FIRST DIVISION

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

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

DECISION

TIJAM, J.:

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

Facts of the Case

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

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

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

	WJSC	WJNA
Mabuhay	70%	70%
IDHI	30%	30%

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

	WJSC	WJNA
Mabuhay	45.5%	45.5%
IDHI	19.5%	19.5%

Sembcorp 35.0% 35.0%

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

The Agreement included an arbitration clause, *viz*:

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

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

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

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

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

(1) payment of the sum of US$929,875.50;

(2) alternatively, damages;

(3) interest on the above sum at such rate as the Arbitral Tribunal deems fit and just;

(4) cost of the arbitration; and

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

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

The Sole Arbitrator hereby decides that the Sole Arbitrator has jurisdiction over the parties' dispute and directs [Mabuhay] to make the following payments to [Sembcorp]:

1. Half of the Guaranteed Return or an amount of US$464,937.75 (Four Hundred Sixty Four Thousand Nine Hundred Thirty Seven and Point Seventy Five US Dollars);

2. Interest at the rate of 12% per annum on the said amount of US$464,937.75 calculated from the date of this Final Award until the said amount of US$464,937.75 is actually and completely paid by [Mabuhay] to [Sembcorp]; and

3. A reimbursement of half of the costs of arbitration fixed by the ICC Court at US$57,000 or the aggregate half of which amount to US$28,500 together with an interest at the rate of 12% per annum calculated from the date of this Final Award until the said amount is actually and completely paid by [Mabuhay] to [Sembcorp].[17]

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

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

Mabuhay argued that the dispute is an intra-corporate controversy, hence, excluded from the scope of the arbitration clause in the Agreement. It alleged that on March 13, 1997, Sembcorp became the controlling stockholder of IDHI by acquiring

substantial shares of stocks through its nominee, Mr. Pablo N. Sare (Sare). Mabuhay thus claimed that it has already been released from the joint obligation with IDHI as Sembcorp assumed the risk of loss when it acquired absolute ownership over the aforesaid shares. Moreover, Mabuhay argued that the appointment of Dr. Chantara-Opakorn was not in accordance with the arbitral clause as he did not have the expertise in the matter at issue, which involved application of Philippine law. Finally, Mabuhay argued that the imposition of twelve percent (12%) interest from the date of the Final Award was contrary to the Philippine law and jurisprudence.[21]

Ruling of the RTC

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

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

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

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

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

Ruling of the CA

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

The CA noted that the Final Award already settled the factual issue on whether Sembcorp acquired the adverted shares of stock in IDHI. Thus, RTC's contrary findings constituted an attack on the merits of the Final Award. In sum, the CA held

that the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of the law. It recognized the Final Award and remanded the case to the RTC for proper execution.[27]

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

Hence, this petition.

Issue

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

Our Ruling

We deny the petition.

I. Governing Laws

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

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

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

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

Sections 19 and 42 of the ADR Act expressly provided for the applicability of the New

York Convention and the Model Law in our jurisdiction, *viz*:

> **SEC. 19. *Adoption of the Model Law on International Commercial Arbitration*.** - International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix "N'.
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> x x x x
>
> **SEC. 42. *Application of the New York Convention*.** - The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.
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> The recognition and enforcement of such arbitral awards shall be filled (sic) with 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 a party to the New York Convention.
>
> x x x x (Emphasis ours)

Five years after the enactment of the ADR Act, the Department of Justice issued the ADR Act's Implementing Rules and Regulations (IRR)[35], and the Supreme Court issued the Special Rules of Court on Alternative Dispute Resolution[36] (Special ADR Rules). These two rules, in addition to the ADR Act incorporating the New York Convention and the Model Law, are our arbitration laws.

In addition to our arbitration laws, our courts, in recognizing or enforcing a foreign arbitral award, shall also take into consideration the laws applied by the arbitral tribunal. These may comprise the substantive law of the contract and the procedural rules or the rules governing the conduct of arbitration proceedings.

As agreed upon by the parties herein under the arbitral clause in their Agreement, the substantive law of the contract is the Philippine law and the procedural rules are the ICC Rules. During the filing of the request for Arbitration, the ICC Rules in effect was the ICC Rules of Arbitration 1998[37] Considering that the essence of arbitration is party autonomy, the Court shall refer to the said Rules for purposes of examining the procedural infirmities raised by the parties to the arbitration.

