EN BANC

G.R. No. 230112 – Global Medical Center of Laguna, Inc., *petitioner* ***v.*** **Ross Systems International, Inc.,** *respondent.*

G.R. No. 230119 – Ross Systems International, Inc., *petitioner* ***v.*** **Global Medical Center of Laguna, Inc.,** *respondent.*

Promulgated:

May 11, 2021

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CONCURRING AND DISSENTING OPINION

LAZARO-JAVIER, *J.*:

Essentially, the *Majority* would like to give true force and effect to the legislature's express intent on how and under what grounds the review of domestic arbitral awards should be operationalized. The *Majority* pushes for Rule 45, instead of Rule 43, as the prescribed mode of review for construction arbitration cases. In so doing, the *Ponencia* rejects the following:

> ***First***, the present iteration of Rule 43 stating that a petition for review "shall apply to appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies (is) the … Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law."[1]
>
> ***Second***, the consistent and long-standing recognition by the Construction Industry Arbitration Commission, the litigants, and even by this Court that it is the Court of Appeals, no other, which has appellate jurisdiction over CIAC's dispositions (through its panel of arbitrators) in construction arbitration cases ever since Republic Act No. (RA) 7902[2] took effect in 1995.[3]
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> ***Third***, all our decisions[4] under Rule 45 where we took cognizance of and resolved petitions emanating from the Rule 43 appellate dispositions of the Court of Appeals in CIAC cases brought before it. We ourselves have never before impugned

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[1] Decision, p. 38.

[2] Amendment to B.P. Blg. 129 Re: Expansion of CA Jurisdiction, Republic Act No. 7902, February 23, 1995.

[3] Decision, p. 30.

[4] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176-208 (2001); *Megaworld Globus Asia Inc. v. DSM Construction and Development Corp.*, 468 Phil. 305-329 (2004); *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corp.*, 563 Phil. 184-218 (2007); *Empire East Land Holdings, Inc. v. Capitol Industrial Construction Groups, Inc.*, 588 Phil. 156-176 (2008); *Stronghold Insurance Company, Inc. v. Tokyu Construction Company, Ltd.*, 606 Phil. 400-415 (2009).

such vesture of jurisdiction in the Court of Appeals. Far from it, we have, for the longest time, explicitly and consistently recognized this jurisdiction *via* our present iteration of Rule 43.

Fourth, the CIAC Revised Rules of Procedure Governing Construction Arbitration[5] which took effect on December 15, 2005. Section 18[6] of the rules similarly echoes the vesture of appellate jurisdiction in the Court of Appeals over construction arbitration cases *via* Rule 43. CIAC is the agency tasked by law to implement the CIAC Law, hence, its interpretation of the law, as borne in the rules, deserves the Court's highest respect.

With due respect, however, the *Majority* appears to have **conflated** the ***vacatur*** and the ***modification or correction*** mechanisms in RA 876[7] and RA 9285[8] and the *Revised CIAC Rules* with the ***appeal*** process also provided for and delineated in the same laws. If the Court should abide by legislative intent, there is *nothing clearer and more explicit* than the **distinctions** between the ***vacatur*** and the ***modification or correction*** mechanisms and the ***appeal*** process in the relevant statutes and implementing rules themselves.

The ***vacatur*** and **correction mechanisms** referred by the *Majority*, **including** the allegedly **exclusive grounds to be invoked** for the **same**, all refer to the **proceedings** at the **Regional Trial Court** and **not the appeal/review proceedings** at the **Court of Appeals**. It is therefore a **leap in logic to restrict** the appeal/review proceedings in the Court of Appeals **solely** to the grounds for vacating or correcting an arbitral award by a Regional Trial Court.

The **"integrity-centered" grounds**[9] referred to by the *Majority* **does not pertain to the appeal/review of the Court of Appeals** but to the **vacatur** and **modification** proceedings before the Regional Trial Court. **On one hand,** RA 876[10] allows the Court of Appeals to entertain **questions of law** in the appeal/review; on the other, RA 9285[11] is **open-ended** as regards the questions that may be raised in the appeal/review process.

