SECOND DIVISION

[G.R. No. 220828, October 07, 2020]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE PHILIPPINE MINING DEVELOPMENT CORPORATION, PETITIONER, VS. APEX MINING COMPANY INC., RESPONDENT.

D E C I S I O N

INTING, J.:

Before the Court is a Petition for Review[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated December 22, 2014 and the Resolution[3] dated September 23, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 133927. The assailed CA Decision reversed and set aside the Decision[4] dated October 28, 2009 of the Mines Adjudication Board (MAB), Department of Environment and Natural Resources (DENR) in MAB Case Nos. 0156-07 and 0157-07; and declared Apex Mining Company, Inc. (Apex) to have prior and preferential rights in its applications for mineral production sharing agreement with the DENR. The assailed CA Resolution, on the other hand, denied the Motion for Reconsideration (of the Decision dated December 22, 2014)[5] filed by the Philippine Mining Development Corporation (PMDC).

The Facts

Republic of the Philippines is represented in this case by the PMDC, a government corporation attached to the DENR. The PMDC became the successor-in-interest of the mining rights of North Davao Mining Corporation (NDMC).

NDMC held mining claims over areas located in the Province of Compostela Valley which were covered by mining lease contracts and published lode lease applications, as follows:

I. By Mining Lease Contracts -

A. Owned by NDMC:
LLC No. V-523 granted on January 22, 1965
MLC No. MRD-155 granted on December 13, 1978
MLC No. MRD-156 granted on December 13, 1978
MLC No. MRD-157 granted on December 13, 1978
MLC No. MRD-158 granted on December 13, 1978

B. Under Operating Agreement with NDMC:

MLC No. MRD-290 granted on March 22, 1982

II. By Published Lode Lease Applications -

A. LLA No. V-14203 Amd published in the newspaper on November 18, 1982 and posted on the same date.

B. LLA No. 14204 [sic][6] published in the newspaper on March 31, 1988 and posted on the same date.

C. LLA No. V-14205 published in the newspaper of general circulation [on] March 31, 1988 and posted on the same date.[7]

NDMC had two mining projects in the Province of Compostela Valley, namely: (1) the Amacan Copper Project, which commenced commercial operation in August 1982 and ceased in May 1992; and (2) the Hijo Gold Project, which commenced in May 1980 and ceased in 1985.[8]

During its commercial operations, NDMC secured a loan from the Philippine National Bank (PNB) using its properties, including its mining claims and rights, as collateral for the loan. As of June 30, 1986, NDMC's outstanding loan balance with the PNB amounted to P4,708,135,920.00. Due to NDMC's inability to pay the loan and its interest, the PNB foreclosed its properties, including the subject mining claims.[9]

On February 27, 1987, the National Government of the Philippines (Government) and the PNB executed a Deed of Transfer,[10] whereby the PNB turned over several of its assets to the Government, including NDMC's mining claims and rights.

Meanwhile, Proclamation No. 50[11] was issued by then President Corazon C. Aquino on December 8, 1986, creating the Committee on Privatization (COP) and the Asset Privatization Trust (APT). The COP and the APT were primarily tasked to take title to and possession of, conserve; provisionally manage and dispose of, assets identified for privatization or disposition and transferred to APT for the benefit of the Government.

On April 21, 1995, Apex filed with the Mines and Geo-Sciences Bureau (MGB), Regional Office No. XI, Davao City applications for Mineral Production Sharing Agreement (MPSA). The applications were denominated as APSA (XI) 99 and APSA (XI) 100. On July 26, 1995, Apex filed another MPSA application denominated as APSA (XI) 112.[12] Apex and other claimants averred that their applications cover mining claims situated in the Municipalities of Maco, Nabunturan and Maragusan in Compostela Valley, held by them either as registered claim owners, assignees or operators.[13]

On January 8, 1996, the NDMC filed an application for Financial and Technical Assistance Agreement (FTAA) with the MGB Regional Office No. XI, Davao City.[14] The FTAA application was registered as FTAA No. (XI) 014.[15] It covered, among others, the mining areas subject of Lode Lease Contract No. V-523, Mining Lease Contract Nos. MRD-155, MRD-156, MRD-157, MRD-158 and MRD-290, as well as published Lease Application Nos. V-14203 Amd, V-14204 and V-14205, covering a total area of 27,058 hectares. However, after the plotting was conducted, the MGB found that the FTAA application overlapped the valid mining rights belonging to other persons within the area in question. Thus, the MGB excluded the areas covered by these mining rights, thereby reducing the FTAA application to 20,237

hectares.[16]

On September 17, 1997, then Acting DENR Secretary Antonio G. M. La Viña issued a Memorandum[17] enjoining all MGB Regional Directors to close areas to new mining locations or applications if these areas are covered by valid and existing mining claims held in trust by APT or other similar entities.

