SPECIAL SECOND DIVISION

JORGE GONZALES and G.R. No. 161957

PANEL OF ARBITRATORS,

Petitioners, Present:

PUNO, C. J.,

Chairperson,

- versus – AUSTRIA-MARTINEZ,

CALLEJO, SR.,

TINGA, and

NAZARIO, JJ.

CLIMAX MINING LTD.,

CLIMAX-ARIMCO MINING CORP.,

and AUSTRALASIAN PHILIPPINES Promulgated:

MINING INC.,

Respondents. January 22, 2007

x------------------------------------------------------------------------------- x

JORGE GONZALES, G.R. No. 167994

Petitioner,

- versus –

HON. OSCAR B. PIMENTEL, in his

capacity as PRESIDING JUDGE of BR. 148

of the REGIONAL TRIAL COURT of

MAKATI CITY, and CLIMAX-ARIMCO

MINING CORPORATION,

Respondents.

x------------------------- -------------------------------------------------- x

R E S O L U T I ON

Tinga, J.:

This is a consolidation of two petitions rooted in the same disputed Addendum Contract entered into by the parties. In G.R. No. 161957, the Court in its Decision of 28 February 2005[1] denied the Rule 45 petition of petitioner Jorge Gonzales (Gonzales). It held that the DENR Panel of Arbitrators had no jurisdiction over the complaint for the annulment of the Addendum Contract on grounds of fraud and violation of the Constitution and that the action should have

been brought before the regular courts as it involved judicial issues. Both parties filed separate motions for reconsideration. Gonzales avers in his Motion for Reconsideration[2] that the Court erred in holding that the DENR Panel of Arbitrators was bereft of jurisdiction, reiterating its argument that the case involves a mining dispute that properly falls within the ambit of the Panel's authority. Gonzales adds that the Court failed to rule on other issues he raised relating to the sufficiency of his complaint before the DENR Panel of Arbitrators and the timeliness of its filing.

Respondents Climax Mining Ltd., et al., (respondents) filed their Motion for Partial Reconsideration and/or Clarification[3] seeking reconsideration of that part of the Decision holding that the case should not be brought for arbitration under Republic Act (R.A.) No. 876, also known as the Arbitration Law.[4] Respondents, citing American jurisprudence[5] and the UNCITRAL Model Law,[6] argue that the arbitration clause in the Addendum Contract should be treated as an agreement independent of the other terms of the contract, and that a claimed rescission of the main contract does not avoid the duty to arbitrate. Respondents add that Gonzales's argument relating to the alleged invalidity of the Addendum Contract still has to be proven and adjudicated on in a proper proceeding; that is, an action separate from the motion to compel arbitration. Pending judgment in such separate action, the Addendum Contract remains valid and binding and so does the arbitration clause therein. Respondents add that the holding in the Decision that "the case should not be brought under the ambit of the Arbitration Law" appears to be premised on Gonzales's having "impugn[ed] the existence or validity" of the addendum contract. If so, it supposedly conveys the idea that Gonzales's unilateral repudiation of the contract or mere allegation of its invalidity is all it takes to avoid arbitration. Hence, respondents submit that the court's holding that "the case should not be brought under the ambit of the Arbitration Law" be understood or clarified as operative only where the challenge to the arbitration agreement has been sustained by final judgment.

Both parties were required to file their respective comments to the other party's motion for reconsideration/clarification.[7] Respondents filed their Comment on 17 August 2005,[8] while Gonzales filed his only on 25 July 2006.[9]

On the other hand, G.R. No. 167994 is a Rule 65 petition filed on 6 May 2005, or while the motions for reconsideration in G.R. No. 161957[10] were pending, wherein Gonzales challenged the orders of the Regional Trial Court (RTC) requiring him to proceed with the arbitration proceedings as sought by Climax-Arimco Mining Corporation (Climax-Arimco).

On 5 June 2006, the two cases, G.R. Nos. 161957 and 167994, were consolidated upon the

recommendation of the Assistant Division Clerk of Court since the cases are rooted in the same Addendum Contract.

We first tackle the more recent case which is G.R. No. 167994. It stemmed from the petition to compel arbitration filed by respondent Climax-Arimco before the RTC of Makati City on 31 March 2000 while the complaint for the nullification of the Addendum Contract was pending before the DENR Panel of Arbitrators. On 23 March 2000, Climax-Arimco had sent Gonzales a Demand for Arbitration pursuant to Clause 19.1[11] of the Addendum Contract and also in accordance with Sec. 5 of R.A. No. 876. The petition for arbitration was subsequently filed and Climax-Arimco sought an order to compel the parties to arbitrate pursuant to the said arbitration clause. The case, docketed as Civil Case No. 00-444, was initially raffled to Br. 132 of the RTC of Makati City, with Judge Herminio I. Benito as Presiding Judge. Respondent Climax-Arimco filed on 5 April 2000 a motion to set the application to compel arbitration for hearing.