To be sure, under both RA 876 and RA 9285, an appeal to the Court of Appeals is **from an order or decision** rendered by the **Regional Trial**

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[5] REVISED RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION, https://ciap.dti.gov.ph/sites/default/files/A.10%20CIAC%20Revised%20Rules%20of%20Procedure%20%28NEW%29.pdf ACCESSED: June 26, 2021.

[6] SECTION 18.2 Petition for Review.- A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

[7] The Arbitration Law, Republic Act No. 876, June 19, 1953.

[8] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

[9] As is apparent in the two grounds that trigger the exceptional factual review of CIAC arbitral awards, *i.e.*, those that pertain to either the lack of integrity or the imputed unconstitutionality or illegality of the arbitrators or the arbitral process, the contracted grounds are tight enough, but nevertheless embrace and preserve the courts' power to re-examine factual findings of a CIAC arbitral tribunal, precisely when the latter's lack of integrity, or its unconstitutional or illegal actions taint the same. Decision, p. 48.

[10] The Arbitration Law, Republic Act No. 876, June 19, 1953.

[11] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

Court in **confirming,** vacating, or correcting an arbitral award or otherwise. The appeal/review of the Court of Appeals is **not** from the arbitral award itself. This should **thus explain** Rule 19.7[12] of the ***Special ADR Rules*** that "[c]onsequently, a party to an arbitration is **precluded** from **filing** an **appeal** or a **petition for *certiorari* questioning** the merits of an **arbitral award.**"

However, Section 40 of RA 9285[13] provides that "[a] **CIAC arbitral award need not be confirmed by the Regional Trial Court** to be executory as provided under E.O. No. 1008." Hence, there **will be no order or decision** from the **Regional Trial Court** that may be **appealed to** or **reviewed by the Court of Appeals,** *unless* one of the parties *moved to vacate or correct* a **CIAC** arbitral award before the Regional Trial Court.

Notably, a **CIAC** arbitral award itself is **NOT immune from appeal/review** by the Court of Appeals. A party to an arbitration **DOES NOT** also have to **first** seek to vacate or correct the arbitral award **before** it may be appealed to and reviewed by the Court of Appeals.

The *Majority* nonetheless posits that RA 9285 has re-enacted the appeal procedure under the **original version** of Section 19 of Executive Order No. (EO) 1008[14] so that the appeal is **now back** to this Court from the Court of Appeals on questions of law and the appeal procedure will already be under Rule 45, Rules of Court, by *certiorari.*[15]

Section 19[16] of EO 1008 (circa 1985), however, cannot be deemed to have been reenacted into RA 9285 (circa 2004). Section 19 states that the arbitral award shall be final and inappealable except on questions of law which shall be brought to the Supreme Court.

While it is true that Section 34 of RA 9285 states that the arbitration of construction disputes shall be governed by EO 1008, this refers only to the **arbitration proceedings proper before the CIAC, not thereafter.** This is clear from the entirety of CHAPTER 6 entitled ARBITRATION OF

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[12] **RULE 19.7.** *No Appeal or Certiorari on the Merits of an Arbitral Award.* — An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding.

Consequently, a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award. (Special Rules of Court on Alternative Dispute Resolution, A.M. No. 07-11-08-SC, September 1, 2009).

[13] **SECTION 40.** *Confirmation of Award.* — The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.

The confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

A CIAC arbitral award need not be confirmed by the Regional Trial Court to be executory as provided under E.O. No. 1008. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004)

[14] Construction Industry Arbitration Law, Executive Order No. 1008, February 4, 1985.

[15] Decision, p. 13.

