

## SECOND DIVISION

[ CA-G.R. SP No. 132509, May 27, 2014 ]

**THE NATIONAL GRID CORPORATION OF THE PHILIPPINES,  
PETITIONER, VS. CONSTRUCTION INDUSTRY ARBITRATION  
COMMISSION AND THE CONSORTIUM OF HYUNDAI  
ENGINEERING CO., LTD. AND HYUNDAI CORPORATION,  
RESPONDENTS.**

### DECISION

**GAERLAN, S.H., J.:**

This is a Petition for Certiorari<sup>[1]</sup> filed under Rule 65 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Resolution<sup>[2]</sup> dated 22 August 2013 of public respondent Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 01-2013. The dispositive portion of which reads:

**"WHEREFORE**, premises considered, (1) the Motion to Dismiss dated 7 February 2013 filed by Respondent National Grid Corporation of the Philippines and (2) the Motion to Dismiss dated 4 February 2013 filed by Respondent National Transmission Corporation, are hereby denied.

Both Respondents are required to file their respective Answers to the Request for Arbitration within fifteen (15) days from receipt of this Resolution.

SO ORDERED."

### FACTS

On 12 November 2007, the Consortium of Hyundai Engineering Co. Ltd. and Hyundai Corporation ("Hyundai") was awarded by the National Transmission Corporation ("TransCo") with the *Contract for the Survey, Design, Supply of Materials/Equipment and Erection/Installation and Commissioning of Maramag-Bunawan 230KV Transmission Backbone Project* ("Subject Contract").<sup>[3]</sup>

Section 2, Paragraph 18 of the Bidding Documents,<sup>[4]</sup> which was made an integral part of the Subject Contract, pertained to a dispute resolution and arbitration clause providing as follows:

"18 CLAIMS, DISPUTES and ARBITRATION

xxx xxx xxx

18.3 The Employer and the Contractor shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.

If, after thirty (30) days from the commencement of such informal negotiations, the Employer and the Contractor have been unable to resolve amicably a Contract Dispute, the parties shall jointly insure the appointment of a Dispute Adjudication Board. xxx

xxx xxx xxx

18.4 If a dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any opinion, instruction, determination, certification or valuation of the Employer, the dispute shall initially be referred in writing to the Dispute Adjudication Board for its decision, with a copy to the other party. Such reference shall state that it is made under this Sub-Clause. xxx

xxx xxx xxx

18.6 Any dispute in respect of which:

(a) the decision, if any, of the Dispute Adjudication Board has not become final and binding pursuant to Sub-clause 18.4, and

(b) amicable settlement has not been reached,

shall be finally decided by international arbitration. The arbitration rules under which the arbitration is conducted, the institution to nominate the arbitrator(s) or to administer the arbitration rules (unless named therein), the number of arbitrators, and the language and place of such arbitration shall be as set out in the Appendix to Tender. The arbitrator(s) shall have full power to open up, review and revise any decision of the Dispute Adjudication Board.

Neither party shall be limited, in the proceedings before such arbitrator(s), to evidence or arguments previously put before the Dispute Adjudication Board to obtain its decision.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the parties and the Dispute Adjudication Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

xxx xxx xxx

18.8 When the appointment of the Dispute Adjudication Board and any replacement has expired, any such dispute referred to in Sub-Clause 18.4 shall be finally settled by arbitration pursuant to Sub-Clause 18.6. The provisions of Sub-clauses 18.4 and 18.5 shall not apply to any such reference."

During the effectivity of the Subject Contract, TransCo, together with the Power Sector Assets and Liabilities Management Corporation, by way of a Concession Agreement,<sup>[5]</sup> granted the National Grid Corporation of the Philippines (NGCP) the exclusive right to the construction, installation, financing, management, improvement, expansion, operation, maintenance, rehabilitation, repair and

refurbishment of the nationwide transmission and sub-transmission systems in the Republic of the Philippines.

Thereafter, TransCo and NGCP entered into a Construction Management Agreement<sup>[6]</sup> which set forth the terms and conditions under which NGCP shall manage the construction and completion of "Projects Under Construction" previously awarded by TransCo to third-party contractors—including Hyundai, in relation to the Maramag-Bunawan Transmission Project. In the Construction Management Agreement, TransCo appointed NGCP as the Construction Manager of the so-called "Projects Under Construction".

In a Letter<sup>[7]</sup> dated 16 March 2009, TransCo informed private respondent Hyundai of the "Transfer/Assignment of Contracts" to NGCP. The Letter in part reads:

" xxx xxx xxx

To effectively operate and maintain the transmission assets and successfully complete the Projects Under Construction pursuant to the Construction Management Agreement entered into between TransCo and NGCP, it is necessary for NGCP or the Concessionaire to assume the rights and obligation of TransCo in the contracts related to the transmission business entered into by the latter. In connection with this, we would like to request for your confirmation or consent on the transfer/assignment of the contract/s listed in Annex A, including all the rights and obligations of TransCo therein, to NGCP effective 15 January 2009.

