

## THIRD DIVISION

**[ G.R. No. 179732, September 13, 2017 ]**

**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, PETITIONER,  
VS. CMC/MONARK/PACIFIC/HI-TRI JOINT VENTURE,  
RESPONDENT.**

### DECISION

**LEONEN, J.:**

As the administrative agency tasked with resolving issues pertaining to the construction industry, the Construction Industry Arbitration Commission enjoys a wide latitude in recognition of its technical expertise and experience. Its factual findings are, thus, accorded respect and even finality, particularly when they are affirmed by an appellate court.

This is a Petition for Review on Certiorari<sup>[1]</sup> assailing the Court of Appeals Decision<sup>[2]</sup> dated September 20, 2007 in CA-G.R. SP Nos. 88953 and 88911, which affirmed the March 1, 2005 Award of the Construction Industry Arbitration Commission (CIAC).

On April 29, 1999, Republic of the Philippines, through the Department of Public Works and Highways (DPWH), and CMC/Monark/Pacific/Hi-Tri J.V. (the Joint Venture) executed "Contract Agreement for the Construction of Contract Package 6MI-9, Pagadian-Buug Section, Zamboanga del Sur, Sixth Road Project, Road Improvement Component Loan No. 1473-PHI"<sup>[3]</sup> (Contract) for a total contract amount of P713,330,885.28.<sup>[4]</sup>

Parts I (General Conditions with forms of tender + agreement) and II (Conditions of Particular Application + Guidelines for Preparation of Part II Clauses) of the "Conditions of Contract for Works of Civil Engineering Construction of the Federation International Des Ingenieurs - Conseils" (Conditions of Contract) formed part of the Contract.<sup>[5]</sup> DPWH hired BCEOM French Engineering Consultants to oversee the project.<sup>[6]</sup>

On October 23, 2002, or while the project was ongoing, the Joint Venture's truck and equipment were set on fire. On March 11, 2003, a bomb exploded at Joint Venture's hatching plant located at Brgy. West Boyogan, Kumalarang, Zamboanga del Sur. According to reports, the bombing incident was caused by members of the Moro Islamic Liberation Front.<sup>[7]</sup>

The Joint Venture made several written demands for extension and payment of the foreign component of the Contract. There were efforts between the parties to settle the unpaid Payment Certificates amounting to P26,737,029.49. Thus, only the foreign component of US\$358,227.95 was up for negotiations subject to further

reduction of the amount on account of payments subsequently received by the Joint Venture from DPWH.<sup>[8]</sup>

In a letter dated September 18, 2003, BCEOM French Engineering Consultants recommended that DPWH promptly pay the outstanding monies due the Joint Venture.<sup>[9]</sup> The letter also stated that the actual volume of the Joint Venture's accomplishment was "2,732m<sup>2</sup> of hardrock and 4,444m<sup>3</sup> of rippable rock," making the project 80% complete when it was halted.<sup>[10]</sup>

On March 3, 2004, the Joint Venture filed a Complaint<sup>[11]</sup> against DPWH before CIAC. Joint Venture' claims, which amounted to P77,206,047.88, were as follows:

#### **CLAIMANT'S CLAIM**

Foreign component of the project of

(US\$358,227.95  
@Php34.90)

Php12,502,155.46

Interest as of December 3, 4003

(Computation for the damages & losses incurred:

Php10,297,090.42 +  
(US\$118,094.93@34.90)

Php14,418,603.47

Equipment and financial losses

5,080,000.00

Additional costs in the contract price under Clause 69.4

20,311,072.66

Adjustment in the contract price under Presidential Decree No. 1594

(9,313,402.91 in pesos  
and 266,859.68 in dollar)

18,626,805.81

Effect of the bombing incident

6,267,410.48

**TOTAL CLAIMS**

**Php77,206,047.88<sup>[12]</sup>**

Meanwhile, on July 8, 2004, the Joint Venture sent a "Notice of Mutual Termination of Contract",<sup>[13]</sup> to DPWH requesting for a mutual termination of the contract subject of the arbitration case. This is due to its diminished financial capability due

to DPWH's late payments, changes in the project involving payment terms, peace and order problems, and previous agreement by the parties.

On July 16, 2004, then DPWH Acting Secretary Florante Soriquez accepted the Joint Venture's request for mutual termination of the contract.<sup>[14]</sup>

After hearing and submission of the parties' respective memoranda,<sup>[15]</sup> CIAC promulgated an Award<sup>[16]</sup> on March 1, 2005, directing DPWH to pay the Joint Venture its money claims plus legal interest. CIAC, however, denied the Joint Venture's claim for price adjustment due to the delay in the issuance of a Notice to Proceed under Presidential Decree No. 1594 or the "Policies, Guidelines, Rules, and Regulations for Government Infrastructure Contracts."<sup>[17]</sup> The dispositive portion of the Award read:

WHEREFORE, premises considered and in view of the resolution of the issues presented, an Award is hereby rendered ordering the Respondent DPWH to pay the Claimant the following:

1. Foreign Component of US\$358,227.95 plus legal interest of US\$18,313.79;
2. Equipment and Plant Losses of P5,080,000, plus legal interest of P464,298.08;
3. Additional Costs resulting from the Bombing of P6,267,410.48 plus legal interest of P320,410.63, and
4. Additional Costs in the contract price under Clause 69.4 of P20,311,072.66 plus legal interest of [P]1,038,368.78.

The claim of Claimant for adjustment under [Presidential Decree No.] 1594 of P18,626,805.81 is hereby denied.

