733 Phil. 365

THIRD DIVISION

[G.R. No. 195580, April 21, 2014]

NARRA NICKEL MINING AND DEVELOPMENT CORP., TESORO MINING AND DEVELOPMENT, INC., AND MCARTHUR MINING, INC., PETITIONERS, VS. REDMONT CONSOLIDATED MINES CORP., RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 filed by Narra Nickel and Mining Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining Inc. (McArthur), which seeks to reverse the October 1, 2010 Decision[1] and the February 15, 2011 Resolution of the Court of Appeals (CA).

The Facts

Sometime in December 2006, respondent Redmont Consolidated Mines Corp. (Redmont), a domestic corporation organized and existing under Philippine laws, took interest in mining and exploring certain areas of the province of Palawan. After inquiring with the Department of Environment and Natural Resources (DENR), it learned that the areas where it wanted to undertake exploration and mining activities where already covered by Mineral Production Sharing Agreement (MPSA) applications of petitioners Narra, Tesoro and McArthur.

Petitioner McArthur, through its predecessor-in-interest Sara Marie Mining, Inc. (SMMI), filed an application for an MPSA and Exploration Permit (EP) with the Mines and Geo-Sciences Bureau (MGB), Region IV-B, Office of the Department of Environment and Natural Resources (DENR). Subsequently, SMMI was issued MPSA-AMA-IVB-153 covering an area of over 1,782 hectares in Barangay Sumbiling, Municipality of Bataraza, Province of Palawan and EPA-IVB-44 which includes an area of 3,720 hectares in Barangay Malatagao, Bataraza, Palawan. The MPSA and EP were then transferred to Madridejos Mining Corporation (MMC) and, on November 6, 2006, assigned to petitioner McArthur.[2]

Petitioner Narra acquired its MPSA from Alpha Resources and Development Corporation and Patricia Louise Mining & Development Corporation (PLMDC) which previously filed an application for an MPSA with the MGB, Region IV-B, DENR on January 6, 1992. Through the said application, the DENR issued MPSA-IV-1-12 covering an area of 3.277 hectares in barangays Calategas and San Isidro, Municipality of Narra, Palawan. Subsequently, PLMDC conveyed, transferred and/or assigned its rights and interests over the MPSA application in favor of Narra.

Another MPSA application of SMMI was filed with the DENR Region IV-B, labeled as

MPSA-AMA-IVB-154 (formerly EPA-IVB-47) over 3,402 hectares in Barangays Malinao and Princesa Urduja, Municipality of Narra, Province of Palawan. SMMI subsequently conveyed, transferred and assigned its rights and interest over the said MPSA application to Tesoro.

On January 2, 2007, Redmont filed before the Panel of Arbitrators (POA) of the DENR three (3) separate petitions for the denial of petitioners' applications for MPSA designated as AMA-IVB-153, AMA-IVB-154 and MPSA IV-1-12.

In the petitions, Redmont alleged that at least 60% of the capital stock of McArthur, Tesoro and Narra are owned and controlled by MBMI Resources, Inc. (MBMI), a 100% Canadian corporation. Redmont reasoned that since MBMI is a considerable stockholder of petitioners, it was the driving force behind petitioners' filing of the MPSAs over the areas covered by applications since it knows that it can only participate in mining activities through corporations which are deemed Filipino citizens. Redmont argued that given that petitioners' capital stocks were mostly owned by MBMI, they were likewise disqualified from engaging in mining activities through MPSAs, which are reserved only for Filipino citizens.

In their Answers, petitioners averred that they were qualified persons under Section 3(aq) of Republic Act No. (RA) 7942 or the *Philippine Mining Act of 1995* which provided:

> Sec. 3 Definition of Terms. As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:
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> x x x x
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> (aq) "Qualified person" means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, or cooperative organized or authorized for the purpose of engaging in mining, with technical and financial capability to undertake mineral resources development and duly registered in accordance with law at least sixty per cent (60%) of the capital of which is owned by citizens of the Philippines: Provided, That a legally organized foreign-owned corporation shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit.