II. Jurisdiction

Mabuhay argues that the CA seriously erred in not dismissing outright the appeal of Sembcorp as it had no jurisdiction to act on the appeal. Mabuhay's argument hinges on Rule 19.12 of the Special ADR Rules, as follows:

> **Rule 19.12.** *Appeal to the Court of Appeals*. - An appeal to the Court of Appeals **through a petition for review** under this Special Rule shall only be allowed from the following final orders of the Regional Trial Court:
>
> x x x x
>
> k. Refusing recognition and/or enforcement of a foreign arbitral award; (Emphasis supplied)
>
> x x x x

Mabuhay thus contends that filing a petition for review and not a notice of appeal is the proper remedy to contest the RTC's refusal to enforce the Final Award.

The Court notes, however, that the Special ADR Rules took effect in 2009. Sembcorp's notice of appeal was filed only in 2008. The ADR Act, which was already in effect at that time, did not specify the proper remedy of appeal from the RTC to the CA. It merely provides that "a decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the CA in accordance with the rules of procedure to be promulgated by the Supreme Court."[38]

The Special ADR Rules shall retroactively apply to all pending cases provided that no vested rights are impaired or prejudiced.[39] In this case, Sembcorp filed a notice of appeal in accordance with Section 2 of Rule 41[40] as it is the only applicable rule existing at that time. Sembcorp had a vested right to due process in relying on the said rule. Consequently, the CA had jurisdiction to act on Sembcorp's appeal.

We now discuss the Court's jurisdiction to entertain the instant petition. The Court's review of a CA Decision is discretionary and limited to specific grounds provided under the Special ADR Rules. Thus:

> **Rule 19.36.** *Review discretionary*. - A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted **only for serious and compelling reasons resulting in grave prejudice to the aggrieved party**. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:
>
> > **a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in**

arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition. (Emphasis ours)

In relation to the applicable standard or test for judicial review by the CA in arriving at its decision, the Special ADR Rules further provide:

Rule 19.20. *Due course*. - If upon the filing of a comment or such other pleading or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records, **the Court of Appeals finds prima facie that the Regional Trial Court has committed an error that would warrant reversal or modification** of the judgment, final order, or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same.

x x x x

Rule 19.24. *Subject of appeal restricted in certain instance*. - If the decision of the Regional Trial Court refusing to recognize and/or enforce, vacating and/or setting aside an arbitral award is premised on a finding of fact, the **Court of Appeals may inquire only into such fact to determine the existence or non-existence of the specific ground under the arbitration laws of the Philippines relied upon by the**

> **Regional Trial Court to refuse to recognize and/or enforce**, vacate and/or set aside an award. Any such inquiry into a question of fact shall not be resorted to for the purpose of substituting the court's judgment for that of the arbitral tribunal as regards the latter's ruling on the merits of the controversy. (Emphasis ours)

Here, Mabuhay did not specifically raise any of the grounds under Rule 19.36 above in its petition before this Court. Nonetheless, considering the dearth of jurisprudence on enforcement of foreign arbitral awards and the fact that the CA reversed the RTC decision, the Court exercises its discretion to review the CA decision solely for purposes of determining whether the CA applied the aforecited standard of judicial review.

III. Grounds for Refusing Enforcement or Recognition

We now delve into the core of the issue - whether there is a ground for the RTC to refuse recognition and enforcement of the Final Award in favor of Sembcorp.

Our jurisdiction adopts a policy in favor of arbitration.[41] The ADR Act and the Special ADR Rules both declare as a policy that the State shall encourage and actively promote the use of alternative dispute resolution, such as arbitration, as an important means to achieve speedy and impartial justice and declog court dockets.[42] This pro-arbitration policy is further evidenced by the rule on presumption in favor of enforcement of a foreign arbitral award under the Special ADR Rules, *viz*:

> **Rule 13.11.** *Court action*. - **It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court.**
>
> The court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established.
>
> The decision of the court recognizing and enforcing a foreign arbitral award is immediately executory.
>
> In resolving the petition for recognition and enforcement of a foreign arbitral award in accordance with these Special ADR Rules, the court shall either [a] recognize and/or enforce or [b] refuse to recognize and enforce the arbitral award. **The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.** (Emphasis ours)