[16] **SECTION 19.** *Finality of Awards.* — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court. (Construction Industry Arbitration Law, Executive Order No. 1008, February 4, 1985)

CONSTRUCTION DISPUTES of RA 9285 which includes Sections 34 to 39, *viz.*:

CHAPTER 6
Arbitration of Construction Disputes

SECTION 34. *Arbitration of Construction Disputes: Governing Law.* — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

SECTION 35. *Coverage of the Law.* — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

SECTION 36. *Authority to Act as Mediator or Arbitrator.* — By written agreement of the parties to a dispute, an arbitrator may act as mediator and a mediator may act as arbitrator. The parties may also agree in writing that, following a successful mediation, the mediator shall issue the settlement agreement in the form of an arbitral award.

SECTION 37. *Appointment of Foreign Arbitrator.* — The Construction Industry Arbitration Commission (CIAC) shall promulgate rules to allow for the appointment of a foreign arbitrator as co-arbitrator or chairman of a tribunal a person who has not been previously accredited by CIAC: Provided, That:

(a) the dispute is a construction dispute in which one party is an international party;

(b) the person to be appointed agreed to abide by the arbitration rules and policies of CIAC;

(c) he/she is either co-arbitrator upon the nomination of the international party; or he/she is the common choice of the two CIAC-accredited arbitrators first appointed, one of whom was nominated by the international party; and

(d) the foreign arbitrator shall be of different nationality from the international party.

SECTION 38. *Applicability to Construction Arbitration.* — The provisions of Section 17(d) of Chapter 2, and Sections 28 and 29 of this Act shall apply to arbitration of construction disputes covered by this Chapter.

SECTION 39. *Court to Dismiss Case Involving a Construction Dispute.* — A Regional Trial Court before which a construction dispute is filed shall,

> upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.[17]

The fact that Section 34 is grouped together with the provisions governing the construction disputes within the jurisdiction of CIAC, the manner by which the parties may choose the arbitrator or mediator who will resolve their dispute, the requisites for appointment of foreign arbitrator, the adoption of certain provisions of RA 9285, specifically Section 17,[18] Chapter 2 on the enforcement of mediated settlement agreement and Sections 28[19] and

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[17] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

[18] **SECTION 17.** *Enforcement of Mediated Settlement Agreements.* — The mediation shall be guided by the following operative principles:

(a) A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsel, if any, and by the mediator.

The parties and their respective counsels shall endeavor to make the terms and condition thereof complete and make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement.

(b) The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in language known to them.

(c) If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court.

(d) The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act No. 876, otherwise known as the Arbitration Law, notwithstanding the provision of Executive Order No. 1008 for mediated disputes outside of the CIAC. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004)

[19] **SECTION 28.** *Grant of Interim Measure of Protection.* — (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

(b) The following rules on interim or provisional relief shall be observed:

(1) Any party may request that provisional relief be granted against the adverse party.

(2) Such relief may be granted:

(i) to prevent irreparable loss or injury;

(ii) to provide security for the performance of any obligation;

(iii) to produce or preserve any evidence; or

(iv) to compel any other appropriate act or omission.

(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.

(5) The order shall be binding upon by the parties.

(6) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004)

29,[20] Chapter 3 on the grant of interim measure of protection pending arbitration before the CIAC, means that Section 34[21] in fact refers only to the adoption of EO 1008 governing the arbitration proceedings before the CIAC and not thereafter when judicial remedies already come into play.

Indeed, after an award or judgment is rendered at the CIAC level, the arbitration process should be deemed to have ended too. Thus, when this award or judgment, *etc.* is challenged in court, the adversarial judicial process begins, not *via* Rule 45 as supposedly prescribed by Section 19 of EO 1008, but *via* Rule 43 and before the Court of Appeals as validly decreed under RA 7902 which is deemed to have long amended Section 19 of EO 1008.

