Republic of the Philippines
Supreme Court
Manila

**EN BANC**

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| **LONE CONGRESSIONAL DISTRICT OF BENGUET PROVINCE, represented by HON. RONALD M. COSALAN, REPRESENTATIVE,** *Petitioner,* | **G.R. No. 244063** |
| *- versus -* | |
| **LEPANTO CONSOLIDATED MINING COMPANY and FAR SOUTHEAST GOLD RESOURCES, INC.,** *Respondents.* | |
| x- - - - - - - - - - - - - - - - - - - - - - - x | |
| **REPUBLIC OF THE PHILIPPINES, represented by the MINES AND GEOSCIENCES BUREAU OF** | **G.R. No. 244216** |
| | Present: |

**THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (MGB-DENR),**
*Petitioner,*

*- versus -*

**LEPANTO CONSOLIDATED MINING COMPANY and FAR SOUTHEAST GOLD RESOURCES, INC.,**
*Respondents.*

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,*
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

June 21, 2022

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## DECISION

**INTING, *J.*:**

These consolidated Petitions for Review on *Certiorari*[1] assail the Decision[2] dated April 30, 2018 and the Resolution[3] dated January 14, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 146806. The CA reversed and set aside the Resolution[4] dated May 6, 2016 of Branch 141, Regional Trial Court, Makati City (RTC Branch 141) in SP Proc. Case

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* No part.

1 Filed under Rule 45 of the Rules of Court. *Rollo* (G.R. No. 244063), pp. 23-34; *rollo*, (G.R. No. 244216), pp. 15-62.

2 *Rollo* (G.R. No. 244063), pp. 40-71; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Jose C. Reyes, Jr. (now a retired Member of the Court) and Franchito N. Diamante.

3 Id. at 73-77; penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Franchito N. Diamante and Rodil V. Zalameda (now a Member of the Court).

4 *Rollo* (G.R. No. 244216), pp. 182-194; penned by Judge Maryann E. Corpus-Mañalac.

No. M-7932 that vacated the Final Award[5] dated November 27, 2015 issued by the Ad Hoc Arbitral Tribunal (Arbitral Tribunal) in favor of Lepanto Consolidated Mining Company (Lepanto) and Far Southeast Gold Resources, Inc. (Southeast) (collectively, respondents).

G.R. No. 244216 was filed by the Republic of the Philippines (the Republic), represented by the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR). On the other hand, G.R. No. 244063 was filed by the Lone Congressional District of Benguet Province (District of Benguet), represented by Hon. Ronald M. Cosalan (Cosalan), assailing the CA's denial of its motion to intervene in respondents' case before the CA.

*The Antecedents*

In Mineral Production Sharing Agreement (MPSA) No. 001-90[6] dated March 3, 1990, the Republic, through the DENR, authorized respondents to conduct mining operations on a vast tract of land located in the Municipality of Mankayan, Province of Benguet.[7] Notably, the land area subject of the MPSA covers part of the ancestral domains of the Mankayan Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs).[8]

Section 3.1 of MPSA No. 001-90 provides for an initial 25-year term, renewable for another period of 25 years "*upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided for by law.*"[9]

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5 Id. at 226-259; signed by Chairman Victor C. Fernandez, and Co-Arbitrators Roderick R.C. Salazar III and José Aguila Grapilon.

6 Id. at 260-283.

7 Id. at 18-19.

8 Id. at 19.

9 Id. at 266. Item 3.1 of the Production Sharing Agreement provides:

3.1. THE INITIAL TERM OF THIS AGREEMENT SHALL BE TWENTY-FIVE (25) CONTRACT YEARS FROM THE EFFECTIVE DATE, SUBJECT TO TERMINATION AS PROVIDED HEREIN, RENEWABLE FOR ANOTHER PERIOD OF TWENTY-FIVE (25) YEARS UPON SUCH TERMS AND CONDITIONS AS MAY BE MUTUALLY AGREED UPON BY THE PARTIES OR AS MAY BE PROVIDED BY LAW.

The present controversy relates to the sought renewal of MPSA No. 001-90, as affected by laws enacted subsequent to its execution on March 3, 1990.

On March 3, 1995, Congress enacted Republic Act No. (RA) 7942, otherwise known as the Philippine Mining Act of 1995 (Mining Act), regulating the exploration, development, utilization and conservation of mineral resources.

