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Division Clerk of Court
Third Division

MAR 23 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

METRO RAIL TRANSIT DEVELOPMENT CORPORATION, Petitioner,	**G.R. No. 200401**
	Present:
	VELASCO, JR., *J., Chairperson,*
	BERSAMIN,
	LEONEN,
-versus-	MARTIRES, and
	GESMUNDO, *JJ.*
GAMMON PHILIPPINES, INC., Respondent.	**Promulgated:** January 17, 2018

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DECISION

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals October 14, 2011 Decision[2] and January 25, 2012 Resolution[3] in CA-G.R. SP No. 98569. The assailed Decision affirmed the Construction Industry Arbitration Commission (CIAC) Decision, [4] which awarded Gammon Philippines, Inc. (Gammon) its monetary claims for lost profits and reimbursements for engineering services, design work, and site de-watering and clean up, due to breach of contract.[5] The assailed Resolution denied Metro Rail Transit Development Corporation's (MRT) Motion for

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1 *Rollo,* pp. 49–91. The Petition was filed under Rule 45 of the Rules of Court.

2 Id. at 8–38. The Decision was penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jane Aurora C. Lantion and Ramon A. Cruz of the Special Twelfth Division, Court of Appeals, Manila.

3 Id. at 40–41. The Resolution was penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Jane Aurora C. Lantion and Ramon A. Cruz of the Former Special Twelfth Division, Court of Appeals, Manila.

4 Id. at 332–372, Construction Industry Arbitration Commission Decision dated March 27, 2007. The Arbitral Tribunal was composed of Alfredo F. Tadiar as Chairman and Primitivo C. Cal and Joven B. Joaquin as Members.

5 Id. at 371.

Reconsideration.[6]

This case involves MRT's MRT-3 North Triangle Description Project (Project), covering 54 hectares of land, out of which 16 hectares were allotted for a commercial center. Half of the commercial center would be used for a podium structure (Podium), which was meant to provide the structure for the Project's Leasable Retail Development and to serve as the maintenance depot of the rail transit system.[7]

Parsons Interpro JV (Parsons) was the Management Team authorized to oversee the construction's execution.[8]

On April 30, 1997, Gammon received from Parsons an invitation to bid for the complete concrete works of the Podium. The scope of the work involved supplying the necessary materials, labor, plants, tools, equipment, facilities, supervision, and services for the construction of Level 1 to Level 4 of the Podium.[9]

On May 30, 1997, Gammon submitted three (3) separate bids and several clarifications on certain provisions of the Instruction to Bidders and the General Conditions of Contract.[10]

Gammon won the bid. On August 27, 1997, Parsons issued a Letter of Award and Notice to Proceed (First Notice to Proceed) to Gammon.[11] It was accompanied by the formal contract documents. The First Notice to Proceed stated:

> We are pleased to inform [you] that you have been awarded the work on the construction of the Podium Structure for the MRT-3 EDSA-North Triangle Development Project. The formal contract document, which is the product of a series of discussions and negotiation[,] is herewith attached for your signature.
>
> The Work includes the furnishing of labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with contract document, approved drawings, specifications and your over-all Breakdown of Lump Sum Bid (marked Exhibit "A") amounting to ONE BILLION FOUR HUNDRED ONE MILLION SIX HUNDRED SEVENTY[-]TWO THOUSAND NINETY[-] FIVE PESOS (₱1,401,672,095.00). It is understood that due to the existing squatters in the Area, the work shall be divided in two (2) separate geographical areas designated as Phase I and Phase II – but shall be

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6 Id. at 40–41.
7 Id. at 9, Court of Appeals Decision.
8 Id. at 10, Court of Appeals Decision.
9 Id.
10 Id. at 10–11, Court of Appeals Decision.
11 Id. at 11.

> treated as one contract and still totaling to ₱1,401,672,095.00. Further, this award is predicated on the commitments contained in the attached comfort letter (marked Exhibit "B") issued by Gammon Construction Limited, your associate company overseas and receipt of the duly signed letter from the Chief Executive of Gammon Construction Limited that is expected within seven days from the date hereof.
>
> . . . .
>
> You may, therefore, proceed with the work at Phase I starting seven (7) days from receipt of this Notice or from the time that Site is dewatered and cleaned up, whichever is the later. It is further understood that Gammon agrees to continue Phase II at the price stated above and the starting time thereof will depend on the completion by others of the footings in time to allow construction of the superstructure in accordance with Gammon's Tender Programme dated 13 August 1997.
>
> . . . .
>
> Please signify your concurrence by signing the appropriate space below and in the accompanying contract documents and return to Parsons-Interpro the originals. We will send to you a complete set of documents as soon as it is signed by the Owner.[12]

In a Letter dated September 2, 1997 (First Letter), Gammon signed and returned the First Notice to Proceed without the contract documents.[13] The First Letter stated:

> **MRT 3 North Triangle Development**
> **Superstructure Contract**
> **Letter of Award/Notice to Proceed**
>
> We return herewith the original copy of the above[-]mentioned letter which we have countersigned dated 28 August '97. (Please note that Mr. Salagdo's signature is missing).
>
> The contract documentation submitted under cover of your letter is being reviewed now, and should be signed and returned to you tomorrow. The Letter of Comfort has now been signed by the Chief Executive of Gammon Construction Ltd., and is being returned this week.
>
> We confirm that we mobilised resources to site on Friday, 29 August '97 to pump out floodwater. Cleaning up of mud and debris will follow on this week.
>
> During this mobilisation phase, our Site Manager is Mr. Ferdinand Fabro who we introduced to you during the Preconstruction meeting last Thursday, 28 August '97.
>
> We enclose herewith a copy of our Mobilisation Programme dated 1 September '97 (4 x A3 sheets) which includes Design activities, Mobilisation activities, initial Construction activities, key plant and formwork items.

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12 Id. at 162–164, Notice to Proceed dated August 27, 1997.

13 Id. at 11, Court of Appeals Decision.

> Our Design Team have now relocated to our office in Makati, and are continuing with preparation of shop drawings of all slabs.
>
> We will submit a project organisation chart shortly but in the meantime, we confirm that the following senior [Gammon Philippines, Inc.] staff are now allocated to the project:
>
> . . . .
>
> As soon as layout of temporary facilities has been agreed with you, establishment will commence in the very limited space allocated . . .
>
> We have today received . . . drawings marked "For Construction", and unless we hear from you to the contrary, we will proceed to procure materials for, plan and construct walls and columns based on these drawings. However, please note that the 3 sheets of construction notes have not been issued. We therefore request issue of these drawings. In addition, there are fifteen 'Requests for Information' (RFIs) which were forwarded to you yesterday – these cover queries which affect both design of slabs and construction of walls, columns and beams. In particular, we urgently need instructions to clarify the reinforcement specification generally, and connectors/splicing of column reinforcement.
>
> Finally, our Performance Bond and Advance Payment Bond are being prepared now – we hope to submit these by end of this week.[14]

In a Letter dated September 3, 1997 (Second Letter), Gammon transmitted to Parsons a signed Letter of Comfort to guarantee its obligations in the Project.[15]

However, in a Letter dated September 8, 1997, MRT wrote Gammon that it would need one (1) or two (2) weeks before it could issue the latter the Formal Notice to Proceed:[16]

> Re: Contract for LRT3 North Triangle Podium Structure
>
> Gentlemen:
>
> Due to current developments in the Philippines' foreign exchange rate and the concomitant soaring interest rates, Metro Rail Transit Development Corp. (MRTDC) will need a week or two to estimate the possible effects and repercussions on the above[-]mentioned project before MRTDC, through the Chairman of the Board, will issue the formal Notice to proceed to your company. When these possible effects and repercussions are analysed and decided upon by our Board, hopefully within the week, we shall notify you at once.[17]

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14 Id. at 160–161, Gammon Letter dated September 2, 1997.
15 Id. at 12, Court of Appeals Decision.
16 Id.
17 Id. at 166, MRT Letter dated September 8, 1997.

On September 9, 1997, Gammon transmitted the contract documents to Parsons.[18]

In a facsimile transmission sent on the same day, Parsons directed Gammon "to hold any further mobilization activities."[19]

In a Letter dated September 10, 1997, Gammon stated:

> "A NOTICE OF AWARD & NOTICE TO PROCEED addressed to Gammon Philippines Inc. (GPI) was issued by your Project Managers, Parsons Interpro JV dated 27th August 1997 and has been signed, accepeted and an original returned to them by our authorised people, therefore a contract exists between MTRDC and GPI.
>
> The formal contract document has been issued to us for final review and has been signed and returned to your Project Managers.
>
> In accordance with the NOA & NTP Gammon Construction Ltd. have provided you with the required letter of guarantee in respect of fulfillment by GCL of GPI's obligations under the Contract in the event of GPI's insolvency.
>
> By the [Notice of Award] & [Notice to Proceed] [Gammon] were (sic) required to proceed with the work starting seven days from receipt of that Notice and it was agreed we would commence dewatering of the flooded site and clean up immediately, under a Change Order, and that the construction period would run from the date of achieving the clean up of the site. It was anticipated that these clean up works would take 11 days.
>
> We are therefore bound by these commitments."[20]

On September 11, 1997, Gammon sent Parsons a facsimile to confirm if all requirements in the contract documents were temporarily suspended pending the clarification of the scope and programming of the Project.[21]

In a facsimile transmission dated September 12, 1997, Parsons confirmed "the temporary suspension of all [the] requirements under the contract except the re-design of the project floor slabs and the site de-watering and clean up."[22]

Thereafter, MRT decided to downscale the Podium's construction and

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18 Id. at 33, Court of Appeals Decision.

19 Id. at 12, Court of Appeals Decision; *rollo*, p. 167. The facsimile stated:
Dear Mr. Paterson,
We have just received the attached letter from our client MRTDC. In light of the contents please hold any further mobilization activities until we discuss this matter with the client.
I will contact you tomorrow A.M. as previously discussed.

