Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

KOREA TECHNOLOGIES CO., LTD.,
Petitioner,
- versus -
HON. ALBERTO A. LERMA, in his capacity as Presiding Judge of Branch 256 of Regional Trial Court of Muntinlupa City, and PACIFIC GENERAL STEEL MANUFACTURING CORPORATION,
Respondents.

G.R. No. 143581

Present:
QUISUMBING, *J.*, Chairperson,
CARPIO,
CARPIO MORALES,
TINGA, and
VELASCO, JR., *JJ.*

Promulgated:
January 7, 2008

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

D E C I S I O N

VELASCO, JR., *J.*:

In our jurisdiction, the policy is to favor alternative methods of resolving disputes, particularly in civil and commercial disputes. Arbitration along with mediation, conciliation, and negotiation, being inexpensive, speedy and less hostile methods have long been favored by this Court. The petition before us puts at issue an arbitration clause in a contract mutually agreed upon by the parties stipulating that they would submit themselves to arbitration in a foreign country. Regrettably, instead of hastening the resolution of their dispute, the parties wittingly or unwittingly prolonged the controversy.

Petitioner Korea Technologies Co., Ltd. (KOGIES) is a Korean corporation which is engaged in the supply and installation of Liquefied Petroleum Gas (LPG) Cylinder manufacturing plants, while private respondent Pacific General Steel Manufacturing Corp. (PGSMC) is a domestic corporation.

On March 5, 1997, PGSMC and KOGIES executed a Contract[1] whereby KOGIES would set up an LPG Cylinder Manufacturing Plant in Carmona, Cavite. The contract was executed in the Philippines. On April 7, 1997, the parties executed, in Korea, an Amendment for Contract No. KLP-970301 dated March 5, 1997[2] amending the terms of payment. The contract and its amendment stipulated that KOGIES will ship the machinery and facilities necessary for manufacturing LPG cylinders for which PGSMC would pay USD 1,224,000. KOGIES would install and initiate the operation of the plant for which PGSMC bound itself to pay USD 306,000 upon the plants production of the 11-kg. LPG cylinder samples. Thus, the total contract price amounted to USD 1,530,000.

On October 14, 1997, PGSMC entered into a Contract of Lease[3] with Worth Properties, Inc. (Worth) for use of Worths 5,079-square meter property with a 4,032-square meter warehouse building to house the LPG manufacturing plant. The monthly rental was PhP 322,560 commencing on January 1, 1998 with a 10% annual increment clause. Subsequently, the machineries, equipment, and facilities for the manufacture of LPG cylinders were shipped, delivered, and installed in the Carmona plant. PGSMC paid KOGIES USD 1,224,000.

However, gleaned from the Certificate[4] executed by the parties on January 22, 1998, after the installation of the plant, the initial operation could not be conducted as PGSMC encountered financial difficulties affecting the supply of materials, thus forcing the parties to agree that KOGIES would be deemed to have completely complied with the terms and conditions of the March 5, 1997 contract.

For the remaining balance of USD306,000 for the installation and initial operation of the plant, PGSMC issued two postdated checks: (1) BPI Check No. 0316412 dated January 30, 1998 for PhP 4,500,000; and (2) BPI Check No. 0316413 dated March 30, 1998 for PhP 4,500,000.[5]

When KOGIES deposited the checks, these were dishonored for the reason PAYMENT STOPPED. Thus, on May 8, 1998, KOGIES sent a demand letter[6] to PGSMC threatening criminal action for violation of *Batas Pambansa Blg*. 22 in case of nonpayment. On the same date, the wife of PGSMCs President faxed a letter dated May 7, 1998 to KOGIES President who was then staying at a Makati City hotel. She complained that not only did KOGIES deliver a different brand of hydraulic press from that agreed upon but it had not delivered several equipment parts already paid for.

On May 14, 1998, PGSMC replied that the two checks it issued KOGIES were fully funded but the payments were stopped for reasons previously made known to KOGIES.[7]

On June 1, 1998, PGSMC informed KOGIES that PGSMC was canceling their Contract dated March 5, 1997 on the ground that KOGIES had altered the quantity and lowered the quality of the machineries and equipment it delivered to PGSMC, and that PGSMC would dismantle and transfer the machineries, equipment, and facilities installed in the Carmona plant. Five days later, PGSMC filed before the Office of the Public Prosecutor an Affidavit-Complaint for *Estafa* docketed as I.S. No. 98-03813 against Mr. Dae Hyun Kang, President of KOGIES.

On June 15, 1998, KOGIES wrote PGSMC informing the latter that PGSMC could not unilaterally rescind their contract nor dismantle and transfer the machineries and equipment on mere imagined violations by KOGIES. It also insisted that their disputes should be settled by arbitration as agreed upon in Article 15, the arbitration clause of their contract.

On June 23, 1998, PGSMC again wrote KOGIES reiterating the contents of its June 1, 1998 letter threatening that the machineries, equipment, and facilities installed in the plant would be dismantled and transferred on July 4, 1998. Thus, on July 1, 1998, KOGIES instituted an Application for Arbitration before the Korean Commercial Arbitration Board (KCAB) in Seoul, Korea pursuant to Art. 15 of the Contract as amended.

On July 3, 1998, KOGIES filed a Complaint for Specific Performance, docketed as Civil Case No. 98-117[8] against PGSMC before the Muntinlupa City Regional Trial Court (RTC). The RTC granted a temporary restraining order (TRO) on July 4, 1998, which was subsequently extended until July 22, 1998. In its complaint, KOGIES alleged that PGSMC had initially admitted that the checks that were stopped were not funded but later on claimed that it stopped payment of the checks for the reason that their value was not received as the former allegedly breached their contract by altering the quantity and lowering the quality of the machinery and equipment installed in the plant and failed to make the plant operational although it earlier certified to the contrary as shown in a January 22, 1998 Certificate. Likewise, KOGIES averred that PGSMC violated Art. 15 of their Contract, as amended, by unilaterally rescinding the contract without resorting to arbitration. KOGIES also asked that PGSMC be restrained from dismantling and transferring the machinery and equipment installed in the plant which the latter threatened to do on July 4, 1998.

