

SHANGRI-LA PROPERTIES, INC. (NOW KNOWN AS SHANGRI-LA PROPERTIES, INC.), PETITIONER, VS. BF CORPORATION, RESPONDENT.

G.R. Nos. 187552-53. October 15, 2019

Ponente: BERSAMIN, C.J.

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BERSAMIN, C.J.:

As a rule, the factual findings of the arbitrators of the Construction Industry Arbitration Commission (CIAC), being final and conclusive, are not reviewable by this Court on appeal. But the rule admits of several exceptions, such as when the findings of the Court of Appeals (CA) are contrary to those made by the arbitrators.[1]

The Case

Before the Court are the consolidated appeals of Shangri-la Properties, Inc. (SLPI) and BF Corporation (BFC) to separately assail the decision promulgated on August 12, 2008[2] and the resolution promulgated on April 16, 2009,[3] whereby the CA partially modified the award of the Arbitral Tribunal composed of Engr. Eliseo Evangelista, Ms. Alicia Tiongson and Atty. Mario Eugenio Lim (Arbitral Tribunal) in connection with their dispute arising from their construction agreement.

This Court finds no reason to disturb the factual findings of the CIAC arbitrators as affirmed by the CA for being supported by the evidence on record. However, the Court proceeds to review the modifications of the arbitral award made by the CA.

Antecedents

The CA summarized the procedural and factual antecedents, as follows:

The present controversy originated from the agreement of Shangri-la Properties, Inc. (SLPI) and BF Corporation (BFC) for the execution of the builder's work for Phases I and II, and the Car Parking Structure (Carpark) of the EDSA Plaza Project (Project) in Mandaluyong City, embodied in the parties' contract documents. SLPI was the project owner and BFC was the trade contractor. BFC sued SLPI and the members of the latter's board of directors (Alfredo C. Ramos, Rufo B. Colayco, Antonio B. Olbes, Gerardo O. Lanuza Jr., Maximo G. Licaucio III and Benjamin C. Ramos) for the collection of P228,630,807.80. The case was docketed as Civil Case No. 63400 in the Regional Trial Court of Pasig City (Branch 157). The proceedings before the trial court was stayed by this court, as affirmed by the Supreme Court, until termination of an arbitration proceeding as required in their contract.

BFC filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC), but the same was eventually dismissed, without prejudice, on the ground that the arbitration between BFC and SLPI must be undertaken in accordance with Republic Act No. 876. Subsequently, the trial court revived the case and directed the parties to proceed with the arbitration proceeding in accordance with R.A. No. 876. Engr. Eliseo Evangelista, Ms. Alicia Tiongson and Atty. Mario Eugenio Lim were tasked to resolve the controversy as members of the Arbitral Tribunal. The issues submitted for the resolution of the Arbitral Tribunal include:

1.

Is Plaintiff [BFC] entitled to its claim for damage and repair? If so, how much?

1.1

Is the claim for fire damage and repairs of BF Corporation already settled under the Release and Discharge Agreement (Exhibit C-10) dated 23 May 1991?

1.2

Is the claim for fire damage and repairs of Plaintiff an arbitral issue?

1.3

Was SLPI actually paid the insurance amount?

2.

Is Plaintiff entitled to its claim for the following damages?

2.1

Unpaid Progress Billings? If so, how much?

2.2

Unpaid Change Orders? If so, how much?

2.3

Fixed and provisional attendances? If so, how much?

2.4

Damages by nominated sub-contractors? If so, how much?

2.5

Retention money? If so, how much?

2.6

Other damages? If so, how much?

3.

Is Plaintiff entitled to its claim for legal interest? If so, how much?

4.

Is Defendant SLPI entitled to its counterclaim for liquidated damages under the Construction Agreements (Exhibits C-13 and C-14)?

4.1

Did Plaintiff incur delays in completion of works for such projects?

4.2

Is Plaintiff entitled to time extensions?

5.

Is Defendant SLPI entitled to its counterclaim for other damages in the amount of P 4 million plus legal interest?

6.

Are the individual defendants entitled to their counterclaims against Plaintiff? If so, how much?

6.1

Are the individual defendants jointly and severally liable with SLPI for the claims of the Plaintiff?

7.

Which among the parties is entitled to attorney's fees and if so, how much?

8.

Which among the parties shall bear the cost of arbitration?

After weighing the evidence on hand, the Arbitral Tribunal arrived at its assailed decision and made the following award:

WHEREFORE, in light of the foregoing discussions, judgment is hereby rendered awarding the Parties of their various claims as follows:

AWARD To Plaintiff BF Corporation (BFC):

1.

Award in issue no. 2.1 for BFC's unpaid progress billing for Contract Bills and Change Orders

.....

P11,709, 468.13

2.

Award in issue no. 2.2 for accomplished but unpaid Change Orders

.....

6,201,278.50

3.

Award in issue no. 2.3. for unpaid Fixed and Provisional attendances provided by BFC

.....

4,351, 874.23

4.

Award in issue no. 2.4 for damages by SLPI's Nominated sub-contractor

.....

381,000.19

5.

Award in issue no. 2.5 for compensatory damages consisting of retention money

.....

10,422,356.21

6.

Award in issue no. 3 for legal interest in the amount of

.....

12,382,710.73

7.

Arbitration Costs

.....

1,457,290.80

Total

.....

P46,905,978.79

AWARD to Defendant Shangri-La Properties, Inc. (SLPI):

1.

Liquidated damages in Issue no. 4.1

.....

P7,590,000.00

2.

Other counterclaims in Issue no. 5

.....

540,315.10

3.

Arbitration Costs

.....

257,168.96

Total

.....

P8,387,484.06

NET AWARD TO BFC

.....

P38,518,494.73

After offsetting the respective awards to the parties, Defendant Shangri-La Properties, Inc. (SLPI) is hereby ordered by this Tribunal to pay Plaintiff BF Corporation (BFC) a net amount of Thirty Eight Million Five Hundred Eighteen Thousand Four Hundred Ninety Four & 73/100 (P38,518,494.73) Pesos plus legal interest at the rate of Six (6%) Percent per annum beginning from the date of this Decision (July 31 2007) until Decision becomes final and executory, and the rate to be increased to Twelve (12%) Percent per annum from the date the herein Decision becomes final and executory until fully paid.

SO ORDERED.[4]

Ruling of the Arbitral Tribunal

In the ruling of the Arbitral Tribunal,[5] the varying claims of both parties were partially upheld, with BFC being awarded P46,905,978.79 and SLPI P8,387,484.06. Offsetting, the Arbitral Tribunal ordered SLPI to pay BFC the final net award of P38,518,494.73 plus legal interest.[6]

The Arbitral Tribunal discussed each issue, starting with those on the fire damage and repairs. It denied BFC's claims for fire damage and repairs because the agreement only allowed BFC to recover said claims from fire insurance proceeds. It explained that BFC could not recover upon its claim because there was no clear and convincing proof showing that SLPI had actually collected any insurance proceeds arising from the fire.[7]

As for BFC's claims for unpaid progress billings, the Arbitral Tribunal segregated the claims into two types, namely: of the first type were the billings for the original scope of work under the agreement (contract bills), and of the second were the billings for unpaid variation orders.[8] The Arbitral Tribunal ruled that BFC was entitled to the payment of the contract bills for having completed the original scope of work by finishing construction of

Phase I, Phase II, and the Carpark of the Project,[9] but allowed only P1,745,116.07 for the contract bills due to the absence of SLPI's conformity and in view of the discrepancies in BFC's computation.[10] As to the second type, the Arbitral Tribunal concluded that SLPI had given the required written authorization for the performance of the works,[11] and allotted P9,513,987.91 to BFC;[12] hence, it granted P11,709,468.13 for the unpaid progress billings (inclusive of 4% VAT).[13]

For the unpaid change orders not included in the progress billings, the Arbitral Tribunal held that there was written authorization from SLPI;[14] hence, it granted P6,201,278.50 to BFC for the change orders shown to have SLPI's written authorization.[15]

The Arbitral Tribunal upheld BFC's claims for fixed and provisional attendances amounting to P4,351,874.23 considering that such claims were provided for under the parties' agreement. [16]

The Arbitral Tribunal partially upheld BFC's claim for damages amounting to P381,000.19 caused by SLPI's nominated sub-contractors because the parties had agreed that damages caused by nominated sub-contractors would be charged by SLPI to the concerned nominated sub-contractor, and thereafter credited by SLPI to BFC.[17]

As for BFC's claim for retention money, the Arbitral Tribunal awarded P10,422,356.21 because the parties' agreement clearly provided for the release of the retention money. Moreover, SLPI admitted that there was basis for the claim and agreed to return said amount to BFC.[18]

On the other hand, SLPI was awarded P7,590,000.00 in liquidated damages for the delays incurred in finishing phases I and II of the Project.[19] In addition, SLPI was partially awarded on its other counterclaims worth P540,315.10 for costs incurred to correct and/or repair the defective works of BFC.[20]

Finally, the Arbitral Tribunal ruled that both parties were liable for the arbitration costs divided pro rata. As such, SLPI was ordered to pay P257,168.96 while BFC was ordered to pay P1,457,290.80 representing arbitration costs shared in proportion to their respective awards.[21]

Decision of the CA

Dissatisfied, SLPI and BFC separately appealed to the CA (respectively docketed as C.A.-G.R. No 100179 and C.A.-G.R. No. 100272).

