



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

DEPARTMENT OF FOREIGN AFFAIRS (DFA), G.R. No. 225051

Petitioner, Present:

- versus -

BCA INTERNATIONAL CORPORATION & AD HOC ARBITRAL TRIBUNAL, composed of Chairman Danilo L. Concepcion and members, Custodio O. Parlade and Antonio P. Jamon, Jr.,

Respondents.

CARPIO, J., Chairperson,
 PERALTA,
 MENDOZA,
 LEONEN,* and
 MARTIRES, JJ.

Promulgated:

19 JUL 2017

[Signature]

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DECISION

PERALTA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court, seeking to annul and set aside Procedural Order No. 11 dated February 15, 2016 and Procedural Order No. 12 dated June 8, 2016, both issued by the UNCITRAL *Ad Hoc* Arbitral Tribunal in the arbitration proceedings between petitioner Department of Foreign Affairs (DFA) and respondent BCA International Corporation.

The facts are as follows:

In an Amended Build-Operate-Transfer (BOT) Agreement¹ dated April 5, 2002 (*Agreement*), petitioner DFA awarded the Machine Readable Passport and Visa Project (*MRP/V Project*) to respondent BCA International

* On wellness leave.
¹ Rollo, pp. 273-297.

[Signature]

Corporation. In the course of implementing the MRP/V Project, conflict arose and petitioner sought to terminate the Agreement.

Respondent opposed the termination and filed a Request for Arbitration on April 20, 2006. The Arbitral Tribunal was constituted on June 29, 2009.²

In its Statement of Claims³ dated August 24, 2009, respondent sought the following reliefs against petitioner: (a) a judgment nullifying and setting aside the Notice of Termination dated December 9, 2005 of the DFA, including its demand to BCA to pay liquidated damages equivalent to the corresponding performance security bond posted by BCA; (b) a judgment confirming the Notice of Default dated December 22, 2005 issued by BCA to the DFA and ordering the DFA to perform its obligation under the Amended BOT Agreement dated April 5, 2002 by approving the site of the Central Facility at the Star Mall Complex in Shaw Boulevard, Mandaluyong City, within five days from receipt of the Arbitral Award; (c) a judgment ordering the DFA to pay damages to BCA, reasonably estimated at ₱100,000,000.00 as of this date, representing lost business opportunities; financing fees, costs and commissions; travel expenses; legal fees and expenses; and cost of arbitration, including the fees of the members of the Arbitral Tribunal; and (d) other just or equitable relief.

On October 5, 2013, respondent manifested that it shall file an Amended Statement of Claims so that its claim may conform to the evidence they have presented.⁴

Petitioner opposed respondent's manifestation, arguing that such amendment at the very late stage of the proceedings will cause undue prejudice to its interests. However, the Arbitral Tribunal gave respondent a period of time within which to file its Amended Statement of Claims and gave petitioner time to formally interpose its objections.⁵

In the Amended Statement of Claims⁶ dated October 25, 2013, respondent interposed the alternative relief that, in the event specific performance by petitioner was no longer possible, petitioner prayed that the Arbitral Tribunal shall render judgment ordering petitioner to pay respondent ₱1,648,611,531.00, representing the net income respondent is

² Composed of Atty. Danilo Concepcion as Chairman, and Dean Custodio O. Parlade and Atty. Antonio P. Jamon, Jr., as members.

³ *Rollo*, pp. 377-385.

⁴ *Id.* at 17.

⁵ *Id.*

⁶ *Id.* at 318-328.

expected to earn under the Agreement, and ₱100,000,000.00 as exemplary, temperate or nominal damages.⁷

In an Opposition dated December 19, 2013, petitioner objected to respondent's Amended Statement of Claims, averring that its belated filing violates its right to due process and will prejudice its interest and that the Tribunal has no jurisdiction over the alternative reliefs sought by respondent.⁸

On August 6, 2014, respondent filed a Motion to Withdraw Amended Statement of Claims⁹ in the light of petitioner's opposition to the admission of the Amended Statement of Claims and to avoid further delay in the arbitration of its claims, without prejudice to the filing of such claims for liquidated and other damages at the appropriate time and proceeding. Thereafter, respondent filed a motion to resume proceedings.

