# FIRST DIVISION

# [ G.R. No. 212734, December 05, 2018 ]

## MABUHAY HOLDINGS CORPORATION, PETITIONER, VS. SEMBCORP LOGISTICS LIMITED, RESPONDENT.

## DECISION

**TIJAM, J.:**

This is an appeal from the Decision[1] dated November 19, 2013 and the Resolution[2] dated June 3, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 92296, reversing and setting aside the Decision of the Regional Trial Court (RTC)[3] of Makati City, Branch 149, in SP Proc. No. M-6064.

### Facts of the Case

Petitioner Mabuhay Holdings Corporation (Mabuhay) and Infrastructure Development & Holdings, Inc. (IDHI) are corporations duly organized and existing under the Philippine Laws.[4]

Respondent Sembcorp Logistics Limited (Sembcorp), formerly known as Sembawang Maritime Limited, is a company incorporated in the Republic of Singapore.[5]

On January 23, 1996, Mabuhay and IDHI incorporated Water Jet Shipping Corporation (WJSC) in the Philippines to engage in the venture of carrying passengers on a common carriage by inter-island fast ferry. On February 5, 1996, they also incorporated Water Jet Netherlands Antilles, N.Y. (WJNA) in Curasao, Netherlands.[6] Their respective shareholding percentage are as follows:[7]

| | WJSC | WJNA |
|---|---|---|
| Mabuhay | 70% | 70% |
| IDHI | 30% | 30% |

On September 16, 1996, Mabuhay, IDHI, and Sembcorp entered into a Shareholders' Agreement[8] (Agreement) setting out the terms and conditions governing their relationship in connection with a planned business expansion of WJSC and WJNA. Sembcorp decided to invest in the said corporations. As a result of Sembcorp's acquisition of shares, Mabuhay and IDHI's shareholding percentage in the said corporations were reduced, as follows:[9]

| | WJSC | WJNA |
|---|---|---|
| Mabuhay | 45.5% | 45.5% |
| IDHI | 19.5% | 19.5% |
| Sembcorp | 35.0% | 35.0% |

Pursuant to Article 13 of the Agreement, Mabuhay and IDHI voluntarily agreed to jointly guarantee that Sembcorp would receive a minimum accounting return of US$929,875.50 (Guaranteed Return) at the end of the 24th month following the full disbursement of the Sembcorp's equity investment in WJNA and WJSC. They further agreed that the Guaranteed Return shall be paid three (3) months from the completion of the special audits of WJSC and WJNA as per Article 13.3 of the Agreement.[10]

The Agreement included an arbitration clause, *viz*:

> **Article XIX. APPLICABLE LAW; ARBITRATION**
>
> 19.1 This Agreement and the validity and performance thereof shall be governed by the laws of the Republic of the Philippines.
>
> 19.2 Any dispute, controversy or claim arising out of or relating to this Agreement, or a breach thereof, other than intra-corporate controversies, shall be finally settled by arbitration in accordance with the rules of conciliation and arbitration of the International Chamber of Commerce by one arbitrator with expertise in the matter at issue appointed in accordance with said rules. The arbitration proceeding including the rendering of the award shall take place in Singapore and shall be conducted in the English Language. This arbitration shall survive termination of this Agreement. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.[11]

On December 6, 1996, Sembcorp effected full payment of its equity investment. Special audits of WJNA and WJSC were then carried out and completed on January 8, 1999. Said audits revealed that WJSC and WJNA both incurred losses.[12]

On November 26, 1999, Sembcorp requested for the payment of its Guaranteed Return from Mabuhay and IDID. Mabuhay admitted its liability but asserted that since the obligation is joint, it is only liable for fifty percent (50%) of the claim or US$464,937.75.[13]

On February 24, 2000, Sembcorp sent a Final Demand to Mabuhay to pay the Guaranteed Return. Mabuhay requested for three (3) months to raise the necessary funds but still failed to pay any amount after the lapse of the said period.[14]

On December 4, 2000, Sembcorp filed a Request for Arbitration before the International Court of Arbitration of the International Chamber of Commerce (ICC) in accordance with the Agreement and sought the following reliefs:

> (1) payment of the sum of US$929,875.50;
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> (2) alternatively, damages;
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> (3) interest on the above sum at such rate as the Arbitral Tribunal deems fit and just;

(4) cost of the arbitration; and

(5) Such further and/or other relief as the Arbitral Tribunal deems fit and just.[15]

On April 20, 2004, a Final Award[16] was rendered by Dr. Anan Chantara-Opakom (Dr. Chantara-Opakorn), the Sole Arbitrator appointed by the ICC. The dispositive portion of the award reads:

> The Sole Arbitrator hereby decides that the Sole Arbitrator has jurisdiction over the parties' dispute and directs [Mabuhay] to make the following payments to [Sembcorp]:
>
> 1. Half of the Guaranteed Return or an amount of US$464,937.75 (Four Hundred Sixty Four Thousand Nine Hundred Thirty Seven and Point Seventy Five US Dollars);
>
> 2. Interest at the rate of 12% per annum on the said amount of US$464,937.75 calculated from the date of this Final Award until the said amount of US$464,937.75 is actually and completely paid by [Mabuhay] to [Sembcorp]; and
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> 3. A reimbursement of half of the costs of arbitration fixed by the ICC Court at US$57,000 or the aggregate half of which amount to US$28,500 together with an interest at the rate of 12% per annum calculated from the date of this Final Award until the said amount is actually and completely paid by [Mabuhay] to [Sembcorp].[17]