20 Id. at 12, Court of Appeals Decision; *Rollo*, p. 481, Letter dated September 10, 1997.

21 Id. at 12–13, Court of Appeals Decision.

22 Id. at 13, Court of Appeals Decision. *Rollo*, p. 169, Facsimile dated September 12, 1997.

to proceed with the Project's conceptual redesign.[23]

Upon Parson's request order, Gammon studied and discussed with MRT the best option to phase the work.[24]

On November 7, 1997, Gammon presented to MRT the sequencing and phasing of the work.[25]

MRT decided to adopt Gammon's reccomendation to construct the Podium up to Level 2 only. [26]

Due to these revisions on the scope of work, MRT also decided to re-design the Level 2 slab, which it perceived would be exposed to more load stresses from prolonged exposure to elements and the weight of heavy construction equipment. MRT asked Gammon to re-design.[27]

On February 18, 1998, Parsons issued Gammon a Notice of Award and Notice to Proceed (Second Notice to Proceed) for the engineering services based on the redesigned plan.[28] The Second Notice to Proceed stated:

> This Notice to Proceed is for the work to be rolled-in into a Lump Sum Contract. In the event that this contract will not be finalized in the near future, any and all expenses that are necessary and directly incurred by you in connection therewith shall be reimbursed based on actual cost plus a negotiated fee.[29]

Gammon signed the Second Notice to Proceed on March 11, 1998 with qualification:

> The Contractor refers to the Notice of Award and Notice to Proceed dated 27 August 1997, and understands that this Notice to Proceed effectively lifts the suspension of work notified in MRTDC letter dated 8 September 1997, in respect of the design activities only for all of the Level 2 slab and that part of the Level 3 slab over the Depot Maintenance Shop and office area . . . ; and that the existing Notice of Award dated 27 August 1997 is still valid.[30]

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23 Id. at 13, Court of Appeals Decision.
24 Id.
25 Id.
26 Id.
27 Id. at 14, Court of Appeals Decision.
28 Id.
29 Id.
30 Id.

On March 3, 1998, Gammon submitted to Parsons a Revised Lump Sum Price Proposal of ₱1,044,055,102.00[31] for the construction of the Podium up to Level 2, including the design of the floor slab at Level 2.[32] At this time, Gammon had already started its engineering services pursuant to the Second Notice to Proceed.[33]

In its Letter dated March 6, 1998, Gammon sent Parsons a breakdown of the Revised Extra Contract Expenses it allegedly incurred in connection with the works' suspension amounting to ₱17,241,505.16.[34]

In its Letter dated March 11, 1998, Gammon notified Parsons of its revised Breakdown of Lump Sum Price worth ₱1,062,986,607.00.[35]

On April 2, 1998, MRT issued in favor of Gammon another Notice of Award and Notice to Proceed (Third Notice to Proceed).[36]

In its Letter dated April 8, 1998, Gammon acknowledged receipt of the Third Notice to Proceed and requested clarification of certain items.[37]

On April 22, 1998, Parsons wrote Gammon, stating that "since the building ha[d] been revised . . . structural changes [would] be needed and quantities may change."[38]

On April 29, 1998, Gammon wrote Parsons, confirming its readiness to start mobilization and requesting clarification of "urgent issues requiring resolution."[39]

In its Letter dated May 7, 1998, Parsons informed Gammon that MRT was temporarily rescinding the Third Notice to Proceed, noting that it remained unaccepted by Gammon.[40]

On June 11, 1998, Gammon received from Parsons the Contract for the Construction and Development of the Superstructure, MRT-3 North Triangle – Amended Notice to Proceed dated June 10, 1998 (Fourth Notice to Proceed).[41]

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31 Id. at 132.
32 Id. at 15, Court of Appeals Decision.
33 Id.
34 Id.
35 Id.
36 Id.
37 Id. at 16.
38 Id.
39 Id. at 16–17, Court of Appeals Decision.
40 Id. at 17.
41 Id.

The terms of the Fourth Notice to Proceed were different from those of the First and the Third Notices to Proceed. The Fourth Notice to Proceed also expressly cancelled the First and Third Notices to Proceed.[42]

On June 19, 1998, Gammon qualifiedly accepted the Fourth Notice to Proceed.[43]

MRT treated Gammon's qualified acceptance as a new offer. In a Letter dated June 22, 1998, MRT rejected Gammon's qualified acceptance and informed Gammon that the contract would be awarded instead to Filsystems if Gammon would not accept the Fourth Notice to Proceed within five (5) days.[44]

In a Letter dated July 8, 1998, Gammon wrote MRT, acknowledging the latter's intent to grant the Fourth Notice to Proceed to another party despite having granted the First Notice to Proceed to Gammon. Thus, it notified MRT of its claims for reimbursement for costs, losses, charges, damages, and expenses it had incurred due to the rapid mobilization program in response to MRT's additional work instructions, suspension order, ongoing discussions, and the consequences of its award to another party.[45]

In a Letter dated July 15, 1998, MRT expressed its disagreement with Gammon and its amenability to discussing claims for reimbursement.[46]

In a Letter dated July 23, 1998, Gammon notified Parsons of its claim for payment of all costs, damages, and expenses due to MRT's suspension order and the consequences of its award of the contract to another party.[47]

In a Letter dated August 7, 1998, MRT informed Gammon that it was willing to reimburse Gammon for its cost in participating in the bid amounting to about 5% of Gammon's total claim of more or less ₱121,000,000.00.[48]

In a Letter dated August 11, 1998, Gammon replied that MRT's offer was not enough to cover the expenses it had incurred for the Project and that it was willing to send MRT additional information necessary for the

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42 Id.
43 Id.
44 Id. at 17–18, Court of Appeals Decision.
45 Id. at 18, Court of Appeals Decision.
46 Id.
47 Id.
48 Id. at 19, Court of Appeals Decision.

evaluation of its claims.[49]

In a Letter dated August 24, 1998, Parsons requested Gammon for additional supporting documents to its claims.[50]

Gammon wrote several communications to MRT to follow up on its evaluation request.[51]

On July 1, 1999, Gammon filed a Notice of Claim before CIAC against MRT.[52]

On August 18, 1999, CIAC issued an Order directing MRT to file its Answer and submit the names of its nominees to the Arbitral Tribunal.[53]

MRT filed a Motion to Dismiss, arguing that CIAC had no jurisdiction to arbitrate the dispute. This Motion was denied and this matter was elevated to this Court.[54] In *Gammon v. Metro Rail Transit Development Corporation*,[55] this Court held that CIAC had jurisdiction over the case.[56]

Thus, on October 19, 2006, MRT filed its Answer with Compulsory Counterclaim,[57] paragraph 77 of which read:

> 77. To begin with, MRTDC is willing to pay GAMMON the total amount of P5,493,639.27 representing the sum of P4,821,261.91 and P672,377.36, which comprise GAMMON's claim for cost of the engineering and design services and site de-watering and clean-up works, respectively. [58]

On November 2, 2006, the Arbital Tribunal was formed. On December 11, 2006, a preliminary conference was set to finalize the Terms of Reference, which would regulate the conduct of the proceedings. The parties agreed that they would simultaneously submit their witnesses' affidavits on January 19, 2007.[59]

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49 Id.
50 Id.
51 Id.
52 Id. at 20, Court of Appeals Decision.
53 Id.
54 Id.
55 *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.*, 516 Phil. 561, 573–574 (2006) [Per J. Tinga, Third Division].
56 *Rollo*, p. 20, Court of Appeals Decision.
57 Id.
58 *Rollo*, p. 300, MRT's Answer with Compulsory Counterclaim
59 Id. at 20–21.

On March 27, 2007, CIAC ruled:[60]

> **WHEREFORE**, judgment is hereby rendered and AWARD is made on the monetary claims of Claimant as follows:
>
> P4,821,261.9 for Engineering services design work
> 672,377.36 for site de-watering and clean up
>
> **P5,493,639.27** Total claim under issue #1
>
> **P53,149,330.35** as a reasonable estimate of the profit it had lost by reason of Respondent's breach of contract in awarding the construction to a different contractor.
>
> **P58,642,969.62 – TOTAL DUE THE CLAIMANT**
>
> **SO ORDERED.**[61]

MRT assailed the CIAC Decision before the Court of Appeals. However, the Court of Appeals affirmed the CIAC Decision:

> WHEREFORE, premises considered, the instant petition is DENIED. The assailed order of the CIAC dated March 8, 2007 is AFFIRMED.[62]

Thus, MRT filed the instant Petition for Review.[63] It argues that Gammon was not entitled to CIAC's award considering that there is no perfected contract between MRT and Gammon[64] and that Gammon's claim for lost profits was based only on an unsubstantiated and self-serving assertion of its employee.[65] Additionally, it contends that the claim for reimbursements for engineering services, design work, site de-watering, and clean-up was not supported by official receipts. It also avers that it is not estopped from contradicting its alleged judicial admission of liability for reimbursements in the amount of ₱5,493,639.27,[66] and further states that it is entitled to attorney's fees.[67]

Gammon filed its Comment,[68] insisting that there is a perfected contract between them.[69] It argues that this Court determined the perfection

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60 Id. at 332–372. Construction Industry Arbitration Commission Decision promulgated on March 27, 2007. The Arbitral Tribunal was composed of Alfredo F. Tadiar as Chairman and Primitivo C. Cal and Joven B. Joaquin as Members.
61 Id. at 371.
62 Id. at 37.
63 Id. at 49–91.
64 Id. at 62–71.
65 Id. at 71–78.
66 Id. at 78–83.
67 Id. at 83–85.
68 Id. at 831–854, Comment.
69 Id. at 831–836, Comment.

of the contract in *Gammon v. Metro Rail Transit Development Corporation*,[70] and thus, the doctrine of the law of the case applies.[71] Gammon asserts that its claim for lost profits was sufficiently substantiated[72] and that it has proven its entitlement to the reimbursements.[73] It avers that damages may be proved not only by official receipts, but also through other documentary evidence, such as invoices and debit notes.[74]

Gammon further claims that MRT is bound by its implied admission of its liability for the reimbursements in its Answer with Compulsory Counterclaim. It points out that MRT mentioned the exact amount it was willing to pay and that it did not state that it would pay only the proved amount.[75] It argues that MRT is raising factual issues and that CIAC's factual findings on the existence of the contract and the amount of damages ought to be respected.[76]

In its Reply,[77] MRT argues that the doctrine of the law of the case does not apply as the issue in *Gammon* was CIAC's jurisdiction and not the existence of the contract.[78] It reiterates that no contract was perfected because MRT withdrew its offer to Gammon before Gammon returned the contract documents.[79] Thus, Gammon's acceptance only came after the offer had been withdrawn and nothing that could have been accepted remained.[80]

MRT reasons that the loss of profits was not proven with a reasonable degree of certainty because Gammon's witness is not an expert witness.[81] Moreover, it emphasizes that the finding in *National Housing Authority v. First Limited Construction Corporation*[82] of 10% profit as the standard practice in the construction industry is merely *obiter dictum*, and thus, cannot operate as a precedent for construction-related cases.[83]

MRT further claims that invoices and debit memos are not sufficient proof of payment to entitle Gammon to reimbursements because an invoice is a mere detailed statement of the items and their prices and charges, while a debit memo is only an advice to the receiver of an outstanding debt.[84]

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70 *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.*, 516 Phil. 561 (2006) [Per J. Tinga, Third Division].
71 *Rollo*, p. 832, Comment.
72 CIVIL CODE, art. 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.
73 *Rollo*, pp. 836–841, Comment.
74 Id. at 845, Comment.
75 Id. at 849, Comment.
76 Id. at 850–853, Comment.
77 Id. at 892–918, Reply.
78 Id. at 892–893 Reply.
79 Id. at 900, Reply.
80 Id. at 900–901, Reply.
81 Id. at 905–906, Reply.
82 675 SCRA 175 (2011).
83 *Rollo*, p. 907, Reply.
84 Id. at 909–910, Reply.

