

THIRD DIVISION

[G.R. No. 180640, April 24, 2009]

**HUTAMA-RSEA JOINT OPERATIONS, INC., PETITIONER, VS.
CITRA METRO MANILA TOLLWAYS CORPORATION,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition^[1] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision^[2] dated 23 May 2007 and Resolution^[3] dated 16 November 2007 of the Court of Appeals in CA-G.R. SP No. 92504.

The facts, culled from the records, are as follows:

Petitioner HUTAMA-RSEA Joint Operations Incorporation and respondent Citra Metro Manila Tollways Corporation are corporations organized and existing under Philippine laws. Petitioner is a sub-contractor engaged in engineering and construction works. Respondent, on the other hand, is the general contractor and operator of the South Metro Manila Skyway Project (Skyway Project).

On 25 September 1996, petitioner and respondent entered into an Engineering Procurement Construction Contract (EPCC) whereby petitioner would undertake the construction of Stage 1 of the Skyway Project, which stretched from the junction of Buendia Avenue, Makati City, up to Bicutan Interchange, Taguig City. As consideration for petitioner's undertaking, respondent obliged itself under the EPCC to pay the former a total amount of US\$369,510,304.00.^[4]

During the construction of the Skyway Project, petitioner wrote respondent on several occasions requesting payment of the former's interim billings, pursuant to the provisions of the EPCC. Respondent only partially paid the said interim billings, thus, prompting petitioner to demand that respondent pay the outstanding balance thereon, but respondent still failed to do so.^[5]

The Skyway Project was opened on 15 December 1999 for public use, and toll fees were accordingly collected. After informing respondent that the construction of the Skyway Project was already complete, petitioner reiterated its demand that respondent pay the outstanding balance on the interim billings, as well as the "Early Completion Bonus" agreed upon in the EPCC. Respondent refused to comply with petitioner's demands.^[6]

On 24 May 2004, petitioner, through counsel, sent a letter to respondent demanding payment of the following: (1) the outstanding balance on the interim billings; (2) the amount of petitioner's final billing; (3) early completion bonus; and (4) interest

charges on the delayed payment. Thereafter, petitioner and respondent, through their respective officers and representatives, held several meetings to discuss the possibility of amicably settling the dispute. Despite several meetings and continuous negotiations, lasting for a period of almost one year, petitioner and respondent failed to reach an amicable settlement.^[7]

Petitioner finally filed with the Construction Industry Arbitration Commission (CIAC) a Request for Arbitration, seeking to enforce its money claims against respondent.

^[8] Petitioner's Request was docketed as CIAC Case No. 17-2005.

In its Answer *ad cautelam* with Motion to Dismiss, respondent averred that the CIAC had no jurisdiction over CIAC Case No. 17-2005. Respondent argued that the filing by petitioner of said case was premature because a condition precedent, *i.e.*, prior referral by the parties of their dispute to the Dispute Adjudication Board (DAB), required by Clause 20.4 of the EPCC, had not been satisfied or complied with. Respondent asked the CIAC to dismiss petitioner's Request for Arbitration in CIAC Case No. 17-2005 and to direct the parties to comply first with Clause 20.4 of the EPCC.^[9]

After submission by the parties of the necessary pleadings on the matter of jurisdiction, the CIAC issued on 30 August 2005, an Order in CIAC Case No. 17-2005, favoring petitioner. The CIAC ruled that it had jurisdiction over CIAC Case No. 17-2005, and that the determination of whether petitioner had complied with Clause 20.4 of the EPCC was a factual issue that may be resolved during the trial. It then ordered respondent to file an Answer to petitioner's Request for Arbitration.^[10]

After respondent and petitioner filed an Answer and a Reply, respectively, in CIAC Case No. 17-2005, the CIAC conducted a preliminary conference, wherein petitioner and respondent signed the "Terms of Reference" outlining the issues to be resolved, *viz*:

- (1) Is prior resort to the DAB a precondition to submission of the dispute to arbitration considering that the DAB was not constituted?;
- (2) Is [herein petitioner] entitled to the balance of the principal amount of the contract? If so, how much?;
- (3) Is [petitioner] entitled to the early compensation bonus net of VAT due thereon? If so, how much?;
- (4) Was there delay in the completion of the project? If so, is [herein respondent] entitled to its counterclaim for liquidated damages?;
- (5) Is [petitioner] entitled to payment of interest on the amounts of its claims for unpaid billings and early completion bonus? If so, at what rate and for what period?;
- (6) Which of the parties is entitled to reimbursement of the arbitration costs incurred?^[11]

Respondent, however, subsequently filed an Urgent Motion requesting that CIAC refrain from proceeding with the trial proper of CIAC Case No. 17-2005 until it had resolved the issue of whether prior resort by the parties to DAB was a condition precedent to the submission of the dispute to CIAC.^[12] Respondent's Urgent Motion was denied by the CIAC in its Order dated 6 December 2005.^[13]

Respondent filed a Motion for Reconsideration of the CIAC Order dated 6 December 2005.^[14] The CIAC issued, on 12 December 2005, an Order denying respondent's Motion for Reconsideration.^[15] It held that prior resort by the parties to DAB was not a condition precedent for it to assume jurisdiction over CIAC Case No. 17-2005. Aggrieved, respondent assailed the CIAC Order dated 12 December 2005 by filing a special civil action for *certiorari* and prohibition with the Court of Appeals,^[16] docketed as CA-G.R. SP No. 92504.