One year later, or on September 17, 1998, Apex filed an Adverse Claim/Protest[18] against the FTAA application of NDMC before the Panel of Arbitrators (POA) for MGB Regional Office No. XI, Davao City. In the main, Apex argued that NDMC's mining claims were null and void for failure to comply with the mining laws.

On December 29, 1998, NDMC filed its Answer contending that the Adverse Claim/Protest filed by Apex should be dismissed on the ground of prescription, laches, lack of cause of action, and lack of merit.[19]

Thereafter, NDMC's Notice of Application for FTAA was published on March 16 and 18, 1999.[20]

On March 24, 1999, Apex filed a manifestation and motion praying that: 1) its Adverse Claim/Protest be treated as an adverse claim against the published FTAA application of NDMC; 2) the areas free of conflict be segregated; and 3) it be allowed to file amended MPSA applications.[21]

In its Order dated January 27, 2000, the POA granted Apex's motion and ordered the segregation of the "free areas."[22] NDMC moved to reconsider the Order, but the POA denied it in its Order dated March 28, 2000.[23]

Meanwhile, on December 6, 2000, Executive Order No. (EO) 323[24] was issued creating the Inter-Agency Privatization Council (PC) and the Privatization and Management Office (PMO) under the Department of Finance. EO 323 was aimed to continue the privatization of government assets and corporations. The PC assumed all the powers, functions, duties arid responsibilities, all properties, real or personal assets, equipment and records, as well as all obligations and liabilities previously held by the COP and APT under Proclamation No. 50.[25] Pursuant to EO 323, NDMC's assets were turned over from COP and APT to PMO.[26]

On July 4, 2003, the Natural Resources Mining and Development Corporation (NRMDC) was created under Securities and Exchange Commission (SEC) Registration No. CS200314923.[27] As stated in the Memorandum from the President[28] dated April 9, 2003, the NRMDC shall be primarily tasked to "conduct and carry on the business of exploring, developing, exchanging, selling, disposing, importing, exporting, trading and promotion of gold, silver, copper, iron and all kinds of mineral deposits and substances."

On June 6, 2005, the PC designated the NRMDC as the trustee and disposition entity for NDMC in lieu of the PMO.[29]

On April 7, 2006, the NRMDC and the Government, through the PC, executed a Trust

Agreement[30] whereby the mining assets of NDMC were transferred, conveyed, and assigned to the NRDMC for development and/or disposition. As a result, NDMC's subject mining claims have been entrusted to the NRDMC.

Thereafter, pursuant to Board Resolution No. 97, Series of 2007, the corporate name of NRMDC was changed to PMDC.[31]

The Ruling of the POA

For ease of reference, the POA grouped the disputed claims into six (6) clusters, denominated as Clusters 1, 2, 3, 4, 5, and 6. In its Decision[32] dated July 4, 2006, the POA dismissed the adverse claim of Apex, holding NDMC to have preferential right over Clusters 1, 2, 3, 5, and 6 only.

Apex filed a Motion for Reconsideration (of Decision dated 4 July 2006).[33] NDMC also filed a motion for partial reconsideration with respect to the POA's ruling that it does not have preferential rights over Cluster 4.[34]

On June 14, 2007, the POA issued an Order[35] denying both motions. Thus, Apex and NDMC filed their respective appeals[36] with the MAB.

The Ruling of the MAB

On October 2, 2009, the MAB rendered its Decision[37] in favor of NDMC, and dismissed Apex's appeal for lack of merit. The MAB set aside the POA Decision insofar as it declared that neither party had preferential rights over Cluster 4, and insofar as how Clusters 1 and 2 were plotted. Accordingly, NDMC was declared to have preferential rights over Cluster 4 in addition to Clusters 1, 2, 3, 5 and 6. The plotting of Clusters 1 and 2 was likewise ordered amended to conform to the plotting of LLA No. V-14203-Amd and LLA No. V-14205, as published.