On July 9, 1998, PGSMC filed an opposition to the TRO arguing that KOGIES was not entitled to the TRO since Art. 15, the arbitration clause, was null and void for being against public policy as it ousts the local courts of jurisdiction over the instant

controversy.

On July 17, 1998, PGSMC filed its Answer with Compulsory Counterclaim[9] asserting that it had the full right to dismantle and transfer the machineries and equipment because it had paid for them in full as stipulated in the contract; that KOGIES was not entitled to the PhP 9,000,000 covered by the checks for failing to completely install and make the plant operational; and that KOGIES was liable for damages amounting to PhP 4,500,000 for altering the quantity and lowering the quality of the machineries and equipment. Moreover, PGSMC averred that it has already paid PhP 2,257,920 in rent (covering January to July 1998) to Worth and it was not willing to further shoulder the cost of renting the premises of the plant considering that the LPG cylinder manufacturing plant never became operational.

After the parties submitted their Memoranda, on July 23, 1998, the RTC issued an Order denying the application for a writ of preliminary injunction, reasoning that PGSMC had paid KOGIES USD 1,224,000, the value of the machineries and equipment as shown in the contract such that KOGIES no longer had proprietary rights over them. And finally, the RTC held that Art. 15 of the Contract as amended was invalid as it tended to oust the trial court or any other court jurisdiction over any dispute that may arise between the parties. KOGIES prayer for an injunctive writ was denied.[10] The dispositive portion of the Order stated:

> WHEREFORE, in view of the foregoing consideration, this Court believes and so holds that no cogent reason exists for this Court to grant the writ of preliminary injunction to restrain and refrain defendant from dismantling the machineries and facilities at the lot and building of Worth Properties, Incorporated at Carmona, Cavite and transfer the same to another site: and therefore denies plaintiffs application for a writ of preliminary injunction.

On July 29, 1998, KOGIES filed its Reply to Answer and Answer to Counterclaim.[11] KOGIES denied it had altered the quantity and lowered the quality of the machinery, equipment, and facilities it delivered to the plant. It claimed that it had performed all the undertakings under the contract and had already produced certified samples of LPG cylinders. It averred that whatever was unfinished was PGSMCs fault since it failed to procure raw materials due to lack of funds. KOGIES, relying on *Chung Fu Industries (Phils.), Inc. v. Court of Appeals*,[12] insisted that the arbitration clause was without question valid.

After KOGIES filed a Supplemental Memorandum with Motion to Dismiss[13] answering PGSMCs memorandum of July 22, 1998 and seeking dismissal of PGSMCs counterclaims, KOGIES, on August 4, 1998, filed its Motion for Reconsideration[14] of the July 23, 1998 Order denying its application for an injunctive writ claiming that the contract was not merely for machinery and facilities worth USD 1,224,000 but was for the sale of an LPG manufacturing plant consisting of supply of all the machinery and facilities and transfer of technology for a total contract price of USD 1,530,000 such that the dismantling and transfer of the machinery and facilities would result in the dismantling and transfer of the very plant itself to the great prejudice of KOGIES as the still unpaid owner/seller of the plant. Moreover, KOGIES points out that the arbitration clause under Art. 15 of the Contract as amended was a valid arbitration stipulation under Art. 2044 of the Civil Code and as held by this Court in *Chung Fu Industries (Phils.), Inc.*[15]

In the meantime, PGSMC filed a Motion for Inspection of Things[16] to determine whether there was indeed alteration of the quantity and lowering of quality of the machineries and equipment, and whether these were properly installed. KOGIES opposed the motion positing that the queries and issues raised in the motion for inspection fell under the coverage of the arbitration clause in their contract.

On September 21, 1998, the trial court issued an Order (1) granting PGSMCs motion for inspection; (2) denying KOGIES motion for reconsideration of the July 23, 1998 RTC Order; and (3) denying KOGIES motion to dismiss PGSMCs compulsory counterclaims as these counterclaims fell within the requisites of compulsory counterclaims.

On October 2, 1998, KOGIES filed an Urgent Motion for Reconsideration[17] of the September 21, 1998 RTC Order granting inspection of the plant and denying dismissal of PGSMCs compulsory counterclaims.

Ten days after, on October 12, 1998, without waiting for the resolution of its October 2, 1998 urgent motion for reconsideration, KOGIES filed before the Court of Appeals (CA) a petition for certiorari[18] docketed as CA-G.R. SP No. 49249, seeking annulment of the July 23, 1998 and September 21, 1998 RTC Orders and praying for the issuance of writs of prohibition, mandamus, and preliminary injunction to enjoin the RTC and PGSMC from inspecting, dismantling, and transferring the machineries and equipment in the Carmona plant, and to direct the RTC to enforce the specific agreement on arbitration to resolve the dispute.

In the meantime, on October 19, 1998, the RTC denied KOGIES urgent motion for reconsideration and directed the Branch Sheriff to proceed with the inspection of the machineries and equipment in the plant on October 28, 1998.[19]

Thereafter, KOGIES filed a Supplement to the Petition[20] in CA-G.R. SP No. 49249 informing the CA about the October 19, 1998 RTC Order. It also reiterated its prayer for the issuance of the writs of prohibition, mandamus and preliminary injunction which was not acted upon by the CA. KOGIES asserted that the Branch Sheriff did not have the technical expertise to ascertain whether or not the machineries and equipment conformed to the specifications in the contract and were properly installed.