Consequently, on April 14, 2005, Sembcorp filed a Petition for Recognition and Enforcement of a Foreign Arbitral Award[18] before the RTC ofMakati City, Branch 149.[19]

Mabuhay filed an Opposition citing the following grounds for non-enforcement under Article V of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention): (1) the award deals with a conflict not falling within the terms of the submission to arbitration; (2) the composition of the arbitral authority was not in accordance with the agreement of the parties; and (3) recognition or enforcement of the award would be contrary to the public policy of the Philippines.[20]

Mabuhay argued that the dispute is an intra-corporate controversy, hence, excluded from the scope of the arbitration clause in the Agreement. It alleged that on March 13, 1997, Sembcorp became the controlling stockholder of IDHI by acquiring substantial shares of stocks through its nominee, Mr. Pablo N. Sare (Sare). Mabuhay thus claimed that it has already been released from the joint obligation with IDHI as Sembcorp assumed the risk of loss when it acquired absolute ownership over the aforesaid shares. Moreover, Mabuhay argued that the appointment of Dr. Chantara-Opakorn was not in accordance with the arbitral clause as he did not have the expertise in the matter at issue, which involved application of Philippine law. Finally, Mabuhay argued that the imposition of twelve percent (12%) interest from the date

of the Final Award was contrary to the Philippine law and jurisprudence.[21]

**Ruling of the RTC**

In a Decision[22] dated May 23, 2008, the RTC dismissed the petition and ruled that the Final Award could not be enforced.

The RTC ruled that the "simple contractual payment obligation" of Mabuhay and IDHI to Sembcorp had been rescinded and modified by the merger or confusion of the person of IDHI into the person of Sembcorp. As a result, said obligation was converted into an intra-corporate matter.[23]

The RTC also ruled on the issue of the lack of expertise of the Sole Arbitrator. Thus, the dispositive portion of its Decision reads:

> **WHEREFORE**, premises considered, this court finds in favor of the defendant Mabuhay Holdings Corporation, hence it hereby DISMISSED the petition for the recognition and enforcement of the subject Arbitral Award for the simple reason that it was issued in violation of the agreement. Moreover, this court cannot recognize the Arbitral Award because it was not the work of an expert as required under the agreement. Finally, the payment obligation in interest of 12% per annum on the US Dollar Amounts ($464,937.75 and $28,500) as ordered by the Sole Arbitrator is contrary to law and existing jurisprudence, hence void. Thus, it cannot be enforced by this Court.
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> Cost de oficio.
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> **SO ORDERED.**[24]

Aggrieved, Sembcorp appealed to the CA via a Notice of Appeal under Rule 41 of the Rules of Court.[25]

**Ruling of the CA**

On November 19, 2013, the CA promulgated its Decision[26] reversing and setting aside the RTC Decision.

The CA noted that the Final Award already settled the factual issue on whether Sembcorp acquired the adverted shares of stock in IDHI. Thus, RTC's contrary findings constituted an attack on the merits of the Final Award. In sum, the CA held that the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of the law. It recognized the Final Award and remanded the case to the RTC for proper execution.[27]

Undaunted, Mabuhay moved for the reconsideration of the CA Decision but the same was denied in a Resolution[28] dated June 3, 2014.

Hence, this petition.

**Issue**

The core issue for resolution is whether the RTC correctly refused to enforce the Final Award. Stated differently, was Mabuhay able to establish a ground for refusing the enforcement of the Final Award under our applicable laws and jurisprudence on arbitration?

## Our Ruling

***We deny the petition.***

### I. Governing Laws

An assiduous analysis of the present case requires a prefatory determination of the rules and other legal authorities that would govern the subject arbitration proceedings and award.

The arbitration proceedings between the parties herein were conducted in Singapore and the resulting Final Award was also rendered therein. As such, the Final Award is a "foreign arbitral award" or an award made in a country other than the Philippines. [29]

The Philippines is among the first signatories of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and acceded to the same as early as 1967.[30] Singapore, on the other hand, became a Contracting State in 1986.[31] The New York Convention aims to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. Thus, the New York Convention primarily governs the recognition and enforcement of foreign arbitral awards by our courts.[32]

In addition, as a member of the United Nations Commission in International Trade Law (UNCITRAL), the Philippines also adopted the UNCITRAL Model Law[33] (Model Law) as the governing law on international commercial arbitrations. Hence, when the Congress enacted Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004[34] (ADR Act), it incorporated the Model Law in its entirety.

Sections 19 and 42 of the ADR Act expressly provided for the applicability of the New York Convention and the Model Law in our jurisdiction, *viz*:

> **SEC. 19. *Adoption of the Model Law on International Commercial Arbitration*.** - International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix "N'.
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> **SEC. 42. *Application of the New York Convention*.** - The New York