664 Phil. 688

SECOND DIVISION

[G.R. No. 183576, May 30, 2011]

DIAMOND DRILLING CORPORATION OF THE PHILIPPINES, PETITIONER, VS. NEWMONT PHILIPPINES INCORPORATED, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition[1] for review on certiorari assailing the Decision[2] dated 16 January 2008 and Resolution[3] dated 8 July 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96093.

The Facts

On 20 December 1994, respondent Newmont Philippines Incorporated (Newmont) (now known as the Cordillera Exploration Company Incorporated) filed eight applications[4] for Financial or Technical Assistance (FTAA) with the Central Office Technical Secretariat of the Mines and Geosciences Bureau (MGB) in Quezon City pursuant to Executive Order No. 279[5] (EO 279) and Department of Environment and Natural Resources (DENR) Administrative Order No. 63[6] (DAO 63), series of 1991. Newmont wanted to explore and develop large gold deposits in the Central Cordillera, particularly the areas situated in Abra, Benguet, Cagayan, Ilocos Sur, Ilocos Norte, Ifugao, Kalinga-Apayao, Mountain Province, Nueva Vizcaya and Pangasinan, comprising a maximum contract area[7] of 100,000 hectares[8] of land for each application.

On the same date, Newmont paid the corresponding filing and processing fees.[9] MGB registered Newmont's FTAA applications on the same day of filing. Thereafter, Newmont furnished through fax transmission the MGB Regional Office in the Cordillera Administrative Region (MGB-CAR) with its letter-application, sketch map and coordinates defining the area of its FTAA applications.[10] The MGB-CAR received the fax machine copies of the letter and other pertinent documents on 21 December 1994.

Petitioner Diamond Drilling Corporation of the Philippines (Diamond Drilling) likewise filed on 20 December 1994 an application for Mineral Production Sharing Agreement (MPSA), covering 4,860 hectares of land in the areas situated in Benguet and Mountain Province, with the MGB-CAR pursuant to EO 279, as implemented by DENR Administrative Order No. 57.[11]

Pending verification by the Survey Section of the MGB-CAR on the availability of the

area applied for, the Mining Recorder of the MGB-CAR advised Diamond Drilling to first register its Articles of Incorporation, By-Laws and Secretary's Certificate with the Securities and Exchange Commission.[12] On 22 December 1994, Diamond Drilling complied with the requirements. Since the area as checked by the MGB-CAR in its records was open for mining location, Diamond Drilling paid for the filing and processing fees on the same date.[13] The MGB-CAR then registered Diamond Drilling's MPSA application.[14]

Upon verification, however, the MGB-CAR found that Diamond Drilling's MPSA application was in conflict with a portion of one of Newmont's FTAA applications.[15]

Meanwhile, on 14 April 1995, Republic Act No. 7942[16] (RA 7942) or the Philippine Mining Act of 1995 took effect.

In a letter dated 4 October 1995, Newmont wrote the MGB requesting for an opinion on the applicability of Section 8 of DAO 63, particularly the provision which requires an FTAA applicant to furnish the MGB Regional Office with a copy of the FTAA application within 72 hours from filing.

In a letter-opinion[17] dated 25 October 1995, the Director of MGB-CAR replied:

> In reply therewith, please be advised as follows:
>
> 1. FTAA proposals/applications filed and accepted by MGB are closed to subsequent mineral rights applications notwithstanding the the fact that the MGB has not furnished a copy thereof to concerned DENR Regional Office within 72 hours. We feel that the inclusion of said period is not a mandatory provision but merely intended to facilitate the processing of FTAA applications; and
>
> 2. While it appears that there is no obligation on the part of the FTAA applicant to furnish said copy to concerned DENR Regional Office, yet, we likewise feel that said applicant is not precluded from doing so for the same reason abovementioned, that is, to facilitate the processing of the FTAA application. x x x

However, in a letter-opinion[18] dated 23 February 1996, the same Director of MGB-CAR reversed his earlier opinion stating:

> x x x Upon thorough study, we believe that when the regulations at that time (DENR Administrative Order No. 63) requires that a copy of the FTAA proposal be furnished to the DENR Regional Office concerned within 72 hours from filing thereof, it is mandatory, notwithstanding our previous opinion on the matter, the purpose being is to notify the said regional office of the existence of said application and therefore they should no longer accept other applications that are in conflict therewith. We cannot blame the Regional Office concerned in accepting applications for MPSA and other applications because the FTAA proponent failed to

> furnish them a copy of its FTAA proposal within the prescribed hours. x x x

On 2 August 1996, Diamond Drilling filed a protest[19] with the MGB-CAR. Diamond Drilling sought to annul the eight FTAA applications of Newmont and asked that it be granted preferential right over the areas covered by its MPSA application.

Meanwhile, due to the requirements of the new mining law,[20] Newmont, in a letter[21] dated 10 September 1996, gave notice to the MGB-CAR that it was relinquishing portions of the areas covered under its FTAA applications, reducing the total area applied for to 81,000 hectares pursuant to Section 257 (now Section 272[22]) of DENR Administrative Order No. 96-40 or the Revised Implementing Rules and Regulations of RA 7942.

In a Decision[23] dated 22 October 1997, the Panel of Arbitrators of the MGB-CAR decided the case in favor of Diamond Drilling. The Panel stated that the filing of the MPSA application on 20 December 1994 up to the payment made on 22 December 1994 was an uninterrupted and continuing act. Since the filing is the preparatory act and the registration is the conclusive act, then an MPSA application is considered accepted and registered upon verification that the area is free and open for location. The dispositive portion of the decision states:

> IN LIGHT OF THE FOREGOING PREMISES, THE PANEL WEIGHED BOTH ALLEGATIONS AND ARGUMENTS AND CONSIDERED THE EVIDENCE AND FOUND THE SAME STRONGLY IN FAVOR OF THE PROTESTANT, DDCP (Diamond Drilling). NPI (Newmont) is hereby ordered to limit its area to 81,000 has. per province and amend its technical description and plan to exclude the area of DDCP. MPSA No. 48 is hereby declared valid, granting to DDCP the preferential right over the area covered by its MPSA.
>
> SO ORDERED.[24]

Newmont appealed the decision of the MGB-CAR to the Mines Adjudication Board (MAB).[25] In a Decision[26] dated 24 April 2000, the MAB reversed the decision of the MGB-CAR and ruled in Newmont's favor. The MAB found that fax machine copies sent to the MGB-CAR of Newmont's FTAA applications showing the essential information, specifically the dates of filing and registration as well as technical descriptions, are valid documents since the law is silent as to the mode of service. The MAB added that since Newmont's FTAA applications were properly filed and formally accepted two days earlier than the date of acceptance of Diamond Drilling's MPSA application, the area covered by Newmont's FTAA applications should be considered closed to other mining applications. The dispositive portion states:

> WHEREFORE, the foregoing premises considered, the appealed decision dated October 22, 1997 of the Panel of Arbitrators, DENR-CAR is hereby REVERSED and SET ASIDE and NPI's FTAA application is hereby SUSTAINED.

SO ORDERED.[27]

Diamond Drilling filed a motion for reconsideration which the MAB denied in a Resolution[28] dated 11 August 2006. Diamond Drilling then filed a petition[29] for review with the CA.

In a Decision[30] dated 16 January 2008, the CA affirmed the decision of the MAB. Diamond Drilling filed a motion for reconsideration which the CA denied in a Resolution[31] dated 8 July 2008.

Hence, this petition.

The Issue

The main issue is whether the CA committed a reversible error in affirming the decision of the MAB giving preferential right to Newmont's FTAA applications over Diamond Drilling's MPSA application.

The Court's Ruling

The petition lacks merit.