On 14 April 2000, Gonzales filed a motion to dismiss which he however failed to set for hearing. On 15 May 2000, he filed an Answer with Counterclaim,[12] questioning the validity of the Addendum Contract containing the arbitration clause. Gonzales alleged that the Addendum Contract containing the arbitration clause is void in view of Climax-Arimco's acts of fraud, oppression and violation of the Constitution. Thus, the arbitration clause, Clause 19.1, contained in the Addendum Contract is also null and void ab initio and legally inexistent.

On 18 May 2000, the RTC issued an order declaring Gonzales's motion to dismiss moot and academic in view of the filing of his Answer with Counterclaim.[13]

On 31 May 2000, Gonzales asked the RTC to set the case for pre-trial.[14] This the RTC denied on 16 June 2000, holding that the petition for arbitration is a special proceeding that is summary in nature.[15] However, on 7 July 2000, the RTC granted Gonzales's motion for reconsideration of the 16 June 2000 Order and set the case for pre-trial on 10 August 2000, it being of the view that Gonzales had raised in his answer the issue of the making of the arbitration agreement.[16]

Climax-Arimco then filed a motion to resolve its pending motion to compel arbitration. The RTC denied the same in its 24 July 2000 order.

On 28 July 2000, Climax-Arimco filed a Motion to Inhibit Judge Herminio I. Benito for "not possessing the cold neutrality of an impartial judge."[17] On 5 August 2000, Judge Benito issued an Order granting the Motion to Inhibit and ordered the re-raffling of the petition for arbitration.[18] The case was raffled to the sala of public respondent Judge Oscar B. Pimentel of Branch 148.

On 23 August 2000, Climax-Arimco filed a motion for reconsideration of the 24 July 2000 Order.[19] Climax-Arimco argued that R.A. No. 876 does not authorize a pre-trial or trial for a motion to compel arbitration but directs the court to hear the motion summarily and resolve it within ten days from hearing. Judge Pimentel granted the motion and directed the parties to arbitration. On 13 February 2001, Judge Pimentel issued the first assailed order requiring Gonzales to proceed with arbitration proceedings and appointing retired CA Justice Jorge Coquia as sole arbitrator.[20]

Gonzales moved for reconsideration on 20 March 2001 but this was denied in the Order dated 7 March 2005.[21]

Gonzales thus filed the Rule 65 petition assailing the Orders dated 13 February 2001 and 7 March 2005 of Judge Pimentel. Gonzales contends that public respondent Judge Pimentel acted with grave abuse of discretion in immediately ordering the parties to proceed with arbitration despite the proper, valid, and timely raised argument in his Answer with Counterclaim that the Addendum Contract, containing the arbitration clause, is null and void. Gonzales has also sought a temporary restraining order to prevent the enforcement of the assailed orders directing the parties to arbitrate, and to direct Judge Pimentel to hold a pre-trial conference and the necessary hearings on the determination of the nullity of the Addendum Contract.

In support of his argument, Gonzales invokes Sec. 6 of R.A. No. 876:

Sec. 6. Hearing by court.—A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an

order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

The court shall decide all motions, petitions or applications filed under the provisions of this Act, within ten (10) days after such motions, petitions, or applications have been heard by it.

Gonzales also cites Sec. 24 of R.A. No. 9285 or the "Alternative Dispute Resolution Act of 2004:"

Sec. 24. Referral to Arbitration.—A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

According to Gonzales, the above-quoted provisions of law outline the procedure to be followed in petitions to compel arbitration, which the RTC did not follow. Thus, referral of the parties to arbitration by Judge Pimentel despite the timely and properly raised issue of nullity of the Addendum Contract was misplaced and without legal basis. Both R.A. No. 876 and R.A. No. 9285 mandate that any issue as to the nullity, inoperativeness, or incapability of performance of the arbitration clause/agreement raised by one of the parties to the alleged arbitration agreement must be determined by the court prior to referring them to arbitration. They require that the trial court first determine or resolve the issue of nullity, and there is no other venue for this determination other than a pre-trial and hearing on the issue by the trial court which has

jurisdiction over the case. Gonzales adds that the assailed 13 February 2001 Order also violated his right to procedural due process when the trial court erroneously ruled on the existence of the arbitration agreement despite the absence of a hearing for the presentation of evidence on the nullity of the Addendum Contract.

