

EN BANC

[G.R. No. 238671, June 02, 2020]

**TAISEI SHIMIZU JOINT VENTURE, PETITIONER, VS.
COMMISSION ON AUDIT AND THE DEPARTMENT OF
TRANSPORTATION (FORMERLY DEPARTMENT OF
TRANSPORTATION AND COMMUNICATION), RESPONDENTS.**

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for *certiorari*^[1] assails the Decision No. 2016-395 dated December 21, 2016^[2] and Resolution No. 2018-047 dated January 22, 2018^[3] of the Commission on Audit (COA) in COA C.P. Case No. 2015-622. The first partially disapproved the payment of the final and executory arbitral award rendered by the Construction Industry Arbitration Commission (CIAC) in favor of petitioner Taisei Shimizu Joint Venture^[4] (TSJV); the second denied petitioner's motion for reconsideration.

Antecedents

Petitioner TSN won the contract award for the construction of the New Iloilo Airport. As project proponent, respondent Department of Transportation^[5] (DOTr) entered into a contract agreement with TSJV on March 15, 2004, pertaining to the construction. Following the project's completion and delivery, it turned out that some TSJV billings had been left unpaid.

After TSJV's initial effort to collect failed, it filed with the CIAC a Request for Arbitration and Complaint,^[6] seeking payment of the following money claims:

Claim No.	Particulars	Amount Awarded
1	Compensation for unforeseen increase in the prices of structural steel and electrical cables which TSJV imported from Japan under Variation Order No. 5 - 12% interest as of September 12, 2014 - 12% VAT	JPY72,486,598.00 JPY55,121,589.00 Php 7,151,162.80
2	Currency conversion	Php 41,909,962.42

	loss - 12% interest as of September 12, 2014	Php 37,567,575.36
3	Interest on delayed payments - 12% interest as of September 12, 2014	Php 246,888,166.94 Php 213,476,677.61
4	Claim for adjustment of the peso component of Work Items under Annex K of the Document I- Invitation to Bid and Instruction to Bidders - 12% interest per annum from June 17, 2008 on the first Php48,675,741.07 and computed from October 5, 2013 on the remaining Php44,771,956.56 as of September 12, 2014 - 12% VAT as of September 12, 2014	Php 93,447,697.63 P 40,829,371.64 Php 16,113,248.31
5	Claim for compensation of costs incurred due to extension of time - 12% interest per annum computed from July 4, 2008 on the first Php77,145,933.94 and computed from October 5, 2013 on the remaining Php4,482,556.17 as of September 12, 2014 - 12% VAT	Php 81,628,490.11 Php 57,345,848.76 Php 16,676,920.66
6	Additional costs from performing embankment works - 12% interest as of September 12, 2014	Php142,383,393.00 Php108,273,793.32 Php 30,078,862.36

	- 12% VAT as of September 12, 2014	
7	Damages for failure of DOTr to pay within a reasonable length of time the additional costs of aggregates - 12% interest as of September 12, 2014 - 12% VAT as of September 12, 2014	Php447,040,482.65 Php287,068,386.23 Php 88,093,064.27
8	Attorney's fees	Php 7,225,221.89
	Litigation expenses	Php 9,916,881.31
	Total	Php2,316,687,603.03^[7]

In defense of the government, the DOTr responded to the Complaint and actively participated in the CIAC proceedings.

Under its Final Award^[8] dated December 11, 2014, the CIAC granted Claim Nos. 1, 3, 4, 5, and 8, viz.:

Claim No.	Particulars	Amount Awarded
1	Compensation for unforeseen increase in the prices of structural steel and electrical cables which TSJV imported from Japan under Variation Order No. 5	Php 37,079,858.18
3	Interest on delayed payments	Php 68,393,583.40
4	Claim for adjustment of the peso component of Work Items under Annex K of the Document I- Invitation to Bid and Instruction to Bidders	Php104,661,421.35
5	Claim for compensation of costs incurred due to extension of time	Php 6,032,437.04
8	Attorney's fees and costs of arbitration	Php 7,234,570.86
	Total	Php223,401,870.83

The DOTr was likewise directed to pay six percent (6%) interest per annum on the total amount from the finality of the Final Award until full payment.^[9]

Subsequently acting on the DOTr's motion for correction of the Final Award, the CIAC, by Order dated February 20,2015,^[10] reduced Claim No. 3. The CIAC cited