Additionally, they stated that their nationality as applicants is immaterial because they also applied for Financial or Technical Assistance Agreements (FTAA) denominated as AFTA-IVB-09 for McArthur, AFTA-IVB-08 for Tesoro and AFTA-IVB-07 for Narra, which are granted to foreign-owned corporations. Nevertheless, **they claimed that the issue on nationality should not be raised since McArthur, Tesoro and Narra are in fact Philippine Nationals as 60% of their capital is owned by citizens of the Philippines**. They asserted that though MBMI owns 40% of the shares of PLMC (which owns 5,997 shares of Narra),[3] 40% of the shares of MMC (which owns 5,997 shares of McArthur)[4] and 40% of the shares of SLMC (which, in turn, owns 5,997 shares of Tesoro),[5] the shares of MBMI will not make it the owner of at least 60% of the capital stock of each of petitioners. **They**

added that the best tool used in determining the nationality of a corporation is the "control test," embodied in Sec. 3 of RA 7042 or the *Foreign Investments Act of 1991*. They also claimed that the POA of DENR did not have jurisdiction over the issues in Redmont's petition since they are not enumerated in Sec. 77 of RA 7942. Finally, they stressed that Redmont has no personality to sue them because it has no pending claim or application over the areas applied for by petitioners.

On December 14, 2007, the POA issued a Resolution disqualifying petitioners from gaining MPSAs. It held:

> [I]t is clearly established that respondents are not qualified applicants to engage in mining activities. On the other hand, [Redmont] having filed its own applications for an EPA over the areas earlier covered by the MPSA application of respondents may be considered if and when they are qualified under the law. The violation of the requirements for the issuance and/or grant of permits over mining areas is clearly established thus, there is reason to believe that the cancellation and/or revocation of permits already issued under the premises is in order and open the areas covered to other qualified applicants.
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> x x x x
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> WHEREFORE, the Panel of Arbitrators finds the Respondents, McArthur Mining Inc., Tesoro Mining and Development, Inc., and Narra Nickel Mining and Development Corp. as, DISQUALIFIED for being considered as Foreign Corporations. Their Mineral Production Sharing Agreement (MPSA) are hereby x x x DECLARED NULL AND VOID.[6]

The POA considered petitioners as foreign corporations being "effectively controlled" by MBMI, a 100% Canadian company and declared their MPSAs null and void. In the same Resolution, it gave due course to Redmont's EPAs. Thereafter, on February 7, 2008, the POA issued an Order[7] denying the Motion for Reconsideration filed by petitioners.

Aggrieved by the Resolution and Order of the POA, McArthur and Tesoro filed a joint Notice of Appeal[8] and Memorandum of Appeal[9] with the Mines Adjudication Board (MAB) while Narra separately filed its Notice of Appeal[10] and Memorandum of Appeal.[11]

In their respective memorandum, petitioners emphasized that they are qualified persons under the law. Also, through a letter, they informed the MAB that they had their individual MPSA applications converted to FTAAs. McArthur's FTAA was denominated as AFTA-IVB-09[12] on May 2007, while Tesoro's MPSA application was converted to AFTA-IVB-08[13] on May 28, 2007, and Narra's FTAA was converted to AFTA-IVB-07[14] on March 30, 2006.

Pending the resolution of the appeal filed by petitioners with the MAB, Redmont filed a Complaint[15] with the Securities and Exchange Commission (SEC), seeking the

revocation of the certificates for registration of petitioners on the ground that they are foreign-owned or controlled corporations engaged in mining in violation of Philippine laws. Thereafter, Redmont filed on September 1, 2008 a Manifestation and Motion to Suspend Proceeding before the MAB praying for the suspension of the proceedings on the appeals filed by McArthur, Tesoro and Narra.

Subsequently, on September 8, 2008, Redmont filed before the Regional Trial Court of Quezon City, Branch 92 (RTC) a Complaint[16] for injunction with application for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as Civil Case No. 08-63379. Redmont prayed for the deferral of the MAB proceedings pending the resolution of the Complaint before the SEC.