Respondent Climax-Arimco, on the other hand, assails the mode of review availed of by Gonzales. Climax-Arimco cites Sec. 29 of R.A. No. 876:

Sec. 29. Appeals.—An appeal may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award through certiorari proceedings, but such appeals shall be limited to questions of law. The proceedings upon such an appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable.

Climax-Arimco mentions that the special civil action for certiorari employed by Gonzales is available only where there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law against the challenged orders or acts. Climax-Arimco then points out that R.A. No. 876 provides for an appeal from such orders, which, under the Rules of Court, must be filed within 15 days from notice of the final order or resolution appealed from or of the denial of the motion for reconsideration filed in due time. Gonzales has not denied that the relevant 15-day period for an appeal had elapsed long before he filed this petition for certiorari. He cannot use the special civil action of certiorari as a remedy for a lost appeal.

Climax-Arimco adds that an application to compel arbitration under Sec. 6 of R.A. No. 876 confers on the trial court only a limited and special jurisdiction, i.e., a jurisdiction solely to determine (a) whether or not the parties have a written contract to arbitrate, and (b) if the defendant has failed to comply with that contract. Respondent cites La Naval Drug Corporation v. Court of Appeals,[22] which holds that in a proceeding to compel arbitration, "[t]he arbitration law explicitly confines the court's authority only to pass upon the issue of whether there is or there is no agreement in writing providing for arbitration," and "[i]n the affirmative, the statute ordains that the court shall issue an order 'summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.'"[23] Climax-Arimco argues that R.A. No. 876 gives no room for any other issue to be dealt with in such a proceeding, and that the court presented with an application to compel arbitration may order arbitration or dismiss the same, depending solely on its finding as to those two limited issues. If either of these matters is disputed, the court is required to conduct a summary hearing on it. Gonzales's proposition

contradicts both the trial court's limited jurisdiction and the summary nature of the proceeding itself.

Climax-Arimco further notes that Gonzales's attack on or repudiation of the Addendum Contract also is not a ground to deny effect to the arbitration clause in the Contract. The arbitration agreement is separate and severable from the contract evidencing the parties' commercial or economic transaction, it stresses. Hence, the alleged defect or failure of the main contract is not a ground to deny enforcement of the parties' arbitration agreement. Even the party who has repudiated the main contract is not prevented from enforcing its arbitration provision. R.A. No. 876 itself treats the arbitration clause or agreement as a contract separate from the commercial, economic or other transaction to be arbitrated. The statute, in particular paragraph 1 of Sec. 2 thereof, considers the arbitration stipulation an independent contract in its own right whose enforcement may be prevented only on grounds which legally make the arbitration agreement itself revocable, thus:

Sec. 2. Persons and matters subject to arbitration.—Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing, between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.

x x x x

The grounds Gonzales invokes for the revocation of the Addendum Contract—fraud and oppression in the execution thereof—are also not grounds for the revocation of the arbitration clause in the Contract, Climax-Arimco notes. Such grounds may only be raised by way of defense in the arbitration itself and cannot be used to frustrate or delay the conduct of arbitration proceedings. Instead, these should be raised in a separate action for rescission, it continues.

Climax-Arimco emphasizes that the summary proceeding to compel arbitration under Sec. 6 of R.A. No. 876 should not be confused with the procedure in Sec. 24 of R.A. No. 9285. Sec. 6 of R.A. No. 876 refers to an application to compel arbitration where the court's authority is

limited to resolving the issue of whether there is or there is no agreement in writing providing for arbitration, while Sec. 24 of R.A. No. 9285 refers to an ordinary action which covers a matter that appears to be arbitrable or subject to arbitration under the arbitration agreement. In the latter case, the statute is clear that the court, instead of trying the case, may, on request of either or both parties, refer the parties to arbitration, unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. Arbitration may even be ordered in the same suit brought upon a matter covered by an arbitration agreement even without waiting for the outcome of the issue of the validity of the arbitration agreement. Art. 8 of the UNCITRAL Model Law[24] states that where a court before which an action is brought in a matter which is subject of an arbitration agreement refers the parties to arbitration, the arbitral proceedings may proceed even while the action is pending.