On November 11, 1998, the Branch Sheriff filed his Sheriffs Report[21] finding that the enumerated machineries and equipment were not fully and properly installed.

The Court of Appeals affirmed the trial court and declared the arbitration clause against public policy

On May 30, 2000, the CA rendered the assailed Decision[22] affirming the RTC Orders and dismissing the petition for certiorari filed by KOGIES. The CA found that the RTC did not gravely abuse its discretion in issuing the assailed July 23, 1998 and September 21, 1998 Orders. Moreover, the CA reasoned that KOGIES contention that the total contract price for USD 1,530,000 was for the whole plant and had not been fully paid was contrary to the finding of the RTC that PGSMC fully paid the price of USD 1,224,000, which was for all the machineries and equipment. According to the CA, this determination by the RTC was a factual finding beyond the ambit of a petition for certiorari.

On the issue of the validity of the arbitration clause, the CA agreed with the lower court that an arbitration clause which provided for a final determination of the legal rights of the parties to the contract by arbitration was against public policy.

On the issue of nonpayment of docket fees and non-attachment of a certificate of non-forum shopping by PGSMC, the CA held that the counterclaims of PGSMC were compulsory ones and payment of docket fees was not required since the Answer with counterclaim was not an initiatory pleading. For the same reason, the CA said a certificate of non-forum shopping was also not required.

Furthermore, the CA held that the petition for certiorari had been filed prematurely since KOGIES did not wait for the resolution of its urgent motion for reconsideration of the September 21, 1998 RTC Order which was the plain, speedy, and adequate remedy available. According to the CA, the RTC must be given the opportunity to correct any alleged error it has committed, and that since the assailed orders were interlocutory, these cannot be the subject of a petition for certiorari.

Hence, we have this Petition for Review on Certiorari under Rule 45.

The Issues

Petitioner posits that the appellate court committed the following errors:

a. PRONOUNCING THE QUESTION OF OWNERSHIP OVER THE MACHINERY AND FACILITIES AS A QUESTION OF FACT BEYOND THE AMBIT OF A PETITION FOR CERTIORARI INTENDED ONLY FOR CORRECTION OF ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF (SIC) EXCESS OF JURISDICTION, AND CONCLUDING THAT THE TRIAL COURTS FINDING ON THE SAME QUESTION WAS IMPROPERLY RAISED IN THE PETITION BELOW;

b. DECLARING AS NULL AND VOID THE ARBITRATION CLAUSE IN ARTICLE 15 OF THE CONTRACT BETWEEN THE PARTIES FOR BEING CONTRARY TO PUBLIC POLICY AND FOR OUSTING THE COURTS OF JURISDICTION;

c. DECREEING PRIVATE RESPONDENTS COUNTERCLAIMS TO BE ALL COMPULSORY NOT NECESSITATING PAYMENT OF DOCKET FEES AND CERTIFICATION OF NON-FORUM SHOPPING;

d. RULING THAT THE PETITION WAS FILED PREMATURELY WITHOUT WAITING FOR THE RESOLUTION OF THE MOTION FOR RECONSIDERATION OF THE ORDER DATED SEPTEMBER 21, 1998 OR WITHOUT GIVING THE TRIAL COURT AN OPPORTUNITY TO CORRECT ITSELF;

e. PROCLAIMING THE TWO ORDERS DATED JULY 23 AND SEPTEMBER 21, 1998 NOT TO BE PROPER SUBJECTS OF CERTIORARI AND PROHIBITION FOR BEING INTERLOCUTORY IN NATURE;

f. NOT GRANTING THE RELIEFS AND REMEDIES PRAYED FOR IN HE (SIC) PETITION AND, INSTEAD, DISMISSING THE SAME FOR ALLEGEDLY WITHOUT MERIT.[23]

The Courts Ruling

The petition is partly meritorious.

Before we delve into the substantive issues, we shall first tackle the procedural issues.

The rules on the payment of docket fees for counterclaims and cross claims were amended effective August 16, 2004

KOGIES strongly argues that when PGSMC filed the counterclaims, it should have paid docket fees and filed a certificate of non-forum shopping, and that its failure to do so was a fatal defect.

We disagree with KOGIES.

As aptly ruled by the CA, the counterclaims of PGSMC were incorporated in its Answer with Compulsory Counterclaim dated July 17, 1998 in accordance with Section 8 of Rule 11, 1997 Revised Rules of Civil Procedure, the rule that was effective at the time the Answer with Counterclaim was filed. Sec. 8 on existing counterclaim or cross-claim states, A compulsory counterclaim or a cross-claim that a defending party has at the time he files his answer shall be contained therein.

On July 17, 1998, at the time PGSMC filed its Answer incorporating its counterclaims against KOGIES, it was not liable to pay filing fees for said counterclaims being compulsory in nature. We stress, however, that effective August 16, 2004 under Sec. 7, Rule 141, as amended by A.M. No. 04-2-04-SC, docket fees are now required to be paid in compulsory counterclaim or cross-claims.

As to the failure to submit a certificate of forum shopping, PGSMCs Answer is not an initiatory pleading which requires a certification against forum shopping under Sec. 5[24] of Rule 7, 1997 Revised Rules of Civil Procedure. It is a responsive pleading, hence, the courts *a quo* did not commit reversible error in denying KOGIES motion to dismiss PGSMCs compulsory counterclaims.