However, on May 4, 2015, respondent filed anew a Motion to Admit Attached Amended Statement of Claims dated April 30, 2015, increasing the actual damages sought to ₱390,000,000.00, plus an additional ₱10,000,000.00 for exemplary, temperate or nominal damages.¹⁰

On November 6, 2015, petitioner filed an Opposition to the Motion to Admit Attached Amended Statement of Claims.

In Procedural Order No. 11¹¹ dated February 15, 2016, the Arbitral Tribunal granted respondent's Motion to Admit Attached Amended Statement of Claims dated April 30, 2015 on the premise that respondent would no longer present any additional evidence-in-chief. Petitioner was given a period of 20 days from receipt of the Order to file its Answer to the Amended Statement of Claims and to manifest before the Tribunal if it will

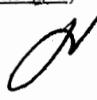
⁷ *Id.* at 328.

⁸ *Id.* at 17.

⁹ *Id.* at 371.

¹⁰ BCA seeks the following relief against the DFA: (a) a judgment nullifying and setting aside the Notice of Termination dated December 9, 2005 of DFA, including its demand to BCA to pay liquidated damages equivalent to the correspondent performance security bond posted by BCA; (b) a judgment confirming the Notice of Default dated December 22, 2005 issued by BCA to DFA and ordering DFA to perform its obligation under the Amended BOT Agreement dated April 5, 2002 by approving the site of the Central Facility and proceeding with the implementation of Phase 2 of the MRP/V Project, within thirty (30) days from receipt of the Arbitral Award; (c) a judgment ordering DFA to pay actual damages to BCA, reasonably estimated at ₱390,000,000.00 as of this date, representing lost business opportunities; legal fees and expenses, including attorney's fees that BCA has incurred as a result of DFA's unlawful attempted termination of the Amended BOT Agreement; and cost of arbitration, including the fees of the members of the Honorable Tribunal, plus an additional ₱10,000,000.00 for exemplary, temperate or nominal damages; and (d) other just or equitable relief.

¹¹ *Rollo*, p. 39.



present additional evidence in support of its Amended Answer in order for the Tribunal to act accordingly.

Procedural Order No. 11 reads:

For resolution by the Tribunal is BCA's Motion to Admit the Amended Statement of Claim dated 30 April 2015 objected to by DFA in its Opposition dated 6 November 2015.

BCA's Counsel made representations during the hearings that the Amendment is for the simple purpose of making the Statement of Claim conform with what BCA believes it was able to prove in the course of the proceedings and that the Amendment will no longer require the presentation of any additional evidence-in-chief.

Without ruling on what BCA was able to prove, the Tribunal hereby grants the Motion to Admit on the premise that BCA will no longer present any additional evidence-in-chief to prove the bigger claim in the Amended Statement.

For the additional claim of 300 million pesos, BCA should pay the additional fee of 5% or 15 million pesos. Having paid 12 million pesos, the balance of 3 million pesos shall be payable upon submission of this case for resolution. No award shall be issued and promulgated by the Tribunal unless the balance of 40% in the Arbitrators' fees for the original Claim and Counterclaim, respectively, and the balance of 3 million for the Amended Claim, are all fully paid by the parties.

DFA is hereby given the period of 20 days from receipt of this Order to file its Answer to the Amended Statement of Complaint, and to manifest before this Tribunal if it will present additional evidence in support of its Amended Answer in order for the Tribunal to act accordingly.¹²

On February 18, 2016, respondent filed a Motion for Partial Reconsideration¹³ of Procedural Order No. 11 and prayed for the admission of its Amended Statement of Claims by the Arbitral Tribunal without denying respondent's right to present evidence on the actual damages, such as attorney's fees and legal cost that it continued to incur.