Thus, the main issue raised in the Petition for Certiorari is whether it was proper for the RTC, in the proceeding to compel arbitration under R.A. No. 876, to order the parties to arbitrate even though the defendant therein has raised the twin issues of validity and nullity of the Addendum Contract and, consequently, of the arbitration clause therein as well. The resolution of both Climax-Arimco's Motion for Partial Reconsideration and/or Clarification in G.R. No. 161957 and Gonzales's Petition for Certiorari in G.R. No. 167994 essentially turns on whether the question of validity of the Addendum Contract bears upon the applicability or enforceability of the arbitration clause contained therein. The two pending matters shall thus be jointly resolved.

We address the Rule 65 petition in G.R. No. 167994 first from the remedial law perspective. It deserves to be dismissed on procedural grounds, as it was filed in lieu of appeal which is the prescribed remedy and at that far beyond the reglementary period. It is elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for certiorari and it has been repeatedly stressed that a petition for certiorari is not a substitute for a lost appeal. As its nature, a petition for certiorari lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law."[25] The Arbitration Law specifically provides for an appeal by certiorari, i.e., a petition for review under certiorari under Rule 45 of the Rules of Court that raises pure questions of law.[26] There is no merit to Gonzales's argument that the use of the permissive term "may" in Sec. 29, R.A. No. 876 in the filing of appeals does not prohibit nor discount the filing of a petition for certiorari under Rule 65.[27] Proper interpretation of the aforesaid provision of law shows that the term "may" refers only to the filing of an appeal, not to the mode of review to be employed. Indeed, the use of "may" merely reiterates the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with law.

Neither can BF Corporation v. Court of Appeals[28] cited by Gonzales support his theory.

Gonzales argues that said case recognized and allowed a petition for certiorari under Rule 65 "appealing the order of the Regional Trial Court disregarding the arbitration agreement as an acceptable remedy."[29] The BF Corporation case had its origins in a complaint for collection of sum of money filed by therein petitioner BF Corporation against Shangri-la Properties, Inc. (SPI). SPI moved to suspend the proceedings alleging that the construction agreement or the Articles of Agreement between the parties contained a clause requiring prior resort to arbitration before judicial intervention. The trial court found that an arbitration clause was incorporated in the Conditions of Contract appended to and deemed an integral part of the Articles of Agreement. Still, the trial court denied the motion to suspend proceedings upon a finding that the Conditions of Contract were not duly executed and signed by the parties. The trial court also found that SPI had failed to file any written notice of demand for arbitration within the period specified in the arbitration clause. The trial court denied SPI's motion for reconsideration and ordered it to file its responsive pleading. Instead of filing an answer, SPI filed a petition for certiorari under Rule 65, which the Court of Appeals, favorably acted upon. In a petition for review before this Court, BF Corporation alleged, among others, that the Court of Appeals should have dismissed the petition for certiorari since the order of the trial court denying the motion to suspend proceedings "is a resolution of an incident on the merits" and upon the continuation of the proceedings, the trial court would eventually render a decision on the merits, which decision could then be elevated to a higher court "in an ordinary appeal."[30]

The Court did not uphold BF Corporation's argument. The issue raised before the Court was whether SPI had taken the proper mode of appeal before the Court of Appeals. The question before the Court of Appeals was whether the trial court had prematurely assumed jurisdiction over the controversy. The question of jurisdiction in turn depended on the question of existence of the arbitration clause which is one of fact. While on its face the question of existence of the arbitration clause is a question of fact that is not proper in a petition for certiorari, yet since the determination of the question obliged the Court of Appeals as it did to interpret the contract documents in accordance with R.A. No. 876 and existing jurisprudence, the question is likewise a question of law which may be properly taken cognizance of in a petition for certiorari under Rule 65, so the Court held.[31]

The situation in B.F. Corporation is not availing in the present petition. The disquisition in B.F. Corporation led to the conclusion that in order that the question of jurisdiction may be resolved, the appellate court had to deal first with a question of law which could be addressed in a certiorari proceeding. In the present case, Gonzales's petition raises a question of law, but not a question of jurisdiction. Judge Pimentel acted in accordance with the procedure prescribed in R.A. No. 876 when he ordered Gonzales to proceed with arbitration and appointed a sole arbitrator after making the determination that there was indeed an arbitration agreement. It has been held that as long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil

action of certiorari.[32]  Even if we overlook the employment of the wrong remedy in the broader interests of justice, the petition would nevertheless be dismissed for failure of Gonzalez to show grave abuse of discretion.

Arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in our jurisdiction.  The Civil Code is explicit on the matter.[33] R.A. No. 876 also expressly authorizes arbitration of domestic disputes.  Foreign arbitration, as a system of settling commercial disputes of an international character, was likewise recognized when the Philippines adhered to the United Nations "Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958," under the 10 May 1965 Resolution No. 71 of the Philippine Senate, giving reciprocal recognition and allowing enforcement of international arbitration agreements between parties of different nationalities within a contracting state.[34]  The enactment of R.A. No. 9285 on 2 April 2004 further institutionalized the use of alternative dispute resolution systems, including arbitration, in the settlement of disputes.

Disputes do not go to arbitration unless and until the parties have agreed to abide by the arbitrator's decision.  Necessarily, a contract is required for arbitration to take place and to be binding.  R.A. No. 876 recognizes the contractual nature of the arbitration agreement, thus:

Sec. 2.  Persons and matters subject to arbitration.—Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing, between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.

Such submission or contract may include question arising out of valuations, appraisals or other controversies which may be collateral, incidental, precedent or subsequent to any issue between the parties.

A controversy cannot be arbitrated where one of the parties to the controversy is an infant, or a person judicially declared to be incompetent, unless the appropriate court having jurisdiction approve a petition for permission to submit such controversy to arbitration made by

the general guardian or guardian ad litem of the infant or of the incompetent. [Emphasis added.]

Thus, we held in Manila Electric Co. v. Pasay Transportation Co.[35] that a submission to arbitration is a contract. A clause in a contract providing that all matters in dispute between the parties shall be referred to arbitration is a contract,[36] and in Del Monte Corporation-USA v. Court of Appeals[37] that "[t]he provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract and is itself a contract. As a rule, contracts are respected as the law between the contracting parties and produce effect as between them, their assigns and heirs."[38]

The special proceeding under Sec. 6 of R.A. No. 876 recognizes the contractual nature of arbitration clauses or agreements. It provides:

Sec. 6. Hearing by court.—A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

The court shall decide all motions, petitions or applications filed under the provisions of this Act, within ten days after such motions, petitions, or applications have been heard by it. [Emphasis added.]

This special proceeding is the procedural mechanism for the enforcement of the contract to arbitrate. The jurisdiction of the courts in relation to Sec. 6 of R.A. No. 876 as well as the nature of the proceedings therein was expounded upon in La Naval Drug Corporation v. Court of Appeals.[39] There it was held that R.A. No. 876 explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration. In the affirmative, the statute ordains that the court shall issue an order "summarily directing the parties to proceed with the arbitration in accordance with the terms thereof." If the court, upon the other hand, finds that no such agreement exists, "the proceeding shall be dismissed."[40] The cited case also stressed that the proceedings are summary in nature.[41] The same thrust was made in the earlier case of Mindanao Portland Cement Corp. v. McDonough Construction Co. of Florida[42] which held, thus:

Since there obtains herein a written provision for arbitration as well as failure on respondent's part to comply therewith, the court a quo rightly ordered the parties to proceed to arbitration in accordance with the terms of their agreement (Sec. 6, Republic Act 876). Respondent's arguments touching upon the merits of the dispute are improperly raised herein. They should be addressed to the arbitrators. This proceeding is merely a summary remedy to enforce the agreement to arbitrate. The duty of the court in this case is not to resolve the merits of the parties' claims but only to determine if they should proceed to arbitration or not. x x x x[43]

Implicit in the summary nature of the judicial proceedings is the separable or independent character of the arbitration clause or agreement. This was highlighted in the cases of Manila Electric Co. v. Pasay Trans. Co.[44] and Del Monte Corporation-USA v. Court of Appeals.[45]

The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is part comes to an end.[46]

The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the

doctrine denotes that the invalidity of the main contract, also referred to as the "container" contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable.[47]

The separability of the arbitration clause is confirmed in Art. 16(1) of the UNCITRAL Model Law and Art. 21(2) of the UNCITRAL Arbitration Rules.[48]

The separability doctrine was dwelt upon at length in the U.S. case of Prima Paint Corp. v. Flood & Conklin Manufacturing Co.[49] In that case, Prima Paint and Flood and Conklin (F & C) entered into a consulting agreement whereby F & C undertook to act as consultant to Prima Paint for six years, sold to Prima Paint a list of its customers and promised not to sell paint to these customers during the same period. The consulting agreement contained an arbitration clause. Prima Paint did not make payments as provided in the consulting agreement, contending that F & C had fraudulently misrepresented that it was solvent and able for perform its contract when in fact it was not and had even intended to file for bankruptcy after executing the consultancy agreement. Thus, F & C served Prima Paint with a notice of intention to arbitrate. Prima Paint sued in court for rescission of the consulting agreement on the ground of fraudulent misrepresentation and asked for the issuance of an order enjoining F & C from proceeding with arbitration. F & C moved to stay the suit pending arbitration. The trial court granted F & C's motion, and the U.S. Supreme Court affirmed.