On August 12, 2008, the CA promulgated the assailed decision partially granting the consolidated petitions.[22]

The CA affirmed the Arbitral Tribunal's ruling on the following matters, namely: (1) the denial of BFC's reimbursement for fire damage repairs for failure to prove that SLPI received fire insurance proceeds;[23] (2) BFC's award consisting of fixed and provisional attendances;[24] (3) BFC's award of compensatory damages consisting of the retention money;[25] and (4) SLPI's award of other counterclaims.[26]

The CA modified the following awards, as follows: (1) increased BFC's award of unpaid progress billings based on the original scope of work; (2) reduced BFC's award of unpaid progress billings on variation orders; (3) reduced BFC's award for the legal interest due on the works on variation orders and the retention money; (4) modified the arbitration costs to be shouldered equally by SLPI and BFC; (5) deleted BFC's award for damages caused by SLPI's nominal sub-contractors; and (6) reduced SLPI's award of liquidated damages.[27]

The CA disposed thusly:

WHEREFORE, the consolidated petitions are hereby PARTIALLY GRANTED. The 31 July 2007 decision of the Arbitral Tribunal is hereby MODIFIED as follows:

A. Award to BFC:

1. Unpaid progress billings based on the original scope of work in the amount of P24,497,555.91, as increased accordingly;
2. Unpaid progress billing on the works on variation orders in the amount of P325,209.74, as reduced accordingly;
3. Unpaid fixed and provisional attendances in the amount of P4,351,874.23, as awarded by the Arbitral Tribunal;
4. Compensatory damages consisting of the retention money amounting to P10,422,356.21, as awarded by the Arbitral Tribunal
5. Legal interest due on the unpaid progress billings on the works on variation orders and the retention money, in the amount of P9,054,824.31; and
6. Arbitration costs in the amount of P857,229.88, as reduced accordingly.

The award of P381,000.19 representing damages caused by the other contractors to BFC, is deleted.

B. Award to SLPI:

1. Liquidated damages in the amount of P780,000.00, as reduced accordingly;
2. Other counterclaims in the amount of P540,315.10, as awarded by the Arbitral Tribunal; and
3. Arbitration costs in the amount of P857,229.88, as increased accordingly.

Offsetting the respective awards to BFC and SLPI leaves the amount of Forty Seven Million Three Hundred Thirty One Thousand Five Hundred Five Pesos and Thirty Cents (P47,331,505.30). Shangri-la Properties, Inc. (now known as Shang Properties, Inc.) is directed to pay BF Corporation the amount of P47,331,505.30 plus legal interest at the rate of six percent (6%) per annum from 31 July 2007 (the date of the decision of the Arbitral Tribunal) until the finality of this decision and thereafter, at the rate of twelve percent (12%) per annum, until said amount is fully paid.

The aspects of the decision of the Arbitral Tribunal, not otherwise modified by this decision, are AFFIRMED.

SO ORDERED.[28]

SLPI and BFC both moved for partial reconsideration.

In its resolution of April 16, 2009, the CA partially granted SLPI's motion by reducing BFC's final award upon finding that the unpaid fixed and provisional attendances totalling P4,351,874.23, and the retention money amounting to P10,422,356.21 had already been paid by SLPI with interest on October 22, 2007; and denied BFC's motion for lack of merit,[29] ruling thusly:

WHEREFORE, premises considered, the motion for reconsideration of Shangri-la Properties, Inc. is PARTIALLY GRANTED. Our decision in this case dated 12 August 2008 is MODIFIED as follows:

1. The awards for unpaid fixed and provisional attendances amounting of P4,351,874.23 and retention money amounting to P10,422,356.21 in favor of BFC are deleted considering that said awards have been paid by SLPI with interest on 22 October 2007; and
2. Offsetting the respective awards in favor of BFC and SLPI, as modified, leaves the amount of Thirty Two Million Five Hundred Fifty Seven Thousand Two Hundred Seventy Four Pesos and Eighty Six Cents (P32,557,274.86). SLPI is directed to pay BFC the amount of P32,557,274.86 plus legal interest of 6% per

annum from 31 July 2007 until the finality of this decision and thereafter, at the rate of 12% per annum, until said amount is fully paid.

BF Corporation's motion for reconsideration is DENIED, for lack of merit.

SO ORDERED.[30]

Hence, both parties now appeal.

Issues

BFC submitted for resolution the following issues, thusly:

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED THE CLAIMS OF BFC FOR VARIATION WORKS IT WAS COMPELLED TO PERFORM UPON THE INSTRUCTIONS OF SLPI.

II.

THE COURT OF APPEALS ERRONEOUSLY DISREGARDED THE AGREEMENT BETWEEN BFC AND SLPI AND SUPPLANTED THE SAME WITH ITS OWN TERMS AND CONDITIONS WHEN IT DENIED BFC REIMBURSEMENT FOR DAMAGES DONE TO ITS WORKS BY THE NOMINATED SUB-CONTRACTORS OF SLPI.

III.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED BFC'S CLAIM FOR FIRE DAMAGE AND REPAIR WORKS.

IV.

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING WELL-ESTABLISHED JURISPRUDENCE WHEN IT HELD THAT FOR PURPOSES OF COMPUTING INTEREST, THE FIXED AND PROVISIONAL ATTENDANCES AS WELL AS THE UNPAID PROGRESS BILLINGS ON THE ORIGINAL SCOPE OF WORK WERE REASONABLY ASCERTAINABLE ONLY FROM THE DATE OF THE ARBITRAL TRIBUNAL'S DECISION DATED 31 JULY 2007.[31]

On the other hand, SLPI insisted that:

I.

THE COURT OF APPEALS ERRED IN AWARDING P24,497,555.91 TO BFC FOR "UNPAID PROGRESS BILLINGS BASED ON THE ORIGINAL SCOPE OF WORK" UNDER ISSUE NO. 2.1 DEFINED IN THE TOR (THE ARBITRAL TRIBUNAL AWARDED P1,745,166.07 ONLY)

II.

THE COURT OF APPEALS ERRED IN REDUCING THE AWARD FOR LIQUIDATED DAMAGES IN FAVOR OF SLPI FROM P7,590,000.00 TO P780,000.00 FOR SUCH RULING IS CONTRARY TO EVIDENCE ON RECORD.[32]

Ruling of the Court

The Court partly grants BFC's appeal, but denies SLPI's petition for review on certiorari for its lack of merit.

Mathematical computations as well as the propriety of arbitral awards are of the nature of factual questions.[33] Such questions exist when doubts or differences arise as to the truth or falsity of alleged facts; when there is need

for the 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.[34]

The Court cannot delve into factual questions in this appeal by certiorari because Section 1 of Rule 45 of the Rules of Court categorically ordains that the petition for review on certiorari "shall only raise questions of law which must be distinctly set forth." Factual issues require the calibration of evidence but such task cannot be done herein because the Court is not a trier of facts.[35]

Nonetheless, the rule limiting the appeal by petition for review on certiorari to the consideration and resolution of legal questions admits of several exceptions, such as the following instances, namely: (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.[36]

Although it is settled that the findings of fact of quasi-judicial bodies that have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect, but also finality, especially when affirmed by the CA, and, in particular reference to this appeal, the factual findings of construction arbitrators are accorded finality and conclusiveness, and should not be reviewable by the Court on appeal,[37] one recognized exception occurs when the findings of the CA are contrary to those of the arbitrators.[38]

Herein, the petitions separately raise issues that call for the calibration of evidence and the mathematical re-computation of the monetary awards. Although such issues are factual in nature, the Court has to embark upon a review in view of the contrary findings by the CA and the Arbitral Tribunal, resulting in the variance of their monetary awards. Such review has now to be made in order to settle once and for all the issues between the parties.

I.

BFC's claim for variation works

According to BFC, the CA erred in reversing the Arbitral Tribunal's findings with respect to the existence of written instructions from SLPI for the performance of variation works.[39]

In reversing the Arbitral Tribunal, the CA observed that SLPI's letter dated May 9, 1991 could not serve as the written authority issued by SLPI to BFC for the latter to undertake the variation works,[40] viz.:

x x x x SLPI, through the subject letter made no instruction to BFC to undertake the works for any variation orders on its own, or without the consent of SLPI. Such interpretation cannot be read from the wordings of the letter. To do so would unnecessarily extend its meaning. The other documents presented by BFC also do not suffice to prove that SLPI gave it the authority to undertake works on the variation orders. Given the foregoing, we are of the considered view that the subject letter cannot satisfy the first requisite of Article 1724. Absent this requisite, BFC cannot validly recover any of the costs it incurred in performing the works for the variation orders.[41]

We reinstate the Arbitral Tribunal's granting of BFC's claim for variation works.

