceptance of the defective or incomplete performance; (2) with actual knowledge of the incompleteness or defect; and (3) under circumstances that would indicate an intention to consider the performance as complete and renounce any claim arising from the defect.[53]

These elements obtain in the instant case. At the time it "booted out" Dynamic from the Project, Hanjin knew that the subcontract works were not yet complete. In fact, there were unresolved matters involving structural design deficiencies and the methods to be used in the retrofitting of the cracked slabs and beams in the Passenger Terminal Building. Hanjin served notice that it will not pay the progress billings for works done after April 2000. In December 2002, it refused entry to Dynamic's workers at the project site. Hanjin took all these actions without demanding that Dynamic finish its contractual undertaking. By operation of law, Hanjin is thus deemed to have waived its right to claim any payment for expenses it incurred in completing the unfinished six percent of the work. No reversible error can thus be attributed to the CA in refusing to allow additional completion costs to Hanjin.

Issue of Dynamic's Entitlement to Retention Money

Hanjin, as stated at the outset, refused to release Dynamic's retention money on the ground of abandonment and non-completion of the Project. Arts. 6.2, 7, and 8.3 of the Subcontract Agreement, relating to the matter on retention money, respectively read, as follows:

6.2) Monthly progress billing calculated on the basis of actual works measured and sixty percent (60%) of the material costs of the delivered goods according to the Bill of quantities, x x x shall be paid with deductions of advance payment stipulated in Article 6.1 and ten percent (10%) of billing amount as the retention money stipulated in Article 7.1 for the period covered. Monthly progress billing[s] shall be paid by the Contractor and to the Subcontractor within seven (7) working days after the Client pays the Contractor.

x x x x

ARTICLE 7. RETENTION

7.1) The retention money, ten percent (10%) of every progress billing with cumulative amount not exceeding ten percent (10%) of the Subcontract Price shall be deducted therefrom in order to secure the remedy of defects.

7.2) Fifty percent (50%) of the retention money shall be released to the Subcontractor immediately after the Contractor issues the "Taking Over Certificate" to the Subcontractor and against presentation of Warranty

Bond x x x valid for the duration of the Defects Liability Period specified in Article 8.

The other fifty percent (50%) retention shall be released pro rata, if no defects have been found, after the Client releases retention money to the Contractor, after the Subcontractor issues a Clearance Certificate to the Contractor attesting that the Contractor is free from all liens and encumbrances in relation to the Subcontract Works and after the Subcontractor submits an acceptable Warranty Bond to the Contractor which is valid until the defects liability period of the Main Contract plus 2 months.

x x x x

8.3) Defects Liability Period shall be three hundred sixty-five (365) days from the date of issuance of the Taking Over Certificate. Within this period, the Subcontractor shall repair and make good all defects in the Subcontract Works at his own cost x x x. The Subcontractor shall assume full and sole responsibility for the removal, repair and replacement of any defective or non- conforming works.[54] x x x

The retention money, as described above, is intended to ensure defect and deficiency-free work as evidenced by the contractor's issuance of a Take Over Certificate. Hanjin, as contractor, never issued this key document to Dynamic. Instead, it discharged Dynamic from the 94%-done Project rendering the issuance of such certificate a virtual impossibility. On June 1, 2003, the DOTC issued a Take Over Certificate to Hanjin and released the latter's retention money under the Main Contract. But even earlier, the DOTC released Hanjin's retention money covering the period February 2000 to December 2001, a development which would have obligated Hanjin to release the corresponding Dynamic's retention money for the same period. But instead of paying, Hanjin held onto Dynamic's retention money. Worse still, Hanjin willfully and in apparent bad faith took over the unfinished work of Dynamic. To us, and to CIAC and the CA earlier, Hanjin in effect waived any and all of its rights to hold Dynamic liable for any defects, deficiencies, or unfinished work. Consequently, there is no legal basis for Hanjin to further withhold payment of Dynamic's retention money.

