

## THIRD DIVISION

[ G.R. No. 141833, March 26, 2003 ]

**LM POWER ENGINEERING CORPORATION, PETITIONER, VS.  
CAPITOL INDUSTRIAL CONSTRUCTION GROUPS, INC.,  
RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Alternative dispute resolution methods or ADRs -- like arbitration, mediation, negotiation and conciliation -- are encouraged by the Supreme Court. By enabling parties to resolve their disputes amicably, they provide solutions that are less time-consuming, less tedious, less confrontational, and more productive of goodwill and lasting relationships.<sup>[1]</sup>

#### The Case

Before us is a Petition for Review on *Certiorari*<sup>[2]</sup> under Rule 45 of the Rules of Court, seeking to set aside the January 28, 2000 Decision of the Court of Appeals<sup>[3]</sup> (CA) in CA-GR CV No. 54232. The dispositive portion of the Decision reads as follows:

"WHEREFORE, the judgment appealed from is REVERSED and SET ASIDE. The parties are ORDERED to present their dispute to arbitration in accordance with their Sub-contract Agreement. The surety bond posted by [respondent] is [d]ischarged."<sup>[4]</sup>

#### The Facts

On February 22, 1983, Petitioner LM Power Engineering Corporation and Respondent Capitol Industrial Construction Groups Inc. entered into a "Subcontract Agreement" involving electrical work at the Third Port of Zamboanga.<sup>[5]</sup>

On April 25, 1985, respondent took over some of the work contracted to petitioner.<sup>[6]</sup> Allegedly, the latter had failed to finish it because of its inability to procure materials.<sup>[7]</sup>

Upon completing its task under the Contract, petitioner billed respondent in the amount of ₱6,711,813.90.<sup>[8]</sup> Contesting the accuracy of the amount of advances and billable accomplishments listed by the former, the latter refused to pay. Respondent also took refuge in the termination clause of the Agreement.<sup>[9]</sup> That clause allowed it to set off the cost of the work that petitioner had failed to undertake -- due to termination or take-over -- against the amount it owed the latter.

Because of the dispute, petitioner filed with the Regional Trial Court (RTC) of Makati (Branch 141) a Complaint<sup>[10]</sup> for the collection of the amount representing the alleged balance due it under the Subcontract. Instead of submitting an Answer, respondent filed a Motion to Dismiss,<sup>[11]</sup> alleging that the Complaint was premature, because there was no prior recourse to arbitration.

In its Order<sup>[12]</sup> dated September 15, 1987, the RTC denied the Motion on the ground that the dispute did not involve the interpretation or the implementation of the Agreement and was, therefore, not covered by the arbitral clause.<sup>[13]</sup>

After trial on the merits, the RTC<sup>[14]</sup> ruled that the take-over of some work items by respondent was not equivalent to a termination, but a mere modification, of the Subcontract. The latter was ordered to give full payment for the work completed by petitioner.

### **Ruling of the Court of Appeals**

On appeal, the CA reversed the RTC and ordered the referral of the case to arbitration. The appellate court held as arbitrable the issue of whether respondent's take-over of some work items had been intended to be a termination of the original contract under Letter "K" of the Subcontract. It ruled likewise on two other issues: whether petitioner was liable under the warranty clause of the Agreement, and whether it should reimburse respondent for the work the latter had taken over.<sup>[15]</sup>

Hence, this Petition.<sup>[16]</sup>

### **The Issues**

In its Memorandum, petitioner raises the following issues for the Court's consideration:

"A

Whether or not there exist[s] a controversy/dispute between petitioner and respondent regarding the interpretation and implementation of the Sub-Contract Agreement dated February 22, 1983 that requires prior recourse to voluntary arbitration;

"B

In the affirmative, whether or not the requirements provided in Article III [1] of CIAC Arbitration Rules regarding request for arbitration ha[ve] been complied with[.]"<sup>[17]</sup>

### **The Court's Ruling**

The Petition is unmeritorious.

### **First Issue:** **Whether Dispute Is Arbitrable**

Petitioner claims that there is no conflict regarding the interpretation or the implementation of the Agreement. Thus, without having to resort to prior arbitration, it is entitled to collect the value of the services it rendered through an ordinary action for the collection of a sum of money from respondent. On the other hand, the latter contends that there is a need for prior arbitration as provided in the Agreement. This is because there are some disparities between the parties' positions regarding the extent of the work done, the amount of advances and billable accomplishments, and the set off of expenses incurred by respondent in its take-over of petitioner's work.