The U.S. Supreme Court did not address Prima Paint's argument that it had been fraudulently induced by F & C to sign the consulting agreement and held that no court should address this argument. Relying on Sec. 4 of the Federal Arbitration Act—which provides that "if a party [claims to be] aggrieved by the alleged failure x x x of another to arbitrate x x x, [t]he court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration x x x. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof"—the U.S. High Court held that the court should not order the parties to arbitrate if the making of the arbitration agreement is in issue. The parties should be ordered to arbitration if, and only if, they have contracted to submit to arbitration. Prima Paint was not entitled to trial on the question of whether an arbitration agreement was made because its allegations of fraudulent inducement were not directed to the arbitration clause itself, but only to the consulting agreement which contained the arbitration agreement.[50] Prima Paint held that "arbitration clauses are 'separable' from the contracts in which they are embedded, and that where no claim is made that fraud was directed to the arbitration clause itself, a broad arbitration clause will be held to encompass arbitration of the claim that the contract itself was induced by fraud."[51]

There is reason, therefore, to rule against Gonzales when he alleges that Judge Pimentel acted with grave abuse of discretion in ordering the parties to proceed with arbitration. Gonzales's argument that the Addendum Contract is null and void and, therefore the arbitration clause therein is void as well, is not tenable. First, the proceeding in a petition for arbitration under R.A. No. 876 is limited only to the resolution of the question of whether the arbitration agreement exists. Second, the separability of the arbitration clause from the Addendum Contract means that validity or invalidity of the Addendum Contract will not affect the enforceability of the agreement to arbitrate. Thus, Gonzales's petition for certiorari should be dismissed.

This brings us back to G.R. No. 161957. The adjudication of the petition in G.R. No. 167994 effectively modifies part of the Decision dated 28 February 2005 in G.R. No. 161957. Hence, we now hold that the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid. We add that when it was declared in G.R. No. 161957 that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the nullification of the main contract on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues.

The Motion for Reconsideration of Gonzales in G.R. No. 161957 should also be denied. In the motion, Gonzales raises the same question of jurisdiction, more particularly that the complaint for nullification of the Addendum Contract pertained to the DENR Panel of Arbitrators, not the regular courts. He insists that the subject of his complaint is a mining dispute since it involves a dispute concerning rights to mining areas, the Financial and Technical Assistance Agreement (FTAA) between the parties, and it also involves claimowners. He adds that the Court failed to rule on other issues he raised, such as whether he had ceded his claims over the mineral deposits located within the Addendum Area of Influence; whether the complaint filed before the DENR Panel of Arbitrators alleged ultimate facts of fraud; and whether the action to declare the nullity of the Addendum Contract on the ground of fraud has prescribed.

These are the same issues that Gonzales raised in his Rule 45 petition in G.R. No. 161957 which were resolved against him in the Decision of 28 February 2005. Gonzales does not raise any new argument that would sway the Court even a bit to alter its holding that the complaint filed before the DENR Panel of Arbitrators involves judicial issues which should properly be resolved by the regular courts. He alleged fraud or misrepresentation in the execution of the Addendum Contract which is a ground for the annulment of a voidable contract. Clearly, such allegations entail legal questions which are within the jurisdiction of the courts.

The question of whether Gonzales had ceded his claims over the mineral deposits in the Addendum Area of Influence is a factual question which is not proper for determination before this Court. At all events, moreover, the question is irrelevant to the issue of jurisdiction of the DENR Panel of Arbitrators. It should be pointed out that the DENR Panel of Arbitrators made a factual finding in its Order dated 18 October 2001, which it reiterated in its Order dated 25 June 2002, that Gonzales had, "through the various agreements, assigned his interest over the mineral claims all in favor of [Climax-Arimco]" as well as that without the complainant [Gonzales] assigning his interest over the mineral claims in favor of [Climax-Arimco], there would be no FTAA to speak of."[52] This finding was affirmed by the Court of Appeals in its Decision dated 30 July 2003 resolving the petition for certiorari filed by Climax-Arimco in regard to the 18 October 2001 Order of the DENR Panel.[53]

The Court of Appeals likewise found that Gonzales's complaint alleged fraud but did not provide any particulars to substantiate it. The complaint repeatedly mentioned fraud, oppression, violation of the Constitution and similar conclusions but nowhere did it give any ultimate facts or particulars relative to the allegations.[54]