Under Article V of the New York Convention, the grounds for refusing enforcement and recognition of a foreign arbitral award are:

> 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and

enforcement is sought, proof that:

> (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
>
> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
>
> (c) **The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration**, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
>
> (d) **The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties**, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
>
> (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
>
> (b) **The recognition or enforcement of the award would be contrary to the public policy of that country.** (Emphasis ours)

The aforecited grounds are essentially the same grounds enumerated under Section 36[43] of the Model Law. The list is exclusive. Thus, Section 45 of the ADR Act provides:

> **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 procedural 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.** (Emphasis ours)

In Our jurisdiction, We have incorporated the grounds enumerated under the New York Convention in our arbitration laws. Article 4.36, Rule 6[44] of the IRR and Rule 13.4[45] of the Special ADR Rules reiterated the exact same exclusive list of grounds.

After a careful review of the case, We find that Mabuhay failed to establish any of the grounds for refusing enforcement and recognition of a foreign arbitral award. We discuss the grounds raised by Mabuhay *in seriatim*:

A. The arbitral authority, composed of Dr. Chatara-Opakorn as the sole arbitrator, was constituted in accordance with the arbitration agreement.

The first ground raised by Mabuhay is Article V(l)(d) of the New York Convention, *i.e.*, that the composition of the arbitral authority was not in accordance with the agreement of the parties. Mabuhay and Sembcorp stipulated in their Agreement that the sole arbitrator must have "expertise in the matter at issue". Since they also agreed that the validity and the performance of the Agreement shall be governed by the Philippine law, Mabuhay argues that the phrase "expertise in the matter at issue" necessarily means expertise in the Philippine law. Dr. Chatara-Opakom, a Thai national, does not possess any educational degree or training in Philippine law.

The Agreement provides, however, that the arbitrator with expertise in the matter at issue shall be appointed in accordance with the ICC Rules. The ICC, thus, is the appointing authority agreed upon by the parties. The "appointing authority" is the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rule the arbitration is agreed to be conducted.[46] Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators.[47]

The pertinent rules in the ICC Arbitration Rules of 1998 provide:

> **Article 9 - Appointment and Confirmation of the Arbitrators**
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> x x x x
>
> 3. Where the Court is to appoint a sole arbitrator or the chairman of an Arbitral Tribunal, it shall make the appointment upon a proposal of a National Committee of the ICC that it considers to be appropriate. If the Court does not accept the proposal made, or if the National Committee fails to make the proposal requested within the time limit fixed by the

> Court, the Court may repeat its request or may request a proposal from another National Committee that it considers to be appropriate.
>
> x x x x
>
> 5. The sole arbitrator or the chairman of the Arbitral Tribunal **shall be of a nationality other than those of the parties**. However, in suitable circumstances and provided that neither of the parties objects within the time limit fixed by the Court, the sole arbitrator or the chairman of the Arbitral Tribunal may be chosen from a country of which any of the parties is a national. (Emphasis ours)

In accordance with the aforecited rules, Dr. Chantara-Opakom was appointed upon the proposal of the Thai National Committee.

It bears stressing that the pro-arbitration policy of the State includes its policy to respect party autonomy. Thus, Rule 2.3 of the Special ADR Rules provides that "the parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings." The procedure to be followed on the appointment of arbitrator are among the procedural rules that may be agreed upon by the parties.

Moreover, under Rule 7.2 of the Special ADR Rules, a challenge to the appointment of an arbitrator may be raised in court only when the appointing authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court. This is clearly not the case for Mabuhay as it was able to challenge the appointment of Dr. Chantara-Opakom in accordance with Article 11 of the ICC Rules, but the ICC Court rejected the same.[48] As such, the Court shall not entertain any challenge to the appointment of arbitrator disguised as a ground for refusing enforcement of an award.

At any rate, Mabuhay's contention that the sole arbitrator must have the expertise on Philippine law fails to persuade. If the intent of the parties is to exclude foreign arbitrators due to the substantive law of the contract, they could have specified the same considering that the ICC Rules provide for appointment of a sole arbitrator whose nationality is other than those of the parties.