But before the RTC can resolve Redmont's Complaint and applications for injunctive reliefs, the MAB issued an Order on September 10, 2008, finding the appeal meritorious. It held:

> WHEREFORE, in view of the foregoing, the Mines Adjudication Board hereby REVERSES and SETS ASIDE the Resolution dated 14 December 2007 of the Panel of Arbitrators of Region IV-B (MIMAROPA) in POA-DENR Case Nos. 2001-01, 2007-02 and 2007-03, and its Order dated 07 February 2008 denying the Motions for Reconsideration of the Appellants. The Petition filed by Redmont Consolidated Mines Corporation on 02 January 2007 is hereby ordered DISMISSED.[17]

Belatedly, on September 16, 2008, the RTC issued an Order[18] granting Redmont's application for a TRO and setting the case for hearing the prayer for the issuance of a writ of preliminary injunction on September 19, 2008.

Meanwhile, on September 22, 2008, Redmont filed a Motion for Reconsideration[19] of the September 10, 2008 Order of the MAB. Subsequently, it filed a Supplemental Motion for Reconsideration[20] on September 29, 2008.

Before the MAB could resolve Redmont's Motion for Reconsideration and Supplemental Motion for Reconsideration, Redmont filed before the RTC a Supplemental Complaint[21] in Civil Case No. 08-63379.

On October 6, 2008, the RTC issued an Order[22] granting the issuance of a writ of preliminary injunction enjoining the MAB from finally disposing of the appeals of petitioners and from resolving Redmont's Motion for Reconsideration and Supplement Motion for Reconsideration of the MAB's September 10, 2008 Resolution.

On July 1, 2009, however, the MAB issued a second Order denying Redmont's Motion for Reconsideration and Supplemental Motion for Reconsideration and resolving the appeals filed by petitioners.

Hence, the petition for review filed by Redmont before the CA, assailing the Orders issued by the MAB. On October 1, 2010, the CA rendered a Decision, the dispositive

of which reads:

> WHEREFORE, the Petition is PARTIALLY GRANTED. The assailed Orders, dated September 10, 2008 and July 1, 2009 of the Mining Adjudication Board are reversed and set aside. The findings of the Panel of Arbitrators of the Department of Environment and Natural Resources that respondents McArthur, Tesoro and Narra are foreign corporations is upheld and, therefore, the rejection of their applications for Mineral Product Sharing Agreement should be recommended to the Secretary of the DENR.
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> With respect to the applications of respondents McArthur, Tesoro and Narra for Financial or Technical Assistance Agreement (FTAA) or conversion of their MPSA applications to FTAA, the matter for its rejection or approval is left for determination by the Secretary of the DENR and the President of the Republic of the Philippines.
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> SO ORDERED.[23]

In a Resolution dated February 15, 2011, the CA denied the Motion for Reconsideration filed by petitioners.

After a careful review of the records, the CA found that there was doubt as to the nationality of petitioners when it realized that petitioners had a common major investor, MBMI, a corporation composed of 100% Canadians. Pursuant to the first sentence of paragraph 7 of Department of Justice (DOJ) Opinion No. 020, Series of 2005, adopting the 1967 SEC Rules which implemented the requirement of the Constitution and other laws pertaining to the exploitation of natural resources, the CA used the "grandfather rule" to determine the nationality of petitioners. It provided:

> Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, **but if the percentage of Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as of Philippine nationality**. Thus, if 100,000 shares are registered in the name of a corporation or partnership at least 60% of the capital stock or capital, respectively, of which belong to Filipino citizens, all of the shares shall be recorded as owned by Filipinos. But if less than 60%, or say, 50% of the capital stock or capital of the corporation or partnership, respectively, belongs to Filipino citizens, only 50,000 shares shall be recorded as belonging to aliens.[24] (emphasis supplied)

In determining the nationality of petitioners, the CA looked into their corporate structures and their corresponding common shareholders. Using the grandfather rule, the CA discovered that MBMI in effect owned majority of the common stocks of the petitioners as well as at least 60% equity interest of other majority shareholders of petitioners through joint venture agreements. The CA found that through a "web