On February 19, 2016, petitioner filed a Motion for Reconsideration of Procedural Order No. 11 and, likewise, filed a Motion to Suspend Proceedings dated February 19, 2016. Further, on February 29, 2016, petitioner filed its Comment/Opposition to respondent's Motion for Partial Reconsideration of Procedural Order No. 11.

¹² *Id.* at 39.

¹³ Dated February 17, 2016.



The Arbitral Tribunal, thereafter, issued Procedural Order No. 12 dated June 8, 2016, which resolved respondent's Motion for Partial Reconsideration of Procedural Order No. 11, disallowing the presentation of additional evidence-in-chief by respondent to prove the increase in the amount of its claim as a limitation to the Tribunals' decision granting respondent's Motion to Amend its Statement of Claims. In Procedural Order No. 12, the Tribunal directed the parties to submit additional documentary evidence in support of their respective positions in relation to the Amended Statement of Claims and to which the other party may submit its comment or objections.

Procedural Order No. 12 reads:

For resolution is the partial Motion for Reconsideration of the Tribunal's Procedural Order No. 11 disallowing the presentation of additional evidence-in-chief by Claimant to prove the increase in the amount of its Claim as a limitation to this Tribunal's decision granting Claimant's Motion to Amend its Statement of Claims.

After a careful consideration of all the arguments presented by the Parties in their pleadings, the Tribunal hereby decides to allow the submission of additional documentary evidence by any Party in support of its position in relation to the Amended Statement of Claims and to which the other may submit its comments or objections. The Tribunal, however, will still not allow the taking of testimonial evidence from any witness by any Party. The Tribunal allowed the amendment of the Statement of Claims but only for the purpose of making the Statement of Claims conform with the evidence that had already been presented, assuming that, indeed, it was the case. In resting its case, Respondent must have already dealt with and addressed the evidence that had already been presented by Claimant and that allegedly supports the amended Claim. However, in order to give the Parties more opportunity to prove their respective positions, additional evidence shall be accepted by the Tribunal, but only documentary evidence.

Wherefore, Procedural Order No. 11 is modified accordingly. The Claimant is given until 25 June 2016 to submit its additional documentary evidence in support of the Amended Statement of Claims. Respondent is given until 15 July 2016 to file its Answer to the Amended Statement of Claims, together with all the documentary evidence in support of its position. Claimant is given until 30 July 2016 to comment or oppose the Answer and the supporting documentary evidence, while Respondent is given until 14 August 2016 to file its comment or opposition to the Claimant's submission, together with any supporting documentary evidence. Thereafter, hearing of the case shall be deemed terminated. The periods allowed herein are non-extendible and the Tribunal will not act on any motion for extension of time to comply.

The Parties shall submit their Formal Offer of Evidence, in the manner previously agreed upon, on 20 September 2016 while their respective Memorandum shall be filed on 20 October 2016. The Reply



Memoranda of the Parties shall be filed on 20 November 2016. Thereafter, with or without the foregoing submissions, the case shall be deemed submitted for Resolution.¹⁴

As Procedural Order No. 12 denied petitioner's motion for reconsideration of Procedural Order No. 11, petitioner filed this petition for *certiorari* under Rule 65 of the Rules of Court with application for issuance of a temporary restraining order and/or writ of preliminary injunction, seeking to annul and set aside Procedural Order No. 11 dated February 15, 2016 and Procedural Order No. 12 dated June 8, 2016.

Petitioner stated that it opted to file the petition directly with this court in view of the immensity of the claim concerned, significance of the public interest involved in this case, and the circumvention of the temporary restraining order issued by this Court in *Department of Foreign Affairs v. BCA International Corporation*, docketed as G.R. No. 210858. It cited *Department of Foreign Affairs, et al. v. Hon. Judge Falcon*,¹⁵ wherein the Court overlooked the rule on hierarchy of courts and took cognizance of the petition for *certiorari*.