B. The dispute is not an intra corporate controversy, hence, included in the scope of disputes submitted to arbitration.

Under Article V(l)(c) of the New York Convention, the court may refuse enforcement of a foreign arbitral award when the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration. Mabuhay argues that the dispute is an intracorporate controversy which is expressly excluded from the scope of disputes submitted to arbitration under the Agreement. In essence, Mabuhay attacks the jurisdiction of the arbitral tribunal to hear the dispute as it did not fall within the terms of submission to arbitration.

The CA correctly applied the *Kompetenz-Kompetenz* principle expressly recognized under Rule 2.2 of the Special ADR Rules, *viz*:

> The Special ADR Rules recognize the principle of competence competence, which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration.

The Special ADR Rules expounded on the implementation of the said principle:

> **Rule 2.4.** *Policy implementing competence-competence principle*. The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, **the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues**. (Emphasis ours)

To recall, the Agreement provides that "(a)ny dispute, controversy or claim arising out of or relating to this Agreement, or breach thereof, *other than intra-corporate controversies*, shall be finally settled by arbitration..."

Among the issues settled in the Final Award is whether the dispute is an intra-corporate controversy. Dr. Chantara-Opakom ruled in the negative. The pertinent portion of the Final Award is reproduced as follows:

> x x x Indeed, during the cross-examination of Mr. Chay, he admitted that there was **no transfer of shares from IDHI to the Claimant** [p. 130 of Transcript of Proceedings]:
>
> x x x x
>
> During the re-examination of Mr. Chay by the Respondent's counsel, he again admitted that the transfer of the shares from IDHI to the Claimant has not taken effect [p. 155 of Transcript of Proceedings]:
>
> x x x x
>
> It is clear that the Claimant's claim is neither premised on allegations of mismanagement of WJNA and WJSC, nor on who manages or controls or who has the right to manage or control WJNA and WJSC, nor is it a claim to effect the transfer of the share, nor an action for registration of the shares transfer [sic] already transferred from IDHI to the Claimant in the

> books of WJNA and WJSC. The nature of the Claimant's claim is not intrinsically connected with the regulation of the corporation. The Claimant's claim in this arbitration is straightforward: that the Respondent agreed, under a contract, to make payment of certain amount of money to the Claimant upon the occurrence of a specified event; that the said event occurred but the Respondent refused to pay such amount of money to the Claimant; that the Claimant filed the Request in order to enforce the payment. Accordingly, the Sole Arbitrator is of the opinion that **the dispute in this arbitration is not an intra-corporate controversy, and, hence, it is not excluded from arbitration** under Article 19.2 of the Shareholders' Agreement.[49] (Emphasis ours)

Again, the Special ADR Rules specifically provides that in resolving the petition for recognition and enforcement of a foreign arbitral award, the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.[50]

Yet, the RTC, in its decision dismissing the petition of Sembcorp, declared that "it is undisputed that the shares of stocks of IDHI in WJNA and WJSC were actually owned by [Sembcorp] before the filing of the request for arbitration"[51] without providing any factual basis for such conclusion which directly contradicts the arbitral tribunal's findings.

Even granting that the court may rule on the issue of whether the dispute is an intra-corporate controversy, Mabuhay's argument is premised on the factual issue of whether Sembcorp indeed acquired the shares of IDHI. Mabuhay failed to establish such fact before the arbitral tribunal. The RTC, on the other hand, concluded that Sembcorp acquired the subject shares but failed to explain the basis for such conclusion. In the absence of sufficient evidence that Sembcorp acquired the shares of IDHI, the Court finds no cogent reason to disturb the arbitral tribunal's ruling in favor of the latter's jurisdiction over the dispute.

C. Enforcement of the award would not be contrary to public policy of the Philippines.

Under Article V(2)(b) of the New York Convention, a court may refuse to enforce an award if doing so would be contrary to the public policy of the State in which enforcement is sought. Neither the New York Convention nor the mirroring provisions on public policy in the Model Law and Our arbitration laws provide a definition of "public policy" or a standard for determining what is contrary to public policy. Due to divergent approaches in defining public policy in the realm of international arbitration, public policy has become one of the most controversial bases for refusing enforcement of foreign arbitral awards.[52]

