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# FIRST DIVISION

# [ G.R. No. 160215, November 10, 2004 ]

## HYDRO RESOURCES CONTRACTORS CORPORATION, PETITIONER, VS. NATIONAL IRRIGATION ADMINISTRATION, RESPONDENT.

## *DECISION*

**YNARES-SATIAGO, J.:**

Challenged in this petition for review on certiorari under Rule 45 is the Decision of the Court of Appeals[1] dated October 29, 2002 and its Resolution dated September 24, 2003[2] in CA-G.R. SP No. 44527,[3] reversing the judgment of the Construction Industry Arbitration Commission (CIAC) dated June 10, 1997[4] in CIAC Case No. 14-98 in favor of petitioner Hydro Resources Contractors Corporation.

The facts are undisputed and are matters of record.

In a competitive bidding conducted by the National Irrigation Administration (NIA) sometime in August 1978, Hydro Resources Contractors Corporation (Hydro) was awarded Contract MPI-C-2[5] involving the main civil work of the Magat River Multi-Purpose Project. The contract price for the work was pegged at P1,489,146,473.72 with the peso component thereof amounting to P1,041,884,766.99 and the US$ component valued at $60,657,992.37 at the exchange rate of P7.3735 to the dollar or P447,361,706.73.

On November 6, 1978, the parties signed Amendment No. 1[6] of the contract whereby NIA agreed to increase the foreign currency allocation for equipment financing from US$28,000,000.00 for the first and second years of the contract to US$38,000,000.00, to be made available in full during the first year of the contract to enable the contractor to purchase the needed equipment and spare parts, as approved by NIA, for the construction of the project. On April 9, 1980, the parties entered into a Memorandum of Agreement[7] (MOA) whereby they agreed that Hydro may directly avail of the foreign currency component of the contract for the sole purpose of purchasing necessary spare parts and equipment for the project. This was made in order for the contractor to avoid further delays in the procurement of the said spare parts and equipment.

A few months after the MOA was signed, NIA and Hydro entered into a Supplemental Memorandum of Agreement (Supplemental MOA) to include among the items to be financed out of the foreign currency portion of the Contract "construction materials, supplies and services as well as equipment and materials for incorporation in the permanent works of the Project."[8]

Work on the project progressed steadily until Hydro substantially completed the

project in 1982 and the final acceptance was made by NIA on February 14, 1984.[9]

During the period of the execution of the contract, the foreign exchange value of the peso against the US dollar declined and steadily deteriorated. Whenever Hydro's availment of the foreign currency component exceeded the amount of the foreign currency payable to Hydro for a particular period, NIA charged interest in dollars based on the prevailing exchange rate instead of the fixed exchange rate of P7.3735 to the dollar. Yet when Hydro received payments from NIA in Philippine Pesos, NIA made deductions from Hydro's foreign currency component at the fixed exchange rate of P7.3735 to US$1.00 instead of the prevailing exchange rate.

Upon completion of the project, a final reconciliation of the total entitlement of Hydro to the foreign currency component of the contract was made. The result of this final reconciliation showed that the total entitlement of Hydro to the foreign currency component of the contract exceeded the amount of US dollars required by Hydro to repay the advances made by NIA for its account in the importation of new equipment, spare parts and tools. Hydro then requested a full and final payment due to the underpayment of the foreign exchange portion caused by price escalations and extra work orders. In 1983, NIA and Hydro prepared a joint computation denominated as the "MPI-C-2 Dollar Rate Differential on Foreign Component of Escalation."[10] Based on said joint computation, Hydro was still entitled to a foreign exchange differential of US$1,353,771.79 equivalent to P10,898,391.17.

Hydro then presented its claim for said foreign exchange differential to NIA on August 12, 1983[11] but the latter refused to honor the same. Hydro made several[12] demands to recover its claim until the same was turned down with finality by then NIA Administrator Federico N. Alday, Jr. on January 6, 1987.[13]

On December 7, 1994, Hydro filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC).[14] In the said request, Hydro nominated six (6) arbitrators. The case was docketed as CIAC Case No. 18-94.

NIA filed its Answer with Compulsory Counterclaim[15] raising laches, estoppel and lack of jurisdiction by CIAC as its special defenses. NIA also submitted its six (6) nominees to the panel of arbitrators. After appointment of the arbitrators, both parties agreed on the Terms of Reference[16] as well as the issues submitted for arbitration.