TSJV's failure to include its claim for input value added tax (VAT) in the corresponding Terms of Reference (TOR). What TSJV did was belatedly pray for payment of its claim for input VAT in its memorandum. Following established jurisprudence, the CIAC held that it could not award an amount in excess of complainant's claim as indicated in the TOR even if the evidence may later show it was entitled to a higher amount. Consequently, the arbitral tribunal amended the Final Award, viz.:

Claim No.	Particulars	Amount Awarded
1	Compensation for unforeseen increase in the prices of structural steel and electrical cables which TSJV imported from Japan under Variation Order No. 5	Php 37,079,858.18
3	Interest on delayed payments	Php 61,065,699.46
4	Claim for adjustment of the peso component of Work Items under Annex K of the Document I-Invitation to Bid and Instruction to Bidders	Php 104,661,421.35
5	Claim for compensation of costs incurred due to extension of time	Php 6,032,437.04
8	Attorney's fees and costs of arbitration	Php 7,234,570.86
	Total	Php216,073,986.89

Following the finality of the CIAC's Final Award, TSJV moved for its execution. The DOTr opposed on ground that the funds sought to be levied were public in character. [11] Under Resolution dated April 22, 2015, the CIAC granted the motion for execution and directed the Clerk of Court and the Ex Officio Sheriff of the Regional Trial Court, Makati City to implement the writ of execution. [12]

The Ex Officio Sheriff thereafter served a demand to satisfy the arbitral award on the DOTr and issued notices of garnishment to the Philippine National Bank (PNB), Philippine Veterans Bank (PVB), Land Bank of the Philippines (LBP), and Development Bank of the Philippines (DBP). [13] The DOTr later on advised TSJV in writing that the arbitral award should be referred to the COA as condition *sine qua non* for payment. [14] Meanwhile, the DBP, PVB, and PNB separately informed the Sheriff that they did not hold funds or properties in the DOTr's name. [15] On the other hand, the LBP advised that claimant TSJV must first seek the COA's approval for payment of the arbitral award. [16]

Again, after its initial effort to execute failed, TSN subsequently filed with the COA a

petition^[17] for enforcement and payment of the arbitral award. To this, the DOTr, through the Office of the Solicitor General (OSG), responded, thus:

8. The allegations in paragraphs 16 and 17 of the Petition are ADMITTED, with the following manifestations:

(a) The Arbitral Tribunal rendered the Final Award dated December 11, 2014 also after a consideration of the numerous submissions filed and pieces of evidence (documentary and testimonial) presented by both parties during the arbitration proceedings;

(b) The original claim of Petitioner [TSJV] on its Claim Nos. 1-8, in the aggregate sum of TWO BILLION THREE HUNDRED SIXTEEN MILLION SIX HUNDRED EIGHTY-SEVEN THOUSAND SIX HUNDRED THREE PESOS AND THREE CENTAVOS (**Php2,316,687,603.03**) as provided in the Terms of Reference, was **substantially reduced** to TWO HUNDRED TWENTY-THREE MILLION FOUR HUNDRED ONE THOUSAND EIGHT HUNDRED SEVENTY PESOS AND EIGHTY-THREE CENTAVOS (**Php223,401,870.83**) plus 6% per annum interest from December 11, 2014 until fully paid - when the Arbitral Tribunal, through the Final Award, completely denied Claim Nos. 2, 6, and 7, while reducing Claims Nos. 1, 3, 4, 5, and 8; and

(c) On motion of Respondent [DOTr], the latter amount of Php223,401,870.83 was **further reduced** to TWO HUNDRED SIXTEEN MILLION SEVENTYTHREE THOUSAND NINE HUNDRED EIGHTY-SIX PESOS AND EIGHTY-NINE CENTAVOS (**Php216,073,986.89**) plus 6% per annum interest from December 11, 2014 until fully paid - when the Arbitral Tribunal, through the Order dated February 20, 2015, deleted the Value-Added Tax (VAT) component in respect of Claim No. 3.

x x x x

10. Finally, as relayed by Respondent's representatives to the undersigned counsel, Respondent has no further comments or objections to the Arbitral Tribunal 's Final Award dated December 11, 201^[4], as amended by the Order dated February 20, 2015.^[18]

By Decision No. 2016-395 dated December 21, 2016,^[19] the COA approved payment but only to the extent of **Php104,661,421.35** or less than half of the total award. Asserting its primary jurisdiction over money claims against government agencies and instrumentalities, the COA claimed to have reviewed the evidence, on the basis of which it found that only Claim No. 4 was in accord with law and the rules.

As for Claim No. 1 pertaining to compensation due to unforeseen price increases in structural steel and electrical cables imported from Japan, the COA held that it was