The Arbitral Tribunal correctly ruled that BFC had complied with the twin requirements imposed by Article 1724 of the Civil Code, which states:

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

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

Article 1724 governs the recovery of costs for any additional work because of a subsequent change in the original plans. The underlying purpose of the provision is to prevent unnecessary litigation for additional costs incurred by reason of additions or changes in the original plan. The provision was undoubtedly adopted to serve as a safeguard or as a substantive condition precedent to recovery.^[42] As such, added costs can only be allowed upon: (a) the written authority from the developer or project owner ordering or allowing the changes in work; and (b) upon written agreement of the parties on the increase in price or cost due to the change in work or design modification. Compliance with the requisites is a condition precedent for recovery; the absence of one requisite bars the claim for additional costs. Notably, neither the authority for the changes made nor the additional price to be paid therefor may be proved by any evidence other than the written authority and agreement as above-stated.^[43]

According to the Arbitral Tribunal, SLPI gave written instructions to BFC to accommodate all requests for changes and variations, to wit:

x x x It is a matter of record that on May 7, 1991, BFC wrote a letter to SLPI that it will no longer accommodate any change or variation orders but if SLPI will insist, BFC will first let SLPI approve the cost and time before implementation. x x x In response, to such letter, SLPI through its Project Manager Kuno Raymond Ginoni sent a letter to BFC ... dated May 9, 1991 advising it of its obligation to "to accommodate all changes and variation orders during the duration of the contract". The same letter states "that any decision by us (SLPI) or the consultants for changes or variation orders are for project enhancement". To the mind of this Tribunal this satisfies the first requirement of Article 1724 as to the required written instruction of SLPI to perform the change/variation orders for the duration of its contract with BFC.^[44] x x x

The letter dated May 9, 1991 adverted to by the Arbitral Tribunal pertinently stated as follows:

Please be advised that under the Condition of Contract Clause 11 ... you are obliged to accommodate all changes and variation orders during the duration of the contract.

We are aware of your schedules and difficulties, but we also believe ... that any decision by us or the consultants for changes or variation orders are for the project enhancement.

As such, your cooperation in this matter is very much appreciated.^[45]

The Arbitral Tribunal also considered the specific variation orders that were approved by SLPI, to wit:

The first set of claims under this category involve variation orders duly approved and authorized by SLPI in its schedule of variation works paid to BFC (Schedule 3). Notably, these variation orders comply with the twin requirements of Art. 1724 by reason of the fact that SLPI appears to have agreed on the price of BFC for these change orders. Coupled by the written instruction of Project Manager Genoni to approve all variation orders for the enhancement of the EDSA Plaza Project, it behooves SLPI to pay for these works. x x x^[46]

The second set of variation orders under this category involve seventeen (17) claims included under Schedule 5

of payments submitted by SLPI. It is clear from this Schedule 5 that all these claims have not been paid by SLPI. x x x A review of the documents in support of these claims show that they bear the signature and express conformity of either one or more of SLPI's officers more particularly Project Manager Rogelio Lombos, President Colayco, and Quality Surveyor Goy Yong Peng as to the cost of the variation works and/or they are covered by specific plans and drawings prepared by SLPI Architect R. Villarosa. It is therefore in light of these facts that this Tribunal Awards the payment for the variation orders listed under this category.[47]

The Arbitral Tribunal considered both the letter dated May 9, 1991 and the specific SLPI-approved variation orders as sufficient compliance with the requisites of Article 1724 of the Civil Code. Therein lay the difference between the conflicting results of the Arbitral Tribunal and the CA. In computing the award, the Arbitral Tribunal painstakingly segregated the additional works that were supported by the corresponding SLPI-approved variation orders, and those that were not; and included in the final computation only the approved variation orders but excluded those that did not carry SLPI's approval.[48] On the other hand, the CA limited itself to the insufficiency of the letter dated May 9, 1991, and did not consider the SLPI--approved variation orders for the performance of specific additional works.

The Court upholds the Arbitral Tribunal. In our view, the CA wrongly disregarded the specific variation orders that carried the conformity of SLPI, which, when coupled with the letter dated May 9, 1991, satisfied the requisites under Article 1724. Accordingly, the Court reinstates the Arbitral Tribunal's awards in favor of BFC for variation orders included in progress billings amounting to P9,513,987.91[49] and for change orders not included in progress billings amounting to P6,201,278.50.[50]

II.

BFC's claim for damages caused by
the nominated sub-contractors of SLPI

According to BFC, the CA erroneously reversed the findings of the Arbitral Tribunal when it denied reimbursement for the damages caused by nominated sub-contractors.[51] The CA ruled that it could not award BFC's claim because the damages had been caused by other contractors, not SLPI; and that SLPI had merely agreed to facilitate collection of the reimbursement for the damages.[52]

We affirm the deletion of the award of P381,000.19 for the damages caused by nominated sub-contractors, and adopt the CA's following rationalization therefor, as follows:

The Arbitral Tribunal also awarded P381,000.19 in favor of BFC resulting from the damages caused to it by the other contractors of SLPI. SLPI argues that it cannot be held liable for damages caused by its contractors because it did not cause them. It only acts like an agent to facilitate the collection of damages caused by one contractor to another. This time, we agree with SLPI. There is no dispute that the damages were caused by other contractors of SLPI and not SLPI, and the latter only agreed to facilitate the collection of these damages. Nonetheless, we find no evidence on record showing that SLPI actually collected the damages being claimed by BFC. It may be true that it had done so in the past, but that is not proof that it actually collected BFC's claim against its contractors now. Neither can we make such an inference simply because SLPI has the authority to collect the damages. Finding no sufficient proof that SLPI collected BFC's claim for damages against the other contractors, it cannot be validly obliged to pay the same.[53]

Indeed, it would be wrong and unjust to hold SLPI liable for damages it did not cause. While it was admitted that in previous instances SLPI had acted as an agent in facilitating the collection of claims among the contractors,[54] there was no evidence on record to prove that SLPI had actually collected the damages now being claimed by BFC. Without such proof, to hold SLPI liable was factually unfounded.

III.

BFC's claim for fire damage and repair works

The CA agreed with the Arbitral Tribunal's ruling that SLPI was not liable to BFC for the fire damage because BFC adduced no proof showing that SLPI had actually received any fire insurance proceeds.[55]

Still, BFC insists that it was entitled to the fire insurance proceeds because it had performed substantial repair works for the damages caused by fire.

BFC's insistence is unwarranted.

The Court finds no reason to disturb the factual findings of the Arbitral Tribunal regarding the claim for fire damage and repair, as affirmed by the CA. As already stated, the findings of fact of quasi-judicial bodies like the Arbitral Tribunal which have acquired expertise owing to their jurisdiction being confined to specific matters are generally accorded not only respect, but also finality, especially when affirmed by the CA.[56]

At any rate, we declare that the rulings on this matter by both the CA and Arbitral Tribunal were duly supported by evidence on record. Based on the records, the parties' contract explicitly provided that damages or losses sustained due to fire would be at the sole risk of BFC; and that BFC would not be entitled to any payment of fire damage repairs except to the proceeds received under an insurance policy, to wit:

... Notwithstanding that the insurance described in this clause will be maintained by the Owner the whole of the site, plant, materials and works are at the sole risk of the Contractor, including any and all liabilities to third parties and damage or loss caused by but not limited to the perils of fire ...

In the event of a claim under the policy being accepted, the Contractor shall, with due diligence, restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove or dispose of any debris and proceed with the carrying out and completion of the works ... The Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods, and the removal and disposal of debris other than the monies received under the policy.[57]

IV.

BFC's claim for the re-computation of interest on the fixed and provisional attendances as well as the unpaid progress billings on the original scope of work

The CA affirmed the Arbitral Tribunal's findings on the fixed and provisional attendances, and the unpaid progress billings based on the original scope of work, to wit:

Here, we agree with the Arbitral Tribunal when it held that the fixed and provisional attendances were not yet reasonably established at the time the demand was made because there is no showing that SLPI conformed to the amount due; neither is said amount pre-agreed in the contract. We find the same to be true with regard to the unpaid progress billings based on the original scope of work. Thus, said claims remain unliquidated and unknown, until they were definitely ascertained, assessed, and determined by the Arbitral Tribunal and only upon presentation of proof thereon. Accordingly, the legal interest of 6% on these claims shall begin to run from 31 July 2007 or the date of the Arbitral Tribunal's decision.[58]

BFC argues that the CA and the Arbitral Tribunal erred in so ruling; and contends that the CA mistakenly computed interest on said awards only from the time of the Arbitral Tribunal's decision dated July 31, 2007.[59]

The contention cannot be upheld. There is no reason to disturb the findings of the CA and Arbitral Tribunal to the effect that said awards could not be reasonably ascertained at the time of demand considering that it was not

established that SLPI had given its conformity to the amounts due.