Petitioner raised these issues:

THE AD HOC ARBITRAL TRIBUNAL COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ADMITTED THE AMENDED STATEMENT OF CLAIMS DATED 30 APRIL 2015 NOTWITHSTANDING THAT:

- I. THE AMENDMENT CAUSES UNDUE DELAY AND PREJUDICE TO PETITIONER DFA;
- II. THE ALTERNATIVE RELIEF IN THE AMENDED STATEMENT OF CLAIMS FALLS OUTSIDE THE SCOPE OF THE ARBITRATION CLAUSE; HENCE, OUTSIDE THE JURISDICTION OF THE AD HOC ARBITRAL TRIBUNAL;
- III. THE AMENDMENT CIRCUMVENTS THE TEMPORARY RESTRAINING ORDER DATED 02 APRIL 2014 ISSUED BY THIS HONORABLE COURT IN G.R. NO. 210858; AND
- IV. PROCEDURAL ORDER NO. 12 DATED 8 JUNE 2016 VIOLATES PETITIONER DFA'S RIGHT TO DUE PROCESS.¹⁶

¹⁴ *Rollo*, p. 40.

¹⁵ 644 Phil. 105 (2010).

¹⁶ *Rollo*, pp. 19-20.

Petitioner states that Article 20 of the 1976 UNCITRAL Arbitration Rules grants a tribunal the discretion to deny a motion to amend where the tribunal “considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances.” It further proscribes an amendment where “the amended claim falls outside the scope of the arbitral clause or separate arbitration agreement.”

Petitioner contends that respondent’s Motion to Admit Attached Amended Statement of Claims dated April 30, 2015 should have been denied by the Arbitral Tribunal as there has been delay and prejudice to it. Moreover, other circumstances such as fair and efficient administration of the proceedings should have warranted the denial of the motion to amend. Finally, the Arbitral Tribunal did not have jurisdiction over the amended claims.

Petitioner prays that a temporary restraining order and/or writ of preliminary injunction be issued enjoining the Arbitral Tribunal from implementing Procedural Order No. 11 dated February 15, 2016 and Procedural Order No. 12 dated June 8, 2016; that the said Procedural Orders be nullified for having been rendered in violation of the 1976 UNCITRAL Arbitration Rules and this Court’s Resolution dated April 2, 2014 rendered in G.R. No. 210858; that respondent’s Amended Statement of Claims dated April 30, 2015 be denied admission; and, if this Court affirms the admission of respondent’s Amended Statement of Claims, petitioner be allowed to present testimonial evidence to refute the allegations and reliefs in the Amended Statement of Claims and to prove its additional defenses or claims in its Answer to the Amended Statement of Claims or Amended Statement of Defense with Counterclaims.

Petitioner contends that the parties in this case have agreed to refer any dispute to arbitration under the 1976 UNCITRAL Arbitration Rules and to compel a party to be bound by the application of a different rule on arbitration such as the Alternative Dispute Resolution (*ADR*) Act of 2004 or Republic Act (*RA*) No. 9285 transgresses such vested right and amounts to vitiation of consent to participate in the arbitration proceedings.

In its Comment, respondent contends that this Court has no jurisdiction to intervene in a private arbitration, which is a special proceeding governed by the *ADR* Act of 2004, its Implementing Rules and Regulations (*IRR*) and the Special Rules of Court on Alternative Dispute Resolution (*Special ADR Rules*).



Respondent avers that petitioner's objections to the admission of its Amended Statement of Claims by the Arbitral Tribunal, through the assailed Procedural Order Nos. 11 and 12, are properly within the competence and jurisdiction of the Arbitral Tribunal to resolve. The Arbitral Tribunal derives their authority to hear and resolve the parties' dispute from the contractual consent of the parties expressed in Section 19.02 of the Agreement.

In a Resolution dated July 25, 2016, the Court resolved to note the Office of the Solicitor General's Very Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction dated July 5, 2016.