MRT avers that the alleged admission in its Answer with Compulsory Counterclaim should be construed as extending only to those "supported by official receipts."[85] It reiterates that "[j]udicial admissions cannot supplant the requirements of law . . . that actual or compensatory damages . . . must be duly proven."[86] Moreover, MRT asserts that its offer to pay is not an admission of liability but only "an attempt to settle the issue and avoid litigation."[87] It argues that the exact amount of ₱5,493,639.27 was mentioned in the Answer with Compulsory Counterclaim as it was the amount claimed by Gammon, which MRT offered to pay, if proven.[88]

It further asserts that the findings of CIAC and of the Court of Appeals are all contrary to evidence on record or are premised on speculation, surmises, and conjectures, and thus, are serious errors of law properly re-examinable by this Court.[89]

For this Court's resolution are the following issues:

First, whether or not there is a perfected contract between petitioner Metro Rail Transit Development Corporation and respondent Gammon Philippines, Inc.;

Second, whether the doctrine of the law of the case in *Gammon v. Metro Rail Transit Development Corporation*[90] applies;

Third, whether or not petitioner Metro Rail Transit Development Corporation is bound by its allegation in its Answer with Compulsory Counterclaim that it was "willing to pay GAMMON the total amount of ₱5,493,639.27 representing the sum of ₱4,821,261.91 and ₱672,377.36, which comprise GAMMON's claim for cost of the engineering and design services and site de-watering and clean-up works, respectively";[91] and

Finally, whether or not respondent Gammon Philippines, Inc.'s claims for actual damages, reimbursement of amounts, and lost profits were sufficiently proven.

This Court denies the Petition.

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85 Id. at 912, Reply.
86 Id. at 914, Reply.
87 Id. at 915, Reply.
88 Id.
89 Id. at 915–916, Reply.
90 *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.*, 516 Phil. 561 (2006) [Per J. Tinga, Third Division].
91 *Rollo*, p. 300, MRT's Answer with Compulsory Counterclaim

CIAC was created under Executive Order No. 1008[92] to establish an arbitral machinery that will settle expeditiously problems arising from, or connected with, contracts in the construction industry.[93]

Its jurisdiction includes construction disputes between or among parties to an arbitration agreement, or those who are otherwise bound by the latter, directly or by reference.[94] Thus, any project owner, contractor, subcontractor, fabricator, or project manager of a construction project who is bound by an arbitration agreement in a construction contract is under CIAC's jurisdiction in case of any dispute.[95]

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92 Otherwise known as the Construction Industry Arbitration Law.

93 Exec. Order No. 1108 (1985), sec. 4 provides:

Section 4. *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

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

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

See also Section 34, 35, 39 of Chapter 6 of Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law).

94 Rep. Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law), sec. 34, 35, and 39 provide:

Section 34. *Arbitration of Construction Disputes: Governing Law.* — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

Section 35. *Coverage of the Law.* — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

. . . .

Section 39. *Court to Dismiss Case Involving a Construction Dispute.* — A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.

95 Rep. Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Law), Chapter 6, sec. 34, 35, and 39. This provision also includes design professional, consultant, quantity surveyor, bondsman, and issuer of an insurance policy in the enumeration of those who may be bound by an arbitration agreement.

Section 34. *Arbitration of Construction Disputes: Governing Law.* — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

Section 35. *Coverage of the Law.* — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

CIAC is a quasi-judicial body exercising quasi-judicial powers.

A quasi-judicial agency is a government body, not part of the judiciary or the legislative branch, which adjudicates disputes and creates rules which affect private parties' rights.[96] It is created by an enabling statute, and thus, its existence continues beyond the resolution of a dispute and is independent from the will of the parties. Its powers are limited to those expressly granted or necessarily implied in the enabling law.[97]

Quasi-judicial or administrative adjudicatory power has been defined as the power: "(1) to hear and determine *questions of fact* to which legislative policy is to apply, and (2) to decide in accordance with the *standards laid down by the law itself in enforcing and administering the same law*."[98]

Arbitration under a quasi-judicial body is similar to commercial arbitration in that its factual findings are generally accorded respect and finality.

However, commercial arbitration is conducted by ad-hoc bodies created by stipulation of parties for the purpose of settling disputes concerning their private or proprietary interests. In general, the findings in commercial arbitration are respected to uphold the autonomy of arbitral awards.[99]

On the other hand, quasi-judicial agencies were created for a speedier resolution of controversies on matters of state interest that require specialized knowledge and expertise.[100]

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

. . . .

Section 39. *Court to Dismiss Case Involving a Construction Dispute.* — A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.

96 *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 202–203 (2001) [Per C.J. Davide, Jr., First Division], *citing The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per J. Sarmiento, En Banc; *Tropical Homes v. National Housing Authority*, 152 SCRA 540 [1987]; *Antipolo Realty Corp. v. NHA*, 236 Phil. 580 (1987) [Per J. Gutierez, Jr., En Banc; and *Solid Homes, Inc. v. Payawal*, 257 Phil. 194 (1989) [Per Per J. Cruz, First Division].

97 *See Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific*, G.R. No. 204197, November 23, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/204197.pdf> [Per J. Brion, Second Division].

98 Id. at 11–12.

99 Id. at 17.

100 *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 202–203 (2001) [Per C.J. Davide,

CIAC exercises quasi-judicial powers over arbitration disputes concerning construction contracts. Thus, its findings are accorded respect because it comes with the presumption that CIAC is technically proficient in efficiently and speedily resolving conflicts in the construction industry.

Thus, under the Construction Industry Arbitration Law, arbitral awards are binding and shall be final and unappealable, except on pure questions of law:

> Section 19. *Finality of Awards.* — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

Initially, CIAC decisions are appealable only to this Court. However, when the Rules of Court were enacted, appeals from CIAC decisions became appealable to the Court of Appeals under Rule 43:[101]

> Section 1. *Scope.* — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.
>
> Section 2. *Cases Not Covered.* — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

While Rule 43 petitions may pertain to questions of fact, questions of law, or both questions of law and fact, it has been established that factual findings of CIAC may not be reviewed on appeal.[102] In *CE Construction v. Araneta*,[103] this Court explained that appeals from CIAC may only raise

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Jr., First Division], *citing The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per J. Sarmiento, En Banc; *Tropical Homes v. National Housing Authority*, 152 SCRA 540 [1987]; *Antipolo Realty Corp. v. NHA*, 236 Phil. 580 (1987) [Per J. Gutierez, Jr., En Banc; and *Solid Homes, Inc. v. Payawal*, 257 Phil. 194 (1989) [Per Per J. Cruz, First Division].

101 *CE Construction vs. Araneta,* G.R. No. 192725, August 9, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/192725.pdf> 23 [Per J. Leonen, Second Division].

102 Id. at 24.

103 G.R. No. 192725, August 9, 2017

questions of law:

> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: that there were those that enabled questions of fact, there were those that enabled questions of law, and there were those that enabled mixed questions fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC Arbitral Tribunals must remain limited to questions of law.
>
> *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.* explained the wisdom underlying the limitation of appeals to pure questions of law:
>
> > Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
> >
> > Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.
>
> Consistent with this restrictive approach, this Court is duty-bound to be extremely watchful and to ensure that an appeal does not become an ingenious means for undermining the integrity of arbitration or for conveniently setting aside the conclusions arbitral processes make. An appeal is not an artifice for the parties to undermine the process they

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<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/192725.pdf> [Per J. Leonen, Second Division].

voluntarily elected to engage in. To prevent this Court from being a party to such perversion, this Court's primordial inclination must be to uphold the factual findings of arbitral tribunals:

> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. *The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions."* The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. *The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal*, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. *Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.*
>
> Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the narrowest of grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled.[104] (Emphasis in the original, citations omitted)

Thus, CIAC's factual findings on construction disputes are final, conclusive, and not reviewable by this Court on appeal. The only exceptions are when:

> (1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No.

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[104] Id. at 24–26.

> 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[105] (Citation omitted)

Necessarily, before petitioner may raise any question of fact, it must prove that the above circumstances exist in the case at bar.

I

This Court rules that there is a perfected contract between MRT and Gammon.

MRT argues that there was no perfected contract between the parties as Gammon only accepted MRT's offer after MRT had already revoked it.[106] MRT claims that it withdrew its offer to Gammon in its September 8, 1997 Letter, when it suspended the Project to review the foreign exchange rates and interest rates.[107] It emphasizes that while Gammon had already then returned the First Notice to Proceed, it did not return the contract documents until September 12, 1997.[108] By then, MRT had already withdrawn the First Notice to Proceed, and the parties were already renegotiating the contract's cause and object.[109]

On the other hand, Gammon maintains that there was a perfected contract between the parties. It insists that MRT did not withdraw or modify its offer before Gammon signed and returned the First Notice to Proceed and the contract documents. It claims that the contract was not cancelled and was only temporarily and partially suspended, and this did not affect its perfection.[110]

The Court of Appeals affirmed CIAC's finding that the contract was perfected when the contract documents were returned to MRT on September 9, 1997. It found that the contract was merely suspended and not terminated when MRT was studying the effects of the foreign exchange rates and interests on the Project.[111] Moreover, it noted that MRT found it necessary to expressly cancel the First Notice to Proceed, implying that a contract was perfected.[112]

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105 Id. at 26.
106 *Rollo*, pp. 64 and 67 Petition; *rollo*, p. 901, Reply.
107 Id. at 66, Petition.
108 Id. at 64–66, Petition.
109 Id. at 66, Petition; *rollo*, pp. 897–900, Reply.
110 Id. at 833–834, Comment.
111 Id. at 33–34, Court of Appeals Decision.
112 Id. at 36, Court of Appeals Decision.