Nonetheless, considering that the CA adjusted the interest award based on the erroneously reduced amount of P325,209.74 for the variation orders,[60] the Court deems it necessary to reinstate the interest award of P12,382,710.73 as computed by the Arbitral Tribunal.[61]

V.

SLPI claims that the CA erred in increasing the award for unpaid progress billings based on the original scope of work

In increasing the award for unpaid progress billings based on the original scope of work, the CA held:

The Arbitral Tribunal awarded BFC the amount of P1,745,116.07 based on the value of its present accomplishment without considering the value (sic) its previous work accomplishment. The Arbitral Tribunal reasoned that the billing statements were not approved by SLPI because the same were not confirmed by any Progress Payment Certificates and were not included in the summary of all payments made by SLPI to BFC, a document prepared by SLPI. The Arbitral Tribunal also believed that the manner by which BFC computed its unpaid claims was flawed because of the discrepancies between "the entry on previous net amount of builders work accomplished for the so-called period in which it was last paid by SLPI (P83,566,744.97) based on the Progress Payment certificate No. 10B (Exhibit C-16) ... [and the] net cumulative amount of work paid by SLPI as of the last billing (P70,964,930.00) ...

We do not agree.

The issuance of a Progress Payment Certificate shows the assent of SLPI to the billing statement of BFC but does not show the amount of work actually accomplished by BFC. The fact that no Progress Payment Certificates were issued to confirm the billing statements of BFC does not necessarily mean that the work was not accomplished by BFC. In fact, the Arbitral Tribunal found that BFC completed the construction of project
x x x

x x x x

We adopt this finding, as it is supported by evidence on record: 1) SLPI's letter dated 28 April 1992, which manifested that it shall begin conducting the final re-measurement of the Project as soon as its As-Built-Drawings are submitted; 2) SLPI's letter[s] dated 9 October 1991, 18 October 1991, 29 October 1991, 31 October 1991 and 22 November 1991, which confirmed that the punch lists for Level I, II, III and IV and the basement of Phase I and the Carpark ha[ve] been completed and the same may be included in the Practical Completion Certificate; 3) SLPI's letter dated 7 February 1992, which demanded BFC to vacate the carpark citing the completion of the work therein as reason for the demand; 4) the release and discharge of BFC for the execution of the main works done by BFC on the Project. The Arbitral Tribunal even based its award on said documents. Concerning the alluded discrepancy, it is explained by the fact that the total amount billed by BFC was not paid by SLPI. As such, the value of the work accomplished by BFC "to date," which is the sum of the values of the work it accomplished in the previous and present periods, and not the value of work accomplished in the present period only, must be considered in determining the amount of unpaid progress billing.

Taking the foregoing into consideration, we find merit in BFC's contention that the amount of unpaid progress billings due to it is the difference between the total amount representing the work it accomplished as billed "to date" by it in its Progress Billings/Summary of Work Accomplishment, and the amount paid to it by SLPI in the latter's Progress Payment Certificates. x x x

x x x x

Thus, the amount of unpaid progress billing pertaining to the original scope of works that BFC is entitled to receive from SLPI is P24,497,555.91 x x x[62]

SLPI submits that the CA erred in increasing the award for unpaid progress billings for the original scope of work from P1,745,166.07 to P24,497,555.91;[63] that contrary to the CA's findings, there was no competent proof to the effect that the original scope of works claimed by BFC were actually undertaken and completed.[64]

The Court upholds the CA.

The CA and the Arbitral Tribunal both found that the original scope of work had been completed and performed by BFC. As such, the completion of such work was a fact conclusively established and no longer reviewable on appeal. At any rate, the CA and Arbitral Tribunal's factual findings on the completion of the project were supported by the evidence on record;[65] hence, such factual findings by construction arbitrators, when affirmed by the CA, are final and conclusive and not reviewable by this Court on appeal.[66]

The only remaining question concerned the computation of the award.

On its part, the Arbitral Tribunal allotted P1,745,116.07 because BFC's billings were not confirmed by progress payment certificates, and were not included in the summary of all payments, which were documents prepared and issued by SLPI. Also, there was a flaw in BFC's computation because of the discrepancy between the net amount builders work based on the last Progress Payment Certificate (P83,566,744.97) and the net cumulative amount of work paid based on the last billing. (P70,964,930.00).

On the other hand, the CA observed that the lack of the Progress Payment Certificate issued by SLPI did not in any way prove that BFC did not complete the original scope of work; and that the discrepancy between the amounts stated in the last Progress Payment Certificates and those contained in the last billing was logically explained by the fact that the total amount billed by BFC had not been paid by SLPI.

The Court agrees with the CA that the lack of SLPI-issued Progress Payment Certificates and the absence of BFC's claimed billings in the summary of payments did not negate the fact that BFC had completed the original scope of work. In finding that BFC had completed the original scope of work, the CA duly considered the evidence on record, particularly: (a) SLPI's letter dated April 28, 1992 referring to the final re-measurement of the Project; (b) SLPI's letter dated October 9, 1991, October 18, 1991, October 29, 1991, October 31, 1991 and November 22, 1991, which confirmed that the punch lists for Levels I, II, III and IV and the basement of Phase I and the Carpark had been completed; (c) SLPI's letter dated February 7, 1992 demanding that BFC vacate the Carpark because work had been completed; and (d) the release and discharge of BFC from the execution of the main works done by BFC on the Project.[67]

In addition, as pointed out by BFC,[68] SLPI did not issue any Schedule of Defects to contest the completed works. The Schedule of Defects was expressly provided for and required in the contract. Had SLPI any complaint, or claim for defects or non-completion of any work, or any other concerns vis-a-vis BFC's work, it would have submitted the Schedule of Defects within the period agreed under their contract, which relevantly stipulated as follows:

PRACTICAL COMPLETION AND DEFECTS LIABILITY

(2) Any defects, shrinkages, or other faults which shall appear within the Defects Liability Period stated in the appendix to these Conditions and which are due to materials or workmanship not in accordance with this Contract or to typhoon(s) occurring before Practical Completion of the Works, shall be specified by the Project Manager in a Schedule of Defects which he shall deliver to the Contractor not later than fourteen days after the expiration of the said Defects Liability Period, and within a reasonable time after receipt of such Schedule the

defects, shrinkages and other faults therein specified shall be made good by the Contractor and (unless the Project Manager shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost.[69]

Accordingly, SLPI was liable to pay BFC for the latter's completed works. As concluded by the Arbitral Tribunal and affirmed by the CA, the completion of the works was conclusively established. Thus, the CA's award for unpaid progress billings for the original scope of work amounting to P24,497,555.91 was correct and is upheld.

VI.

SLPI's claim for liquidated damages
incurred due to delays

SLPI posits that the CA erred in reducing the liquidated damages in its favor from P7,590,000.00 to only P780,000.00.[70]

We consider the CA's reduction of liquidated damages proper and warranted.

The liquidated damages answer for the delays in the completion of the project suffered by SLPI.[71] Such damages were stipulated in the parties' contract, to wit:

6. Contract Program. The Trade Contractor undertakes to complete the above-mentioned Scope of Work within the following agreed dates:

6.1. Phase I - As represented by the Trade Contractor in its letter of 28 May 1991 and submitted work program (Ref. No. ACP-059-91), copies of which are hereto attached as Annexes "B" and "B-1", the Trade Contractor shall complete the Scope of Work for Phase I of the Project in accordance with the following schedule:

- i) Substantial Completion by 15 September 1991;
- ii) Overall completion by 30 September 1991.

6.2. Phase II - As represented by the Trade Contractor in its letter of 28 May 1991 and submitted work programs (Ref. No. ACP-060-91), copies of which are hereto attached as Annexes "C", "C-1" and "C-2", the Trade Contractor shall complete the Scope of Work for Phase II of the Project in accordance with the following schedule:

- i) From Basement to Level 4 - Overall completion by 15 September 1991;
- ii) Level 5 to Level 8 and overall completion (including Carpark) - By 31 October 1991.

The failure by the Trade contractor to complete the Scope of Work by the above stated substantial completion date of 15 September 1991 for Phase I and overall completion date of 15 September 1991 for Phase II (Basement to Level 4) shall entitle the Owner to impose liquidated damages at the following rates, to be deducted from all monies due the Trade Contractor.

6.3. Phase I (Substantial completion date of 15 September 1991) - ONE HUNDRED THIRTY THOUSAND PESOS (P130,000.00) for each day of delay, counted from 16 September 1991; and

6.4. Phase II ... EIGHTY THOUSAND PESOS (P80,000.00) for each day of delay counted for 1st November 1991.

6.5. Liquidated damages shall be up to a maximum of Five Per Cent (5%) of the total Contract Price.[72]

On the issue of liquidated damages, the Arbitral Tribunal and the CA separately discussed Phase I and Phase II of the Project. For the Carpark portion, the Arbitral Tribunal noted that the above-quoted provisions of the contract did not include the completion of the Carpark as basis for the imposition of liquidated damages.[73] On its part,

the CA held that the parties' contract made no mention of any date of completion or penalty for any delay in the completion of the Carpark.[74] In view of this, the Court shall only proceed to review the computation for the liquidated damages corresponding to Phase I and Phase II of the Project.