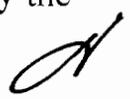
In regard to the allegation that the Amended Statement of Claims circumvents the temporary restraining order dated April 2, 2014 issued by the Court in *DFA v. BCA International Corporation*, docketed as G.R. No. 210858, it should be pointed out that the said temporary restraining order has been superseded by the Court's Decision promulgated on June 29, 2016, wherein the Court resolved to partially grant the petition and remand the case to the RTC of Makati City, Branch 146, to determine whether the documents and records sought to be subpoenaed are protected by the deliberative process privilege as explained in the Decision.

The issues to be resolved at the outset are which laws apply to the arbitration proceedings and whether the petition filed before the Court is proper.

The Agreement provides for the resolution of dispute between the parties in Section 19.02 thereof, thus:

If the Dispute cannot be settled amicably within ninety (90) days by mutual discussion as contemplated under Section 19.01 herein, the Dispute shall be settled with finality by an arbitrage tribunal operating under International Law, hereinafter referred to as the "*Tribunal*," under the UNCITRAL Arbitration Rules contained in Resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976, and entitled "*Arbitration Rules on the United Nations Commission on the International Trade Law*." The DFA and BCA undertake to abide by and implement the arbitration award. The place of arbitration shall be Pasay City, Philippines, or such other place as may mutually be agreed upon by both parties. The Arbitration proceeding shall be conducted in the English language.

Under Article 33 of the UNCITRAL Arbitration Rules governing the parties, "the arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute." "Failing such designation by the



parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.” Established in this jurisdiction is the rule that the law of the place where the contract is made governs, or *lex loci contractus*.¹⁷ As the parties did not designate the applicable law and the Agreement was perfected in the Philippines, our Arbitration laws, particularly, RA No. 876,¹⁸ RA No. 9285¹⁹ and its IRR, and the Special ADR Rules apply.²⁰ The IRR of RA No. 9285 provides that “[t]he arbitral tribunal shall decide the dispute in accordance with such law as is chosen by the parties. In the absence of such agreement, Philippine law shall apply.”²¹

In another earlier case filed by petitioner entitled *Department of Foreign Affairs v. BCA International Corporation*,²² docketed as G.R. No. 210858, petitioner also raised as one of its issues that the 1976 UNCITRAL Arbitration Rules and the Rules of Court apply to the present arbitration proceedings, not RA No. 9285 and the Special ADR Rules. We ruled therein thus:

Arbitration is deemed a special proceeding and governed by the special provisions of RA 9285, its IRR, and the Special ADR Rules. RA 9285 is the general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods. While enacted only in 2004, we held that RA 9285 applies to pending arbitration proceedings since it is a procedural law, which has retroactive effect.

x x x x

The IRR of RA 9285 reiterate that RA 9285 is procedural in character and applicable to all pending arbitration proceedings. Consistent with Article 2046 of the Civil Code, the Special ADR Rules were formulated and were also applied to all pending arbitration proceedings covered by RA 9285, provided no vested rights are impaired. Thus, contrary to DFA’s contention, RA 9285, its IRR, and the Special ADR Rules are applicable to the present arbitration proceedings. The arbitration between the DFA and BCA is still pending, since no arbitral award has yet been rendered. Moreover, DFA did not allege any vested rights impaired by the application of those procedural rules.

RA No. 9285 declares the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make

¹⁷ *Department of Foreign Affairs v. BCA International Corporation*, G.R. No. 210858, June 29, 2016.

¹⁸ *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*.

¹⁹ *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*.

²⁰ *Department of Foreign Affairs v. BCA International Corporation*, G.R. No. 210858, June 29, 2016.

²¹ Art. 5.28, Department Circular No. 98 or IRR of RA No. 9285.