Most arbitral jurisdictions adopt a narrow and restrictive approach in defining public policy pursuant to the pro-enforcement policy of the New York Convention. The public policy exception, thus, is "a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundaments on which it is based."[53] An example of a narrow approach adopted by several jurisdictions[54] is that the public

policy defense may only be invoked "where enforcement [of the award] would violate the forum state's most basic notions of morality and justice."[55] Thus, in Hong Kong, an award obtained by fraud was denied enforcement by the court on the ground that fraud is contrary to Hong Kong's "fundamental notions of morality and justice."[56] In Singapore, also a Model Law country, the public policy ground is entertained by courts only in instances where upholding the award is "clearly injurious to the public good or... wholly offensive to the ordinary reasonable and fully informed member of the public."[57]

In Our jurisdiction, the Court has yet to define public policy and what is deemed contrary to public policy in an arbitration case. However, in an old case, the Court, through Justice Laurel, elucidated on the term "public policy" for purposes of declaring a contract void:

> x x x At any rate, courts should not rashly extend the rule which holds that a contract is void as against public policy. **The term "public policy" is vague and uncertain in meaning, floating and changeable in connotation.** It may be said, however, that, in general, a contract which is neither prohibited by law nor condemned by judicial decision, nor contrary to public morals, contravenes no public policy. In the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, **has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property**.[58] (Emphasis ours)

An older case, *Ferrazzini v. Gsell*[59], defined public policy for purposes of determining whether that part of the contract under consideration is against public policy:

> By "public policy," as defined by the courts in the United States and England, is intended **that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good**, which may be termed the "policy of the law," or "public policy in relation to the administration of the law." Public policy is the principle under which freedom of contract or private dealing is restricted by law for the good of the public. In determining whether a contract is contrary to public policy the nature of the subject matter determines the source from which such question is to be solved. (Emphasis ours and citation omitted)

In light of the foregoing and pursuant to the State's policy in favor of arbitration and enforcement of arbitral awards, the Court adopts the majority and narrow approach in determining whether enforcement of an award is contrary to Our public policy. Mere errors in the interpretation of the law or factual findings would not suffice to warrant refusal of enforcement under the public policy ground. The illegality or

immorality of the award must reach a certain threshold such that, enforcement of the same would be against Our State's fundamental tenets of justice and morality, or would blatantly be injurious to the public, or the interests of the society.

We now discuss the pertinent claims of Mabuhay in relation to public policy.

i. Violation of partnership law

Mabuhay contends that it entered into a joint venture, which is akin to a particular partnership, with Sembcorp. Applying the laws on partnership, the payment of the Guaranteed Return to Sembcorp is a violation of Article 1799[60] of the Civil Code, as it shields the latter from sharing in the losses of the partnership. Ergo, enforcement of the Final Award would be contrary to public policy as it upholds a void stipulation.

The restrictive approach to public policy necessarily implies that not all violations of the law may be deemed contrary to public policy. It is not uncommon for the courts in Contracting States of the New York Convention to enforce awards which does not conform to their domestic laws.[61]

At any rate, Mabuhay's contention is bereft of merit. The joint venture between Mabuhay, IDHI, and Sembcorp was pursued under the Joint Venture Corporations, WJSC and WJNA. By choosing to adopt a corporate entity as the medium to pursue the joint venture enterprise, the parties to the joint venture are bound by corporate law principles under which the entity must operate.[62] Among these principles is the limited liability doctrine. The use of a joint venture corporation allows the co-venturers to take full advantage of the limited liability feature of the corporate vehicle which is not present in a formal partnership arrangement.[63] In fine, Mabuhay's application of Article 1799 is erroneous.

ii. Imposition of interest

Mabuhay argues that the twelve percent (12%) annual interest from the date of the Final Award is also contrary to the Philippine law and jurisprudence. To reiterate, the only ground for refusing enforcement of a foreign arbitral award is when enforcement of the same would be contrary to public policy.

Mere incompatibility of a foreign arbitral award with domestic mandatory rules on interest rates does not amount to a breach of public policy. However, some jurisdictions refused to recognize and enforce awards, or the part of the award which was considered to be contrary to public policy, where they considered that the awarded interest was unreasonably high.[64] In this case, the twelve percent (12%) interest rate imposed under the Final Award is not unreasonably high or unconscionable such that it violates our fundamental notions of justice.