On March 13, 1995, NIA filed a Motion to Dismiss[17] questioning CIAC's jurisdiction to take cognizance of the case. The latter, however, deferred resolution of the motion and set the case for hearing for the reception of evidence.[18] NIA moved[19] for reconsideration but the same was denied by CIAC in an Order dated April 25, 1995.[20]

Dissatisfied, NIA filed a petition for certiorari and prohibition with the Court of Appeals where the same was docketed as CA-G.R. SP No. 37180,[21] which dismissed the petition in a Resolution dated June 28, 1996.[22]

NIA challenged the resolution of the Court of Appeals before this Court in a special civil action for certiorari, docketed as G.R. No. 129169.[23]

Meanwhile, on June 10, 1997, the CIAC promulgated a decision in favor of Hydro.[24] NIA filed a Petition for Review on Appeal before the Court of Appeals, which was docketed as CA-G.R. SP No. 44527.[25]

During the pendency of CA-G.R. SP No. 44527 before the Court of Appeals, this Court dismissed special civil action for certiorari docketed as G.R. No. 129169 on the ground that CIAC had jurisdiction over the dispute and directed the Court of Appeals to proceed with reasonable dispatch in the disposition of CA-G.R. SP No. 44527. NIA did not move for reconsideration of the said decision, hence, the same became final and executory on December 15, 1999.[26]

Thereafter, the Court of Appeals rendered the challenged decision in CA-G.R. SP No. 44527, reversing the judgment of the CIAC on the grounds that: (1) Hydro's claim has prescribed; (2) assuming that Hydro was entitled to its claim, the rate of exchange should be based on a fixed rate; (3) Hydro's claim is contrary to R.A. No. 529;[27] (4) NIA's Certification of Non-Forum-Shopping was proper even if the same was signed only by counsel and not by NIA's authorized representative; and (5) NIA did not engage in forum-shopping.

Hydro's Motion for Reconsideration was denied in Resolution of September 24, 2003.

Hence, this petition.

Addressing first the issue of prescription, the Court of Appeals, in ruling that Hydro's claim had prescribed, reasoned thus:

> Nevertheless, We find good reason to apply the principle of prescription against HRCC. It is well to note that Section 25 of the General Conditions of the subject contract provides (*CIAC Decision, p. 15, Rollo, p. 57*):
>
> > Any controversy or dispute arising out of or relating to this Contract which cannot be resolved by mutual agreement shall be decided by the Administrator within thirty (30) calendar days from receipt of a written notice from Contractor and who shall furnish Contractor a written copy of this decision. *Such decision shall be final and conclusive unless within thirty (30) calendar days from the date of receipt thereof, Contractor shall deliver to NIA a written notice addressed to the Administrator that he desires that the dispute be submitted to arbitration. Pending decision from arbitration, Contractor shall proceed diligently with the performance of the Contract and in accordance with the decision of the Administrator. (Emphasis and Underscoring Ours)*
>
> Both parties admit the existence of this provision in the Contract (*Petition, p. 4; Comment, p. 16; Rollo, pp. 12 and 131*). *Apropos*, the following matters are clear: (1) any controversy or dispute between the parties arising from the subject contract shall be governed by the provisions of the contract; (2) upon the failure to arrive at a mutual

> agreement, the contractor shall submit the dispute to the Administrator of NIA for determination; and (3) the decision of the Administrator shall become final and conclusive, unless within thirty (30) calendar days from the date of receipt thereof, the Contractor shall deliver to NIA a written notice addressed to the Administrator that he desires that the dispute be submitted for arbitration.
>
> Prescinding from the foregoing matters, We find that the CIAC erred in granting HRCC's claim considering that the latter's right to make such demand had clearly prescribed. To begin with, on January 7, 1986, Cesar L. Tech (NIA's Administrator at the time) informed HRCC in writing that after a review of the additional points raised by the latter, NIA confirms its original recommendation not to allow the said claim (*Annex "F"; Rollo, p. 81; CIAC Decision, p. 11; Rollo, p. 53*). This should have propelled private respondent to notify and signify to NIA of intention to submit the dispute to arbitration pursuant to the provision of the contract. Yet, it did not. Instead it persisted to send several letters to NIA reiterating the reason for its rejected claim (*CIAC Decision, p. 11; Rollo, p. 53*).[28]