For Phase I, the CA and the Arbitral Tribunal agreed that the completion date was November 13, 1991. The CA affirmed the Arbitral Tribunal's declaration that BFC was entitled to a 53-day extension for Phase I, but corrected the Arbitral Tribunal's error in reckoning the last day of the 53-day extended period for completion of Phase I as November 13, 1991, stating thusly:

The Arbitral Tribunal identified 13 November 1991 as the date of completion of Phase I, supported by the punch lists prepared by SLPI and accomplished by BFC. The period of completing Phase I was extended for a period of 53 days from 15 September 1991. Since BFC and SLPI no longer question this ruling, we shall affirm the same. 53 days from 15 September 1991, however, do not fall on 9 November 1991 but on 7 November 1991. As such, BFC has incurred six (6) days of delay, which is P780,000.00 when translated in pesos.[75]

The Court concurs with the CA. Fifty three days from September 15, 1991 was November 7, 1991, not November 9, 1991. Consequently, BFC's delay totaled six days for Phase I, which was equal to P780,000.00 in liquidated damages.

For Phase II, the CA likewise affirmed the Arbitral Tribunal's holding that BFC was entitled to the 183-day extension starting from October 31, 1991; hence, the last day for the completion of Phase II was May 1, 1992.[76] The CA disagreed with the Arbitral Tribunal on the completion date of Phase II, with the latter fixing the completion date at July 30, 1992, and the former pegging the completion date on April 30, 1992.

The Court considers the CA to be correct, and adopts the explanation of the CA for its reckoning of the completion date for Phase II, viz.:

For Phase II, the Arbitral Tribunal pinpointed no concrete basis when it concluded that 30 July 1992 is the date of its completion. Conversely, BFC convinced us that the date of completion of Phase II, at the most, must be 30 April 1992. As held above, the final re-measurement of the Project, is one of the conclusive proof of the completion of the project. On 28 April 1992, SLPI already required BFC to submit As-Built Drawings in connection with the final re-measurement of the Project. More so, SLPI's payment of P10,000,000.00, the balance of the final settlement for the works done by BFC in the project, was made on 30 April 1992. Since the payment of the foregoing amount is conditioned on the completion of the Project, it is safe to conclude the full completion of the project on said date. The Arbitral Tribunal determined that the period of completing Phase II was extended for 183 days. Again, since this period of extension was not disputed by BFC or SLPI, we shall affirm the same. 183 days from 31 October 1991 falls on 1 May 1992. Consequently, BFC cannot be held liable to pay SLPI liquidated damages because it did not incur any delay in completing Phase II of the Project.[77]

The CA had sufficient factual basis for its reckoning. It cited the letter dated April 27, 1992 by SLPI's project manager requiring BFC to submit as-built drawings for the purpose of the final re-measurement of the entire project,[78] and the parties' agreement (Stipulation 9.3) to the effect that the balance of P10,000,000.00 "shall be paid by the owner to BFC upon the completion by BFC of the new scope of work specified in paragraph 8 hereof." [79] As a consequence, the CA correctly stated that BFC had already completed the work on the date the payment was made on April 30, 1992.

VII.

Summary of Claims Offsetting

To summarize:

Award to BFC includes the following:

1.

Increase in the award for BFC's unpaid progress billings for contract bills and change orders under Issue No.

2.1

.....

P35,372,005.57[80]

2.

Reinstate the award for accomplished but unpaid change orders in Issue No. 2.2

.....

P6,201,278.50

3.

Reinstate the award for legal interest in Issue No. 3

.....

P12,382,710.73

4.

Equal sharing of arbitration costs

.....

P857, 229.88

Total

.....

P54,813,224.68

Award to SLPI includes the following:

1.

Affirm the award for liquidated damages in Issue No. 4.1

.....

P780,000.00

2.

Affirm the award for other counterclaims in Issue No.5

.....

P540,315.10

3.

Equal sharing of arbitration costs

.....

P857,229.88

Total

.....

P2,177,544.98

NET AWARD to BFC

.....

P52,635,679.70

Finally, the imposable interest on the net monetary awards after the finality of this judgment is modified to conform to prevailing jurisprudence,[81] which allows the rate of only 6% per annum from the time the awards attain finality until full satisfaction thereof.[82] In addition, the principal amount due, plus the interest of 6% per annum, shall further earn interest of 6% per annum until full satisfaction.

WHEREFORE, the Court PARTIALLY GRANTS the petition for review on certiorari in G.R. Nos. 187608-09; DENIES the petition for review on certiorari in G.R. Nos. 187552-53; AFFIRMS the decision promulgated by the Court of Appeals on August 12, 2008 subject to the following MODIFICATION to the effect that Shangri-La Properties, Inc. shall pay to BF Corporation the net amount of P52,635,679.70, plus legal interest of 6% per annum reckoned from July 31, 2007, the date of the Arbitral Tribunal's decision, until this decision becomes final and executory; and, thereafter, the principal amount due, plus the interest of 6% per annum, shall likewise earn interest of 6% per annum until full satisfaction.

Each party shall bear its own costs of suit.

SO ORDERED.

Carpio, Perlas-Bernabe, Leonen, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting and Zalameda, JJ., concur.

Peralta and A. Reyes, Jr., JJ., see separate concurring opinions.

Carpio and Caguioa, JJ., no part.

J. Reyes, Jr., J., on leave.

[1] *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 126619, December 20, 2006, 511 SCRA 335, 345.

[2] *Rollo* (G.R. No. 187608-09), pp. 10-40; penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justice Juan Q. Enriquez, Jr., and Associate Justice Isaias P. Dicdican.

[3] *Id.* at 41-45.

[4] *Id.* at 11-14.

[5] *Id.* at 352-558.

[6] *Id.* at 557.

[7] *Id.* at 413-414.

[8] *Id.* at 422.

[9] *Id.* at 427

[10] *Id.* at 428-429.

[11] *Id.* at 433-434.

[12] *Id.* at 443.

[13] *Id.*

[14] *Id.* at. 446.

[15] *Id.* at. 452.

[16] *Id.*

[17] *Id.* at 459-460; 464.

[18] *Id.* at 468.

[19] *Id.* at 497-498.

[20] *Id.* at 500-501; 532-533.

[21] *Id.* at 556.

[22] *Id.* at 10-40.

[23] *Id.* at 30.

[24] *Id.* at 34 & 38.

[25] Id. at 36 & 38.

[26] Id. at 38.

[27] Id. at 37-38.

[28] Id. at 38-39.

[29] Id. at 45.

[30] Id.

[31] Id. at 80-82.

[32] Id. at 30-31.

[33] Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp., G.R. No. 169408 & 170144, April 30, 2008, 553 SCRA 541, 558.

[34] Id. at 557.

[35] DPWH v. Foundation Specialists, Inc., G.R. No. 191591, June 17, 2015, 759 SCRA 138, 149.

[36] Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp., *supra*, note 33, at 557-558, citing *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 709.

[37] Shinryo (Philippines) Company, Inc. v. RRN Incorporated, G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *Ibex International, Inc. v. GSIS*, G.R. No. 162095, October 12, 2009, 603 SCRA 306, 314.

[38] Id. at 131.

[39] *Rollo* (G.R. No. 187608-09), pp. 84-85.

[40] Id. at 25.

[41] Id. at 26-27.

[42] *Powton Conglomerate, Inc. v. Agcolicol*, G.R. No. 150978, April 3, 2003, 400 SCRA 523, 528-529.

[43] *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. No. 176439 and 176718, January 15, 2014, 713 SCRA 455, 466-467.

[44] *Rollo* (G.R. No. 187608-09), p. 433.

[45] Id. at 26.

[46] Id. at 435.

[47] Id. at 436-437.

[48] Id. at 437-438.

[49] Id. at 443.

[50] Id. at 452.

[51] Id. at 132.

[52] Id. at 34.

[53] Id. at 34-35.

[54] Id. at 459.

[55] Rollo (G.R. No. 187552-53), pp. 74-75.

[56] National Transmission Corporation v. Alphaomega Integrated Corporation, G.R. No. 184295, July 30, 2014, 731 SCRA 299, 310.

[57] Rollo (G.R. No. 187552-53), Conditions of Contract, pp. 127-128.

[58] Rollo (G.R. No. 187608-09), p. 36.

[59] Id. at 149.

[60] Rollo (G.R. No. 187552-53), p. 81.

[61] Id. at 373.

[62] Rollo (G.R. No. 187608-09), pp. 20-23, 68.

[63] Rollo (G.R. No. 187552-53), p. 30.