IV. Attorney's Fees

Mabuhay avers that the dispositive portion of the CA Decision failed to include its

finding that Mabuhay is not liable for attorney's fees and exemplary damages. The pertinent portion of the CA Decision is reproduced as follows:

> Turning now to Sembcorp's prayer for the award of attorney's fees and exemplary damages, We find the same bereft of legal and factual bases. Article 2208 of the Civil Code allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought, there must be a showing that the losing party acted willfully or in bad faith and practically compelled the claimant to litigate and incur litigation expenses. Meanwhile, in order to obtain exemplary damages under Article 2232 of the Civil Code, the claimant must prove that the assailed actions of the defendant are not just wrongful, but also wanton, fraudulent, reckless, oppressive or malevolent.
>
> Indeed, Sembcorp was compelled to file the instant appeal. However, such fact alone is insufficient to justify an award of attorney's fees and exemplary damages when there is no sufficient showing of MHC's [Mabuhay] bad faith in refusing to abide by the provisions of the Final Award. To Us, MHC's [Mabuhay] persistent acts in rejecting Sembcorp's claim proceed from an erroneous conviction in the righteousness of its cause.[65]

We affirm the aforecited findings of the CA. However, We find no conflict between the *fallo* and the *ratio decidendi* of the CA Decision. The *fallo* of the CA Decision includes "[n]o pronouncement as to cost." The CA also reversed and set aside the RTC Decision in its entirety. As such, even the pronouncement of the RTC as to costs is set aside. Accordingly, We find no merit in Mabuhay's prayer for a statement in the dispositive portion expressly stating that it is not liable for attorney's fees and exemplary damages.

On a final note, We implore the lower courts to apply the ADR Act and the Special ADR Rules accordingly. Arbitration, as a mode of alternative dispute resolution, is undeniably one of the viable solutions to the longstanding problem of clogged court dockets. International arbitration, as the preferred mode of dispute resolution for foreign companies, would also attract foreign investors to do business in the country that would ultimately boost Our economy. In this light, We uphold the policies of the State favoring arbitration and enforcement of arbitral awards, and have due regard to the said policies in the interpretation of Our arbitration laws.

WHEREFORE, the Petition is hereby **DENIED**. The November 19, 2013 Decision and the June 3, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 92296 are **AFFIRMED**.

SO ORDERED.

Bersamin, C. J., (Chairperson), Del Castillo, Jardeleza, and *Gesmundo, JJ.*, concur.

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier, concurring. *Rollo*, pp. 68-84.

[2] Id. at 65-66.

[3] Penned by Presiding Judge Cesar O. Untalan. Id. at 85-92.

[4] Id. at 19.

[5] Id.

[6] Id. at 19-20.

[7] Id. at 213.

[8] Id. at 93-112.

[9] Id. at 20-21 and 69.

[10] Id. at 69.

[11] Id. at 108.

[12] Id. at 69-70.

[13] Id. at 70.

[14] Id.

[15] Id.

[16] Id. at 210-260.

[17] Id. at 260.

[18] Id. at 265-270.

[19] Id. at 71.

[20] Id. at 71-72.

[21] Id at 70-71, 291-297.

[22] Id. at 85-92.

[23] Id. at 89.

[24] Id. at 91-92.

[25] Id. at 75.

[26] Id at 68-84.

[27] Id. at 77-82.

[28] Id. at 65-66.

[29] Rule 1.11 (d), A.M. No. 07-11-08-SC, entitled "Special Rules of Court on Alternative Dispute Resolution" (October 30, 2009).

[30] New York Convention was ratified by the Philippines under Senate Resolution No. 71 on July 6, 1967; See <http://www.newyorkconvention.org/countries> last accessed on November 30, 2018.

[31] <http://www.newyorkconvention.org/countries> last accessed on November 30, 2018.

[32] *Transjield Philippines, Inc. v. Luzon Hydro Corporation*, 523 Phil. 374 (2006).

[33] 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.

[34] Republic Act No. 9285, 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.

[35] Department Circular No. 98 or the Implementing Rules and Regulations of the Alternative Dispute Resolution Act of2004, December 4, 2009.

[36] Special ADR Rules, A.M. No. 07-11-08-SC, September 1, 2009.

[37] 1998 International Chamber of Commerce, Rules of Arbitration, available online at <http://www.iccwbo.org/uploadedFiles/Court/Arbitration/other/rules_arb_english.pdf> last visited on November 4, 2018.

[38] See Sec. 46 of RA 9285.