Issue of Entitlement to Moral and Exemplary Damages

Hanjin's ascription of bad faith and gross negligence on the part of Dynamic, as basis for its claim of attorney's fees against the latter, has nothing to commend itself for concurrence. In fact, both the CIAC and CA are one in saying that it was Hanjin which acted in bad faith in its contractual relation with Dynamic. The CIAC, in awarding attorney's fees to Dynamic, categorically stated:

On the basis of the evidence before us, we do not find any basis to hold Dynamic liable to Hanjin for x x x damages and attorney's fees. On the other hand, on the basis of our finding that Hanjin acted in bad faith and had persistently acted in a manner that we interpret as attempts to squeeze out Dynamic from the Subcontract, and for attempting to pass on to Dynamic a part of the cost of retrofitting when, it is clear from the evidence, it was free from fault, and all the difficulties encountered by Dynamic in trying to enforce its rights under the Subcontract, we should find Hanjin liable to pay Dynamic exemplary damages but we cannot award exemplary damages as they are not part of the claim of Dynamic. x x x We, however, award attorney's fees of P500,000.00.[55]

Issue of Entitlement to Attorney's Fees

The Subcontract Agreement, as supplemented, is silent as to payment of attorney's fees. The applicable law, Art. 2208 of the Civil Code, must thus govern any award thereof. It reads:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

x x x x

2) When the defendant's acts or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect its interest;

x x x x

5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

x x x x

11) In any case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

An award of attorney's fees being the exception,[56] some compelling legal reason must obtain to bring the case within the exception and justify such award. In the case at bench, there is a categorical finding by the CIAC and CA that Hanjin's refusal to satisfy Dynamic's just claims amounted to gross and evident bad faith. This to us presents the justifying ingredient for the award of attorney's fees. Accordingly, we affirm the award of attorney's fees in CA-G.R. SP No. 86641 to Dynamic in the amount of PhP 500,000.

Issue of Computation of Interest

The Court of Appeals Erred in Its Award of Interest Payment

In its appealed Resolution of August 31, 2005, the CA decreed that:

[Hanjin] x x x is hereby ordered to pay [Dynamic] the amount of [PhP 293,952,273.36]; plus interest at 12% per annum from the promulgation of the assailed Final Award on September 7, 2004, until paid. Hanjin is likewise ordered to release to [Dynamic] the retention money in the amount of PhP 58,210,336.00, plus interest at 12% per annum from the time the Request for Arbitration was filed with the CIAC on February 20, 2004, until fully paid.[57] x x x

In the landmark case of *Eastern Shipping Lines v. Court of Appeals*, the Court summarized the rules on interest award, as follows:

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

- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

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

- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such

finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[58]

The contract under consideration does not partake of a loan or forbearance of money; it is a construction contract. Thus, the matter of interest award proceeding from the dispute would fall under the second paragraph of the above-quoted decision.

The reckoning point in the determination of the period of application of the six percent interest is from the time extrajudicial demand is made. In the instant case, the Terms of Reference submitted before the CIAC shows that, in a letter dated November 20, 2003, Dynamic served notice that should Hanjin fail to pay the former's claims, the case shall be submitted for arbitration. Thus, the six percent interest due shall start to run from November 20, 2003 until the award becomes final and executory. Only then will the 12% interest referred to in the aforequoted third paragraph of Eastern Shipping Lines start to run until the same is paid.

WHEREFORE, the CA Decision dated July 6, 2005, as modified by the Resolution dated August 31, 2005, both rendered in CA-G.R. SP No. 86641, are hereby AFFIRMED with the MODIFICATION that the interest to be imposed on the sum total of the net award (PhP 293,952,273.36) and retention money (PhP 58,210,336) awarded to Dynamic shall be six percent (6%) interest per annum, reckoned from November 20, 2003 until the total award becomes final and executory. A yearly interest of twelve percent (12%) on the total amount adjudged by the CIAC, as modified in the CA Resolution and further modified by this Decision, as due to Dynamic, shall be assessed against Hanjin, computed from the finality of the CIAC Final Award, as thus modified, until the final satisfaction thereof.