This Court rules that there is a perfected contract between the parties.

Article 1305 of the Civil Code states:

> Article 1305. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.
>
> Article 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

The requisites of a valid contract are provided for in Article 1318 of the Civil Code:

> (1) Consent of the contracting parties;
> (2) Object certain which is the subject matter of the contract;
> (3) Cause of the obligation which is established.

A contract is perfected when both parties have consented to the object and cause of the contract. There is consent when the offer of one party is absolutely accepted by the other party.[113] The acceptance of the other party may be express or implied.[114] However, the offering party may impose the time, place, and manner of acceptance by the other party, and the other party must comply.[115]

Thus, there are three (3) stages in a contract: negotiation, perfection, and consummation.

Negotiation refers to the time the parties signify interest in the contract up until the time the parties agree on its terms and conditions. The perfection of the contract occurs when there is a meeting of the minds of the parties such that there is a concurrence of offer and acceptance, and all the essential elements of the contract—consent, object and cause—are present. The consummation of the contract covers the period when the parties perform their obligations in the contract until it is finished or extinguished.[116]

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[113] Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made.

[114] CIVIL CODE, art. 1320. An acceptance may be express or implied.

[115] CIVIL CODE, art. 1321.

[116] *Far East Bank and Trust Co. v. Phil. Deposit Insurance Corp.*, 764 Phil. 488, 503 (2015) [Per J. Brion,

To determine when the contract was perfected, the acceptance of the offer must be unqualified, unconditional, and made known to the offeror.[117] Before knowing of the acceptance, the offeror may withdraw the offer.[118] Moreover, if the offeror imposes the manner of acceptance to be done by the offeree, the offeree must accept it in that manner for the contract to be binding.[119] If the offeree accepts the offer in a different manner, it is not effective, but constitutes a counter-offer, which the offeror may accept or reject.[120] Thus, in *Malbarosa v. Court of Appeals*:[121]

> Under Article 1319 of the New Civil Code, the consent by a party is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. An offer may be reached at any time until it is accepted. An offer that is not accepted does not give rise to a consent. The contract does not come into existence. To produce a contract, there must be acceptance of the offer which may be express or implied but must not qualify the terms of the offer. The acceptance must be absolute, unconditional and without variance of any sort from the offer.
>
> The acceptance of an offer must be made known to the offeror. Unless the offeror knows of the acceptance, there is no meeting of the minds of the parties, no real concurrence of offer and acceptance. The offeror may withdraw its offer and revoke the same before acceptance thereof by the offeree. The contract is perfected only from the time an acceptance of an offer is made known to the offeror. If an offeror prescribes the exclusive manner in which acceptance of his offer shall be indicated by the offeree, an acceptance of the offer in the manner prescribed will bind the offeror. On the other hand, an attempt on the part of the offeree to accept the offer in a different manner does not bind the offeror as the absence of the meeting of the minds on the altered type of acceptance. An offer made *inter praesentes* must be accepted immediately. If the parties intended that there should be an express acceptance, the contract will be perfected only upon knowledge by the offeror of the express acceptance by the offeree of the offer. An acceptance which is not made in the manner prescribed by the offeror is not effective but constitutes a counter-offer which the offeror may accept or reject. The contract is not perfected if the offeror revokes or withdraws its offer and the revocation or withdrawal of the offeror is the first to reach the offeree. The acceptance by the offeree of the offer after knowledge of the revocation or withdrawal of the offer is inefficacious. The termination of the contract when the negotiations of the parties terminate and the offer and acceptance concur, is largely a question of fact to be determined by the trial court.[122] (Citations omitted)

Second Division].

117 *Malbarosa v. Court of Appeals*, 450 Phil. 202, 212 (2003) [Per J. Callejo, Sr., Second Division].

118 Id.

119 Id. at 213.

120 Id.

121 450 Phil. 202 (2003) [Per J. Callejo, Sr., Second Division].

122 Id. at 212–213.

In bidding contracts, this Court has ruled that the award of the contract to the bidder is an acceptance of the bidder's offer. Its effect is to perfect a contract between the bidder and the contractor upon notice of the award to the bidder.[123] Thus, in *Valencia v. Rehabilitation Finance Corp.*:[124]

> With respect to the first argument, it is worthy of notice that the proposal submitted by petitioner consisted of several items, among which are: (a) one for P389,980, for the "complete construction of the office building" in question, . . . ; (b) another for P358,480, for the "complete construction of the office building *only*", . . . ; (c) a third one for P18,900, for the "electrical installations *only*", . . . ; and (d) a fourth item for P12,600, for the "plumbing installations *only*" . . .
>
> *Each one of these items was complete in itself*, and, as such, it was distinct, separate and independent from the other items. *The award in favor of petitioner herein, implied, therefore, neither a modification of his offer nor a partial acceptance thereof. It was an unqualified acceptance of the fourth item of his bid, which item constituted a complete offer or proposal on the part of petitioner herein. The effect of said acceptance was to perfect a contract, upon notice of the award to petitioner herein.*[125] (Emphasis supplied)

Likewise, in *Central Bank of the Philippines v. Court of Appeals*:[126]

> As We see it then, contrary to the contention of the Bank, the provision it is citing may not be considered as determinative of the perfection of the contract here in question. Said provision only means that as regards the violation of any particular term or condition to be contained in the formal contract, the corresponding action therefor cannot arise until after the writing has been fully executed. Thus, *after the Proposal of respondent was accepted by the Bank thru its telegram and letter both dated December 10, 1965 and respondent in turn accepted the award by its letter of December 15, 1965, both parties became bound to proceed with the subsequent steps needed to formalize and consummate their agreement. Failure on the part of either of them to do so, entitles the other to compensation for the resulting damages.* To such effect was the ruling of this Court in Valencia vs. RFC 103 Phil. 444. We held therein that *the award of a contract to a bidder constitutes an acceptance of said bidder's proposal and that "the effect of said acceptance was to perfect a contract, upon notice of the award to (the bidder)" . . . We further held therein that the bidder's "failure to (sign the corresponding contract) did not relieve him of the obligation arising from the unqualified acceptance of his offer. Much less did it affect the existence of a contract between him and respondent"* . . .
>
> It is neither just nor equitable that Valencia should be construed to have sanctioned a one-sided view of the perfection of contracts in the sense

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[123] *Central Bank of the Philippines v. Court of Appeals*, 159-A Phil. 21–76, 40 (1975) [Per J. Barredo, Second Division]; *Valencia v. Rehabilitation Finance Corp*, 103 Phil. 444, 449–450 (1958) [Per J. Concepcion, En Banc].

[124] 103 Phil. 444 (1958) [Per J. Concepcion, En Banc].

[125] Id. at 449–450.

[126] 159-A Phil. 21 (1975) [Per J. Barredo, Second Division].

> that the acceptance of a bid by a duly authorized official of a government-owned corporation, financially and otherwise autonomous both from the National Government and the Bureau of Public Works, insofar as its construction contracts are concerned, *binds only the bidder and not the corporation until the formal execution of the corresponding written contract.* [127] (Emphasis supplied)

Thus, the award of a contract to a bidder perfects the contract.[128] Failure to sign the physical contract does not affect the contract's existence or the obligations arising from it.[129]

Applying this principle to the case at bar, this Court finds that there is a perfected contract between the parties. MRT has already awarded the contract to Gammon, and Gammon's acceptance of the award was communicated to MRT before MRT rescinded the contract.

The Invitation to Bid issued to Gammon stated that MRT "will select the Bidder that [MRT] judges to be the most suitable, most qualified, most responsible and responsive, and with the most attractive Price and *will enter into earnest negotiations to finalize and execute the Contract.*"[130]

On May 30, 1997, Gammon tendered its bids.[131]

In a Letter dated July 14, 1997, Gammon submitted another offer to MRT in response to the latter's invitation to submit a final offer considering the fluctuation in foreign exchange rates and an odd-and-even vehicle restriction plan.[132]

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127 Id. at 40.

128 *Central Bank of the Philippines v. Court of Appeals,* 159-A Phil. 21–76, 40 (1975) [Per J. Barredo, Second Division]; *Valencia v. Rehabilitation Finance Corp*, 103 Phil. 444, 449–450 (1958) [Per J. Concepcion, En Banc].

129 Id.

130 *Rollo*, pp. 145–146. "The Owner will select the Bidder that Owner judges to be the most suitable, most qualified, most responsible and responsive, and with the most attractive Price and *will enter into earnest negotiations to finalize and execute the Contract.* If total agreeement cannot be reached with the Bidder first selected as most suitable, the Owner will invite the Bidder considered the next most suitable to enter into earnest negotiations and so forth. The Owner shall be the sole judge as to which Bidder(s) with whom he will enter into earnest negotiations and others shall not protest such selection. Bidders whose Bids are not accepted will be notified in writing. The terms, conditions, value and any other details of any contract entered into will not be revealed to any unsuccessful Bidder.

Metro Rail Transit Development Corporation assumes no obligation whatsoever to compensate or indemnify Bidders for any expense or loss that they may have incurred in the preparation of their Bids nor does Metro Rail Transit Development Corporation guarantee that an award will be made. . . . Metro Rail Transit Development Corporation reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability to or against Metro Rail Transit Development Corporation." (Emphasis supplied).

131 Id. at 149, Letter dated May 30, 1997.

132 Id. at 153–155. "We refer to your fax received this morning inviting us to submit our final offer in the light of two recent developments:

1. Fluctuation in foreign exchange rates
2. Odd and even vehicle restriction plan

In the very limited time you have given us to respond, we propose the following:

. . . .