We side with respondent. Essentially, the dispute arose from the parties' incongruent positions on whether certain provisions of their Agreement could be applied to the facts. The instant case involves technical discrepancies that are better left to an arbitral body that has expertise in those areas. In any event, the inclusion of an arbitration clause in a contract does not *ipso facto* divest the courts of jurisdiction to pass upon the findings of arbitral bodies, because the awards are still judicially reviewable under certain conditions.<sup>[18]</sup>

In the case before us, the Subcontract has the following arbitral clause:

"6. The Parties hereto agree that any dispute or conflict as regards to interpretation and implementation of this Agreement which cannot be settled between [respondent] and [petitioner] amicably shall be settled by means of arbitration x x x."<sup>[19]</sup>

Clearly, the resolution of the dispute between the parties herein requires a referral to the provisions of their Agreement. Within the scope of the arbitration clause are discrepancies as to the amount of advances and billable accomplishments, the application of the provision on termination, and the consequent set-off of expenses.

A review of the factual allegations of the parties reveals that they differ on the following questions: (1) Did a take-over/termination occur? (2) May the expenses incurred by respondent in the take-over be set off against the amounts it owed petitioner? (3) How much were the advances and billable accomplishments?

The resolution of the foregoing issues lies in the interpretation of the provisions of the Agreement. According to respondent, the take-over was caused by petitioner's delay in completing the work. Such delay was in violation of the provision in the Agreement as to time schedule:

"G. TIME SCHEDULE

"[Petitioner] shall adhere strictly to the schedule related to the WORK and complete the WORK within the period set forth in Annex C hereof. NO time extension shall be granted by [respondent] to [petitioner] unless a corresponding time extension is granted by [the Ministry of Public Works and Highways] to the CONSORTIUM."<sup>[20]</sup>

Because of the delay, respondent alleges that it took over some of the work contracted to petitioner, pursuant to the following provision in the Agreement:

"K. TERMINATION OF AGREEMENT

"[Respondent] has the *right to terminate and/or take over* this Agreement for any of the following causes:

x x x                      x x x                      x x x

'6. If despite previous warnings by [respondent], [petitioner] does not execute the WORK in accordance with this Agreement, or *persistently or flagrantly neglects to carry out [its] obligations under this Agreement.*"<sup>[21]</sup>

Supposedly, as a result of the "take-over," respondent incurred expenses in excess of the contracted price. It sought to set off those expenses against the amount claimed by petitioner for the work the latter accomplished, pursuant to the following provision:

"If the total direct and indirect cost of completing the remaining part of the WORK exceed the sum which would have been payable to [petitioner] had it completed the WORK, the amount of such excess [may be] claimed by [respondent] from either of the following:

'1. Any amount due [petitioner] from [respondent] at the time of the termination of this Agreement."<sup>[22]</sup>

The issue as to the correct amount of petitioner's advances and billable accomplishments involves an evaluation of the manner in which the parties completed the work, the extent to which they did it, and the expenses each of them incurred in connection therewith. Arbitrators also need to look into the computation of foreign and local costs of materials, foreign and local advances, retention fees and letters of credit, and taxes and duties as set forth in the Agreement. These data can be gathered from a review of the Agreement, pertinent portions of which are reproduced hereunder:

"C. CONTRACT PRICE AND TERMS OF PAYMENT

x x x                      x x x                      x x x

"All progress payments to be made by [respondent] to [petitioner] shall be subject to a retention sum of ten percent (10%) of the value of the approved quantities. Any claims by [respondent] on [petitioner] may be deducted by [respondent] from the progress payments and/or retained amount. Any excess from the retained amount after deducting [respondent's] claims shall be released by [respondent] to [petitioner] after the issuance of [the Ministry of Public Works and Highways] of the Certificate of Completion and final acceptance of the WORK by [the Ministry of Public Works and Highways].

x x x                      x x x                      x x x

"D. IMPORTED MATERIALS AND EQUIPMENT

"[Respondent shall open the letters of credit for the importation of