On October 29, 1997, Congress also enacted RA 8371, or the Indigenous People's Rights Act of 1997 (IPRA). The IPRA enjoins all departments and other government agencies from granting, issuing or *renewing* any concession, license or lease, or from entering into any production-sharing agreement, *without prior certification from the National Commission on Indigenous Peoples (NCIP) that the area affected does not overlap with any ancestral domains*.[10] Specifically, the IPRA requires the "Free and Prior Informed and Written Consent" (FPIC) of the affected ICCs/IPs as a condition for the issuance of the certificate. The requirement is herein referred to as "FPIC and NCIP Certification Precondition."

Relatedly, the NCIP Administrative Order No. 1-98[11] was issued outlining the procedures and guidelines for the implementation of the IPRA, more particulary on the requirement of the certification as a pre-condition for the issuance of any mining permits or licenses.[12]

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[10] Section 59 of Republic Act No. 8371 provides:

SECTION 59. *Certification Precondition.* — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, *without prior certification from the NCIP that the area affected does not overlap with any ancestral domain.* Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, *That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned*: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

[11] Entitled, "Rules and Regulations Implementing Republic Act No. 8371, otherwise known as the 'Indigenous Peoples' Rights Act of 1997,'" approved on June 9, 1998.

[12] Sections 6 and 9, Part II, Rule VIII, NCIP Administrative Order No. 1-98 provides:

Section 6. *Existing Contracts, Licenses, Concessions, Leases, and Permits Within Ancestral Domains.* — Existing contracts, licenses, concessions, leases and permits for the exploitation of natural resources within the ancestral domain may continue to be in force and effect until they expire. *Thereafter, such contracts, licenses, concessions, leases and permits shall not be renewed without the free and prior informed consent of the IP*

As MPSA No. 001-90 was about to expire on March 18, 2015, respondents wrote the MGB-Cordillera Administrative Region (CAR) a Letter[13] dated May 22, 2014, expressing their intention to renew the agreement for a period of another 25 years under the same terms and conditions pursuant to Section 3.1 thereof.

*Controversy arose* when the MGB-CAR, while informing Lepanto that it had substantially complied with the requirements for the renewal of MPSA No. 001-90, advised respondents that their joint application for renewal would be endorsed to the NCIP for appropriate action, supposedly for the required FPIC and NCIP Certification Precondition.[14] Respondents questioned the endorsement, arguing that the imposition of the certification as a pre-condition for the issuance of any mining permits or licenses would impair their vested rights to renew MPSA No. 001-90. They invoked the following contract and law provisions:

1) Section 3.1 of the MPSA No. 001-90 stating that the term of twenty-five (25) years is "renewable for another period of 25 years *upon such terms and conditions as may be mutually agreed upon by the parties or as may be provided by law*;"

2) Section 32 of the Mining Act or RA 7942, which provides that "mineral agreements shall have a term not exceeding 25 years to start from the date of execution thereof, and *renewable* for another term not

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*community members and upon renegotiation of all terms and conditions thereof.* All such existing contracts, licenses, concessions, leases and permits may be terminated for cause upon violation of the terms and conditions thereof. (Italics in the original and supplied.)

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Section 9. *Certification Precondition Prior to Issuance of any Permits or Licenses.* —

a) *Need for Certification. No department of government or other agencies shall issue, renew or grant any concession, license, lease, permit or enter into any production sharing agreement without a prior certification from the NCIP that the area affected does not overlap any ancestral domain.*

b) *Procedure for Issuance of Certification by NCIP.*

x x x x

(2) The certification shall be issued only upon the free, prior, informed and written consent of the ICCs/IPs who will be affected by the operation of such concessions, licenses or leases or production-sharing agreements. A written consent for the issuance of such certification shall be signed by at least a majority of the representatives of the all households comprising the concerned ICCs/IPs. (Italics in the original and supplied.)

[13] *Rollo* (G.R. No. 244216), pp. 284-286.

[14] Id. at 290.

exceeding 25 years *under the same terms and conditions thereof, without prejudice to changes mutually agreed upon by the parties*;"

3) Section 14.2 of the MPSA No. 001-90, which provides that "*any term and condition more favorable to the production sharing contractors resulting x x x from the enactment of a law, regulation, or administrative order shall inure to the benefit of the contractors and such law, regulation or administrative order shall be considered a part of [the] agreement*;" and

4) Section 56 of the IPRA mandating that "*property rights within the ancestral domains already existing and/or vested upon effectivity of this act, shall be recognized and respected.*"[15]

On January 22, 2015, respondents wrote the DENR Secretary, reiterating their position that MPSA No. 001-90 is exempt from the IPRA requirement on the FPIC and Certification Precondition.[16] On February 18, 2015, respondents served the Republic, through the DENR, a Demand for Arbitration[17] pursuant to Section XII of MPSA No. 001-90 which pertinently provides:

SECTION XII

ARBITRATION

12.1 THE GOVERNMENT AND THE CONTRACTORS SHALL CONSULT WITH EACH OTHER IN GOOD FAITH AND SHALL EXHAUST ALL AVAILABLE REMEDIES TO SETTLE ANY AND *ALL DISPUTES* OR DISAGREEMENTS *ARISING OUT OF OR RELATING TO* THE VALIDITY, *INTERPRETATION*, ENFORCEABILITY, OR PERFORMANCE *OF THIS AGREEMENT* BEFORE RESORTING TO ARBITRATION.[18] (Italics supplied.)