Insofar as they are inconsistent with this Decision, the CA Decision dated January 28, 2005 and Resolution dated October 14, 2005 in CA-G.R. SP No. 86633 are MODIFIED accordingly.

The petitions of Hanjin are PARTIALLY GRANTED in a sense as above discussed.

Costs against Hanjin.

SO ORDERED.

Quisumbing, Carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo (G.R. No. 169408), pp. 217-264.

[2] Id. at 130-152. Penned by Presiding Justice Romeo A. Brawner (Chairperson) and concurred in by Associate Justices Edgardo P. Cruz and Jose C. Mendoza.

[3] Id. at 153-166.

[4] Rollo (G.R. No. 170144), pp. 95-120. Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Portia Aliño-Hormachuelos (Chairperson) and Aurora Santiago-Lagman.

[5] Id. at 122-126.

[6] Rollo (G.R. No. 169408), pp. 131, 229.

[7] Id. at 131, 223.

[8] Id. at 320-409.

[9] Id. at 223.

- [10] Id. at 235.
- [11] Id. at 239-240.
- [12] Id. at 243-244.
- [13] Id. at 244-246.
- [14] Id. at 247.
- [15] Id. at 410-418.
- [16] Id. at 223.
- [17] Id. at 133.
- [18] Id. at 132.
- [19] Id. at 218-219.
- [20] Id. at 219-220.
- [21] Supra note 1, at 262.
- [22] Rollo (G.R. No. 169408), pp. 273-274.
- [23] Supra note 4, at 119.
- [24] Supra note 2, at 150-151.
- [25] Supra note 3, at 165-166.
- [26] Rollo (G.R. No. 170144), p. 1166.
- [27] Rollo (G.R. No. 169408), pp. 1446-1447.
- [28] G.R. No. 149004, April 14, 2004, 427 SCRA 517, 523-524.
- [29] G.R. No. 109849, February 26, 1997, 268 SCRA 703, 709.
- [30] Megaworld Globus Asia, Inc. v. DSM Construction and Development Corporation, G.R. No. 153310, March 2, 2004, 424 SCRA 179.
- [31] Bangko Sentral ng Pilipinas v. Santamaria, G.R. No. 139885, January 13, 2003, 395 SCRA 84.
- [32] Layug v. Intermediate Appellate Court, No. L-75364, November 23, 1988, 167 SCRA 627.
- [33] Rollo (G.R. No. 169408), p. 321.
- [34] Civil Code, Art. 1370; See Baylon v. Court of Appeals, G.R. No. 109941, August 17, 1999, 312 SCRA 502.
- [35] Rollo (G.R. No. 169408), p. 228.
- [36] Cortez v. Court of Appeals, G.R. No. 121772, January 13, 2003, 395 SCRA 33.
- [37] Supra note 1, at 229.
- [38] Rollo (G.R. No. 169408), p. 229.
- [39] Supra note 3, at 157-158.

- [40] Balayon, Jr. v. Ocampo, A.M. No. MTJ-91-619, January 29, 1993, 218 SCRA 13.
- [41] Rollo (G.R. No. 169408), p. 1528.
- [42] Id. at 479-484.
- [43] Id. at 471-472.
- [44] Id. at 145.
- [45] Id.
- [46] Id. at 260.
- [47] Id. at 142.
- [48] Spouses Renato S. Ong and Francia N. Ong v. Court of Appeals, Inland Trailways, Inc. and Pantranco Service Enterprises, Inc., G.R. No. 117103, January 21, 1999, 301 SCRA 387.
- [49] Supra note 1, at 257-258.
- [50] Rollo (G.R. No. 169408), p. 253.
- [51] Supra note 3, at 156.
- [52] Philrock, Inc. v. Construction Industry Arbitration Commission, G.R. Nos. 132848-49, June 25, 2001, 359 SCRA 632.
- [53] 4 Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 278 (1991).
- [54] Rollo (G.R. No. 169408), pp. 325-327.
- [55] Supra note 1, at 263.
- [56] Padilla v. Court of Appeals, G.R. No. 119707, November 29, 2001, 371 SCRA 27.
- [57] Supra note 3, at 166.
- [58] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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