We will highly appreciate your response within fifteen (15) days after your receipt of this letter. Should we not receive your response within the said period, we will consider the same as consent on your part.

xxx xxx xxx"

Private Respondent Hyundai did not respond to the Letter dated 16 March 2009, implying its consent thereto.

In 2010, the present dispute arose when NGCP, in its capacity as Construction Manager, assessed Hyundai with liquidated damages for the latter's alleged delay in the completion of the Maramag-Bunawan Transmission Project.

Pursuant to the above-quoted dispute resolution clause, Hyundai served notice upon NGCP for the appointment of a Dispute Adjudication Board to resolve the difference of opinion between the parties. When NGCP did not respond to the notice, Hyundai filed with herein public respondent CIAC a Request for Arbitration<sup>[8]</sup> against NGCP and TransCo.

NGCP filed a Motion to Dismiss<sup>[9]</sup> on the ground of absence of an agreement between Hyundai and NGCP to warrant submission of the dispute to voluntary arbitration.

TransCo for its part likewise filed a Motion to Dismiss<sup>[10]</sup> on the ground of the alleged failure of the Request for Arbitration to state a cause of action and Hyundai's alleged non-compliance with conditions precedent for arbitration.

On 22 August 2013, CIAC rendered the assailed Resolution, denying NGCP's and TransCo's respective motions to dismiss, and assuming jurisdiction over the dispute.  
[11]

Thus, petitioner filed the instant Petition on the following grounds:[12]

## **GROUND**

### **I.**

**THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT IT HAS JURISDICTION OVER THE DISPUTE BETWEEN HYUNDAI AND NGCP DESPITE THE TOTAL ABSENCE OF AN AGREEMENT BETWEEN THEM TO SUBMIT THE DISPUTE TO VOLUNTARY ARBITRATION.**

### **II.**

**THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT IT HAS JURISDICTION OVER THE DISPUTE BETWEEN HYUNDAI AND NGCP UPON THE ERRONEOUS CONCLUSION THAT THE RULING IN THE CASE OF *PRUDENTIAL GUARANTEE VS. ANSCOR LAND* FINDS APPLICATION IN THE PRESENT CASE.**

### **III.**

**THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN INSISTING ON TAKING COGNIZANCE OF THE DISPUTE BETWEEN PETITIONER NGCP AND RESPONDENT HYUNDAI WHEN JURISDICTION IS VESTED IN THE REGULAR CIVIL COURTS.**

## **THE COURT'S RULING**

Before discussing the substance of the petition, We shall briefly address the procedural issue raised by private respondent in its Comment/Opposition. Hyundai claims that petitioner committed a serious procedural lapse in supposedly failing to furnish the former with copies of the relevant pleadings referred to in the Petition, thus, warranting the outright dismissal thereof.

The argument has no merit.

As correctly relied upon and complied with by petitioner NGCP, A.M. No. 11-9-4-SC, otherwise known as the Efficient Use of Paper Rule pertinently provides:

"SECTION 6. Annexes Served on Adverse Party. — A party required by the rules to serve a copy of his court-bound paper on the adverse party **need not enclose copies of those annexes that based on the record of the court such party already has in his possession.** In the event a party requests a set of the annexes actually filed with the court, the party who filed the paper shall comply with the request within five days from receipt."

Based on the foregoing rule, petitioner's omission to furnish to private respondent with copies of the pleadings, orders, resolutions and other documents forming part of the records before CIAC is clearly justified, considering that private respondent is presumed to have obtained possession thereof during the proceedings *a quo*.

This brings Us to the real controversy presented in this Petition. In brief, the foregoing issues boil down to whether CIAC has jurisdiction over the dispute between Hyundai, on one hand, and TransCo and NGCP, on the other hand.

We resolve in the negative.

Section 4 of E.O. No. 1008 provides that:

"SEC. 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship, violation of the terms of agreement, interpretation and/or application of contractual time and delays, maintenance and defects, payment, default of employer or contractor, and changes in contract cost.

Excluded from the coverage of the law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Based on the foregoing, in order for the CIAC to acquire jurisdiction two requisites must concur: first, the dispute must be somehow connected to a construction contract; and second, the parties must have agreed to submit the dispute to arbitration proceedings.<sup>[13]</sup>

In this case, the point of contention of the parties touches on the existence of the second requirement, or the absence thereof. To recall, only Hyundai and TransCo contracted the Subject Contract, which embodies the dispute resolution clause. It is, thus, petitioner's stand that it could not be bound by the other parties' agreement to submit any construction dispute to arbitration proceedings.

In concluding the agreement to arbitrate between Hyundai and TransCo is binding upon petitioner NGCP, public respondent CIAC ruled in this wise:

"6.22. There is no dispute that the parties to the arbitration clause in the Subject Contract are the Claimant and Respondent TransCo. There is also no dispute that TransCo appointed Respondent NGCP, through the CMA, as the Construction Manager in the Project Under Construction which is the subject of the present dispute. The CMA between TransCo and NGCP is significantly and substantially connected to the Subject Contract between TransCo and the Claimant, out of which the present construction dispute arose. The significant and substantial connection between the