Petitioner Diamond Drilling insists that the requirement of furnishing the MGB Regional Office a copy of the FTAA application within 72 hours is mandatory in character. Diamond Drilling adds that the transmission by Newmont of fax machine copies of its FTAA applications to the MGB Regional Office is not sufficient compliance with Section 8 of DAO 63. Thus, Diamond Drilling asserts that it has preferential rights over the area included in its MPSA application as against respondent Newmont.

Section 8 of DENR Administrative Order No. 63 states:

> SEC. 8. Acceptance and Evaluation of FTAA. - **All FTAA proposals shall be filed with and accepted by the Central Office Technical Secretariat (MGB) after payment of the requisite fees to the Mines and Geosciences Bureau, copy furnished the Regional Office concerned within 72 hours. The Regional Office shall verify the area and declare the availability of the area for FTAA and shall submit its recommendations within thirty (30) days from receipt. In the event that there are two or more applicants over the same area, priority shall be given to the applicant who first filed his application.** In any case, the Undersecretaries for Planning, Policy and Natural Resources Management; Legal Services, Legislative, Liaison and Management of FASPO; Field Operations and Environment and Research, or its equivalent, shall be given ten (10) days from receipt of FTAA proposal within which to submit their comments/recommendations and the Regional Office, in the preparation of its recommendation shall consider the financial and technical capabilities of the applicant, in addition to the proposed Government

> share. Within five (5) working days from receipt of said recommendations, the Technical Secretariat shall consolidate all comments and recommendations thus received and shall forward the same to the members of the FTAA Negotiating Panel for evaluation at least within thirty (30) working days. (Emphasis supplied)

It is clear from Section 8 of DAO 63 that the MGB Central Office processes all FTAA applications after payment of the requisite fees. Section 8 requires the FTAA applicant to furnish the MGB Regional Office a copy of the FTAA application within 72 hours from filing of the FTAA application. The Regional Office verifies the area that an applicant intends to utilize, and declares the availability of the area for FTAA application. The Regional Office will then submit its recommendation to the MGB Central Office within thirty days from receipt by the Regional Office of a copy of the FTAA application from the applicant. However, when there are two or more applicants in the same area, priority shall be given to the applicant that first filed its application.

In the present case, the records show that Newmont filed its FTAA applications with the MGB Central Office in Quezon City on 20 December 1994. After Newmont paid the filing and processing fees, the MGB Central Office registered Newmont's FTAA applications on the same date. On the other hand, Diamond Drilling filed its MPSA application with the MGB-CAR Regional Office in Baguio City on 20 December 1994. However, since the pertinent documents needed by the MGB-CAR Regional Office were lacking, it took two more days for Diamond Drilling to complete the requirements. Diamond Drilling paid its filing and processing fees only on 22 December 1994 or two days after Newmont's FTAA applications were registered with the MGB Central Office. Thus, Diamond Drilling's MPSA application was registered by the MGB-CAR Regional Office only on 22 December 1994.

Since Newmont's FTAA applications preceded that of Diamond Drilling's MPSA application, priority should be given to Newmont. Section 8 of DAO 63 is clear. It states that in the event there are two or more applicants over the same area, priority shall be given to the applicant that first filed its application.

On the requirement that the applicant should furnish the proper MGB Regional Office a copy of the FTAA application within 72 hours from filing, the CA, in its Decision dated 16 January 2008, stated:

> x x x We rule that the requirement of DAO No. 63 that the MGB Regional Office concerned be furnished a copy of the FTAA application is merely directory in character. The word "*shall*," which seems to give the provision a mandatory character, precedes the filing of an FTAA application and not the furnishing of a copy of the same to the Regional office; hence to interpret the word "*shall*" as giving the latter a mandatory character is far-fetched. A fortiori, the purpose of said requirement is to notify the Regional Office concerned that an application for FTAA was filed with the Central Office Technical Secretariat (COTS) of the MGB so that the Regional Office may verify the area covered by the application and submit its recommendation concerning its availability. It must be stressed that the Regional Office concerned only has the