Sec. 5, Rule 8 of the Rules of Court specifically provides that in all averments of fraud, the circumstances constituting fraud must be stated with particularity. This is to enable the opposing party to controvert the particular facts allegedly constituting the same. Perusal of the complaint indeed shows that it failed to state with particularity the ultimate facts and circumstances constituting the alleged fraud. It does not state what particulars about Climax-Arimco's financial or technical capability were misrepresented, or how the misrepresentation was done. Incorporated in the body of the complaint are verbatim reproductions of the contracts, correspondence and government issuances that reportedly explain the allegations of fraud and misrepresentation, but these are, at best, evidentiary matters that should not be included in the pleading.

As to the issue of prescription, Gonzales's claims of fraud and misrepresentation attending the

execution of the Addendum Contract are grounds for the annulment of a voidable contract under the Civil Code.[55] Under Art. 1391 of the Code, an action for annulment shall be brought within four years, in the case of fraud, beginning from the time of the discovery of the same. However, the time of the discovery of the alleged fraud is not clear from the allegations of Gonzales's complaint. That being the situation coupled with the fact that this Court is not a trier of facts, any ruling on the issue of prescription would be uncalled for or even unnecessary.

WHEREFORE, the Petition for Certiorari in G.R. No. 167994 is DISMISSED. Such dismissal effectively renders superfluous formal action on the Motion for Partial Reconsideration and/or Clarification filed by Climax Mining Ltd., et al. in G.R. No. 161957.

The Motion for Reconsideration filed by Jorge Gonzales in G.R. No. 161957 is DENIED WITH FINALITY.

SO ORDERED.

DANTE O. TINGA

Associate Justice

WE CONCUR:

REYNATO S. PUNO

Chief Justice

Chairperson

MA. ALICIA AUSTRIA-MARTINEZ          ROMEO J. CALLEJO, SR.

Associate Justice          Associate Justice

MINITA V. CHICO-NAZARIO

Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court.

REYNATO S. PUNO

Chief Justice

[1]Gonzales v. Climax Mining Ltd., G.R. No. 161957, 28 February 2005.

[2]Rollo (G.R. No. 161957), pp. 715-741.

[3]Id. at 700-706.

[4]The pertinent portion of the assailed decision reads:

Petitioner also disagrees with the Court of Appeals' ruling that the case should be brought for arbitration under Rep. Act [No.] 876, pursuant to the arbitration clause in the Addendum Contract which states that "[a]ll disputes arising out of or in connection with the Contract, which cannot be settled amicably among the Parties, shall finally be settled under R.A. No. 876." He points out that respondents Climax and APMI are not parties to the Addendum Contract and are thus not bound by the arbitration clause in said contract.

We agree that the case should not be brought under the ambit of the Arbitration Law, but for a different reason. The question of validity of the contract containing the agreement to submit to arbitration will affect the applicability of the arbitration clause itself. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions. As previously discussed, the complaint should have been filed before the regular courts as it involved issues which are judicial in nature. Rollo [G.R. No. 161957], p. 695

[5]4 Am Jur 2d, at 136, and American Law Reports, Annotated, 3 ALR2d 425 to 426.

[6]Art. 16(1) thereof states: "The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause." The Model Law was adopted in Republic Act No. 9285 or the "Alternative Dispute Resolution Act of 2004" (in Sec. 19 thereof).

[7]Resolution of 15 June 2005, rollo (G.R. No. 161957), p. 767.

[8]Id. at 780-790.

[9]Id. at 832-838.

[10]Rollo (G.R. No. 167994), pp. 3-24.

[11]Clause 19.1 of the Addendum Contract, rollo (G.R. No. 167994), p. 87. It reads: "All disputes arising out of or in connection with the Contract, which cannot be settled amicable among the Parties, shall be finally settled under Republic Act No. 876, otherwise known as 'The Arbitration Law," as may be amended from time to time. It is agreed, however, that at all events and notwithstanding any provision of Republic Act No. 876, only one arbitrator shall be appointed by all the Parties. For purposes of such appointment and at all proceedings hereunder, each of the CLAIMOWNER and ARIMCO shall have one vote. AUMEX, GEOPHILIPPINES and INMEX shall jointly have only one vote and, for purposes hereof, GEOPHILIPPINES and INMEX hereby irrevocably constitute AUMEX as their attorney-in-fact, in their place, name and stead, to exercise the voting right granted hereunder. If the CLAIMOWNER, ARIMCO and AUMEX fail to agree on an arbitrator within 30 days from the date they first begin considering persons to act as arbitrator, such arbitrator shall be appointed by the appropriate court in accordance with Republic Act No. 876. The Parties agree that the venue of the arbitration and all

actions under the Contract shall be Metro Manila, Philippines. The Parties further agree that the decision of the arbitrator shall be binding and enforceable upon the Parties and that no judicial action may be instituted by any Party against any other Party under the Contract except as provided in this Clause 19.1."