[39] Special ADR Rules, Rule 24.1 Transitory Provision. - Considering its procedural character, the

Special ADR Rules shall be applicable to all pending arbitration, mediation or other

ADR forms covered by the ADR Act, unless the parties agree otherwise. The Special ADR Rules, however, may not prejudice or impair vested rights in accordance with law.

[40] **Rule 41** -Appeal From The Regional Trial Courts

Section 2. *Modes of appeal*. -

> (a) *Ordinary appeal*. - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. x x x

[41] *Lanuza, Jr. v. BF Corporation, et al.*, 744 Phil. 612 (2014).

[42] See Sec. 2 of RA 9285 and Rule 2.1 of the Special ADR Rules.

[43] Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

> (a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
>
> > (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
> >
> > (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
> >
> > (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
> >
> > (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the

parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or (b) if the court finds that: (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

[44] **Article 4.36.** *Grounds for Refusing Recognition or Enforcement*.

A. CONVENTION AWARD.

Recognition or enforcement of an arbitral award, made in a state, which is a party to the New York Convention, may be refused, at the request of the party against whom it is provoked, only if the party furnishes to the Regional Trial Court proof that:

(a) The parties to the arbitration agreement are, under the law applicable to them, under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or; failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

Recognition and enforcement of an arbitral award may also be refused if the Regional Trial Court where recognition and enforcement is sought finds that:

(a) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

(b) the recognition or enforcement of the award would be contrary to the public policy of the Philippines.

A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the Special ADR Rules only on the grounds enumerated under paragraphs (a) and (c) of Article 4.35 (*Recognition and Enforcement*). Any other ground raised shall be disregarded by the Regional Trial Court.

[45] **Rule 13.4.** *Governing law and grounds to refuse recognition and enforcement*. - x x x

A Philippine court shall not set aside a foreign arbitral award but may refuse it recognition and enforcement on any or all of the following grounds:

a. The party making the application to refuse recognition and enforcement of the award furnishes proof that:

(i). A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under the law of the country where the award was made; or

(ii). The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii). The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv). The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where arbitration took place; or

(v). The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which that award was made; or

b. The court finds that:

(i). The subject-matter of the dispute is not capable of settlement or resolution by arbitration under Philippine law; or

(ii). The recognition or enforcement of the award would be contrary to public policy.

The court shall disregard any ground for opposing the recognition and enforcement of a foreign arbitral award other than those enumerated above. (Emphasis ours)

[46] See Rule 1.11(b) of the Special ADR Rules.

[47] Id.

[48] *Rollo*, p. 221.

[49] Id. at 230-231.

[50] See Rule 11.9 of the Special ADR Rules.

[51] *Rollo*, p. 88.

[52] *See* Gary Born, International Commercial Arbitration (2nd ed., 2001) 815.

[53] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (2016 ed) 240.

[54] Id.

[55] *Parsons & Whittemore Overseas v. Societe Generate de L 'Industrie du Papier (RAKTA), Court of Appeals, Second Circuit, United States of America*, 508 F.2d 969, 974 (1974).

[56] *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, [2009] 12 H.K.C.F.A.R. 84, 100 (C.F.A.); See also *Hebei Import & Export Corporation v. Polytek Engineering Company Limited* [1999] 1 HKLRD 665.

[57] *PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA* [2007] I SLR(R) 597 citing *Deutsche Schachtbau-und Tiejbohrgesellschaft m.b.H. v. Shell International Petroleum Co. Ltd., Court of Appeal, England and Wales*, 24 March 1987, [1990] 1 A.C. 295.

[58] *Gabriel vs. Monte De Piedad*, 71 Phil. 497, 500 (1941).

[59] 34 Phil. 697, 711-712 (1916).

[60] Art. 1799. A stipulation which excludes one or more partners from any share in the profits or losses is void.

[61] See *Oberlandesgericht Dresden, Germany*, 11 Sch 06/98, 13 January 1999; and

Robert E. Schreter v. Gasmac Inc., Ontario Court, General Division, Canada, [13 February 1992], [1992] O.J. No. 257.

[62] Cesar L. Villanueva, Non-Corporate Media of Doing Business: Agency, Trusts, Partnerships & Joint Ventures (2011) 795-796.

[63] Id. at 805.

[64] See UNCITRAL Secretariat Guide, Article V(2)(b) or p. 246.

[65] *Rollo*, pp. 82-83.

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