Thereafter, arbitration ensued in an Arbitral Tribunal before which the parties submitted the following issues:

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[15] Id. at 291-292.
[16] Id. at 72.
[17] Id. at 299-301.
[18] Id. at 278.

A

Whether or not the parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA 001-90, is under the original and exclusive jurisdiction of the [regular] court[s].

B

Whether or not the parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA 001-90 is arbitrable or is within the scope of the arbitration agreement.

C

Whether or not the FPIC and [NCIP] Certification Precondition may be validly imposed as a requirement for the renewal of MPSA 001-90.[19]

Meanwhile, on March 18, 2015, respondents obtained a Writ of Preliminary Injunction[20] from Branch 149, RTC, Makati City in Sp. Proc. Case No. M-7767, enjoining the Republic and its agencies, including the DENR, MGB and NCIP, from disturbing respondents' mining operations in the area covered by MPSA No. 001-90, pending the resolution of the dispute.

On November 27, 2015, the Arbitral Tribunal issued a Final Award[21] (Arbitral Award) holding that the issue arising from the FPIC and NCIP certification requirement for the renewal of MPSA 001-90 is arbitrable, thus:

> WHEREFORE, after considering the submissions/pleadings and evidence submitted by the parties, the Tribunal has decided, in full and final resolution of the issues submitted for determination in the arbitration, as follows:
>
> 1. The parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA is not under the original and exclusive jurisdiction of the court;

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19 Id. at 235-236.
20 Id. at 343-344.
21 Id. at 226-259.

> 2. The parties' disagreement regarding the imposition of the FPIC and [NCIP] Certification Precondition as a requirement for the renewal of MPSA is arbitrable or is within the scope of the arbitration agreement; and
>
> 3. The FPIC and [NCIP] Certification Precondition may not be validly imposed as a requirement for the renewal of MPSA 001-90, and the latter should be renewed under the same terms and conditions, without prejudice to changes mutually agreed upon by the parties.
>
> 4. [The Republic] must reimburse Claimants the amount of Two Million Six Hundred Thousand Pesos (Php2,600,000.00), which the Claimants have advanced on behalf of the [Republic].
>
> SO ORDERED.[22]

*First*, ruling for the arbitrability of the disagreement of the parties, the Arbitral Tribunal debunked the Republic's argument that the Arbitral Tribunal has no jurisdiction to settle the controversy calling for the interpretation of laws relating to the MPSA's renewal clause. The Arbitral Tribunal cited the *policy on arbitration*[23] that arbitral tribunals have jurisdiction to interpret and apply relevant laws in order to resolve the dispute submitted to it by the parties. It underscored that the policy applies even if the referral would tend to oust a court of its jurisdiction.[24]

*Second*, the Arbitral Tribunal characterized the FPIC and NCIP Certification Precondition requirement as an "unfavorable future legislation requirement" relative to MPSA No. 001-90, thus making it prejudicial to respondents for being violative of Section 14.2 thereof, as well as Section 56 of the IPRA mandating that "*property rights within*

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[22] Id. at 258-259.

[23] Rule 2.2 of the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules) provides:

> Rule 2.2. *Policy on arbitration. — (A) Where the parties have agreed to submit their dispute to arbitration, courts shall refer the parties to arbitration pursuant to Republic Act No. 9285 bearing in mind that such arbitration agreement is the law between the parties and that they are expected to abide by it in good faith. Further, the courts shall not refuse to refer parties to arbitration for reasons including, but not limited to, the following:*
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> a. *The referral tends to oust a court of its jurisdiction;*
>
> x x x x
>
> f. *One or more of the issues are legal and one or more of the arbitrators are not lawyers*;
>
> x x x x
>
> (Italics supplied).

[24] *Rollo* (G.R. No. 244216), pp. 237-238.

