

SECOND DIVISION

[G.R. No. 210858, June 29, 2016]

DEPARTMENT OF FOREIGN AFFAIRS, PETITIONER, VS. BCA
INTERNATIONAL CORPORATION, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

This petition for review^[1] assails the Orders dated 11 October 2013^[2] and 8 January 2014,^[3] as well as the Resolution dated 2 September 2013,^[4] of the Regional Trial Court of Makati City (RTC), Branch 146, in SP. PROC. No. M-7458.

The Facts

In an Amended Build-Operate-Transfer Agreement dated 5 April 2002 (Agreement), petitioner Department of Foreign Affairs (DFA) awarded the Machine Readable Passport and Visa Project (MRP/V Project) to respondent BCA International Corporation (BCA), a domestic corporation. During the implementation of the MRP/V Project, DFA sought to terminate the Agreement. However, BCA opposed the termination and filed a Request for Arbitration, according to the provision in the Agreement:

Section 19.02. *Failure to Settle Amicably* - If the Dispute cannot be settled amicably within ninety (90) days by mutual discussion as contemplated under Section 19.01 herein, the Dispute shall be settled with finality by an arbitrage tribunal operating under International Law, hereinafter referred to as the "*Tribunal*", under the **UNCITRAL Arbitration Rules contained in Resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976**, and entitled "*Arbitration Rules on the United Nations Commission on the International Trade Law*". The DFA and the BCA undertake to abide by and implement the arbitration award. The place of arbitration shall be Pasay City, Philippines, or such other place as may be mutually agreed upon by both parties. The arbitration proceeding shall be conducted in the English language.^[5] (Emphasis supplied)

On 29 June 2009, an *ad hoc* arbitral tribunal^[6] was constituted. In an Order dated 15 April 2013,^[7] the arbitral tribunal approved BCA's request to apply in court for the issuance of subpoena, subject to the conditions that the application will not affect its proceedings and the hearing set in October 2013 will proceed whether the witnesses attend or not.

On 16 May 2013, BCA filed before the RTC a Petition for Assistance in Taking

Evidence^[8] pursuant to the Implementing Rules and Regulations (IRR) of "The Alternative Dispute Resolution Act of 2004," or Republic Act No. 9285 (RA 9285). In its petition, BCA sought the issuance of subpoena *ad testificandum* and subpoena *duces tecum* to the following witnesses and documents in their custody:^[9]

Witnesses	Documents to be produced
1. Secretary of Foreign Affairs or his representative/s, specifically Undersecretary Franklin M. Ebdalin and Ambassador Belen F. Anota	<p>a. Request for Proposal dated September 10, 1999 for the MRP/V Project;</p> <p>b. Notice of Award dated September 29, 2000 awarding the MRP/V Project in favor of BCA and requiring BCA to incorporate a Project Company to implement the MRP/V Project;</p> <p>c. Department of Foreign Affairs Machine Readable Passport and Visa Project Build-Operate-Transfer Agreement dated February 8, 2001;</p> <p>d. Department of Foreign Affairs Machine Readable Passport and Visa Project Amended Build-Operate-Transfer Agreement dated April 5, 2002;</p> <p>e. Documents, records, papers and correspondence between DFA and BCA regarding the negotiations for the contract of lease of the PNB building, which was identified in the Request for Proposal as the Central Facility Site, and the failure of said negotiations;</p> <p>f. Documents, records, reports, studies, papers and correspondence between DFA and BCA regarding the search for alternative Central Facility Site;</p> <p>g. Documents, records, papers and correspondence between DFA and BCA regarding the latter's submission of the Project Master Plan (Phase One of the MRP/V Project);</p> <p>h. Documents, records, papers and correspondence among DFA, DFA's Project Planning Team, Questronix Corporation, MRP/V Advisory Board</p>

and other related government agencies, and BCA regarding the recommendation for the issuance of the Certificate of Acceptance in favor of BCA;

i. Certificate of Acceptance for Phase One dated June 9, 2004 issued by DFA;