Pursuant to the case of Eastern Shipping Lines vs. Court of Appeals, 234 SCRA 78, the foregoing monetary awards shall earn interest at the rate of 12% per annum from the date the Award becomes final and executor until its satisfaction.

SO ORDERED.<sup>[18]</sup>

DPWH and the Joint Venture filed their respective petitions for review before the Court of Appeals.<sup>[19]</sup>

The Court of Appeals in its Decision<sup>[20]</sup> dated September 20, 2007, sustained CIAC's Award with certain modifications and remanded the case to CIAC for the determination of the number of days' extension that the Joint Venture is entitled to and "the conversion rate in pesos of the awarded foreign exchange payments stated."<sup>[21]</sup>

The Court of Appeals held that CIAC did not commit reversible error in not awarding the price adjustment sought by the Joint Venture under Presidential Decree No.

1594 since it was the Asian Development Bank's Guidelines on procurement that was applicable and not Presidential Decree No. 1594.<sup>[22]</sup>

The Court of Appeals also held that CIAC did not err in not awarding actual damages in the form of interest at the rate of 24% since there was no provision for such interest payment in the Contract. However, the Court of Appeals ruled that CIAC was correct when it awarded legal interest.<sup>[23]</sup>

The Court of Appeals sustained the Joint Venture's argument on the non-inclusion of a clear finding of its entitlement to time extensions in the dispositive portion of the CIAC Award.<sup>[24]</sup> The Court of Appeals held that CIAC did not clearly dispose of the matter:

Yet, a close scrutiny of the foregoing disposition shows that it does not refer to the 133 days as per Variation Order No. 2 since CIAC made mention that the project is already terminated and the entire volume under said Order "will not be consumed". Whether or not the Claimant then deserves to get the full 133 calendar days is a matter that has to be clearly resolved. On this, We hold that this Court is not prepared to engage into a technical bout that only the expertise of the CIAC can pass upon.<sup>[25]</sup>

On the other hand, the Court of Appeals did not accept DPWH's argument that the case was already moot and academic. According to the Court of Appeals, when the Joint Venture requested for the mutual termination of the Contract on July 8, 2004, it did not waive its right to be paid the amounts due to it.<sup>[26]</sup>

The Court of Appeals, however, raised a concern with regard to CIAC's order for DPWH to pay its liabilities in US dollars. It held that the parties have agreed that "all payments for works carried out after 31 May 2003 and related price escalation claims and retention releases in the contract will be in pesos only, therefore no foreign exchange payments." This was never contested by the Joint Venture; hence, it may be presumed that it acquiesced to the request of the DPWH.<sup>[27]</sup>

The dispositive portion of the Court of Appeals Decision read:

**WHEREFORE**, premises considered, the assailed Decision is hereby **AFFIRMED** with **MODIFICATION** to include the award to the Claimant of time extensions per: 1) delay in payment at One Hundred Eight (108) days, and 2) extension Twenty Nine (29) days due to peace and order situation.

Re 1) the award of time extension per Variation Order No. 2-as stated earlier elsewhere in the Decision, the CIAC must make a vivid presentation of the number of calendar days the Claimant is entitled to, and 2) the conversion rate in pesos of the awarded foreign exchange payments states, *supra*, in the assailed Decision, these matters are hereby **REMANDED** to the CIAC for proper disposition. Accordingly, the rest of the challenged Decision **STANDS**.

**SO ORDERED.**<sup>[28]</sup> (Emphasis in the original)

Petitioner DPWH filed the present Petition for Review<sup>[29]</sup> assailing the Court of Appeals Decision. In a Resolution<sup>[30]</sup> dated January. 28, 2008, this Court required respondent Joint Venture to file its Comment.

On March 27, 2008, respondent filed its comment/opposition.<sup>[31]</sup> Petitioner thereafter filed its Reply<sup>[32]</sup> on September 3, 2008.

The issues for resolution in this case are:

First, whether or not the case has become moot and academic due to the parties' mutual termination of the Construction Contract;

Second, whether or not the case is premature due to Joint Venture's non-compliance with the doctrine of exhaustion of administrative remedies;

Third, whether or not the Joint Venture is entitled to the foreign component of the Project in the amount of US\$358,227.95;

Fourth, whether or not the Joint Venture is entitled to time extensions due to Variation Order No. 2, peace and order problems, and delay in payment;

Fifth, whether or not the Joint Venture is entitled to a price adjustment due to the delay of the issuance of the Notice of the Proceed;

Sixth, whether or not the Asian Development Bank Guidelines on Procurement or Presidential Decree 1594 applies with regard to once adjustments due to the delay of the issuance of the Notice to Proceed;

Seventh, whether or not the Joint Venture is entitled to its claim for equipment and financial losses due to peace and order situation (additional costs);

Eighth, whether or not the Joint Venture is entitled to actual damages and interest on its claims; and

Finally, whether or not the Joint Venture should be paid in local currency or in U.S. dollars.

## I

According to respondent Joint Venture, the Petition suffers from a fatal defect in its certification against non-forum shopping. The verification and certification against non-forum shopping was signed only by petitioner's counsel, Atty. Mary Jean D. Valderama, from the Office of the Solicitor General.<sup>[33]</sup>

This Court has long enforced the strict procedural requirement of verification and certification against non-forum shopping.<sup>[34]</sup> It is settled that certification against forum shopping must be executed by the party or principal and not by counsel.<sup>[35]</sup> In *Anderson v. Ho*,<sup>[36]</sup> this Court explained that it is the party who is in the best position to know whether he or she has filed a case before any courts.<sup>[37]</sup> It is clear in this case that counsel for petitioner, Atty. Valderama, was not clothed with