Parsons thereafter issued the First Notice to Proceed,[133] which stated:

> We are pleased to inform [you] that you have been awarded the work on the construction of the Podium Structure for the MRT-3 EDSA-North Triangle Development Project. The formal contract document, which is the product of a series of discussions and negotiation is herewith attached for your signature.
>
> The Work includes the furnishing of labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with contract document, approved drawings, specifications and your over-all Breakdown of Lump Sum Bid (marked Exhibit "A") amounting to ONE BILLION FOUR HUNDRED ONE MILLION SIX HUNDRED SEVENTY[-]TWO THOUSAND NINETY[-]FIVE PESOS (₱1,401,672,095.00). It is understood that due to the existing squatters in the Area, the work shall be dvided in two (2) separate geographical areas designated as Phase I and Phase II – but shall be treated as one contract and still totalling to ₱1,401,672,095.00. *Further, this award is predicated on the commitments contained in the attached comfort letter (marked Exhibit "B") issued by Gammon Construction Limited, your associate company overseas and receipt of the duly signed letter from the Chief Executive of Gammon Construction Limited that is expected within seven days from the date hereof.*
>
> . . . .
>
> *You may, therefore, proceed with the work at Phase I starting seven (7) days from receipt of this Notice or from the time that Site is dewatered and cleaned up, whichever is later.* It is further understood that Gammon agrees to continue Phase II at the price stated above and the starting time thereof will depend on the completion by others of the footings in time to allow construction of the superstructure in accordance with Gammon's Tender Programme dated 13 August 1997.
>
> . . . .
>
> *Please signify your concurrence by signing the appropriate space below and in the accompanying contract documents and return to Parsons-Interpro the originals.* We will send to you a complete set of documents as soon as it is signed by the Owner.[134] (Emphasis supplied)

In its First Letter, Gammon signed and returned the First Notice to Proceed to signify its consent to its prestations.[135]

In its Second Letter, Gammon transmitted to Parsons the signed Letter

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We are therefore in a high state of preparedness and ready to respond to the Owner[']s acceptance of our offer immediately. Once again, we thank you for giving this opportunity."

133 Id. at 11, Court of Appeals Decision.

134 Id. at 162–165, Notice of Award and Notice to Proceed dated August 27, 1997.

135 Id. at 11, Court of Appeals Decision.

of Comfort to guarantee its obligations in the Project.[136]

On September 9, 1997, Gammon returned to Parsons the contract documents.[137]

MRT argues that the return of the contract documents occurred after it had already revoked its offer, i.e., after it sent its September 8, 1997 Letter, which stated:

> Re: Contract for LRT3 North Triangle Podium Structure
>
> Gentlemen:
>
> Due to current developments in the Philippines' foreign exchange rate and the concomitant soaring interest rates, Metro Rail Transit Development Corp. (MRTDC) will need a week or two to estimate the possible effects and repercussions on the above[-]mentioned project before MRTDC, through the Chairman of the Board, will issue the formal Notice to proceed to your company. When these possible effects and repercussions are analysed and decided upon by our Board, hopefully within the week, we shall notify you at once.[138]

However, MRT had already accepted the offered bid of Gammon and had made known to Gammon its acceptance when it awarded the contract and issued it the First Notice to Proceed on August 27, 1997.

The First Notice to Proceed clearly laid out the object and the cause of the contract. In exchange for ₱1,401,672,095.00, Gammon was to furnish "labor, supervision, materials, plant, equipment and other facilities and appurtenances necessary to perform all the works in accordance with [its bid]."[139]

This acceptance is also manifested in the First Notice to Proceed when it authorized Gammon to proceed with the work seven (7) days from its receipt or from the time the site is de-watered and cleaned up.

Thus, Gammon's receipt of the First Notice to Proceed constitutes the acceptance that is necessary to perfect the contract.

The First Notice to Proceed stated that the award "is predicated on the commitments contained in the . . . comfort letter . . . issued by Gammon

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136 Id. at 12, Court of Appeals Decision.
137 Id. at 33, Court of Appeals Decision.
138 Id. at 12, Court of Appeals Decision; *rollo*, p. 166, MRT Letter dated September 8, 1997.
139 Id. at 156, Notice of Award and Notice to Proceed dated August 27, 1997.

Construction Limited," Gammon's associate company overseas.[140] It also required that Gammon signify its concurrence by signing and returning the First Notice to Proceed and the accompanying contract documents.[141]

Assuming that this constitutes a counter-offer from MRT, this Court rules that Gammon sufficiently complied with these requirements such that the perfection of the contract cannot be affected. Gammon returned the signed First Notice to Proceed on September 2, 1997. It transmitted to Parsons the signed Letter of Comfort to guarantee its obligations in the Project on September 3, 1997.[142] The signed contract documents were returned on September 9, 1997.[143]

Gammon manifested its unqualified acceptance of the First Notice to Proceed on September 2, 1997 in its First Letter:

MRT 3 North Triangle Development
Superstructure Contract
Letter of Award/Notice to Proceed

> We return herewith the original copy of the above mentioned letter which we have countersigned dated 28 August '97. (Please note that Mr. Salagdo's signature is missing).
>
> The contract documentation submitted under cover of your letter is being reviewed now, and should be signed and returned to you tomorrow. The Letter of Comfort has now been signed by the Chief Executive of Gammon Construction Ltd., and is being returned this week.
>
> We confirm that we mobilised resources to site on Friday, 29 August '97 to pump out floodwater. Cleaning up of mud and debris will follow on this week.
>
> During this mobilisation phase, our Site Manager is Mr. Ferdinand Fabro who we introduced to you during the Preconstruction Meeting last Thursday, 28 August '97.
>
> We enclose herewith a copy of our Mobilisation programme dated 1 September '97 (4 x A3 sheets) which includes Design activities, Mobilisation activities, initial Construction activities, key plant and formwork items.
>
> Our Design Team have now relocated to our office in Makati, and are continuing with preparation of shop drawings of all slabs.
>
> We will submit a project organisation chart shortly but in the meantime, we confirm that the following senior [Gammon Philippines, Inc.] staff are now allocated to the project:

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[140] Id. at 162, Notice of Award and Notice to Proceed dated August 27, 1997.
[141] Id. at 164, Notice of Award and Notice to Proceed dated August 27, 1997.
[142] Id. at 12, Court of Appeals Decision.
[143] Id. at 33, Court of Appeals Decision.

. . . .

> As soon as layout of temporary facilities has been agreed with you, establishment will commence in the very limited space allocated . . .
>
> We have today received . . . drawings marked "For Construction", and unless we hear from you to the contrary, we will proceed to procure materials for, plan and construct walls and columns based on these drawings. However, please note that the 3 sheets of construction notes have not been issued. We therefore request issue of these drawings. In addition, there are fifteen 'Requests for Information' (RFIs) which were forwarded to you yesterday – these cover queries which affect both design of slabs and construction of walls, columns and beams. In particular, we urgently need instructions to clarify the reinforcement specification generally, and connectors/splicing of column reinforcement.
>
> Finally, our Performance Bond and Advance Payment Bond are being prepared now – we hope to submit these by the end of the week.[144]

This First Letter shows that Gammon fully consented to the contents and accepted the prestations of the First Notice to Proceed. Gammon's acceptance is also manifested in its undertakings to mobilize resources, to prepare the Performance and Advance Payment Bonds, and to procure materials necessary for the Project. All that remained was the formality of returning the contract documents and the Letter of Comfort, which eventually was complied with by Gammon. Thus, there is already mutual consent on the object of the contract and its consideration, and an absolute acceptance of the offer.

In any case, this Court has ruled that the meeting of the minds need not always be put in writing, and the fact that the documents have not yet been signed or notarized does not mean that the contract has not been perfected.[145] A binding contract may exist even if the signatures have not yet been affixed because acceptance may be express or implied.[146]

Thus, the parties have become bound to consummate the contract such that the failure by one party to comply with its obligations under the contract entitles the other party to damages. Clearly, Gammon was expected to comply with the award when it signified its concurrence. Thus, it is not just or equitable for the perfection of the contract to be one (1)-sided such that the contract only binds Gammon but not MRT just because the contract

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[144] Id. at 160–161, Gammon's First Letter dated September 2, 1997; *rollo*, p. 11, Court of Appeals Decision.

[145] *Far East Bank and Trust Co. v. Phil. Deposit Insurance Corp.*, citing *Limketkai Sons Milling, Inc. v. CA.*, 764 Phil. 488, 515 (2015) [Per J. Brion, Second Division].

[146] *Far East Bank and Trust Co. v. Phil. Deposit Insurance Corp.*, 764 Phil. 488, 503 (2015) [Per J. Brion, Second Division].

documents were not yet returned before MRT suspended the contract.[147]

Moreover, this Court rules that MRT did not revoke its offer when it temporarily suspended the First Notice to Proceed.

MRT's September 8, 1997 Letter stated, thus:

> Due to current developments in the Philippines' foreign exchange rate and the concomitant soaring interest rates, Metro Rail Transit Development Corp. (MRTDC) will need a week or two to estimate the possible effects and repercussions on the above[-]mentioned project before MRTDC, through the Chairman of the Board, will issue the formal Notice to Proceed to your company. When these possible effects and repercussions are analysed and decided upon by our Board, hopefully within the week, we shall notify you at once.[148]

Thereafter, Parsons directed Gammon to hold any further mobilization activities in a facsimile transmission dated September 9, 1997.[149]

On September 11, 1997, Gammon sent Parsons a facsimile to confirm if all requirements in the contract documents were temporarily suspended pending the clarification of the scope and programming of the Project.[150]

In a facsimile transmission dated September 12, 1997, Parsons confirmed "the temporary suspension of all the requirements under the contract except the re-design of the project floor slabs and the site de-watering and clean up":[151]

> With reference to your fax of September 11, 1997 this will *confirm the temporary suspension of all requirements under the terms of the contract until such time as clarification of scope has been received from the owner.* The only exception to this suspension is the re-design of the project[']s floor slabs and the site de-watering and clean up.[152] (Emphasis supplied)

The wording of these communications indicates that the contract is still binding though on hold. Gammon was informed that the contract was temporarily suspended. When a contract is suspended temporarily, it

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147 *Central Bank of the Philippines v. Court of Appeals,* 159-A Phil. 21–76, 40 (1975) [Per J. Barredo, Second Division].

148 *Rollo*, p. 12, Court of Appeals Decision; *rollo*, p. 166, MRT Letter dated September 8, 1997.