Admittedly, we have the Special Rules of Court on Alternative Dispute Resolution, Rule 19.7 which reads: "... a party to an arbitration is precluded from filing an appeal or a petition for *certiorari* questioning the merits of an arbitral tribunal." But these rules should not be construed to repeal a statute enacted by Congress, such as RA 7902, which the Court is conclusively presumed to have known of when it promulgated these Special Rules. Notably, even after the promulgation of the Special Rules in 2009, we did not amend Rule 43. In fact, even in 2019 when we revised our Rules on Civil Procedure, we did not amend Rule 43 insofar as CIAC cases are concerned. We simply continued to recognize the jurisdiction of the Court of Appeals over the dispositions of CIAC *via* Rule 43 pursuant to RA 7902. If at all, Rule 19.7 should be construed as applying only to the process of alternative dispute resolution before arbitration tribunals other than CIAC which is already specifically governed by Rule 43.

In any event, if the *Majority* is correct, that Rule 19.7 should be understood to be absolute and literal, then even the prescribed remedy by the *Ponencia*, a Rule 45 petition to this Court, would also have been prohibited.

More important, RA 9285 took effect in 2004, hence, it is governed by the 1987 Constitution. Section 30, Art. VI[22] of the 1987 Constitution provides that "no law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and consent." On the basis of this provision, therefore, the alleged vesture under the so-called reenacted Section 19 of EO 1008 of "exclusive appellate jurisdiction in the Supreme Court" over CIAC awards, judgments, *etc.*,

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[20] **SECTION 29.** *Further Authority for Arbitrator to Grant Interim Measure of Protection.* — Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute following the rules in Section 28, paragraph 2. Such interim measures may include but shall not be limited to preliminary injunction directed against a party, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration. Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004).

[21] **SECTION 34.** *Arbitration of Construction Disputes: Governing Law.* — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004)

[22] **SECTION 30.** No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

without its advice and consent, is **unconstitutional**. This must be the reason why despite the effectivity of EO 1008 and its so-called reenactment into RA 9285, the iteration of Rule 43 since 1997 remains the same to this very date, that is, the jurisdiction of the Court of Appeals over CIAC awards, *etc.* remains vested in the Court of Appeals *via* a petition for review. Clearly, in promulgating Rule 43, the Supreme Court has applied RA 7902,[23] and never Section 19 of EO 1008 whether in its original text or as purportedly reenacted.

Further, note the specific provisions in Chapter 7 of RA 9285 on ***judicial review***. If the intention of Section 34 *were* to adopt ***in toto*** EO 1008 (specifically Section 19) and not only the provisions with respect to the ***voluntary*** dispute resolution of ***arbitration***, RA 9285 *would not have* enacted Chapter 7 and *would not have* provided specific provisions on ***judicial review*** by the Regional Trial Court, *viz.*:

> A. DOMESTIC AWARDS
>
> **SECTION 40.** *Confirmation of Award.* — The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 876.
>
> A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.
>
> The recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.
>
> The confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.
>
> A CIAC arbitral award need not be confirmed by the Regional Trial Court to be executory as provided under E.O. No. 1008.[24]

Too, if Section 34 of RA 9285 *were all encompassing*, there **would have been no need for Congress** to enact the last paragraph of Section 40 of RA 9285, *viz.*:

> The confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.
>
> A CIAC arbitral award need not be confirmed by the Regional Trial Court to be executory as provided under E.O. No. 1008.[25]

Further, **note that** Section 40 is actually a ***mere reiteration*** of Section 20 of EO 1008, *viz.*:

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[23] Amendment to B.P. Blg. 129 Re: Expansion of CA Jurisdiction, Republic Act No. 7902, February 23, 1995.
[24] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.
[25] *Id.*

> **SECTION 20.** *Execution and Enforcement of Awards.* — As soon as a decision, order or award has become final and executory, the Arbitral Tribunal or the single arbitrator with the occurrence of the CIAC shall motu proprio, or on motion of any interested party, issue a writ of execution requiring any sheriff or other proper officer to execute said decision, order or award.[26]

Yet, Congress ***still included*** this portion of Section 40 in RA 9285. This shows even more that the adoption of EO 1008 into RA 9285 applies only to the provisions pertaining to the arbitration proceeding proper before the CIAC and does not include the adoption of the provisions on judicial remedies.

