

THIRD DIVISION

[G.R. No. 219708, October 03, 2018]

TOURISM INFRASTRUCTURE AND ENTERPRISE ZONE AUTHORITY, PETITIONER, VS. GLOBAL-V BUILDERS CO., RESPONDENT.

DECISION

PERALTA, J.:

This is a petition for review on certiorari, under Rule 45 of the Rules of Court, of the Amended Decision^[1] of the Court of Appeals in CA-G.R. SP No. 131024, dated April 6, 2015, and its Resolution,^[2] dated July 22, 2015, affirming the Final Award^[3] dated July 16, 2013 of the Arbitral Tribunal that was constituted by the Construction Industry Arbitration Commission (CIAC).

The facts are as follows:

In 2007 and 2008, the Philippine Tourism Authority (PTA) entered into five Memoranda of Agreement (MOA) with respondent Global-V Builders Co. (Global-V). The Memoranda of Agreement are as follows:

- 1) Memorandum of Agreement (MOA) dated February 2, 2007 for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) located at Boracay, Aklan;^[4]
- 2) MOA dated September 6, 2007 for the Boracay Environmental Infrastructure Project (BEIP)-Extension of Drainage Component System (Main Road and Access Road) located at Barangay Balabag, Boracay, Aklan;^[5]
- 3) MOA dated December 7, 2007 for the Additional Sidewalk, Streetlighting and Drainage System (Main Road), located at Boracay, Aklan;^[6]
- 4) MOA dated September 19, 2008 for the Widening of Boracay Road along Willy's Place at Barangay Balabag, Boracay, Aklan;^[7] and
- 5) MOA dated February 29, 2008 for the Perimeter Fence at Banaue Hotel in Banaue, Ifugao.^[8]

The BEIP-Extension of Drainage Component System (Main Road and Access Road) Project and the Perimeter Fence at Banaue Hotel Project were procured through competitive bidding, while the rest of the projects aforementioned were obtained through negotiated procurement pursuant to Section 53, paragraphs (b) and (d) of Republic Act (R.A.) No. 9184 (The Government Procurement Reform Act).

On July 31, 2012, Global-V filed a Request for Arbitration^[9] and a Complaint^[10] before the CIAC, seeking payment from the Tourism Infrastructure and Enterprise Zone Authority (TIEZA), the office that took over the functions of PTA, of unpaid bills in connection with the five projects, as well as payment of interest, moral and

exemplary damages, and attorney's fees. The claims of Global-V amounted to P16,663,736.34, broken down as follows:

Widening of Boracay Road along Willy's Place	P2,305,738.07
Construction of Stamped Concrete Sidewalk and Installation of Streetlights	5,222,948.37
Additional Sidewalk Streetlight and Drainage System (Main Road)	5,279,380.10
BEIP Extension of Drainage Component System (Main Road & Access Road)	332,815.76
Perimeter Fence at Banaue Hotel	249,873.54
Interest (6% as of 31 July 2012)	2,722,980.50
Moral damages	100,000.00
Exemplary damages	100,000.00
Attorney's fees	350,000.00 ^[11]

On August 30, 2012, TIEZA filed a Refusal of Arbitration (Motion to Dismiss for Lack of Jurisdiction),^[12] instead of filing an Answer. TIEZA argued that CIAC has no jurisdiction over the case filed by Global-V because the Complaint does not allege an agreement to arbitrate and the contracts do not contain an arbitration agreement in accordance with Sections 2.3 and 2.3.1^[13] of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules).

In its Comment/Opposition to Respondent's Refusal of Arbitration,^[14] Global-V countered that R.A. No. 9184 vests on CIAC jurisdiction over disputes involving government infrastructure projects like the projects in this case. Section 59 of R.A. No. 9184 provides that "*[a]ny and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto.*"

Global-V asserted that the pertinent provisions of R.A. No. 9184 governing the subject infrastructure projects are deemed part of the contracts entered into by the parties. It cited *Guadines v. Sandiganbayan*,^[15] which held that "[b]asic is the rule that provisions of existing laws and regulations are read into and form an integral part of contracts, [more so] in the case of government contracts." Global-V contended that considering that the arbitration process is an integral part of the contracts between the parties by operation of law, the requirement under Section 2.3 of the CIAC Rules has been met.