On December 23, 2009, Apex filed a Motion for Reconsideration (of Decision dated 28 October 2009),[38] which the MAB denied in its Resolution[39] dated December 26, 2013. Consequently, Apex elevated the case to the CA *via* a Petition for Review.[40]

The Ruling of the CA

In the assailed Decision[41] dated December 22, 2014, the CA ruled in favor of Apex and set aside the MAB Decision dated October 28, 2009 and Resolution dated December 26, 2013. The dispositive portion of the CA Decision reads:

> WHEREFORE, the petition for review is GRANTED. The decision of the Mines Adjudication Board (MAB) dated October 28, 2009 and resolution dated December 26, 2013 in MAB Case No. 0156-07 and MAB Case No. 0157-07, are REVERSED and SET ASIDE. Petitioner Apex Mining Company, Inc. is declared to have prior and preferential right in its applications for mineral production sharing agreement with the Department of Environment and Natural Resources pursuant to Section 29 of Rep. Act No. 7942, covering areas subject of its applications,

particularly, Clusters 1, 2, 3, 4, 5 and 6 as shown in Annex 7 of the Panel of Arbitrators' decision dated July 4, 2006 with Clusters 1 and 2 to be amended to conform to the plotting of LLA No. V-14203-Amd and LLA No. V-14205 as mentioned in the Mines Adjudication Board's decision dated October 28, 2009.

SO ORDERED.[42]

The CA found that under Republic Act No. (RA) 7942,[43] otherwise known as the Philippine Mining Act of 1995, the requirements for the filing and approval of mineral agreements are different from the requirements for the filing and approval of FTAA applications. The CA relied on the ruling in the case of *Diamond Drilling Corp. of the Phils. v. Newmont Phils., Inc.*[44] (*Diamond Drilling Corporation*), which applied Section 8[45] of DENR Administrative Order No. 63. Series of 1991 (DAO 63),[46] stating in part that priority shall be given to the applicant that first filed its application over the same area. Thus, as between the MPSA applications of Apex and the FTAA application of NDMC, the CA held that Apex should be given priority since it filed its MPSA applications over the contested mining areas on April 21, 1995 and on July 26, 1996, while NDMC filed its FTAA application only on January 8, 1996.

Moreover, the CA held that DENR Memorandum dated September 17, 1997, which directed all MGB Regional Directors to close to new mining applications areas already covered by valid and existing mining claims, was not an impediment to the application of Apex. The CA ratiocinated that at the time of the issuance of the Memorandum, Apex had already filed its MPSA applications with the MGB, during which time the subject mining areas were not yet closed to miring applications.

Furthermore, the CA held that the MAB committed reversible error in upholding the mining lease contracts or published lode lease applications of NDMC in support of the latter's FTAA application despite noncompliance with RA 7942 and its imple1nenting rules and regulations (IRR) for continued recognition of its mining claims. The CA ruled that NDMC failed to submit or file any application for mineral agreement on or before September 15, 1997, the mandatory deadline for the filing of mineral agreement applications by holders of valid and existing mining claims and lease/quarry applications, pursuant to Section 113[47] of RA 7942, Section 273[48] of DAO 96-40[49] (IRR of RA 7942), and Section 8[50] of DENR Memorandum Order No. (DMO) 97-07.[51] According to the CA, the FTAA application of NDMC does not partake of the nature of a mineral agreement. It cited Section 3(ab) of RA 7942 which defines a mineral agreement as "*a contract between the government and a contractor, involving mineral production-sharing agreement, co-production agreement, or joint-venture agreement*;" and declared that FTAA, on the other hand, is a service contract for financial and technical assistance.

The CA concluded that NDMC in effect abandoned its mining claims when it failed to file an application for mineral agreement on or before September 15, 1997. Additionally, it held that NDMC's abandonment of its mining claims is coupled by the fact of the bankruptcy and revocation of its certificate of registration by the SEC and the suspension of its mining operations.

Furthermore, the CA ruled that the MAB erred in declaring NDMC to have