If truly the intent of Section 34 were truly what the *Majority* asserts it to be, Section 40 would have been an **unnecessary provision**. But Congress **could not have** enacted a **useless provision**. The fact that the last paragraph of Section 40 was enacted **only means** that Section 34 is **not all encompassing** as the *Ponencia* says it is.

I cannot subscribe to the position of the *Majority* that since Section 19 of EO 1008 originally took effect in 1985 under the 1973 Constitution where advice and consent of the Supreme Court was not yet required,[27] its reenactment into RA 9285, *albeit* the same took effect under the new Constitution, remains exempt from complying with the consent and advice requirement. Surely, every provision of law even that which has been simply reenacted, is, in the eyes of the Constitution, a new provision altogether. As such, it must comply with the requirements of the Constitution effective at the time it is passed and becomes effective. It is absurd to say that most of the provisions of RA 9285 are governed by the 1987 Constitution while one stand out provision remains governed by the 1973 Constitution.

At any rate, in promulgating every single provision in the Rules of Court, the Highest Court of the land is conclusively presumed to know all the relevant existing laws and it will never promulgate rules contrary thereto. To repeat, the claim that the appeal jurisdiction over CIAC arbitral awards has reverted back to the Supreme Court pursuant to Section 34 of RA 9285, specifically pertaining to Section 19 of EO 1008, has no legal basis, nay, unconstitutional. The appellate jurisdiction over CIAC arbitral awards is still with the Court of Appeals and the appellate procedure for this purpose is still under Rule 43 of the Rules of Court.

As for the grounds upon which the appeal to the Court of Appeals is made, the same cannot be restricted to the grounds impacting on the arbitral tribunal's integrity. RA 7902 provides questions of law as the ground for appeal. These are not limited to issues about the integrity of the arbitral tribunal. Questions of law include whether on the basis of the facts on record, the standard of proof has been satisfied. They assume the credibility and reliability of the factual findings of the arbitral tribunal but ask: *Did the*

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[26] Construction Industry Arbitration Law, Executive Order No. 1008, February 4, 1985.
[27] Decision, p. 26.

claimant prove its case according to the standard of proof demanded by the case?

Going now to Rule 65, the same is always available where there is grave abuse of discretion amounting to excess or lack of jurisdiction and there is no appeal or any plain, speedy, or adequate remedy available in the ordinary course of law. But even though appeal may be available, Rule 65 may still be resorted to if appeal is not a plain speedy or adequate remedy to the aggrieved party under the circumstances. There is no question that Rule 65 is the appropriate remedy where the CIAC acted with grave abuse of discretion, amounting to excess or lack of jurisdiction. I agree with Senior Associate Justice Estela Perlas-Bernabe that this ground cannot be altered or narrowed down by the Court into just:

> The resort to Rule 65, instead of Rule 43, further finds support in the very nature of the factual circumstances which trigger said exceptional factual review—those that center not on the actual findings of fact but on the integrity of the tribunal that makes these findings, or their compliance with the Constitution or positive law, *i.e.*, any of the following factual allegations: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section 9 of R.A. 876, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[28]

This is discriminatory, hence, **violative of the equal protection clause**.

In any case, the Court cannot rule that Rule 65, and exclusively on such limited grounds, is the only remedy available at the Court of Appeals. To emphasize, this pronouncement is contrary to RA 7902 which defines the remedy as an appeal and the ground as questions of law. In the exercise of its rule making power, the Court had, over two (2) decades ago, identified the procedure of this appeal as falling under Rule 43. This determination by the Court is of course correct. The remedy cannot be under Rule 65 because it is not an appeal procedure.