²² *Supra* note 17.

their own arrangements to resolve their disputes.²³ Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution as an important means to achieve speedy and impartial justice and declog court dockets.²⁴

Court intervention is allowed under RA No. 9285 in the following instances: (1) when a party in the arbitration proceedings requests for an interim measure of protection;²⁵ (2) judicial review of arbitral awards²⁶ by the Regional Trial Court (RTC); and (3) appeal from the RTC decisions on arbitral awards to the Court of Appeals.²⁷

²³ RA No. 9285, Section 2.

²⁴ *Id.*

²⁵ SECTION 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 (RTC) an interim measure of protection and for the 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 tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, 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:

(1) Any party may request that provisional relief be granted against the adverse party.

(2) 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.

(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(4) 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.

(5) The order shall be binding upon the parties.

(6) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(7) 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 order's judicial enforcement.

²⁶ SECTION 40. *Confirmation of Award.* – The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.

The confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

SECTION 41. *Vacation Award.* – A party to a domestic arbitration may question the arbitral award with the appropriate Regional Trial Court in accordance with rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the Regional Trial Court.

²⁷ SECTION 46. *Appeal from Court Decisions on 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 of 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.

The extent of court intervention in domestic arbitration is specified in the IRR of RA No. 9285, thus:

Art. 5.4. Extent of Court Intervention. In matters governed by this Chapter, no court shall intervene except in accordance with the Special ADR Rules.

Court intervention in the Special ADR Rules is allowed through these remedies: (1) Specific Court Relief, which includes Judicial Relief Involving the Issue of Existence, Validity and Enforceability of the Arbitral Agreement,²⁸ Interim Measures of Protection,²⁹ Challenge to the Appointment of Arbitrator,³⁰ Termination of Mandate of Arbitrator,³¹ Assistance in Taking Evidence,³² Confidentiality/Protective Orders,³³ Confirmation, Correction or Vacation of Award in Domestic Arbitration,³⁴ all to be filed with the RTC; (2) a motion for reconsideration may be filed by a party with the RTC on the grounds specified in Rule 19.1; (3) an appeal to the Court of Appeals through a petition for review under Rule 19.2 or through a special civil action for *certiorari* under Rule 19.26; and (4) a petition for *certiorari* with the Supreme Court from a judgment or final order or resolution of the Court of Appeals, raising only questions of law.

Under the Special ADR Rules, review by the Supreme Court of an appeal by *certiorari* is not a matter of right, 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;

²⁸ Rule 3.
²⁹ Rule 5.
³⁰ Rule 7.
³¹ Rule 8.
³² Rule 9.
³³ Rule 10.
³⁴ Rule 11.

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.

RULE 19.37. *Filing of Petition with Supreme Court.* – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals issued pursuant to these Special ADR Rules may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law, which must be distinctly set forth.

It is clear that an appeal by *certiorari* to the Supreme Court is from a judgment or final order or resolution of the Court of Appeals and only questions of law may be raised. There have been instances when we overlooked the rule on hierarchy of courts and took cognizance of a petition for *certiorari* alleging grave abuse of discretion by the Regional Trial Court when it granted interim relief to a party and issued an Order assailed by the petitioner, considering the transcendental importance of the issue involved therein³⁵ or to better serve the ends of justice when the case is determined on the merits rather on technicality.³⁶ However, in this case, the appeal by *certiorari* is not from a final Order of the Court of Appeals or the Regional Trial Court, but from an interlocutory order of the Arbitral Tribunal; hence, the petition must be dismissed.

WHEREFORE, the Court resolves to **DISMISS** the petition for failure to observe the rules on court intervention allowed by RA No. 9285 and the Special ADR Rules, specifically Rule 19.36 and Rule 19.37 of the latter, in the pending arbitration proceedings of the parties to this case.

³⁵ *Department of Foreign Affairs, et al. v. Hon. Judge Falcon, supra* note 15.

³⁶ *Department of Foreign Affairs v. BCA International Corporation, supra* note 17.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



JOSE CATRAL MENDOZA
Associate Justice

On wellness leave
MARVIC M.V.F. LEONEN
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

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 Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's 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 Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice