



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated 10 October 2022 which reads as follows:

“G.R. No. 262718 (*Major Properties, Inc. vs. Excell Contractors & Development, Inc.*). — This Petition for Review on *Certiorari* Under Rule 45 (With Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction)¹ expostulates with the *Resolution*² dated 6 July 2022 of the Court of Appeals (CA) in CA-G.R. SP No. 172210, which sustained the implementation of the Final Award³ issued by the Construction Industry Arbitration Commission (CIAC) and promulgated on 7 February 2022.

After an insightful review of the case, the Court resolves to **DENY** the instant Petition and **AFFIRM** the challenged issuance of the CA due to the absence of showing that it committed any serious reversible error. As discursively adjudged by the CA, petitioner ostensibly erred because it resorted to a wrong mode of appeal when it filed a Petition for Review under Rule 43 of the Rules of Court in assailing the Final Award given by the CIAC instead of filing a Rule 45 petition or a Rule 65 petition before the CA. Consequently, this Court recognizes no legal hindrance to the implementation of the Final Award through the Writ of Execution⁴ dated 13 June 2022 duly issued by the Sole Arbitrator, with the concurrence of the CIAC Commissioners. It is axiomatic that “procedural rules setting the period of perfecting an appeal are generally inviolable, considering that appeals are not a natural right or a component of due process, but a mere statutory privilege.”⁵

Quite recently, the Court pronounced in *Global Medical Center vs. Ross Systems International*⁶ (*Global Medical*) that the judicial review of CIAC arbitral awards shall be either through a Rule 45 petition, purely on questions

¹ *Rollo*, pp. 3-25.

² *Id.* at 27-30. Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justice Walter S. Ong and Associate Justice Emily L. San Gaspar-Gito.

³ *Id.* at 32-45. Issued by Sole Arbitrator Reynaldo A. Cortes.

⁴ *Id.* at 113-114. Issued by Sole Arbitrator Reynaldo A. Cortes with the concurrence of CIAC Chairperson Justice Teresita V. Diaz-Baldos (ret.) and CIAC Member Antonio A. Abola; CIAC Member Emilio Lolito J. Tumbucon (on leave).

⁵ See *DMCI Project Developers, Inc. vs. Bernadas*, G.R. No. 221978, 4 April 2022.

⁶ *Global Medical Center of Laguna, Inc. vs. Ross Systems International, Inc.*, G.R. Nos. 230112 & 230119, 11 May 2021.

of law, or *via* Rule 65 before the CA on factual issues but only on limited grounds pertaining to the integrity of the arbitration tribunal or its decision or grave abuses of discretion, thus:

1. For appeals from CIAC arbitral awards that have already been filed and are currently pending before the CA under Rule 43, the prior availability of the appeal on matters of fact and law thereon applies. This is only proper since the parties resorted to this mode of review as it was the existing procedural rules at the time of filing, prior to the instant amendment.
2. For future appeals from CIAC arbitral awards that will be filed after the promulgation of this Decision:
 - a. If the issue to be raised by the parties is a pure question of law, the appeal should be filed directly and exclusively with the Court through a petition for review under Rule 45.
 - b. If the parties will appeal factual issues, the appeal may be filed with the CA, but only on the limited grounds that pertain to either a challenge on the integrity of the CIAC arbitral tribunal (i.e., allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal) or an allegation that the arbitral tribunal violated the Constitution or positive law in the conduct of the arbitral process, through the special civil action of a petition for certiorari under Rule 65, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction. The CA may conduct a factual review only upon sufficient and demonstrable showing that the integrity of the CIAC arbitral tribunal had indeed been compromised, or that it committed unconstitutional or illegal acts in the conduct of the arbitration.**
3. Under no other circumstances other than the limited grounds provided above may parties appeal to the CA a CIAC arbitral award.⁷

The CA aptly adjudged that when petitioner filed on 17 March 2022 its Petition for Review under Rule 43 following the prospective application in *Global Medical*, it patently availed of the wrong mode of appeal.

It bears emphasis that “[a]rbitral awards are final and binding. When reviewing arbitral awards, courts should refrain from making their own findings of fact, and instead preserve and protect the process and structure of arbitration. Only on limited grounds are courts allowed to vacate arbitral awards.”⁸ Furthermore, in several occasions the Court upheld “the persuasive weight of factual findings of the CIAC, and consequently rules against a factual judicial review that effectively undermines the CIAC’s conclusive and authoritative findings.”⁹ In the case at bench, petitioner clearly raises factual issues which are beyond the ambit of a Rule 45 petition. The Court has tellingly accentuated that “it will not relitigate issues of fact previously

⁷ Id.

⁸ *ASEC Development and Construction Corp. vs. Toyota Alabang, Inc.*, G.R. Nos. 243477-78, 27 April 2022.

⁹ *Supra* note 6.

resolved by an arbitral tribunal, save for the instance of a clear showing of grave abuse of discretion.”¹⁰ This is not the case here.

Finally, anent petitioner’s application for a Temporary Restraining Order and/or Writ of Preliminary Injunction, the Court rules and so holds that it was not able to discharge its burden of proving entitlement thereto. The very first requisite that must be met before injunction may issue is that “the applicant must have a clear and unmistakable right to be protected, that is a right in *esse*.”¹¹ A right in *esse* is one “clearly founded in or granted by law or is enforceable as a matter of law.”¹² Ergo, “[a]ny hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief.”¹³ Palpably, the first requisite of a right in *esse* is absent because petitioner did not demonstrate a clear and unmistakable right as it merely averred vague notions of injustice and irreparable damage. Perforce, the CA unerringly dismissed the petition.

All told, this Court discerns no compelling reason to issue any injunctive relief in favor of petitioner.

WHEREFORE, the Petition for Review on *Certiorari* with application for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is hereby **DENIED**.

SO ORDERED.” (Caguioa, *J.*, on official leave; Inting, *J.*, designated as acting Chairperson per Special Order No. 2918-REVISED dated 12 October 2022)

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

Atty. Jay S. Sangalang

¹⁰ Id.

¹¹ See *Bicol Medical Center, et al. vs. Botor, et al.*, 819 Phil. 447, 458 (2017).

¹² See *Mayor Cayabyab, et al. vs. Dimson*, 813 Phil. 492, 502 (2017).

¹³ *Supra* note 11 at 461.

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