149 Id. at 12, Court of Appeals Decision.

150 Id. at 12–13, Court of Appeals Decision; *rollo*, p. 168.
"Please confirm that due to the current problems, all requirements within the Contract Documents for [Gammon Philippines, Inc.] to provide programmes, breakdowns and the like within a fixed number of days of the Notice to Proceed (e.g. Article 22.02 states 15 days for Contract Breakdown) are temporarily suspended pending further clarification on scope and programming."

151 Id. at 13, Court of Appeals Decision.

152 Id. at 169.

provisionally ceases to be operative until the occurrence of a condition or situation that warrants the lifting of the suspension of the contract.[153]

It is different from a cancellation of a contract which terminates the contract such that it does not become operative again.

The usage of the words "temporary suspension" is clear. It is a settled rule that when the words in a contract are clear and leave no doubt on the parties' intentions, the literal meaning shall control.[154] Thus, the above communications cannot be interpreted to mean that the contract has been cancelled or rescinded.

This is bolstered by MRT's express cancellation of the contract on June 10, 1998 in its Fourth Notice to Proceed:

> This notice formally cancels documents referred to as Notice of Award, Notice to Proceed issued on August 27, 1997, which was received by [Gammon Philippines, Inc.] on August 28, 1997 and April 2, 1998, which was received by [Gammon Philippines, Inc.] on April 8, 1998.[155]

It can be implied that prior to the Fourth Notice to Proceed, the First and Third Notices to Proceed were not cancelled and were still valid and subsisting.

Furthermore, MRT's Second Notice to Proceed issued on February 18, 1998 for engineering services based on the redesigned plan was signed by Gammon on March 11, 1998 with a qualification:[156]

> The Contractor refers to the 'Notice of Award' and 'Notice to Proceed' dated 27 August 1997, and understands that this 'Notice to Proceed' effectively lifts the suspension of work notified in Metro Rail Transit Development Corporation letter dated 8 September 1997, in respect of the design activities only for all of the Level 2 slab and that part of the Level 3 slab over the Depot Maintenance Shop and office area . . . ; *and that the existing 'Notice of Award' dated 27 August 1997 is still valid.*[157] (Emphasis supplied)

MRT did not contest Gammon's notice of receipt of the First Notice to Proceed, expressing that it was still valid and was not cancelled.

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153 *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*, 135 Phil. 532, 549 (1968) [Per J. Zaldivar, En Banc].

154 CIVIL CODE, art. 1370.

155 *Rollo*, p. 220.

156 Id. at 14, Court of Appeals Decision; *rollo*, pp. 190–191.

157 Id. at 191.

Additionally, when the parties were discussing the change of plans, MRT did not mention that no contract was executed between them. Instead, it sought to modify its terms and conditions. Thus, Gammon was made to believe that the First Notice to Proceed was in force and effect, albeit temporarily suspended.

Given these circumstances, it cannot be said that no contract was perfected between the parties.

II

The parties argue on the application of *Gammon v. Metro Rail Transit Development Corporation*[158] on the contract's perfection.

MRT claims that this Court's ruling in *Gammon* did not determine that a contract was perfected as to warrant the application of the doctrine of the law of the case.[159] It argues that the issue in *Gammon* was CIAC's jurisdiction over the Notice of Claim, not the existence of the contract.[160] MRT insists that the ruling was limited only to the preliminary question of whether or not there is an arbitration agreement between the parties to give CIAC jurisdiction over the dispute.[161] It was a preliminary finding supported by limited evidence and not the result of an actual trial.[162]

However, Gammon claims that *Gammon* already determined that there is a perfected contract, and thus, the doctrine of the law of the case applies. It insists that without the perfected contract, which contains the provision for arbitration, CIAC would not have acquired jurisdiction over the case. This is shown in that the existence of a contract between the parties was not an issue submitted by the parties in the arbitration proceedings. Thus, CIAC could not have ruled on it.[163]

The Court of Appeals affirmed that there was a perfected contract because MRT alleged in *Gammon* that the contract was novated or abandoned. It found that this was an implied admission that the contract was perfected considering that there was nothing to novate or abandon if there had been no perfected contract. The perfection of the contract was further confirmed by this Court's ruling in *Gammon* that the contract was merely modified.[164]

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158 516 Phil. 561 (2006) [Per J. Tinga, Third Division].
159 *Rollo*, p. 892, Reply.
160 Id. at 893 Reply.
161 Id. at 69–70, Petition; *rollo*, p. 893, Reply.
162 Id. at 69–70, Petition.
163 Id. at 831– 833, Comment.
164 Id. at 34, Court of Appeals Decision.

In *Gammon v. Metro Rail Transit Development Corporation,*[165] this Court held:

> Although there is considerable disagreement concerning the foregoing facts, specifically whether Gammon undertook certain works on the Project and whether a re-bidding for the downgraded podium structure was indeed conducted, the Court does not need to make its own factual findings before it can resolve the *main question of whether the CIAC's jurisdiction was properly invoked. The resolution of this question necessarily involves a two-pronged analysis, first, of the requisites for invoking the jurisdiction of the CIAC, and second, of the scope of arbitrable issues covered by CIAC's jurisdiction.*
>
> EO 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration . . .
>
> . . . .
>
> In this case, the parties submitted themselves to the jurisdiction of the CIAC by virtue of the arbitration clause in the [General Conditions of Contract], which provides:
>
> . . . .
>
> MRTDC, however, contends that the contract between the parties was novated by subsequent [Notices of Award]/[Notices to Proceed] which changed the design of the podium structure and reduced the contract price.
>
> We do not agree. Novation is defined as the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions; substituting the person of the debtor; or subrogating a third person in the rights of the creditor. In order tha[t] an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.
>
> Novation cannot be presumed. The *animus novandi*, whether partial or total, must appear by the express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken. Further, novation may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former. It is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.
>
> *We have carefully gone over the records of this case and are convinced that the redesign of the podium structure and the reduction in the contract price merely modified the contract. These modifications were even anticipated by the [General Conditions of Contract] as it expressly*

[165] 516 Phil. 561 (2006) [Per J. Tinga, Third Division].

states that changes may be made on the works without invalidating the contract, thus:

. . . .

By these terms, the parties evidently agreed that should changes need to be made on the Project plans, such changes shall not annul or extinguish the contract. Thus, it can fairly be concluded that the revisions in the design of the Project and the reduction of the contract price were intended to merely modify the agreement and not to supplant the same.

Parenthetically, while the [Notices of Award]/[Notices to Proceed] adverted to the execution of a formal contract for the Project, no such formal contract appears to have been executed. Instead, the [Notices of Award]/[Notices to Proceed] issued by MRTDC in favor of Gammon denominated the agreement as "Contract No. 4.251.001 for the Construction and Development of the Superstructure MRT 3 North Triangle" and consistently referred to the [General Conditions of Contract] as one of the controlling documents with regard to the transaction.

In fact, as mentioned by the CIAC in its assailed Order dated August 18, 1999, the [Notice of Award]/[Notice to Proceed] dated June 10, 1998 makes reference to the [General Conditions of Contract]. The June 10, 1998 [Notice of Award]/[Notice to Proceed] states:

> A formal contract for the Work is in process and will be available for signature as soon as possible. Pending the execution of the contract, the General conditions, and the Drawings and Specifications included with the Bid Documents (as originally issued and only as applicable to the current scope of work), all of which are incorporated herein by this reference, shall apply in this Notice . . .

A similar reference to the [General Conditions of Contract] appears in the April 2, 1998 [Notice of Award]/[Notice to Proceed]. Thus, even granting that, as the Court of Appeals ruled, the August 27, 1997 [Notice of Award]/[Notice to Proceed] had been novated by the April 2, 1998 [Notice of Award]/[Notice to Proceed] and that, in turn, the latter was rescinded by MRTDC, the arbitration clause in the [General Conditions of Contract] remained in force.

At any rate, the termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect. The Court of Appeals, therefore, erred in ruling that there must be a subsisting contract before the jurisdiction of the CIAC may properly be invoked. *The jurisdiction of the CIAC is not over the contract but the disputes which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof.*

It may even be added that issues regarding the rescission or termination of a construction contract are themselves considered arbitrable issues under Sec. 2, Art. IV of the Rules of Procedure Governing

> Construction Arbitration, the Rules which were in force at the time the present controversy arose. . . .
>
> This brings us to the question of whether the dispute in this case falls within the scope of the arbitration clause.
>
> . . . .
>
> The arbitration clause in the [General Conditions of Contract] submits to the jurisdiction of the CIAC all disputes, claims or questions subject to arbitration under the contract. The language employed in the arbitration clause is such as to indicate the intent to include all controversies that may arise from the agreement as determined by the CIAC Rules. It is broad enough to encompass all issues save only those which EO 1008 itself excludes, *i.e.*, employer-employee relationship issues. Under these Rules, the amount of damages and penalties is a general category of arbitrable issues under which Gammon's claims may fall.[166] (Emphasis supplied, citations omitted)

This Court rules that the doctrine of the law of the case applies in this case.

There is a distinction between the agreement to arbitrate and the contract which may be the subject matter of the dispute between the parties. While the agreement to arbitrate may be in the same subject matter contract, it is a separate agreement in itself.

Under the Construction Industry Arbitration Law, CIAC acquires jurisdiction when the parties agree to submit the matter to voluntary arbitration.

> Section 4. *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. *For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.*
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Emphasis supplied)

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[166] Id. at 569–574.

In *Ormoc Sugarcane Planters' Association, Inc. v. Court of Appeals*,[167] this Court discussed that "an agreement to arbitrate is a contract" in itself:

> Except where a compulsory arbitration is provided by statute, the first step toward the settlement of a difference by arbitration is the entry by the parties into a valid agreement to arbitrate. An agreement to arbitrate is a contract, the relation of the parties is contractual, and the rights and liabilities of the parties are controlled by the law of contracts. In an agreement for arbitration, the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or by implication. (Citation omitted)

Thus, in *Gammon v. Metro Rail Transit Development Corporation*,[168] this Court ruled that CIAC does *not* have jurisdiction over construction *contracts*. Rather, it has jurisdiction over the *dispute* arising from or connected to construction contracts, such that it still acquires jurisdiction even if the contract has been breached, abandoned, terminated, or rescinded.[169]

On the basis of this ruling, this Court concluded that CIAC has jurisdiction over the dispute between MRT and Gammon. Their contract need not be valid or in force before CIAC may arbitrate the matter, so long as there is an agreement to arbitrate.

Thus, the agreement to arbitrate is separate from the construction contract entered into by parties.

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[167] 613 Phil. 240 (2009) [Per J. Leonardo-De Castro, First Division].

[168] 516 Phil. 561 (2006) [Per J. Tinga, Third Division].

[169] Id. at 573–574. This Court stated:

> "At any rate, the termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect. The Court of Appeals, therefore, erred in ruling that there must be a subsisting contract before the jurisdiction of the CIAC may properly be invoked. *The jurisdiction of the CIAC is not over the contract but the disputes which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof.*
>
> It may even be added that issues regarding the rescission or termination of a construction contract are themselves considered arbitrable issues under Sec. 2, Art. IV of the Rules of Procedure Governing Construction Arbitration, the Rules which were in force at the time the present controversy arose. . . .
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> . . . .
>
> The arbitration clause in the [General Conditions of Contract] submits to the jurisdiction of the CIAC all disputes, claims or questions subject to arbitration under the contract. The language employed in the arbitration clause is such as to indicate the intent to include all controversies that may arise from the agreement as determined by the CIAC Rules. It is broad enough to encompass all issues save only those which EO 1008 itself excludes, *i.e.*, employer-employee relationship issues. Under these Rules, the amount of damages and penalties is a general category of arbitrable issues under which Gammon's claims may fall." (Emphasis supplied, citations omitted).

Nonetheless, the doctrine of the law of the case applies in the case at bar. While *Gammon* did not expressly state that the contract was perfected, it concluded that both the construction contract and the arbitration contract existed between the parties.

The doctrine of the law of the case applies when in a particular case, an appeal to a court of last resort has resulted in a determination of a question of law. The determined issue will be deemed to be the law of the case such that it will govern a case through all its subsequent stages.[170] Thus, after ruling on the legal issue and remanding the case to a lower court for further proceedings, the determined legal issue can no longer be passed upon and determined differently in another appeal in the same case.

In *Presidential Decree No. 1271 Committee v. De Guzman*:[171]

> The doctrine of the "law of the case" provides that questions of law previously determined by a court will generally govern a case through all its subsequent stages where "the determination has already been made on a prior appeal to a court of last resort." In *People v. Olarte*:
>
> > Suffice it to say that our ruling in Case L-13027, rendered on the first appeal, constitutes the *law of the case*, and, even if erroneous, it may no longer be disturbed or modified since it has become final long ago. A subsequent reinterpretation of the law may be applied to new cases but certainly not to an old one finally and conclusively determined.
> >
> > > 'Law of the case' has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.
> > >
> > > As a general rule a decision on a prior appeal of the same case is held to be the law of the case whether that decision is right or wrong, the remedy of the party being to seek a rehearing.
> > >
> > > . . . .

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[170] *See Presidential Decree No. 1271 Committee v. De Guzman*, G.R. Nos. 187291 & 187334, December 5, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/187291.pdf> [Per J. Leonen, Second Division].

[171] G.R. Nos. 187291 & 187334, December 5, 2016 [Per J. Leonen, Second Division].

> It is thus clear that posterior changes in the doctrine of this Court [cannot] retroactively be applied to nullify a prior final ruling in the same proceeding where the prior adjudication was had, whether the case should be civil or criminal in nature.
>
> If an appellate court has determined a legal issue and has remanded it to the lower court for further proceedings, another appeal in that same case should no longer differently determine the legal issue previously passed upon. Similar to *res judicata*, it is a refusal to reopen what has already been decided.[172] (Citations omitted)

The legal issue determined in *Gammon* is the jurisdiction of CIAC. However, this determination was arrived at after this Court found that *the parties entered into a construction contract with an agreement to arbitrate.*

This is indicated when *Gammon* determined that there is no novation of the contract between MRT and Gammon as to deprive CIAC of jurisdiction. It ruled that there is merely a *modification*, not an annulment or extinguishment, of the contract; thus:

> We have carefully gone over the records of this case and are convinced that the redesign of the podium structure and the reduction in the contract price *merely modified the contract*. These *modifications* were even anticipated by the [General Conditions of Contract] as *it expressly states that changes may be made on the works without invalidating the contract*, thus:
>
> . . . .
>
> By these terms, the parties evidently agreed that *should changes need to be made on the Project plans, such changes shall not annul or extinguish the contract.* Thus, it can fairly be concluded that the revisions in the design of the Project and the reduction of the contract price were *intended to merely modify the agreement and not to supplant the same.* [173] (Emphasis supplied)

While this Court's determination on the perfection of the contract is not categorical and its finding that the CIAC's jurisdiction is not over the contract but rather over the disputes that arise from it, the existence of a contract, albeit terminated or rescinded, is still contemplated:

> At any rate, the termination of the contract prior to a demand for arbitration will generally have no effect on such demand, provided that the dispute in question either arose out of the terms of the contract or arose when a broad contractual arbitration clause was still in effect. The Court of Appeals, therefore, erred in ruling that there must be a subsisting

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[172] Id. at 20–21.

[173] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corp.*, 516 Phil. 561, 571–572 (2006) [Per J. Tinga, Third Division].

> contract before the jurisdiction of the CIAC may properly be invoked. *The jurisdiction of the CIAC is not over the contract but the disputes which arose therefrom, or are connected thereto, whether such disputes arose before or after the completion of the contract, or after the abandonment or breach thereof.*
>
> It may even be added that issues regarding the rescission or termination of a construction contract are themselves considered arbitrable issues under Sec. 2, Art. IV of the Rules of Procedure Governing Construction Arbitration, the Rules which were in force at the time the present controversy arose. . . .[174] (Emphasis supplied, citations omitted)

Thus, the doctrine of the law of the case applies. The current appeal can no longer bring the existence of the contract into issue.

III

MRT seeks to question the award of lost profits and reimbursements in favor of Gammon.

As to the reimbursement award for engineering services, design work, site de-watering, and clean-up, CIAC awarded the reimbursement claims on account of MRT's allegation in paragraph 77 of its Answer with Compulsory Counterclaim, thus:

> 77. To begin with, MRTDC is willing to pay GAMMON the total amount of P5,493,639.27 representing the sum of P4,821,261.91 and P672,377.36, which comprise GAMMON's claim for cost of the engineering and design services and site de-watering and clean-up works, respectively.[175]

CIAC ruled that as MRT had already admitted its liability for the claims, it was bound by this admission.[176] This finding was also affirmed by the Court of Appeals, which ruled that there was no showing that the admission was made by palpable mistake. It also noted that MRT did not amend its Answer.[177]

MRT argues that while it expressed its willingness to pay Gammon the reimbursements, it only applies to those supported by official receipts.[178] Gammon was allegedly aware that it had to substantiate its claims, as proven by its inclusion of the reimbursement amount in the issues to be resolved by CIAC in the Terms of Reference and its presentation of proof for its

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[174] Id. at 573.
[175] *Rollo*, p. 300, MRT's Answer with Compulsory Counterclaim
[176] Id. at 352, CIAC Decision.
[177] Id. at 23, Court of Appeals Decision.
[178] Id. at 81, Petition; *rollo*, p. 912, Reply.

claims.[179] MRT also insists that its judicial admission is not conclusive because an answer is a mere statement of fact that the filing party is expected to prove; it is not evidence.[180] The trial court is still given leeway to consider evidence especially when the parties agreed to submit the issue for the court's resolution.[181]

MRT avers that judicial admissions cannot supplant the requirement that actual damages must be duly proven. It further asserts that an offer to pay is not an admission of liability under Rule 130, Section 27 of the Rules of Court. The admission was made only as an attempt to settle the issue and to avoid litigation. It explains that the exact amount of ₱5,493,639.27 was mentioned in the Answer with Compulsory Counterclaim because it was the amount Gammon was claiming and which MRT offered to pay, if proven.[182]

On the other hand, Gammon claims that MRT is bound by its allegation in its Answer with Compulsory Counterclaim. It argues that MRT failed to show that its admission was made by palpable mistake.[183] MRT even mentioned the exact amount it was willing to pay. It did not state that it would pay only the amount proved or present any evidence to contradict its admission.[184] Gammon asserts that although the amount was included as an issue in the Terms of Reference, this only meant that MRT can present contrary evidence without needing to prove that the admissions were made through palpable mistake.[185]

This Court rules that MRT is bound by its judicial admission.

Rule 129, Section 4 of the Revised Rules of Court provides:

> Section 4. Judicial admissions. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Judicial admissions may be made by a party in his or her pleadings, during the trial, through verbal or written manifestations, or in other stages of the judicial proceeding.[186] They are binding such that no matter how much the party rationalizes it, the party making the admission cannot

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179 Id. at 82, Petition; *rollo*, p. 912, Reply.
180 Id. at 82, Petition; *rollo*, p. 914, Reply.
181 Id. at 82, Petition.
182 Id. at 914–915, Reply.
183 Id. at 846, Comment.
184 Id. at 849–850, Comment.
185 Id. at 846, Comment.
186 *Spouses Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 365 (2006) [Per J. Sandoval Gutierrez, Second Division].

contradict himself or herself unless it is shown that the admission was made through a palpable mistake.[187]

In this case, MRT alleges that it is willing to pay Gammon the total amount of ₱5,493,639.27, which comprises the latter's claim for cost of engineering and design services, and de-watering and clean-up works.[188]

MRT's allegation was not qualified. It neither stated that Gammon must first present proof of its claims for the cost of engineering and design services, and of de-watering and clean-up works nor amended the Answer with Compulsory Counterclaim to either correct this allegation or to qualify that Gammon must first present official receipts. Thus, CIAC correctly held that MRT is bound by this admission and is estopped from denying its representation.

IV.A

MRT is likewise asserting that the evidence presented by Gammon to prove its entitlement to actual damages is not sufficient.

Actual damages are provided for under Article 2199 of the Civil Code:

> Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Actual damages constitute compensation for sustained measurable losses.[189] It must be proven "with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable."[190] It is never presumed or based on personal knowledge of the court.[191]

In *International Container Terminal Services, Inc. v. Chua*:[192]

> "Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and **susceptible of measurement**. . . . Basic is the rule that **to recover actual damages, not**

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187 Id. at 366.
188 *Rollo*, p. 845.
189 *International Container Terminal Services, Inc. v. Chua*, 730 Phil. 475, 489–490 (2014) [Per J. Perez, Second Division].
190 Id. at 489.
191 Id. at 489–490.
192 730 Phil. 475 (2014) [Per J. Perez, Second Division].

> **only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty**, premised upon competent proof or the best evidence obtainable."
>
> . . . .
>
> This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne. An award of actual damages is "dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof."[193] (Emphasis in the original, citations omitted)

Although official receipts are the best evidence of payment, this Court has acknowledged that actual damages may be proved by other forms of documentary evidence, including invoices.

In *MCC Industrial Sales Corporation v. Ssangayong Corporation*,[194] this Court did not award actual damages because the claimant failed to substantiate its claims with official receipts.[195]

In *G.Q. Garments, Inc. v. Miranda*,[196] this Court held that an allegation of a witness must be supported by receipts or other documentary proofs to prove the claim of actual damages.[197]

In *Gonzales v. Camarines Sur II Electric Cooperative, Inc.*,[198] this Court noted that petitioners did not back up its claims of actual damages by documentary proof such as a receipt or an *invoice*.[199]

For lost profits, Article 2200 of the Civil Code provides:

> Article 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

This Court has ruled that the award of unrealized profits cannot be based on the sole testimony of the party claiming it. In *Producers Bank of the Philippines v. Court of Appeals*:[200]

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193 Id. at 489–490.
194 562 Phil. 390 (2007) [Per J. Nachura, Third Division].
195 Id. at 439.
196 528 Phil. 341 (2006) [Per J. Callejo, First Division]
197 Id. at 359.
198 705 Phil. 511 (2013) [Per C.J. Sereno, First Division]
199 Id. at 519.
200 417 Phil. 646 (2001) [Per J. Melo, Third Division].

In the case at bar, actual damages in the form of unrealized profits were awarded on the basis of the sole testimony of private respondent Salvador Chua, to wit:

. . . .

However, other than the testimony of Salvador Chua, private respondents failed to present documentary evidence which is necessary to substantiate their claim for actual or compensatory damages. In order to recover this kind of damages, the injured party must prove his case, thus:

> When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. (*Cerreno vs. Tan Chuco*, 28 Phil. 312 [1914] quoted in *Central Bank of the Philippines vs. Court of Appeals*, 63 SCRA 431 [1975])

Applying the foregoing test to the instant case, the Court finds the evidence of private respondents insufficient to be considered within the purview of "best evidence." The bare assertion of private respondent Salvador Chua that he lost an average of P18,000.00 per month is inadequate if not speculative and should be admitted with extreme caution especially because it is not supported by independent evidence. Private respondents could have presented such evidence as reports on the average actual profits earned by their gasoline business, their financial statements, and other evidence of profitability which could aid the court in arriving with reasonable certainty at the amount of profits which private respondents failed to earn. Private respondents did not even present any instrument or deed evidencing their claim that they have transferred their right to operate their gasoline station to their relatives. We cannot, therefore, sustain the award of P18,000.00 a month as unrealized profits commencing from October 16, 1984 because this amount is not amply justified by the evidence on record.[201]

IV.B

As to the reimbursement award for engineering services, design work, site de-watering, and clean-up, MRT argues that it was not supported by sufficient documentary evidence as only 2% of the claims have official receipts.[202] It argues that invoice, debit notes, and summaries are not proof of payment. An invoice is a mere detailed statement of the items, price, and

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[201] Id. at 659–661.

[202] *Rollo*, p. 79; *rollo*, p. 908.

charges of the things invoiced[203] while a debit memo is merely an advice to the receiver of an outstanding debt.[204]

Gammon nonetheless insists that it was able to prove its entitlement to the reimbursements.[205] It avers that official receipts are not the only documentary evidence to prove the claim of damages. Invoices and debit notes are allowed. Debit notes do not require an official receipt as additional documentation.[206]

The Court of Appeals found that there are sufficient bases for the award of Gammon's reimbursement claims.[207] It ruled that MRT failed to prove that the evidence was insufficient and that Gammon's computations were erroneous.[208] It found that Gammon provided the best available documentary evidence, through invoices, debit notes, and official receipts.[209]

IV.C

MRT likewise questions the award of lost profits in favor of Gammon.

Gammon presented evidence of its claim for lost profits by presenting as witness Francisco Delos Santos (Delos Santos), the Planning and Estimating Engineer of Gammon since 1996. He was responsible for the preparation of proposals, "negotiations, mobilization, and meetings with and among the parties involved in the Project."[210]

Delos Santos testified that "the average competitive percentage of profit in the construction industry, in Gammon's experience, [was] 5% and [that] the Net Cost Estimate was properly set at ₱65,194,050.93."[211]

CIAC granted the award of lost profits based on Delos Santos' testimony.[212] The Court of Appeals affirmed this finding and found that the award for lost profits was not grounded on pure speculation as "documentary evidence is not absolutely necessary . . . to prove a claim for lost profit."[213] It found that Delos Santos was competent to testify on the matter.[214] In any

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203 Id. at 909.
204 Id. at 910.
205 Id. at 842.
206 Id. at 845.
207 Id. at 24.
208 Id. at 27.
209 Id. at 28.
210 Id. at 223.
211 Id. at 73.
212 Id. at 365.
213 Id. at 32.
214 Id. at 30.

case, it ruled that CIAC shall act without regard to technicalities or legal forms, in accordance with justice and equity and the merits of the case.[215] It also noted CIAC's finding that this Court upheld as reasonable 18% as expected profit estimate.[216]

MRT contests this finding and argues that Delos Santos is not an expert witness.[217] It claims that Delos Santos' testimony was not sufficient because there is no proof of his experience, and his functions consist only of preparing project proposals, negotiations, mobilization, and meetings with and among the parties in the Project.[218] It holds that Delos Santos' testimony was bare, insufficient, self-serving, and unsubstantiated by independent evidence, like audited financial statements or other reports on past projects.[219]

MRT also avers that the 5% lost profits should not be based on the last net estimate of the contract cost because it must be based on the contract price agreed upon. It argues that basing it on the revised scope of work and a greatly increased foreign exchange rate would unjustly enrich Gammon.[220]

On the other hand, Gammon insists that its claim for lost profits was sufficiently substantiated. It asserts that there need not be absolute certainty in its amount to be able to recover lost profits.[221] It argues that "lost profits cannot be denied in a construction contract on the ground of business uncertainty."[222] It also holds that loss of profits can be proven on the basis of experience and the industry standard by which it can be calculated, if there is any.[223]

Gammon asserts that MRT did not refute the 5% amount given by Delos Santos or quantify how much Gammon is actually entitled to. It notes that MRT presented no evidence contrary to what was testified and that this Court has accepted 10% profit as the standard industry practice in the construction business.[224]

This Court affirms the findings of CIAC and of the Court of Appeals.

MRT is raising questions of fact. Questions of fact are not proper in a Petition for Review under Rule 45. This Court can no longer entertain

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215 Id. at 32.
216 Id. at 31.
217 Id. at 76; *rollo*, pp. 905–906.
218 Id. at 905.
219 Id. at 73 and 76.
220 Id. at 77.
221 Id. at 836.
222 Id. at 837.
223 Id.
224 Id. at 840–841.

factual issues, unless there are compelling and cogent reasons, as when the findings were "drawn from a vacuum or arbitrarily reached, or are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd."[225]

The findings of fact in the case at bar was arrived at by CIAC, a quasi-judicial body, the jurisdiction of which is confined to construction disputes. "[F]indings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals."[226]

Moreover, arbitration proceedings are not bound by the technical rules of evidence in judicial proceedings. Arbitrators are to ascertain the facts in each case by all reasonable means without regard to technicalities of law or procedure.[227]

Thus, under Section 13.5 of the CIAC Revised Rules of Procedure Governing Construction Arbitration:

> Section 13.5 *Evidence.* — The parties may offer such evidence as they desire and shall produce such additional documents and witnesses as the Arbitral Tribunal may deem necessary to clear understanding of facts issues for a judicious determination of the dispute(s). The Arbitral Tribunal shall act according to justice and equity and merits of the case, without regard to technicalities or legal forms and need not be bound by any technical rule of evidence. Evidence shall be taken in the presence of the Arbitral Tribunal and all of the parties, except where any of the parties is absent, or has waived his right to be present.
>
> 13.5.1 *Order to produce documentary evidence.* Upon motion of either or both of the parties, or on its own initiative, the Arbitral Tribunal may direct any person, board, body, tribunal, or government office, agency or instrumentality, or corporation to produce real or documentary evidences necessary for the proper adjudication of the issues.
>
> 13.5.2 *Order to give testimony.* The Arbitral Tribunal may, likewise, direct any person to give testimony at any proceedings for arbitration.

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225 *National Housing Authority v. First United Constructors Corp.*, 672 Phil. 621, 658 (2011) [Per J. Perez, Second Division].

226 Id.

227 CIAC REV. RULES OF PROC., sec. 1.3 provides:
Section 1.3 *Judicial Rules Not Controlling.* — In any arbitration proceedings under these Rules, the judicial rules of evidence need not be controlling, and it is the spirit and intention of these Rules to ascertain the facts in each case by every and all reasonable means without regard to technicalities of law or procedure.

Thus, the findings of fact of CIAC are binding, respected, and final. They are not reviewable by this Court, especially when affirmed by the Court of Appeals.[228] "A review of the CIAC's findings of fact would have had the effect of 'setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.'"[229]

The only exceptions subject to this rule were laid out in *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction and Development Corporation*:[230]

> As a rule, findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal. This rule, however admits of certain exceptions.
>
> In *David v. Construction Industry and Arbitration Commission*, we ruled that, as exceptions, factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.
>
> Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.[231] (Citations omitted)

However, petitioner failed to prove that any of these exceptions are present in the case at bar. Thus, this Court will no longer disturb CIAC's factual findings, which were affirmed by the Court of Appeals.

WHEREFORE, the petition is **DENIED**. The Court of Appeals

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228 *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction and Development Corporation*, 540 Phil. 350, 360 (2006) [Per Tinga, Third Division].

229 Id. at 376.

230 540 Phil. 350 (2006) [Per Tinga, Third Division].

231 Id. at 360–361.

October 14, 2011 Decision and January 25, 2012 Resolution in CA-G.R. SP No. 98569 are hereby **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 23 2018