Finally, because the *Majority* pushes for the abandonment of our nearly 24-year-old Rule 43 and the countless cases we resolved upholding it, there is also the consequent abandonment of the present CIAC Rules, ***albeit* CIAC is not before us and has not been heard**. Most of all, the issue whether we should revise Rule 43 and, thus, prescribe a new mode of review is being *motu proprio* advocated, in violation of the Court's strict procedure in revising the provisions of the Rules of Court. Included in this procedure are the creation of a corresponding sub-committee to undertake the study of the proposed

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[28] Decision, p. 40.

amendment and the invitation to the stakeholders to participate and be heard in the process, among others. The amendment of Rule 43, with all its serious repercussions, cannot be done hastily here and now, nay, sharply departing from our prescribed rules on amendments. More so because the appeal or review procedure we now seek to overhaul is not even the subject of the present cases before us now. Thus, the parties are absolutely unaware of this issue and consequently have not been heard thereon.

Lastly, I respectfully **stress** the Court's efforts to **empower** our lower courts, especially the third level appellate courts, by **decentralizing** the appeal/review process and **entrusting** them with **greater** than the usual **adjudicative jurisdiction** and **responsibility for the decisions** they make. This advocacy **has also helped** the Court to **focus** its attention to some extent only to **cases of transcendental importance and impact.** I respectfully submit that the *Majority* goes **against** this tide of **adjudicative empowerment** and **proper case focus and management.** Allowing the Court of Appeals to take cognizance of the appeal/review from a CIAC Decision **under Rule 43** as there is **no other procedure,** is more in keeping with the time-honored rule that **the transfer of appeals by the Court to subordinate appellate courts is purely a procedural and not a substantive power.**[29]

When the Court resolves to transfer an appeal to a lower court, it only has in mind **practicality** and **efficiency.** Procedural amendments are always aimed to **upgrade the Court's efficiency** by **maxing up the Court of Appeals' capability** before they finally reach the Court. It is actually a **filtering mechanism** adopted by the Court so that by the time a case reaches the Court, the **relevant issues** have already been laid straight and the Court can now be true to its mandate of resolving only issues of transcendental importance and impact. Again, this is to enable the Court to devote its precious time and effort to cases with more pressing issues.

Here, there are **no strong** and **justifiable reasons** to **overhaul** jurisprudence that upholds the **jurisdiction of the Court of Appeals** over appeals/review from **CIAC arbitral awards** and to **reject Rule 43 of the *Rules of Court*** as the **governing procedure** for this purpose. Maintaining the ***status quo*** would **acknowledge** not only the **competence and expertise of arbitrators** and the **generally final nature of their orders and decisions but also the importance to us of ensuring ample protection for the rights of the parties.**

On the **merits,** I **humbly agree** with the *Majority* that the Court of Appeals erred in awarding RSII the amount of Php1,088,214.83. The decision of the arbitrators **denying** RSII any claim under Progress Billing No. 15 is **based on substantial evidence.** Hence, the Court of Appeals **erred** in modifying the arbitrators' decision on this aspect. GMCLI should furnish RSII with the pertinent BIR Form 2307. This is pursuant to a **straightforward application** of Section 2.57.3 of Revenue Regulation No. 2-98. As applied

[29] *Fabian v. Desierto,* 356 Phil. 787, 810 (1998).

here, this Revenue Regulation should have already called for GMCLI to remit the 2% CWT as soon as each Progress Billing was paid and to issue the corresponding BIR Form 2307 to RSII in order for the latter to have had a tax credit claim on the same.

ACCORDINGLY, I vote to **PARTIALLY REVERSE** the Decision dated October 28, 2016 of the Court of Appeals in CA-G.R. SP No. 145753 with respect to the entitlement of RSII to the amount of ₱1,088,214.83, and to **REINSTATE with MODIFICATION,** the Arbitrators' Decision dated May 10, 2016. GMCLI should be **ORDERED** to furnish RSII with BIR Form 2307.

However, **I maintain my position that the appellate jurisdiction over CIAC arbitral awards is still with the Court of Appeals and the appellate procedure for this purpose is still under Rule 43 of the Rules of Court.**

AMY C. LAZARO-JAVIER
Associate Justice