Interlocutory orders proper subject of certiorari

Citing *Gamboa v. Cruz*,[25] the CA also pronounced that certiorari and Prohibition are neither the remedies to question the propriety of an interlocutory order of the trial court.[26] The CA erred on its reliance on *Gamboa*. *Gamboa* involved the denial of a motion to acquit in a criminal case which was not assailable in an action for certiorari since the denial of a motion to quash required the accused to plead and to continue with the trial, and whatever objections the accused had in his motion to quash can then be used as part of his defense and subsequently can be raised as errors on his appeal if the judgment of the trial court is adverse to him. The general rule is that interlocutory orders cannot be challenged by an appeal.[27] Thus, in *Yamaoka v. Pescarich Manufacturing Corporation*, we held:

> The proper remedy in such cases is an ordinary appeal from an adverse judgment *on* the *merits*, incorporating in said appeal the grounds for assailing the interlocutory orders. Allowing appeals from interlocutory orders would result in the sorry spectacle of a case being subject of a counterproductive *ping-pong* to and from the appellate court as often as a trial court is perceived to have made an error in any of its interlocutory rulings. However, where the assailed interlocutory order was issued with grave abuse of discretion or patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court allows certiorari as a mode of redress.[28]

Also, appeals from interlocutory orders would open the floodgates to endless occasions for dilatory motions. Thus, where the interlocutory order was issued without or in excess of jurisdiction or with grave abuse of discretion, the remedy is certiorari.[29]

The alleged grave abuse of discretion of the respondent court equivalent to lack of jurisdiction in the issuance of the two assailed orders coupled with the fact that there is no plain, speedy, and adequate remedy in the ordinary course of law amply provides the basis for allowing the resort to a petition for certiorari under Rule 65.

Prematurity of the petition before the CA

Neither do we think that KOGIES was guilty of forum shopping in filing the petition for certiorari. Note that KOGIES motion for reconsideration of the July 23, 1998 RTC Order which denied the issuance of the injunctive writ had already been denied. Thus, KOGIES only remedy was to assail the RTCs interlocutory order via a petition for certiorari under Rule 65.

While the October 2, 1998 motion for reconsideration of KOGIES of the September 21, 1998 RTC Order relating to the inspection of things, and the allowance of the compulsory counterclaims has not yet been resolved, the circumstances in this case would allow an exception to the rule that before certiorari may be availed of, the petitioner must have filed a motion for reconsideration and said motion should have been first resolved by the court a quo. The reason behind the rule is to enable the lower court, in the first instance, to pass upon and correct its mistakes without the intervention of the higher court.[30]

The September 21, 1998 RTC Order directing the branch sheriff to inspect the plant, equipment, and facilities when he is not competent and knowledgeable on said matters is evidently flawed and devoid of any legal support. Moreover, there is an urgent necessity to resolve the issue on the dismantling of the facilities and any further delay would prejudice the interests of KOGIES. Indeed, there is real and imminent threat of irreparable destruction or substantial damage to KOGIES equipment and machineries. We find the resort to certiorari based on the gravely abusive orders of the trial court sans the ruling on the October 2, 1998 motion for reconsideration to be proper.

The Core Issue: Article 15 of the Contract

We now go to the core issue of the validity of Art. 15 of the Contract, the arbitration clause. It provides:

> Article 15. *Arbitration*.All disputes, controversies, or differences which may arise between the parties, out of or in relation to or in connection with this Contract or for the breach thereof, shall finally be settled by arbitration in Seoul, Korea in accordance with the Commercial Arbitration Rules of the Korean Commercial Arbitration Board. **The award rendered by the arbitration(s) shall be final and binding upon both parties concerned**. (Emphasis supplied.)

Petitioner claims the RTC and the CA erred in ruling that the arbitration clause is null and void.

Petitioner is correct.

Established in this jurisdiction is the rule that the law of the place where the contract is made governs. *Lex loci contractus*. The contract in this case was perfected here in the Philippines. Therefore, our laws ought to govern. Nonetheless, Art. 2044 of the Civil Code sanctions the validity of mutually agreed arbitral clause or the finality and binding effect of an arbitral award. Art. 2044 provides, **Any stipulation that the arbitrators award or decision shall be final, is valid**, without prejudice to Articles 2038, 2039 and 2040. (Emphasis supplied.)

Arts. 2038,[31] 2039,[32] and 2040[33] abovecited refer to instances where a compromise or an arbitral award, as applied to Art. 2044 pursuant to Art. 2043,[34] may be voided, rescinded, or annulled, but these would not denigrate the finality of the arbitral award.

The arbitration clause was mutually and voluntarily agreed upon by the parties. It has not been shown to be contrary to any law, or against morals, good customs, public order, or public policy. There has been no showing that the parties have not dealt with each other on equal footing. We find no reason why the arbitration clause should not be respected and complied with by both parties. In *Gonzales v. Climax Mining Ltd.*,[35] we held that submission to arbitration is a contract and that a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitration is a contract.[36] Again in *Del Monte Corporation-USA v. Court of Appeals*, we likewise ruled 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.[37]

Arbitration clause not contrary to public policy

The arbitration clause which stipulates that the arbitration must be done in Seoul, Korea in accordance with the Commercial Arbitration Rules of the KCAB, and that the arbitral award is final and binding, is not contrary to public policy. This Court has sanctioned the validity of arbitration clauses in a *catena* of cases. In the 1957 case of *Eastboard Navigation Ltd. v. Juan Ysmael and Co., Inc.*,[38] this Court had occasion to rule that an arbitration clause to resolve differences and breaches of mutually agreed contractual terms is valid. In *BF Corporation v. Court of Appeals*, we held that [i]n this jurisdiction, arbitration has been held valid and constitutional. Even before the approval on June 19, 1953 of Republic Act No. 876, this Court has countenanced the settlement of disputes through arbitration. Republic Act No. 876 was adopted to supplement the New Civil Codes provisions on arbitration.[39] And in *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, we declared that:

> Being an inexpensive, speedy and amicable method of settling disputes, arbitrationalong with mediation, conciliation and negotiationis encouraged by the Supreme Court. Aside from unclogging judicial dockets, arbitration also hastens the resolution of disputes, especially of the commercial kind. It is thus regarded as the wave of the future in international civil and commercial disputes. Brushing aside a contractual agreement calling for arbitration between the parties would be a step backward.
>
> Consistent with the above-mentioned policy of encouraging alternative dispute resolution methods, courts should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration.[40]

Having said that the instant arbitration clause is not against public policy, we come to the question on what governs an arbitration clause specifying that in case of any dispute arising from the contract, an arbitral panel will be constituted in a foreign country and the arbitration rules of the foreign country would govern and its award shall be final and binding.

RA 9285 incorporated the UNCITRAL Model law to which we are a signatory

For domestic arbitration proceedings, we have particular agencies to arbitrate disputes arising from contractual relations. In case a foreign arbitral body is chosen by the parties, the arbitration rules of our domestic arbitration bodies would not be applied. As signatory to the Arbitration Rules of the UNCITRAL Model Law on International Commercial Arbitration[41] of the United Nations Commission on International Trade Law (UNCITRAL) in the New York Convention on June 21, 1985, the Philippines committed itself to be bound by the Model Law. We have even incorporated the Model Law in Republic Act No. (RA) 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 entitled *An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes*, promulgated on April 2, 2004. Secs. 19 and 20 of Chapter 4 of the Model Law are the pertinent provisions:

CHAPTER 4 - INTERNATIONAL COMMERCIAL ARBITRATION

> 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 for enactment by the General Assembly in Resolution No. 40/72 approved on December 11, 1985, copy of which is hereto attached as Appendix A.
>
> SEC. 20. *Interpretation of Model Law.*In interpreting the Model Law, regard shall be had to its international origin and to the need for uniformity in its interpretation and resort may be made to the *travaux preparatories* and the report of the Secretary General of the United Nations Commission on International Trade Law dated March 25, 1985 entitled, International Commercial Arbitration: Analytical Commentary on Draft Trade identified by reference number A/CN. 9/264.

While RA 9285 was passed only in 2004, it nonetheless applies in the instant case since it is a procedural law which has a retroactive effect. Likewise, KOGIES filed its application for arbitration before the KCAB on July 1, 1998 and it is still pending because no arbitral award has yet been rendered. Thus, RA 9285 is applicable to the instant case. Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. As a general rule, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached nor arisen from them.[42]

Among the pertinent features of RA 9285 applying and incorporating the UNCITRAL Model Law are the following:

(1) The RTC must refer to arbitration in proper cases

Under Sec. 24, the RTC does not have jurisdiction over disputes that are properly the subject of arbitration pursuant to an arbitration clause, and mandates the referral to arbitration in such cases, thus:

> 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.

(2) Foreign arbitral awards must be confirmed by the RTC

Foreign arbitral awards while mutually stipulated by the parties in the arbitration clause to be final and binding are not immediately enforceable or cannot be implemented immediately. Sec. 35[43] of the UNCITRAL Model Law stipulates the requirement for the arbitral award to be recognized by a competent court for enforcement, which court under Sec. 36 of the UNCITRAL Model Law may refuse recognition or enforcement on the grounds provided for. RA 9285 incorporated these provisos to Secs. 42, 43, and 44

relative to Secs. 47 and 48, thus:

> SEC. 42. *Application of the New York Convention.*The New York Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention.
>
> The recognition and enforcement of such arbitral awards shall be filed with the **Regional Trial Court** in accordance with the rules of procedure to be promulgated by the Supreme Court. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.
>
> The applicant shall establish that the country in which foreign arbitration award was made in party to the New York Convention.
>
> x x x x
>
> SEC. 43. *Recognition and Enforcement of Foreign Arbitral Awards Not Covered by the New York Convention.*The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The Court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a convention award.
>
> SEC. 44. *Foreign Arbitral Award Not Foreign Judgment.*A foreign arbitral award when confirmed by a court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not as a judgment of a foreign court.
>
> A foreign arbitral award, when confirmed by the Regional Trial Court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines
>
> x x x x
>
> SEC. 47. *Venue and Jurisdiction.*Proceedings for recognition and enforcement of an arbitration agreement or for vacations, setting aside, correction or modification of an arbitral award, and any application with a court for arbitration assistance and supervision shall be deemed as special proceedings and shall be filed with the Regional Trial Court (i) where arbitration proceedings are conducted; (ii) where the asset to be attached or levied upon, or the act to be enjoined is located; (iii) where any of the parties to the dispute resides or has his place of business; or (iv) in the National Judicial Capital Region, at the option of the applicant.
>
> SEC. 48. *Notice of Proceeding to Parties.*In a special proceeding for recognition and enforcement of an arbitral award, the Court shall send notice to the parties at their address of record in the arbitration, or if any part cannot be served notice at such address, at such partys last known address. The notice shall be sent al least fifteen (15) days before the date set for the initial hearing of the application.

It is now clear that foreign arbitral awards when confirmed by the RTC are deemed not as a judgment of a foreign court but as a foreign arbitral award, and when confirmed, are enforced as final and executory decisions of our courts of law.

Thus, it can be gleaned that the concept of a final and binding arbitral award is similar to judgments or awards given by some of our quasi-judicial bodies, like the National Labor Relations Commission and Mines Adjudication Board, whose final judgments are stipulated to be final and binding, but not immediately executory in the sense that they may still be judicially reviewed, upon the instance of any party. Therefore, the final foreign arbitral awards are similarly situated in that they need first to be confirmed by the RTC.