On 23 May 2007, the Court of Appeals rendered its Decision in CA-G.R. SP No. 92504, annulling the 12 December 2005 Order of the CIAC, and enjoining the said Commission from proceeding with CIAC Case No. 17-2005 until the dispute between petitioner and respondent had been referred to and decided by the DAB, to be constituted by the parties pursuant to Clause 20.4 of the EPCC. The appellate court, thus, found that the CIAC exceeded its jurisdiction in taking cognizance of petitioner's Request for Arbitration in CIAC Case No. 17-2005 despite the latter's failure to initially refer its dispute with respondent to the DAB, as directed by Clause 20.4 of the EPCC.

The dispositive portion of the 23 May 2007 Decision of the Court of Appeals reads:

WHEREFORE, the instant petition is **GRANTED** and the order of the Arbitration Tribunal of the Construction Industry Arbitration Commission dated December 12, 2005 is hereby **ANNULED** and **SET ASIDE** and, instead, [CIAC, members of the Arbitral Tribunal,^[17] and herein petitioner], their agents or anybody acting in their behalf, are enjoined from further proceeding with CIAC Case No. 17-2005, promulgating a decision therein, executing the same if one has already been promulgated or otherwise enforcing said order of December 12, 2005 until the dispute has been referred to and decided by the Dispute Adjudication Board to be constituted by the parties in accordance with Sub-Clause 20.4 of the Engineering Procurement Construction Contract dated September 25, 1996.

Petitioner filed a Motion for Reconsideration of the afore-mentioned Decision but this was denied by the Court of Appeals in a Resolution dated 16 November 2007.

Hence, petitioner filed the instant Petition for Review before us raising the sole issue of whether CIAC has jurisdiction over CIAC Case No. 17-2005.

Section 4 of Executive Order No. 1008^[18] defines the jurisdiction of CIAC, thus:

SECTION 4. *Jurisdiction.* - The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises before or after the completion of the

contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. **For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.**

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Emphasis ours.)

Further, Section 1, Article III of the CIAC Rules of Procedure Governing Construction Arbitration^[19] (CIAC Rules), provides:

SECTION 1. *Submission to CIAC Jurisdiction.* - An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC.

An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration.

It may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams or any other modes of communication. (Emphasis ours.)

Based on the foregoing provisions, the CIAC shall have jurisdiction over a dispute involving a construction contract if said contract contains an arbitration clause (notwithstanding any reference by the same contract to another arbitration institution or arbitral body); or, even in the absence of such a clause in the construction contract, the parties still agree to submit their dispute to arbitration.

It is undisputed that in the case at bar, the EPCC contains an arbitration clause in which the petitioner and respondent explicitly agree to submit to arbitration any dispute between them arising from or connected with the EPCC, under the following terms and conditions^[20]:

CLAIMS, DISPUTES and **ARBITRATION**

x x x x

20.3 Unless the member or members of the Dispute Adjudication Board have been previously mutually agreed upon by the parties and named in the Contract, the parties shall, within 28 days of the Effective Date, jointly ensure the appointment of a Dispute Adjudication Board. Such Dispute Adjudication Board shall comprise suitably qualified persons as members, the number of members being either one or three, as stated in the Appendix to Tender. If the Dispute Adjudication Board is to comprise three members, each party shall nominate one member for the approval of the other party, and the parties shall mutually agree upon and appoint the third member (who shall act as chairman).

The terms of appointment of the Dispute Adjudication Board shall:

- (a) incorporate the model terms published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC),
- (b) require each member of the Dispute Adjudication Board to be, and to remain throughout the appointment, independent of the parties,
- (c) require the Dispute Adjudication Board to act impartially and in accordance with the Contract, and
- (d) include undertakings by the parties (to each other and to the Dispute Adjudication Board) that the members of the Dispute Adjudication Board shall in no circumstances be liable for breach of duty or of contract arising out of their appointment; the parties shall indemnify the members against such claims.

The terms of the remuneration of the Dispute Adjudication Board, including the remuneration of each member and of any specialist from whom the Dispute Adjudication Board may require to seek advice, shall be mutually agreed upon by the Employer, the Contractor and each member of the Dispute Adjudication Board when agreeing such terms of appointment. In the event of disagreement, the remuneration of each member shall include reimbursement for reasonable expenses, a daily fee in accordance with the daily fee established from time to time for arbitrators under the administrative and financial regulations of the International Centre for Settlement of Investment Disputes, and a retainer fee per calendar month equivalent to three times such daily fee.

The Employer and the Contractor shall each pay one-half of the Dispute Adjudication Board's remuneration in accordance with its terms of remuneration. If, at any time, either party shall fail to pay its due proportion of such remuneration, the other party shall be entitled to make payment on his behalf and recover it from the party in default.