TIEZA filed its Rebuttal to Comment/Opposition,^[16] arguing that an arbitration clause is a condition *sine qua non* before CIAC can acquire jurisdiction over the subject matter, as provided for in the CIAC Rules.

CIAC constituted an Arbitral Tribunal to handle the case, with its first task of ruling on the motion to dismiss filed by TIEZA.^[17]

On November 16, 2012, the Arbitral Tribunal directed the parties to submit their respective memorandum on TIEZA's motion to dismiss, and the parties complied.

[18]

In an Order dated December 18, 2012, the Arbitral Tribunal dismissed TIEZA's motion to dismiss for lack of merit, to wit:

Respondent [TIEZA] filed its Motion to Dismiss on the ground that the CIAC has no jurisdiction over the instant case in the absence of an arbitration clause in the MOA between the parties. Respondent also expresses the view that the arbitration cannot proceed because Claimant [Global-V] failed to exhaust administrative remedies.

On the first ground, Respondent has cited Section 2.3 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules), which states "For the CIAC to acquire jurisdiction, the parties to the dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration."

On the second ground, Respondent draws the attention of this Tribunal to the absence of allegation in the Complaint filed by Claimant that it exhausted administrative remedies. Respondent alleges that Claimant did not exhaust administrative remedies by failing to file a money claim before the Commission on Audit (COA). It cited the case of National Irrigation Authority vs. Enciso (G.R. No. 142571, 5 May 2006), which states: "Only after COA has ruled on the claim, may the injured party invoke judicial intervention by bringing the matter to this court on petition for certiorari."

On the other hand, Claimant asserts that the absence of an arbitration clause in the MOA does not deprive the CIAC of jurisdiction in view of a provision in R.A. 9184 which states:

Section 59. Arbitration. - Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act, Provided[,] That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

It is Claimant's position that the provisions cited above, being provisions of law, are deemed part of the MOA between the parties and therefore the requirement under Section 2.3 of CIAC Rules has been effectively met. Claimant alleges that, in fact, there is an arbitration clause in the MOA inasmuch as the General Conditions of Contract, which are integral parts of the MOA, have the above-cited provisions in Par. 21.3 of Clause 21 thereof.

*On the issue of Failure to Exhaust Administrative remedies raised by the Respondent, particularly in Claimant not first filing its money claims with the COA, Claimant contends that a later case on this issue effectively counters the claim of Respondent. In *Vigilar vs. Aquino* (G.R. No. 180388, 18 January 2011), the Supreme Court disregarded the defense on not first filing the claim before the COA on the ground that application of the rule would cause unreasonable delay or official inaction to the prejudice of the contractor.*

We rule in favor of the Claimant. The absence of an arbitration clause in the main body of the MOA is not fatal to the case of the Claimant. Claimant has correctly pointed out that the above-cited provisions in R.A. 9184 are deemed incorporated in the MOA. To rule otherwise would frustrate the intention of the law. In any case, the applicable provisions of R.A. 9184 are found in "The General Conditions of Contract".

*On the issue of exhaustion of administrative remedies, Claimant has complied with this condition, correctly citing the *Vigilar vs. Aquino* case. In addition, under Section 3.2 of the CIAC Rules, Claimant has satisfied precondition no. 2, viz "there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made." In the instance case, more than three years have elapsed since the date Claimant made its Final Demand for payment before the head of TIEZA himself WHEREFORE, Respondent's Motion to Dismiss for lack of jurisdiction is hereby dismissed for lack of merit.^[19]*

TIEZA filed a motion for reconsideration of the Arbitral Tribunal's Order dated December 18, 2012. The Arbitral Tribunal denied the motion for reconsideration in its Order dated January 29, 2013, thus:

*Respondent [TIEZA] contends that this Tribunal erred in ruling that: (1) it has jurisdiction over the complaint; and (2) Claimant [Global-V] has complied with the requirement of exhaustion of administrative remedies. On the first issue, Respondent has reiterated its position [that] the contract between the parties does not have an arbitration clause. On the second issue, Respondent argues that the cited *Vigilar vs. Aquino* case involves a claim which remained unpaid for two decades while the Claim of Claimant involves a lesser period.*

This Tribunal stands by its previous ruling that the provisions of Section 59 of R.A. No. 9184 are deemed incorporated in the contract between the parties. There are several alternative modes of dispute resolution; arbitration is one of them. This Tribunal[']s reading of the cited provisions of R.A. No. 9184 is that the parties reduce their agreement in writing should they choose to resort to alternative modes of dispute resolution, other than arbitration.

*On the issue of exhaustion of administrative remedies, this Tribunal holds the view that the period of unreasonable delay cited in the *Vigilar vs Aquino* case should not be interpreted literally. In the instant case, considering the amount of claim involved, the period of almost five years*

of nonpayment can already be considered as unreasonable delay, which would exempt Claimant from the "Exhaustion of Administrative Remedies" rule.

In view of the foregoing, Respondent's MR is hereby denied with finality for lack of A1erit. Moreover, Respondent is directed to submit its Answer to Claimant's Complaint within ten (10) days from receipt of this Order.

[20]

On February 11, 2013, TIEZA filed its Answer *Ex Abundanti Ad Cautelam*^[21] in compliance with the directive of the Arbitral Tribunal.

On March 7, 2013, the parties and their respective counsels attended the preliminary conference. TIEZA manifested that its participation in the preparation of the Terms of Reference (TOR) was being done to safeguard its rights in the proceedings, without waiving its challenge on the jurisdiction of CIAC. TIEZA also informed the Arbitral Tribunal that it was intending to amend its Answer *Ex Abundanti Ad Cautelam* in view of two supervening events: its Request for Special Audit (on all MOAs entered into by the parties) dated January 29, 2013 and the Commission on Audit's (COA's) Notice of Disallowance^[22] dated January 3, 2013, which was received by TIEZA on March 5, 2013.^[23] The said Notice disallowed the payment of the amount of P12,161,423.11 for the Construction of Stamped Concrete Sidewalk and Installation of Streetlights (Main Road) Project, as COA found the concrete stamping logo to be unnecessary in the promotion of trade and business of TIEZA in Boracay and in the tourism infrastructure development as a whole, and the cost of the project was extravagant.

The TOR drafted during the preliminary conference was signed by Global-V and its counsel, as well as the members of the Arbitral Tribunal. TIEZA and its counsel, however, did not affix their signatures on the TOR, as it was to be submitted for review and approval of the supervising Assistant Solicitor General and the Solicitor General.

After the preliminary conference, the Arbitral Tribunal received the following pleadings from the parties: TIEZA's Answer *Ex Abundanti Ad Cautelam*^[24] dated February 11, 2013; Global-V's Reply to Amended Answer^[25] dated March 27, 2013; TIEZA's Rejoinder *Ad Cautelam*^[26] dated April 5, 2013; TIEZA's Extremely Urgent Manifestation and Motion *Ad Cautelam*^[27] dated April 10, 2013; and Global-V's Manifestation^[28] dated April 11, 2013.

On April 18, 2013, the Arbitral Tribunal resolved the issues raised in the aforementioned pleadings submitted by the parties. The Arbitral Tribunal affirmed with finality its ruling in the Order dated January 29, 2013 that CIAC has jurisdiction over this case. The Arbitral Tribunal said that it only allowed the jurisdictional issue to be reopened on the manifestation of TIEZA that a supervening event occurred, which was the special audit being conducted by COA on all MOAs and projects entered into between TIEZA and Global-V. The Arbitral Tribunal noted, however, that TIEZA made its request to COA to conduct the said special audit on the day that the Arbitral Tribunal issued the Order dated January 29, 2013, denying TIEZA's motion for reconsideration and affirming its ruling in the Order dated December 18, 2012