(3) The RTC has jurisdiction to review foreign arbitral awards

Sec. 42 in relation to Sec. 45 of RA 9285 designated and vested the RTC with specific authority and jurisdiction to set aside, reject, or vacate a foreign arbitral award on grounds provided under Art. 34(2) of the UNCITRAL Model Law. Secs. 42 and 45 provide:

> SEC. 42. *Application of the New York Convention.*The New York Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention.
>
> The recognition and enforcement of such arbitral awards shall be filed with the **Regional Trial Court** in accordance with the rules of procedure to be promulgated by the Supreme Court. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.
>
> The applicant shall establish that the country in which foreign arbitration award was made is party to the New York Convention.

> If the application for rejection or suspension of enforcement of an award has been made, the Regional Trial Court may, if it considers it proper, vacate its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the party to provide appropriate security.

x x x x

> SEC. 45. *Rejection of a Foreign Arbitral Award.*A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the procedures and rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the Regional Trial Court.

Thus, while the RTC does not have jurisdiction over disputes governed by arbitration mutually agreed upon by the parties, still the foreign arbitral award is subject to judicial review by the RTC which can set aside, reject, or vacate it. In this sense, what this Court held in *Chung Fu Industries (Phils.), Inc*. relied upon by KOGIES is applicable insofar as the foreign arbitral awards, while final and binding, do not oust courts of jurisdiction since these arbitral awards are not absolute and without exceptions as they are still judicially reviewable. Chapter 7 of RA 9285 has made it clear that all arbitral awards, whether domestic or foreign, are subject to judicial review on specific grounds provided for.

(4) Grounds for judicial review different in domestic and foreign arbitral awards

The differences between a final arbitral award from an international or foreign arbitral tribunal and an award given by a local arbitral tribunal are the specific grounds or conditions that vest jurisdiction over our courts to review the awards.

For foreign or international arbitral awards which must first be confirmed by the RTC, the grounds for setting aside, rejecting or vacating the award by the RTC are provided under Art. 34(2) of the UNCITRAL Model Law.

For final domestic arbitral awards, which also need confirmation by the RTC pursuant to Sec. 23 of RA 876[44] and shall be recognized as final and executory decisions of the RTC,[45] they may only be assailed before the RTC and vacated on the grounds provided under Sec. 25 of RA 876.[46]

(5) RTC decision of assailed foreign arbitral award appealable

Sec. 46 of RA 9285 provides for an appeal before the CA as the remedy of an aggrieved party in cases where the RTC sets aside, rejects, vacates, modifies, or corrects an arbitral award, thus:

> SEC. 46. *Appeal from Court Decision or Arbitral Awards.*A decision of the Regional Trial Court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules and procedure to be promulgated by the Supreme Court.
>
> The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appellate court to post a counterbond executed in favor of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.

Thereafter, the CA decision may further be appealed or reviewed before this Court through a petition for review under Rule 45 of the Rules of Court.

PGSMC has remedies to protect its interests

Thus, based on the foregoing features of RA 9285, PGSMC must submit to the foreign arbitration as it bound itself through the subject contract. While it may have misgivings on the foreign arbitration done in Korea by the KCAB, it has available remedies under RA 9285. Its interests are duly protected by the law which requires that the arbitral award that may be rendered by KCAB must be confirmed here by the RTC before it can be enforced.

With our disquisition above, petitioner is correct in its contention that an arbitration clause, stipulating that the arbitral award is final and binding, does not oust our courts of jurisdiction as the international arbitral award, the award of which is not absolute and without exceptions, is still judicially reviewable under certain conditions provided for by the UNCITRAL Model Law on ICA as applied and incorporated in RA 9285.

Finally, it must be noted that there is nothing in the subject Contract which provides that the parties may dispense with the arbitration clause.

Unilateral rescission improper and illegal

Having ruled that the arbitration clause of the subject contract is valid and binding on the parties, and not contrary to public policy; consequently, being bound to the contract of arbitration, a party may not unilaterally rescind or terminate the contract for whatever cause without first resorting to arbitration.

What this Court held in *University of the Philippines v. De Los Angeles*[47] and reiterated in succeeding cases,[48] that the act of treating a contract as rescinded on account of infractions by the other contracting party is valid albeit provisional as it can be judicially assailed, is not applicable to the instant case on account of a valid stipulation on arbitration. Where an arbitration clause in a contract is availing, neither of the parties can unilaterally treat the contract as rescinded since whatever infractions or breaches by a party or differences arising from the contract must be brought first and resolved by arbitration, and not through an extrajudicial rescission or judicial action.

The issues arising from the contract between PGSMC and KOGIES on whether the equipment and machineries delivered and installed were properly installed and operational in the plant in Carmona, Cavite; the ownership of equipment and payment of the contract price; and whether there was substantial compliance by KOGIES in the production of the samples, given the alleged fact that PGSMC could not supply the raw materials required to produce the sample LPG cylinders, are matters proper for arbitration. Indeed, we note that on July 1, 1998, KOGIES instituted an Application for Arbitration before the KCAB in Seoul, Korea pursuant to Art. 15 of the Contract as amended. Thus, it is incumbent upon PGSMC to abide by its commitment to arbitrate.

Corollarily, the trial court gravely abused its discretion in granting PGSMCs Motion for Inspection of Things on September 21, 1998, as the subject matter of the motion is under the primary jurisdiction of the mutually agreed arbitral body, the KCAB in Korea.

In addition, whatever findings and conclusions made by the RTC Branch Sheriff from the inspection made on October 28, 1998, as ordered by the trial court on October 19, 1998, is of no worth as said Sheriff is not technically competent to ascertain the actual status of the equipment and machineries as installed in the plant.

For these reasons, the September 21, 1998 and October 19, 1998 RTC Orders pertaining to the grant of the inspection of the equipment and machineries have to be recalled and nullified.

Issue on ownership of plant proper for arbitration

Petitioner assails the CA ruling that the issue petitioner raised on whether the total contract price of USD 1,530,000 was for the whole plant and its installation is beyond the ambit of a Petition for Certiorari.

Petitioners position is untenable.

It is settled that questions of fact cannot be raised in an original action for certiorari.[49] Whether or not there was full payment for the machineries and equipment and installation is indeed a factual issue prohibited by Rule 65.

However, what appears to constitute a grave abuse of discretion is the order of the RTC in resolving the issue on the ownership of the plant when it is the arbitral body (KCAB) and not the RTC which has jurisdiction and authority over the said issue. The RTCs

determination of such factual issue constitutes grave abuse of discretion and must be reversed and set aside.

RTC has interim jurisdiction to protect the rights of the parties

Anent the July 23, 1998 Order denying the issuance of the injunctive writ paving the way for PGSMC to dismantle and transfer the equipment and machineries, we find it to be in order considering the factual milieu of the instant case.

Firstly, while the issue of the proper installation of the equipment and machineries might well be under the primary jurisdiction of the arbitral body to decide, yet the RTC under Sec. 28 of RA 9285 has jurisdiction to hear and grant interim measures to protect vested rights of the parties. Sec. 28 pertinently provides:

> SEC. 28. *Grant of interim Measure of Protection.*(a) **It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court to grant such measure**. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral **or to the extent that the arbitral tribunal has no power to act or is unable to act effectivity, the request may be made with the Court**. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.
>
> (b) The following rules on interim or provisional relief shall be observed:
>
> Any party may request that provisional relief be granted against the adverse party.
>
> Such relief may be granted:
>
> (i) **to prevent irreparable loss or injury**;
> (ii) to provide security for the performance of any obligation;
> (iii) to produce or preserve any evidence; or
> (iv) to compel any other appropriate act or omission.
>
> (c) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.
>
> (d) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.
>
> (e) **The order shall be binding upon the parties**.
>
> (f) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.
>
> (g) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the orders judicial enforcement. (Emphasis ours.)

Art. 17(2) of the UNCITRAL Model Law on ICA defines an interim measure of protection as:

> *Article 17. Power of arbitral tribunal to order interim measures*
>
> xxx xxx xxx
>
> (2) An **interim measure** is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:
>
> *(a)* Maintain or restore the status quo pending determination of the dispute;
>
> *(b)* Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
>
> *(c)* Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Art. 17 J of UNCITRAL Model Law on ICA also grants courts power and jurisdiction to issue interim measures:

Article 17 J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

In the recent 2006 case of *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, we were explicit that even the pendency of an arbitral proceeding does not foreclose resort to the courts for provisional reliefs. We explicated this way:

As a fundamental point, the pendency of arbitral proceedings does not foreclose resort to the courts for provisional reliefs. The Rules of the ICC, which governs the parties arbitral dispute, allows the application of a party to a judicial authority for interim or conservatory measures. Likewise, Section 14 of Republic Act (R.A.) No. 876 (The Arbitration Law) recognizes the rights of any party to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration. In addition, R.A. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004, allows the filing of provisional or interim measures with the regular courts whenever the arbitral tribunal has no power to act or to act effectively.[50]

It is thus beyond cavil that the RTC has authority and jurisdiction to grant interim measures of protection.

Secondly, considering that the equipment and machineries are in the possession of PGSMC, it has the right to protect and preserve the equipment and machineries in the best way it can. Considering that the LPG plant was non-operational, PGSMC has the right to dismantle and transfer the equipment and machineries either for their protection and preservation or for the better way to make good use of them which is ineluctably within the management discretion of PGSMC.

Thirdly, and of greater import is the reason that maintaining the equipment and machineries in Worths property is not to the best interest of PGSMC due to the prohibitive rent while the LPG plant as set-up is not operational. PGSMC was losing PhP322,560 as monthly rentals or PhP3.87M for 1998 alone without considering the 10% annual rent increment in maintaining the plant.

Fourthly, and corollarily, while the KCAB can rule on motions or petitions relating to the preservation or transfer of the equipment and machineries as an interim measure, yet on hindsight, the July 23, 1998 Order of the RTC allowing the transfer of the equipment and machineries given the non-recognition by the lower courts of the arbitral clause, has accorded an interim measure of protection to PGSMC which would otherwise been irreparably damaged.

Fifth, KOGIES is not unjustly prejudiced as it has already been paid **a** substantial amount based on the contract. Moreover**,** KOGIES is amply protected by the arbitral action it has instituted before the KCAB, the award of which can be enforced in our jurisdiction through the RTC. Besides, by our decision, PGSMC is compelled to submit to arbitration pursuant to the valid arbitration clause of its contract with KOGIES.

PGSMC to preserve the subject equipment and machineries

Finally, while PGSMC may have been granted the right to dismantle and transfer the subject equipment and machineries, it does not have the right to convey or dispose of the same considering the pending arbitral proceedings to settle the differences of the parties. PGSMC therefore must preserve and maintain the subject equipment and machineries with the diligence of a good father of a family[51] until final resolution of the arbitral proceedings and enforcement of the award, if any.

WHEREFORE, this petition is **PARTLY GRANTED**, in that:

(1) The May 30, 2000 CA Decision in CA-G.R. SP No. 49249 is **REVERSED** and **SET ASIDE**;

(2) The September 21, 1998 and October 19, 1998 RTC Orders in Civil Case No. 98-117 are **REVERSED** and **SET ASIDE**;

(3) The parties are hereby **ORDERED** to submit themselves to the arbitration of their dispute and differences arising from the subject Contract before the KCAB; and

(4) PGSMC is hereby **ALLOWED** to dismantle and transfer the equipment and machineries, if it had not done so, and **ORDERED** to preserve and maintain them until the finality of whatever arbitral award is given in the arbitration proceedings.