[12]Rollo (G.R. No. 167994), pp. 250-322.

[13]Id. at 517.

[14]Id. at 518-520.

[15]Id. at 525.

[16]Id. at 526.

[17]Id. at 381.

[18]Id.

[19]Id. at 527-530.

[20]Id. at 30-35.

[21]Id. at 39.

[22]G.R. No. 103200, 31 August 1994, 236 SCRA 78.

[23]Id. at 91.

[24]Sec. 19 of R.A. No. 9258 adopts the UNCITRAL Model Law for international commercial arbitration, while Sec. 33 of R.A. No. 9258 makes certain portions of the UNCITRAL Model Law, including Art. 8, applicable to domestic arbitration.

[25]Nippon Paint Employees Union-Olalia v. Court of Appeals, G.R. No. 159010, 19 November 2004, 443 SCRA 286, 291.

[26]Justice Romero, in his dissenting opinion in Asset Privatizatoin Trust v. Court of Appeals, 360 Phil. 768, 824-825 (1998), had occasion to discuss the mode of review under Sec. 29 of R.A. No. 876:

The term "certiorari" in [Sec. 29 of R.A. No. 876] refers to an ordinary appeal under Rule 45, not the special action of certiorari under Rule 65. It is an "appeal," as Section 29 proclaims. The proper forum for this action is, under the old and the new rules of procedure, the Supreme Court. Thus, Section 2(c) of Rule 41 of the 1997 Rules of Civil Procedure states that, "In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45." Moreover, Section 29 limits the appeal to "questions of law," another indication that it is referring to an appeal by certiorari under Rule 45 which, indeed, is the customary manner of reviewing such issues. On the other hand, the extraordinary remedy of certiorari under Rule 65 may be availed of by a party where there is "no appeal, nor any plain, speedy, and adequate remedy in the course of law," and under circumstances where "a tribunal, board or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion."

[27]Rollo (G.R. No. 167994), pp. 364-365.

[28]351 Phil. 508 (1998).

[29]Rollo (G.R. No. 167994), p. 365.

[30]Supra note 28, at  518-519.

[31]Supra  note 28 at 520-521.

[32]Estate of Salud Jimenez v. Philippine Export Processing Zone, 402 Phil. 271, 284 (2001).

[33]Civil Code, Book IV, Title  XIV, Chapter 2.

[34]National Union Fire Insurance Company of Pittsburgh v. Stolt-Nielsen Philippines, Inc., G.R. No. 87958, 26 April 1990, 184 SCRA 682.

[35]57 Phil. 600 (1932).

[36]Id. at 603.

[37]404 Phil. 192 (2001).

[38]Id. at 201.

[39]Supra note 22.

[40]Supra note 22 at 91.

[41]Id.

[42]126 Phil. 78 (1967).

[43]Id. at 84-85.

[44]Supra note 35.

[45]Supra note 37.

[46]P. Capper, International arbitration: A Handbook (3rd ed., 2004), p. 12.

[47]Id. Accordingly, the termination or avoidance (for example, following a fraudulent misrepresentation) of a contract which was initially valid will not affect the validity of the arbitration agreement. The doctrine also recognizes in this way the wish of the parties to have disputes arising out of their contract settled by arbitration, even if that contract is no longer in existence. Id. at 81.

In the U.S., a distinction has been drawn between legal doctrines relating to enforceability of

contracts and legal doctrines relating to whether a contract is formed.  Making this distinction, some courts have applied Prima Paint Corp. v. Flood and ConKlin, infra note 49, to voidable-contract arguments, but not to no-contract agreements involving for example forgery. S.J. Ware, infra note 50 at 49.

[48]Supra note 46, at 81.

[49]388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967).

[50]S.J. Ware, Alternative Dispute Resolution (2001 ed.), pp. 45-46, citing Prima Paint,supra.

[51]Supra note 49, 380 U.S., at 404.

[52]Order of 25 June 2002, rollo (G.R. No. 161957), p. 612.

[53]Rollo (G.R. No. 161957), pp. 194-201.

[54]Id. at 199.

[55]See Civil Code, Art. 1390.