[64] Rollo (G.R. No. 187608-09), p. 39.

[65] Id. at 66-67.

[66] DPWH v. Foundation Specialists, Inc., G.R. No. 191591, June 17, 2015, 759 SCRA 138, 150.

[67] Rollo (G.R. No. 187552-53), pp. 66-67.

[68] Id. at 581.

[69] Id. at 123.

[70] Id. at 44.

[71] Id. at 77.

[72] Id. at 99-100.

[73] Id. at 374.

[74] Id. at 77.

[75] Id. at 77-78.

[76] Id. at 78.

[77] Id. at 78.

[78] Id. at 510.

[79] Id. at 96.

[80] Sum of the unpaid progress billings for original scope of works (P24,497,555.91) and variation orders (P9,513,987.91), inclusive of 4% VAT (P1,360,461.75).

[81] ACS Development & Property Managers, Inc. v. Montaire Realty and Development Corporation, G.R. No. 195552, April 18, 2016; S.C. Megaworld Construction and Development Corporation v. Parada, G.R. No.

183804, September 11, 2013, 705 SCRA 584, 609.

[82] Id.

SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur in the result.

Nonetheless, I maintain that arbitral awards issued by the Construction Industry Arbitration Commission are final and inappealable, except on questions of law.[1] As a general rule, they cannot be appealed on questions of fact.

This Court should be restrained in its review and prescribe more restraint on the Court of Appeals in reviewing appeals from such awards. These appeals should be reviewed with the purpose of the Construction Industry Arbitration Commission and the law creating it, Executive Order No. 1008 or the Construction Industry Arbitration Law, in mind.

In *Department of Public Works and Highways v. CMC/Monark/Pacific/Hi-Tri Joint Venture*,[2] this Court laid out the legal framework within which the Construction Industry Arbitration Commission operates:

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

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

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

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

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

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

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

Section 59. Arbitration. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law". Provided, however, That, disputes that are within the competence

of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution. . . .

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

CHAPTER 6 — ARBITRATION OF CONSTRUCTION DISPUTES

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

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

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.[3] (Citations omitted)

Executive Order No. 1008 is clear that arbitral awards are final and inappealable, except on questions of law.[4]

Nonetheless, this Court has held that the Court of Appeals may review questions of fact in appeals from the Construction Industry Arbitration Commission's arbitral awards.

Explaining this reasoning in *Metro Construction, Inc. v. Chatham Properties, Inc.*,[5] this Court invoked Supreme Court Circular No. 1-91 in relation to Republic Act No. 7902, amending Batas Pambansa Blg. 129:

On 27 February 1991, this Court issued Circular No. 1-91, which prescribes the Rules Governing Appeals to the Court of Appeals from Final Orders or Decisions of the Court of Tax Appeals and Quasi-Judicial Agencies. Pertinent portions thereof read as follows:

1. Scope[.] — These rules shall apply to appeals from final orders or decisions of the Court of Tax Appeals. They shall also apply to appeals from final orders or decisions of any quasi-judicial agency from which an appeal is now allowed by statute to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Secretary of Agrarian Reform and Special Agrarian Courts under R.A. No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission and Philippine Atomic Energy Commission.

2. Cases not Covered. — These rules shall not apply to decisions and interlocutory orders of the National Labor Relations Commission or the Secretary of Labor and Employment under the Labor Code of the Philippines, the Central Board of Assessment Appeals, and other quasi-judicial agencies from which no appeal to the courts is prescribed or allowed by statute.

3. Who may appeal and where to appeal. — The appeal of a party affected by a final order, decision, or judgment of the Court of Tax Appeals or a quasi-judicial agency shall be taken to the Court of Appeals within

the period and in the manner herein provided, whether the appeal involves questions of fact or of law or mixed questions of fact and law. From final judgments or decisions of the Court of Appeals, the aggrieved party may appeal by certiorari to the Supreme Court as provided in Rule 45 of the Rules of Court.

Subsequently, on 23 February 1995, R.A. No. 7902 was enacted. It expanded the jurisdiction of the Court of Appeals and amended for that purpose Section 9 of B.P. Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980.

Section 9(3) thereof reads:

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

. . . .

(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. . . .

Then this Court issued Administrative Circular No. 1-95, which revised Circular No. 1-91. Relevant portions of the former reads as follows:

1. Scope. — These rules shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of any quasi-judicial agency from which an appeal is authorized to be taken to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunication Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, and Construction Industry Arbitration Commission.

SECTION 2. Cases Not Covered. — These rules shall not apply to judgments or final orders issued under the Labor Code of the Philippines, Central Board of Assessment Appeals, and by other quasi-judicial agencies from which no appeal to the court is prescribed or allowed.

SECTION 3. Where to Appeal. — An appeal under these rules may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

Thereafter, this Court promulgated the 1997 Rules on Civil Procedure. Sections 1, 2 and 3 of Rule 43 thereof provides:

SECTION 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land

Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

SECTION 2. Cases Not Covered. — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

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

Through Circular No. 1-91, the Supreme Court intended to establish a uniform procedure for the review of the final orders or decisions of the Court of Tax Appeals and other quasi-judicial agencies provided that an appeal therefrom is then allowed under existing statutes to either the Court of Appeals or the Supreme Court. The Circular designated the Court of Appeals as the reviewing body to resolve questions of fact or of law or mixed questions of fact and law.

It is clear that Circular No. 1-91 covers the CIAC. In the first place, it is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.

In the second place, the language of Section 1 of Circular No. 1-91 emphasizes the obvious inclusion of the CIAC even if it is not named in the enumeration of quasi-judicial agencies. The introductory words "[a]mong these agencies are" preceding the enumeration of specific quasi-judicial agencies only highlight the fact that the list is not exclusive or conclusive. Further, the overture stresses and acknowledges the existence of other quasi-judicial agencies not included in the enumeration but should be deemed included. In addition, the CIAC is obviously excluded in the catalogue of cases not covered by the Circular and mentioned in Section 2 thereof for the reason that at the time the Circular took effect, E.O. No. 1008 allows appeals to the Supreme Court on questions of law.

In sum, under Circular No. 1-91, appeals from the arbitral awards of the CIAC may be brought to the Court of Appeals, and not to the Supreme Court alone. The grounds for the appeal are likewise broadened to include appeals on questions of facts and appeals involving mixed questions of fact and law.

The jurisdiction of the Court of Appeals over appeals from final orders or decisions of the CIAC is further fortified by the amendments to B.P. Blg. 129, as introduced by R.A. No. 7902. With the amendments, the Court of Appeals is vested with appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except "those 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."

While, again, the CIAC was not specifically named in said provision, its inclusion therein is irrefutable. The

CIAC was not expressly covered in the exclusion. Further, it is a quasi-judicial agency or instrumentality.[6] (Citations omitted)

This Court reasoned that although the Construction Industry Arbitration Commission was not specifically named among the quasi-judicial agencies covered by Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, it was also not specifically excluded from its coverage. Thus, when Republic Act No. 7902 amended Batas Pambansa Blg. 129 so that appeals from "awards, judgments, final orders or resolutions of any quasi-judicial agency from which an appeal is authorized" could be filed before the Court of Appeals, this meant that the Construction Industry Arbitration Commission's arbitral awards could be appealed before the Court of Appeals on questions of fact.

The ruling in *Metro Construction* was reiterated in *Summa Kumagai, Inc.-Kumagai Gumi Company, Ltd. Joint Venture v. Romago, Inc.*,[7] where this Court stated:

As to the judgment of the Court of Appeals increasing the award in favor of Romago, the Court affirms the same. SK-KG questions the power and authority of the Court of Appeals to reverse the ruling of CIAC, on the ground that CIAC is specialized body with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters. However, although CIAC findings are entitled to respect, the Court of Appeals is not always bound thereby. The Court of Appeals necessarily has the power to affirm, modify or reverse the findings of fact of the CIAC if the evidence so warrants; otherwise, appeals would be inutile. In *Metro Construction, Inc. v. Chatham Properties, Inc.*, we held that review of the CIAC award may involve either questions of fact or of law, or of both fact and law.[8] (Citation omitted)

This reasoning has often been cited to support the position that the Court of Appeals may review questions of fact in appeals from the Construction Industry Arbitration Commission's arbitral awards.

I disagree with the correctness of the reasoning repeatedly used to arrive at this conclusion. This Court should return to a more restrictive review of these arbitral awards, as is what the law provides. To reiterate, Section 19 of Executive Order No. 1008 provides:

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

The Construction Industry Arbitration Law has not been amended to expand the grounds for appealing the Construction Industry Arbitration Commission's arbitral awards.

In *Metro Construction*, however, this Court effectively held that Section 19 of Executive Order No. 1008, which states that the Construction Industry Arbitration Commission's arbitral awards are "inappealable except on questions of law"[9] has been amended by law to expand the range of questions that may be raised on appeal. This was based, in part, on the reasoning that exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of quasi-judicial agencies was conferred on the Court of Appeals, which has been vested with the power to perform acts necessary to resolve factual issues raised on appeal.