*the ancestral domains already existing and/or vested upon its (IPRA) effectivity shall be recognized and respected.*" The Arbitral Tribunal noted that the areas affected by MPSA No. 001-90 indeed overlap with ancestral domains. With the imposition of the certification not stipulated by the parties in the agreement, respondents would then be obligated to acquire the consent of the concerned ICCs/IPs, who are not even parties to the MPSA No. 001-90.[25]

*Third*, the Arbitral Tribunal held that the renewability of MPSA No. 001-90 under its original terms and conditions is a vested right of respondents, anchored on the fact that they heavily spent for and engaged in mining operations over the years with the renewal provision in mind. The Arbitral Tribunal noted that the Republic failed to refute respondents' documents showing that respondents spent billions of pesos as exploration and other pre-development costs, which include the construction of the Tailings Dam. To the Arbitral Tribunal, the imposition of the FPIC and NCIP Certification Precondition, which was not stipulated in MPSA No. 001-90, as a pre-condition for its renewal would amount to an outright confiscation respondents' substantial financial investments.[26]

*Fourth*, the Arbitral Tribunal found that MPSA No. 001-90 was already deemed renewed on the basis of the correspondence between the parties, indicating that the Republic, through the MGB-CAR, found Lepanto to have substantially complied with all requirements for the joint renewal of the agreement, save for the new imposition of FPIC and NCIP Certification Precondition under the IPRA.[27]

Disagreeing, the Republic filed a Petition to Vacate Arbitral Award[28] with the RTC Branch 141, based on the following grounds: *first*, the matter of applicability of IPRA imposing the FPIC and NCIP Certification as an additional requirement for the renewal of MPSA No. 001-90 is beyond the scope of the arbitration agreement.[29] *Second*, the application of IPRA is a matter of public policy which cannot be subject to the will of the parties, or to the determination of the Arbitral Tribunal, and this public policy on the protection and promotion of the interests of

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[25] Id. at 246.
[26] Id. at 229-253.
[27] Id. at 257.
[28] Id. at 200-225.
[29] Id. at 187.

the ICCs/IPs is deemed written in the MPSA.[30] *Third*, the renewal of MPSA No. 001-90 is imbued with public interest, and is thus subject to the inherent police power of the State to protect and promote the interests of the ICCs/IPs.[31] *Fourth*, respondents do not have vested rights to renew the agreement, the same being contingent upon their full compliance with the requirements imposed by laws, more particularly the IPRA's FPIC and NCIP Certification Precondition.[32]

*Ruling of the RTC Branch 141*

In its Resolution[33] dated May 6, 2016, the RTC Branch 141 sustained the Republic's arguments and vacated the Arbital Award, *viz.*:

> WHEREFORE, judgment is hereby rendered in favor of the petition. Except for the award of reimbursement of costs, the Final Award dated November 27, 2015 is hereby VACATED for having been rendered in excess of the Tribunal's authority and outward disregard of the law and public policy.
>
> SO ORDERED.[34]

The RTC Branch 141 found that the Arbitral Tribunal exceeded its authority in taking cognizance of the subject controversy.

The RTC Branch 141 ruled that the dispute arising from the interpretation of the renewal clause of the MPSA No. 001-09 cannot be resolved within the confines of the parties' contract because it necessitates the determination of the applicability of the IPRA and related regulations imposing the FICP and NCIP Certification Precondition. Moreover, the RTC Branch 141 characterized the enactment of the IPRA as the State's exercise of police power promoting and protecting the rights of the ICCs/IPs, which it opined as superior to respondents' invocation of the principle of non-impairment of contracts. To the RTC Branch 141, the parties cannot dispense with the requirement without contravening the underlying public policy embodied in the IPRA on the promotion and protection of the rights of

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30 Id.
31 Id.
32 Id.
33 Id. at 182-194.
34 Id. at 194.

the ICCs/IPs. Thus, citing Rule 19.10[35] of the Special Rules of Court on Alternative Dispute Resolution[36] (Special ADR Rules), the RTC Branch 141 vacated the Arbitral Award on the ground that it contravenes such declared public policy.[37]

In its Order[38] dated July 5, 2016, the RTC Branch 141 denied respondents' motion for reconsideration.

Respondents then elevated the case to the CA *via* a petition for review under the Special ADR Rules.[39]

Meanwhile, on August 31, 2017, the District of Benguet, represented by Cosalan, filed a Motion for Leave to Intervene.[40]

*Ruling of the CA*

In the assailed Decision[41] dated April 30, 2018, the CA set aside the Resolution dated May 6, 2016 and Order dated July 5, 2016 of the RTC Branch 141, and denied the Motion for Leave to Intervene of the District of Benguet. Thus, the CA affirmed the Arbitral Award in favor of respondents:

> WHEREFORE, the instant petition is hereby GRANTED.
>
> The Resolution dated May 6, 2016 and Order dated July 5, 2016 in SP. Proc. Case No. M-7932 rendered by Branch 141, Regional Trial Court of Makati City are SET ASIDE.
>
> Accordingly, the Award dated November 27, 2015 of the Arbitral Tribunal is hereby AFFIRMED.