We disagree for the following reasons:

*First*, the appellate court clearly overlooked the fact that NIA, through then Administrator Fedrico N. Alday, Jr., denied "with finality" Hydro's claim only on January 6, 1987 in a letter bearing the same date[29] which reads:

> This refers to your letter dated November 7, 1986 requesting reconsideration on your claim for payment of the Dollar Rate Differential of Price Escalation in Contract No. MPI-C-2.
>
> *We have reviewed the relevant facts and issues as presented and the additional points raised in the abovementioned letter in the context of the Contract Documents and we find no strong and valid reason to reverse the earlier decision of NIA's previous management denying your claim*. Therefore, we regret that we have to reiterate the earlier official stand of NIA under its letter dated January 7, 1986, that confirms the original recommendation which had earlier been presented in our 4th Indorsement dated February 5, 1985 to your office.
>
> In view hereof, ***we regret to say <u>with finality</u> that the claim cannot be given favorable consideration.*** (Emphasis and italics supplied)

Hydro received the above-mentioned letter on January 27, 1987.[30] Pursuant to Section 25 of the Contract's General Conditions (GC-25), Hydro had thirty (30) days from receipt of said denial, or until February 26, 1987, within which to notify NIA of its desire to submit the dispute to arbitration.

On February 18, 1987, Hydro sent a letter[31] to NIA, addressed to then NIA Administrator Federico N. Alday, Jr., manifesting its desire to submit the dispute to arbitration. The letter was received by NIA on February 19, 1987, which was *within* the thirty-day prescriptive period.

Moreover, a circumspect scrutiny of the wording of GC-25 with regard to the thirty-

day prescriptive period shows that said proviso is intended to apply to disputes which arose *during* the *actual* construction of the project and not for controversies which occured *after* the project is completed. The rationale for such a stipulation was aptly explained thus by the CIAC in its Decision in CIAC Case No. 18-94:

> In construction contracts, there is invariably a provision for interim settlement of disputes. The right to settle disputes is given to the owner or his representative, either an architect or engineer, designated as "owner's representative," only for the purpose of avoiding delay in the completion of the project. In this particular contract, that right was reserved to the NIA Administrator. The types of disputes contemplated were those which may have otherwise affected the progress of the work. It is very clear that this is the purpose of the limiting periods in this clause that the dispute shall be resolved by the Administrator within 30 days from receipt of a written notice from the Contractor and that the Contractor may submit to arbitration this dispute if it does not agree with the decision of the Administrator, and "Pending decision from arbitration, Contractor shall proceed diligently with the performance of the Contract and in accordance with the decision of the Administrator."
>
> In this case, the dispute had arisen after completion of the Project. The reason for the 30-day limitation no longer applies, and we find no legal basis for applying it. Moreover, in Exhibit "B," NIA Administrator Cesar L. Tech had, instead of rendering an adverse decision, by signing the document with HRCC's Onofre B. Banson, implicitly approved the payment of the foreign exchange differential, but this payment could not be made because of the opinion of Auditor Saldua and later of the Commission on Audit.[32]

*Second*, as early as April 1983, Hydro and NIA, through its Administrator Cesar L. Tech, prepared the Joint Computation which shows that Hydro is entitled to the foreign currency differential.[33] As correctly found by the CIAC, this computation constitutes a written acknowledgment of the debt by the debtor under Article 1155 of the Civil Code, which states:

> ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and ***when there is any written acknowledgment of the debt by the debtor.*** (Emphasis and italics supplied)

Instead of upholding the CIAC's findings on this point, the Court of Appeals ruled that Cesar L. Tech's act of signing the Joint Computation was an *ultra vires* act. This again is patent error. It must be noted that the Administrator is the highest officer of the NIA. Furthermore, Hydro has been dealing with NIA through its Administrator in all of its transactions with respect to the contract and subsequently the foreign currency differential claim. The NIA Administrator is empowered by the Contract to grant or deny foreign currency differential claims. It would be preposterous for the NIA Administrator to have the power of granting claims without the authority to verify the computation of such claims. Finally, the records of the case will show that NIA itself *never* disputed its Administrator's capacity to sign the Joint Computation because it knew that the Administrator, in fact, had such capacity.

Even assuming for the sake of argument that the Administrator had no authority to