In support of this interpretation of Batas Pambansa Blg. 129, this Court reasoned that the proscription against fact-based appeals makes sense only if the law proscribes direct appeals to this Court, and that there is no basis to maintain the same limitation when the awards are appealable to the Court of Appeals.

I agree that Republic Act No. 7902 has the effect of amending Section 19 of Executive Order No. 1008, placing appeals from the Construction Industry Arbitration Commission under the jurisdiction of the Court of Appeals. However, I disagree with the extent of how such amendment and legislative intent have been interpreted.

Republic Act No. 7902 amends Section 19 of the Construction Industry Arbitration Law only by making arbitral awards appealable to the Court of Appeals instead of this Court. In other words, I submit that, as amended by Batas Pambansa Blg. 129, Section 19 effectively reads:

SECTION 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Court of Appeals. (Emphasis supplied)

The law did not expand the grounds for appealing the Construction Industry Arbitration Commission's arbitral awards to include questions of fact. It did not amend the provision that these arbitral awards are, as a general rule, final, inappealable, and binding upon the parties. It only vested the Court of Appeals, instead of this Court, with the jurisdiction to review questions of law on appeal.

Thus, although the Rules of Court includes decisions of the Construction Industry Arbitration Commission among those that may be appealed via petitions for review under Rule 43, this inclusion should pertain to a standardization of procedure and not an expansion of the grounds available for appealing arbitral awards. As pointed out in *CE Construction Corporation v. Araneta Center, Inc.*[10]

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

This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC arbitral tribunals must remain limited to questions of law.[11] (Citations omitted)

Absent a statutory provision expanding the grounds for appealing the Construction Industry Arbitration Commission's arbitral awards, this Court is duty bound to follow the clear text of the Construction Industry Arbitration Law: such arbitral awards are final and inappealable, except on questions of law.

This deference to the Construction Industry Arbitration Commission's factual determinations is grounded on several reasons.

First, this deference is aligned with the State's policy of ensuring expeditious resolution of disputes in the construction industry.

The Construction Industry Arbitration Law was passed in recognition of the vital role that the construction industry plays in the nation's growth and achievement of its goals. Its *whereas* clause notes, among others, that the construction industry employs a large segment of the country's labor force, and is a top contributor to its gross national product. Because of this special role, Executive Order No. 1008 recognizes that problems connected with the construction industry may hinder the nation's growth. Thus, it declared that the State's policy is "to encourage the early and expeditious settlement of disputes in the Philippine construction industry." [12]

Despite best efforts to reduce the time needed to resolve cases, the court system generally does not promote the early and expeditious settlement of disputes. Having a decision reviewed first by the Court of Appeals, and then by this Court, can already add more than a year to the settlement of any dispute. This process takes even longer

when the issues to be resolved on review include questions of fact.

The compelling reasons for encouraging the referral of disputes to arbitration and other forms of alternative dispute resolution was restated in Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004. Its Section 2 provides:

SECTION 2. Declaration of Policy. — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from the time to time.

As recognized in Republic Act No. 9285, referring disputes to alternative modes of dispute resolution such as arbitration is a means of achieving speedy and impartial justice and unclogging court dockets. Moreover, it is in recognition of the policy of promoting party autonomy in making appropriate arrangements to resolve disputes, where letting them do so is not contrary to public policy.

Second, the Construction Industry Arbitration Commission was specifically created and designed to resolve these disputes. In *CE Construction Corporation*, this Court stressed that the majority of the arbitrators accredited by the Construction Industry Arbitration Commission are experts from construction-related professions or engaged in related fields. Apart from them, there are also technical experts who aid in dispute resolution. This Court stated:

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

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

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

....

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

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

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. [The Construction Industry Arbitration Law] created an arbitration facility to which

the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

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

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[13] (Emphasis in the original, citations omitted)

Emphasizing the restrictive nature of any review of the Construction Industry Arbitration Commission's decisions, this Court stated that even the exceptional grounds available for revisiting the factual findings of lower courts or tribunals in petitions for review are not available on appeal from the such decisions:

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

We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[14] (Citations omitted)

In modifying the arbitral award in this case, however, the Court of Appeals engaged in a comprehensive review without duly considering the context of the Construction Industry Arbitration Law.

All of the Court of Appeals' modifications entailed an evaluation of the evidence presented by the parties, based on questions of fact.

As a general rule, if the issues raised are purely factual, the courts should defer to the Construction Industry Arbitration's findings. In *CE Construction Corporation*:

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

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

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

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

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

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

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

The CIAC Arbitral Tribunal acted in keeping with the law, its competence, and the adduced evidence; thus, this Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards.[15] (Citation omitted)

In this case, the Court of Appeals' modification of the Construction Industry Arbitration Commission's arbitral award was based on neither a legal question nor any exceptional ground requiring it to look into factual issues.

Nonetheless, since both parties, Shangri-La Properties, Inc. and BF Corporation, raised factual issues in their respective appeals, I concur with this Court that they are estopped from questioning the Court of Appeals' authority to review factual issues in this case.

ACCORDINGLY, I concur with the ponencia.

[1] Executive Order No. 1008 (1985), sec. 19, Construction Industry Arbitration Law.

[2] 818 Phil. 27 (2017) [Per J. Leonen, Third Division].

[3] Id. at 51-53.

[4] Executive Order No. 1008 (1985), sec. 19.

[5] 418 Phil. 176 (2001) [Per C.J. Davide, Jr., First Division].

[6] Id. at 199-204.

[7] 602 Phil. 945 (2009) [Per J. Chico-Nazario, Third Division].

[8] Id. at 960.

[9] Executive Order No. 1008 (1985), sec. 19.

[10] 816 Phil. 221 (2017) [Per J. Leonen, Second Division].

[11] Id. at 258-259.

[12] Executive Order No. 1008 (1985), sec. 2.

[13] CE Construction Corporation v. Araneta Center, Inc., 816 Phil. 221, 257-260 (2017) [Per J. Leonen, Second Division].

[14] Id. at 260-262.

[15] Id. at 283-284.

CONCURRING OPINION

REYES, A., JR., J.:

I concur with the exhaustive and lucidly written ponencia of Chief Justice Lucas P. Bersamin. I write solely to express my views regarding the scope of review of Construction Industry Arbitration Commission (CIAC) decisions by the Court of Appeals (CA) and the Supreme Court.

The ponencia upholds the comprehensive scope of review by the CA in appeals from decisions of the CIAC, which includes not only the power to resolve questions of law but also the power to inquire into and resolve questions of fact. On the other hand, the Separate Opinion, utilizing a diversified approach to appeals under Rule 43, takes the view that appeals from CIAC decisions can only cover questions of law.

While I commend the scholarly analysis undertaken in the Separate Opinion, I am convinced that the conclusions therein are somewhat blunted by the omission to apply Republic Act (R.A.) No. 7902, entitled "An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the purpose Section Nine of Batas Pambansa (BP) Blg. 129, as amended, Known as the Judiciary Reorganization Act of 1980," in its entirety. In this regard, I write this opinion to address the same.

Executive Order (E.O.) No. 1008,[1] otherwise known as the Construction Industry Arbitration Law, was enacted on February 4, 1985. It vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. Initially, pursuant to Section 19[2] of the said law, decisions of the CIAC were unappealable, except to the Supreme Court on pure questions of law.[3]

Thereafter, R.A. No. 7902 was enacted amending BP 129 and clearly vesting the CA with exclusive jurisdiction over appeals from decisions of quasi-judicial agencies. Said law specifically granted the CA with the power to resolve factual issues raised in cases falling within its appellate jurisdiction, viz.:

SECTION 1. Section 9 of Batas Pambansa Blg. 129, as amended, known as the Judiciary Reorganization Act of 1980, is hereby further amended to read as follows:

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

x x x x

"(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 (3) months, unless extended by the Chief Justice." (Emphasis supplied)

In fact, the subsequent promulgation of the 1997 Rules of Court specifically named the CIAC as one of the quasi-judicial agencies whose decisions or awards may be elevated to the CA for review via Rule 43.[4] Moreover, Sections 1 and 3 of said Rule categorically provides that this mode of review may include questions of law, questions of fact, or even a mixture of both, viz.:

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

x x x x

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

Metro Construction Inc. v. Chatham Properties, Inc.,[5] later on reiterated this expanded scope of review of the CA and discussed how the manner of appeal from decisions and awards of CIAC was effectively modified through the introduction of changes in the relevant laws, viz.:

In sum, under Circular No. 1-91, appeals from the arbitral awards of the CIAC may be brought to the Court of Appeals, and not to the Supreme Court alone. The grounds for the appeal are likewise broadened to include appeals on questions of facts and appeals involving mixed questions of fact and law.