No pronouncement as to costs.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

ANTONIO T. CARPIO CONCHITA CARPIO MORALES
Associate Justice Associate Justice

DANTE O. TINGA
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

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

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairpersons Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

REYNATO S. PUNO
Chief Justice

---

[1] Id. at 58-65; signed by KOGIES President Dae Hyun Kang and PGSMC President Honorio Santiago.
[2] Id. at 94.
[3] Id. at 208-218; signed by PGSMC President Honorio Santiago and Worth President Wilson L. Chua.
[4] Id. at 95; signed by KOGIES President Dae Hyun Kang and PGSMC President Honorio Santiago.

[5] Id. at 207.
[6] Id. at 221.
[7] Id. at 222.
[8] Id. at 47-51; dated July 1, 1998.
[9] Id. at 66-82.
[10] Id. at 97.
[11] Id. at 83-89.
[12] G.R. No. 96283, February 25, 1992, 206 SCRA 545.
[13] *Rollo*, pp. 108-111.
[14] Id. at 98-100.
[15] Supra note 12.
[16] *Rollo*, pp. 101-105.
[17] Id. at 113-115.
[18] Id. at 120-146; dated October 9, 1998.
[19] Id. at 119.
[20] Id. at 116-118.
[21] Id. at 266-268.
[22] Id. at 40. Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Ma. Alicia Austria-Martinez and Portia Alio-Hormachuelos.
[23] Id. at 16-17; original in boldface.

[24] SEC. 5. *Certification against forum shopping.*The plaintiff or principal party shall certify under oath in the **complaint or other initiatory pleading** asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court where his aforesaid complaint or initiatory pleading has been filed. (Emphasis supplied.)

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[25] G.R. No. L-56291, June 27, 1988, 162 SCRA 642.
[26] *Rollo*, p. 45.
[27] *La Tondea Distillers, Inc. v. Ponferrada*, G.R. No. 109656, November 21, 1996, 264 SCRA 540; *Mendoza v. Court of Appeals*, G.R. No. 81909, September 5, 1991, 201 SCRA 343; *MB Finance Corporation v. Abesamis*, G.R. No. 93875, March 22, 1991, 195 SCRA 592; *Quisumbing v. Gumban*, G.R. No. 85156, February 5, 1991, 193 SCRA 520.
[28] G.R. No. 146079, July 20, 2001, 361 SCRA 672, 680-681, citing *Go v. Court of Appeals*, G.R. No. 128954, October 8, 1998, 297 SCRA 574.
[29] I Regalado, REMEDIAL LAW COMPENDIUM 502 (2002).

[30] Id. at 721 (8th rev. ed.).

[31] Art. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents is subject to the provisions of Article 1330 [voidable] of this Code.

However, one of the parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced.

[32] Art. 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties.

But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents.

[33] Art. 2040. If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise may be rescinded.

Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise.

[34] Art. 2043. The provisions of the preceding Chapter upon compromises shall also be applicable to arbitrations.

[35] G.R. No. 161957 and G.R. No. 167994, January 22, 2007, 512 SCRA 148; citing *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600 (1932).

[36] Id. at 603.

[37] G.R. No. 136154, February 7, 2001, 351 SCRA 373, 381.

[38] 102 Phil. 1 (1957).

[39] G.R. No. 120105, March 27, 1998, 288 SCRA 267, 286.

[40] G.R. No. 141833, March 26, 2003, 399 SCRA 562, 569-570; citations omitted.

[41] Adopted by the UNCITRAL on June 21, 1985 (United Nations Document A/40/17) and recommended for enactment by the General Assembly in Resolution No. 40/72, approved on 11 December 1985. Subsequently amended on July 7, 2006.

[42] *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, G.R. No. 150274, August 4, 2006, 497 SCRA 626, 636-637; citing *Calacala v. Republic*, G.R. No. 154415, July 28, 2005, 464 SCRA 438, 446.

[43] Id. Art. 35(1) provides:

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

[44] An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes (1953).

[45] RA 9285, Sec. 40.

[46] Id., Sec. 41.

[47] G.R. No. L-28602, September 29, 1970, 35 SCRA 102.

[48] See *Lorenzo Shipping Corp. v. BJ Marthel International, Inc.*, G.R. No. 145483. November 19, 2004, 443 SCRA 163; *Subic Bay Metropolitan Authority v. Universal International Group of Taiwan*, G.R. No. 131680, September 14, 2000, 340 SCRA 359; *Philippine National Construction Corp. v. Mars Construction Enterprises, Inc.*, G.R. No. 133909, February 15, 2000, 325 SCRA 624; *Cheng v. Genato*, G.R. No. 129760, December 29, 1998, 300 SCRA 722; *Goldenrod, Inc. v. Court of Appeals*, G.R. No. 126812, November 24, 1998, 299 SCRA 141; *Adelfa Properties, Inc. v. Court of Appeals*, G.R. No. 111238, January 25, 1995; 240 SCRA 565; *Bowe v. Court of Appeals*, G.R. No. 95771, March 19, 1993, 220 SCRA 158; *Lim v. Court of Appeals*, G.R. No. 85733, February 23, 1990, 182 SCRA 564.

[49] *Suarez v. NLRC*, G.R. No. 124723, July 31, 1998, 293 SCRA 496, 502.

[50] G.R. No. 146717, May 19, 2006, 490 SCRA 14, 20-21.

[51] Cf. Article 1173 of the Civil Code.