j. Documents, records, papers and correspondence between DFA and BCA regarding the approval of the Star Mall complex as the Central Facility Site;

k. Documents, records, papers and correspondence among DFA, Questronix Corporation, MRP/V Advisory Board and other related government agencies, and BCA regarding the recommendation for the approval of the Star Mall complex as the Central Facility Site;

l. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's request for BCA to terminate its Assignment Agreement with Philpass, including BCA's compliance therewith;

m. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's demand for BCA to prove its financial capability to implement the MRP/V Project, including the compliance therewith by BCA;

n. Documents, records, papers and correspondence between DFA and BCA regarding the DFA's attempt to terminate the Amended BOT Agreement, including BCA's response to DFA and BCA's attempts to mutually discuss the matter with DFA;

o. Documents, records, papers and correspondence among DFA and MRP/V Advisory Board, DTI-BOT Center, Department of Finance and Commission on Audit regarding the delays in the implementation of the

	<p>MRP/V Project, DFA's requirement for BCA to prove its financial capability, and the opinions of the said government agencies in relation to DFA's attempt to terminate the Amended BOT Agreement; and</p> <p>p. Other related documents, records, papers and correspondence.</p>
<p>2. Secretary of Finance or his representative/s, specifically former Secretary of Finance Juanita D. Amatong</p>	<p>a. Documents, records, papers and correspondence between DFA and Department of Finance regarding the DFA's requirement for BCA to prove its financial capability to implement the MRP/V Project and its opinion thereon;</p> <p>b. Documents, records, papers and correspondence between DFA and DOF regarding BCA's compliance with DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project;</p> <p>c. Documents, records, papers and correspondence between DFA and DOF regarding the delays in the implementation of the MRP/V Project;</p> <p>d. Documents, records, papers and correspondence between DFA and DOF regarding the DFA's attempted termination of the Amended BOT Agreement; and</p> <p>e. Other related documents, records, papers and correspondence.</p>
<p>3. Chairman of the Commission on Audit or her representative/s, specifically Ms. Iluminada M. V. Fabroa (Director IV)</p>	<p>a. Documents, records, papers and correspondence between DFA and COA regarding the COA's conduct of a sectoral performance audit on the MRP/V Project;</p> <p>b. Documents, records, papers and correspondence between DFA and COA regarding the delays in and its recommendation to fast-track the implementation of the MRP/V Project;</p>

	<p>c. Documents, records, papers and correspondence between DFA and COA regarding COA's advice to cancel the Assignment Agreement between BCA and Philpass "for being contrary to existing laws and regulations and DOJ opinion";</p> <p>d. Documents, records, papers and correspondence between DFA and COA regarding DFA's attempted termination of the Amended BOT Agreement; and</p> <p>e. Other related documents, records, papers and correspondence.</p>
<p>4. Executive Director or any officer or representative of the Department of Trade and Industry Build-Operate-Transfer Center, specifically Messrs. Noel Eli B. Kintanar, Rafaelito H. Taruc and Luisito Ucab</p>	<p>a. Documents, records, papers and correspondence between DFA and BOT Center regarding the delays in the implementation of the MRP/V Project, including DFA's delay in the issuance of the Certificate of Acceptance for Phase One of the MRP/V Project and in approving the Central Facility Site at the Star Mall complex;</p> <p>b. Documents, records, papers and correspondence between DFA and BOT Center regarding BCA's financial capability and the BOT Center's opinion on DFA's demand for BCA to further prove its financial capability to implement the MRP/V Project;</p> <p>c. Documents, records, papers and correspondence between DFA and BOT Center regarding the DFA's attempt to terminate the Amended BOT Agreement, including the BOT Center's unsolicited advice dated December 23, 2005 stating that the issuance of the Notice of Termination was "precipitate, and done without first carefully ensuring that there were sufficient grounds to warrant such an issuance" and was "devoid of merit";</p> <p>d. Documents, records, papers and correspondence between DFA and BOT Center regarding the DFA's</p>