The jurisdiction of the Court of Appeals over appeals from final orders or decisions of the CIAC is further fortified by the amendments to B.P. Blg. 129, as introduced by R.A. No. 7902. With the amendments, the Court of Appeals is vested with appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except "those 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."

x x x x

There is no controversy on the principle that the right to appeal is statutory. However, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified provided that vested rights are not impaired. The Supreme Court is bestowed by the Constitution with the power and prerogative, inter alia, to promulgate rules concerning pleadings, practice and procedure in all courts, as well as to review rules of procedure of special courts and quasi-judicial bodies, which, however, shall remain in force until disapproved by, the Supreme Court. This power is constitutionally enshrined to enhance the independence of the Supreme Court.

The right to appeal from judgments, awards, or final orders of the CIAC is granted in E.O. No. 1008. The procedure for the exercise or application of this right was initially outlined in E.O. No. 1008. While R.A. No. 7902 and circulars subsequently issued by the Supreme Court and its amendments to the 1997 Rules on Procedure effectively modified the manner by which the right to appeal ought to be exercised, nothing in these changes impaired vested rights. The new rules do not take away the right to appeal allowed in E.O. No. 1008. They only prescribe a new procedure to enforce the right. No litigant has a vested right in a particular remedy, which may be changed by substitution without impairing vested rights; hence, he can have none in rules of procedure which relate to remedy.[6] (Citations omitted and emphasis supplied)

These changes and its effects were succinctly explained by the Court in the recent case of J Plus Asia Dev 't Corp. v. Utility Assurance Corp.[7] as follows:

Executive Order (EO) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. By express provision of Section 19 thereof, the arbitral award of the CIAC is final and unappealable, except, on questions of law, which are appealable to the Supreme Court. With the amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the CA in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law, or of fact

and law.[8] (Emphasis supplied)

Instead of traversing the statutory mandate of R.A. No. 7902, the Separate Opinion takes an approach which effectively emasculates Rule 43, viz.:

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

This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enables questions of law, and there those that enabled mixed questions of fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law any appeal from CIAC arbitral tribunals must remain limited to questions of law.[9]

The assertion that "Section 3 of Rule 43 merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes" strikes me as an unrequited transmutation of the plain meaning of the phrase "whether the appeal involves questions of fact, of law, or mixed questions of fact and law," as it appears in Rule 43, Section 3. What has been up to now a straightforward statement on the possible grounds for appeal under Rule 43 has been transformed into "variances in the disparate modes of appeal:" a conclusion that I find baseless and therefore, objectionable.

It is a basic rule of statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[10] A close reading of Rule 43 should clearly and plainly show that there is no word or phrase therein that would support the existence of "disparate modes of appeal." I submit that Rule 43 contemplates only one single mode of appeal, i.e., an appeal by petition for review.

The Separate Opinion propounds a diversified approach to the scope of review of decisions of quasi-judicial agencies under Rule 43. It proposes that the enabling statute of each agency primarily determines which parts of their decisions may be reviewed on appeal: there are statutes that only enable review of factual questions; there are statutes that only enable review of questions of law; and there are statutes that enable review of mixed questions of fact and law. Under this approach, Rule 43 merely operates as a funnel into which all appeals from the decisions of the wide array of quasi-judicial agencies flow into, always subject to the prescription of the scope of review granted by the agencies' enabling statutes. As applied to the CIAC, this means that, in keeping with the enabling statute of the CIAC (specifically, Section 19 of E.O. No. 1008), any appeal from the CIAC must remain limited to questions of law.

There are two faults in this approach. First, it overlooks R.A. No. 7902 and the Metro Construction ruling. It must be noted that R.A. No. 7902 is a substantive law which explicitly expands the jurisdiction of the CA and vests it with "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 x x x appellate jurisdiction." As such, it modified Rule 43 and any such change made by R.A. No. 7902 must be read into Rule 43 as an integral part thereof. Indeed, the phrase in Section 19 of E.O. No. 1008 that an arbitral award shall be appealable to the Supreme Court on questions of law is incompatible with the provision in R.A. No. 7902 that the CA has the power to resolve factual issues raised in appeals from decisions of quasi-judicial agencies. In turn, Metro Construction explains that,

although the right to appeal has not been taken away, the manner of exercising such a right had been effectively modified, i.e., the appeal is no longer taken to the Supreme Court, but to the CA, and that the grounds for appeal are not limited to questions of law, but may also involve questions of fact and mixed questions of law and fact. Clearly, Rule 43 should not be read as a mere procedural conduit through which Section 19 of E.O. No. 1008 must flow. I submit that the correct view is that Rule 43 must be read together with R.A. No. 7902, which modified Section 19 of E.O. No. 1008, as held by this Court in the Metro Construction line of cases.

The plain meaning of Rule 43, as modified by R.A. No. 7902, cannot be explained away by mere invocation of distinctions between general and special laws. As mentioned earlier, R.A. No. 7902 is a jurisdictional statute which provides for an expanded definition of the CA's judicial power. Furthermore, the rule *generalia specialibus non derogant* is subject to a very important qualification. The rule does not apply if the legislature's intent to repeal or alter is manifest.^[11] It is axiomatic that a later law prevails over a prior statute,^[12] more so when the later law expressly provides for the repeal or amendment of prior inconsistent statutes and rules, as Section 2^[13] of R.A. No. 7902 does.

The second fault in the diversified approach to appeals under Rule 43 is that it places too much emphasis on expediency. The function of an appeal is to review errors of judgment committed by the court or tribunal with jurisdiction over the subject matter and the parties; or any such error committed by the court or tribunal in the exercise of jurisdiction amounting to nothing more than an error of judgment. ^[14] While the CIAC was indeed formed to expedite the resolution of construction industry disputes, it must not be forgotten that the overriding concern in the resolution of cases is the dispensation of justice. Thus, I submit that the CA must likewise be allowed to fully exercise its vested statutory powers to review cases appealed to it; and this power includes the discretion to review factual questions. Such review serves not to undermine, but rather, to enhance, the integrity of arbitration, by ensuring an opportunity for an impartial review of the factual findings of the arbitral tribunal. Justice contemplates not only the speedy disposition of cases but also the accurate and fair adjudication thereof.

Given the foregoing, I agree with the ponencia's ruling that given the prevailing laws and jurisprudence surrounding the scope of review of the CA over decisions and awards rendered by the CIAC, to confine the former's review exclusively to legal issues would only create confusion and irreconcilable conflict.^[15]

As for the Supreme Court's jurisdiction over appeals from decisions of the CIAC, suffice it to say that while the CA was vested by R.A. No. 7902 with near-plenary power to consider factual questions in appeals brought under Rule 43, the Supreme Court does not have this power. As made abundantly clear in the ponencia and in the case of *Metro Rail Transit Development Corporation v. Gammon Philippines, Inc.*,^[16] the Supreme Court's power to review decisions of the CA in CIAC cases appealed via Rule 43 is limited to questions of law. The rule however is not absolute. Jurisprudence has recognized exceptions to the rule in which the Supreme Court in a petition for review on certiorari may delve into the factual findings of the arbitral tribunal.^[17] In the case at bar, the conflicting factual findings of the CIAC and the CA necessitated an inquiry into the factual issues in order to arrive at an optimal resolution of the case.

I conclude by reiterating that there is no need to take a restrictive or liberal construction of E.O. No. 1008 and R.A. No. 7902. All that is needed is to apply the plain meaning of said statutes and read them together. In the first place, those laws do not suffer from any ambiguity that would require interpretation, strict or liberal.

IN VIEW OF THE FOREGOING, I concur in the ponencia.

[1] Creating an Arbitration Machinery in the Construction Industry of the Philippines.

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

[3] *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, 684 Phil. 330, 344 (2012).

[4] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 204-205 (2001).

[5] *Id.*

[6] *Id.* at 203-206.

[7] 712 Phil. 587 (2013).

[8] *Id.* at 601.

[9] Separate Opinion of Justice Leonen, pp. 14-15.

[10] *Phil. Amusement and Gaming Corp. (PAGCOR) v. Phil. Gaming Jurisdiction Inc. (PEJI), et al.*, 604 Phil 547, 553 (2009).

[11] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827-828 (1948).

[12] *Daud v. Collector of Customs of the Port of Zamboanga City*, 160-A Phil. 798, 802-803 (1975).

[13] Section 2. All provisions of laws and rules inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

[14] *Silverio v. CA*, 225 Phil. 459, 473 (1986).

[15] Ponencia, p. 27.

[16] G.R. No. 200401, January 17, 2018, 851 SCRA 378.

[17] *Werr Corp. International v. Highlands Prime, Inc.*, 805 Phil. 415 (2017) lays down the following exceptions: (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section 10 of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the arbitral tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the CA are contrary to those of the CIAC; or (8) when a party is deprived of administrative due process. See also *Metro Rail Transit Development Corp. v. Gammon Philippines, Inc.*, *id.* at 403-407, citing *CE Construction Corporation v. Araneta Center, Inc.*, 816 Phil. 221, 252 (2017).

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