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35 Rule 19.10 of the Special ADR Rules provides:
Rule 19.10. *Rule on judicial review on arbitration in the Philippines.* — x x x
If the Regional Trial Court is asked to *set aside an arbitral award* in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only *if the same amounts to a violation of public policy.*
x x x x. (Italics supplied.)

36 A.M. No. 07-11-08-SC, approved on September 1, 2009.

37 *Rollo* (G.R. No. 244216), p. 190.

38 Id. at 195-199.

39 Id. at 119-179.

40 *Rollo* (G.R. No. 244063), pp. 79-88.

41 Id. at 40-71.

SO ORDERED.[42]

The CA underscored that the District of Benguet could no longer intervene in respondents' petition for review for the reason that it failed to intervene during the arbitration proceedings, or in the Republic's action to vacate the Arbitral Award before the RTC Branch 141. The CA added that the intervention would only cause undue delay of proceedings.[43]

As regards the main case, the CA found that the RTC Branch 141 committed grave abuse of discretion amounting to excess of jurisdiction when it vacated the Arbitral Award.[44]

*First*, the CA characterized as a legal conflict the parties' *disagreement regarding the imposition by the IPRA of the FPIC and NCIP Certification Precondition for the renewal of MPSA No. 001-90.* Underscoring that the IPRA itself states that property rights within the ancestral domains already existing and/or vested upon its effectivity shall be recognized and respected, the CA held that the conflict relates to the correct interpretation and enforceability of the MPSA's renewal provision; hence, it is a proper subject of arbitration pursuant to the MPSA Arbitration Clause. The CA added that the Arbitral Tribunal has authority and jurisdiction to interpret and apply relevant laws in resolving the disputes presented before it.[45]

*Second*, the CA debunked the Republic's argument that a complete, final and definite award was not made by the Arbitral Tribunal upon the subject matter before it, with the NCIP not being impleaded as a party to the arbitration proceedings. The CA ruled that the Republic is deemed to have acted for and in behalf of the entire government machinery, including its agency, the NCIP.[46]

*Third*, the CA held that the RTC Branch 141 acted in excess of jurisdiction when it explored the merits of the Arbitral Award and passed

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[42] Id. at 70.
[43] Id. at 52.
[44] Id. at 70.
[45] Id. at 53-55.
[46] Id. at 58-60.

upon the issue of whether or not the FPIC and NCIP Certification Precondition may validly be imposed as a precondition for the renewal of MPSA No. 001-90, when the same issue was specifically submitted by the parties to the Arbitral Tribunal for resolution. It added that the grounds for vacating an arbitral award are not concerned with the correctness of the award, but only with the validity of the arbitration agreement or the regularity of the arbitration proceedings.[47]

*Fourth*, the CA ruled that courts are without power to amend or overule the Arbitral Award merely because of disagreement on matters of law or facts as determined by the arbitrators. It added that the RTC Branch 141, in interfering with the Arbitral Tribunal's determination of facts and/or interpretation of the law, *assumed the existence of violation of law and public policy.* Emphasizing that the RTC Branch 141 questioned the correctness of the Arbitral Award and not the validity of the arbitration agreement or the regularity of the arbitration proceedings, the CA found no ground to vacate the award. To the CA, the consequence of the interpretation and application by the Arbitral Tribunal of the parties' renewal clause, as well as the relevant provisions of the Mining Act and IPRA itself respecting the rights of respondents in MPSA No. 001-90 *vis-à-vis* the IPRA FPIC and NCIP Certification Precondition, cannot be challenged under the pretext of a public policy violation.[48]

In a subsequent Resolution[49] dated January 14, 2019, the CA denied the Republic's motion for reconsideration.

Hence, the consolidated petitions.[50]

In G.R. 244063, the District of Benguet assigns as error the CA's denial of its sought intervention in respondents' petition.[51]

On the other hand, in G.R. No. 244216, the Republic raises the following issues:[52]

47 Id. at 67.
48 Id. at 68-69.
49 Id. at 73-77.
50 In a Resolution dated February 18, 2019, the Court resolved to consolidated G.R. No. 244063 with G.R. No. 244216; *id.* at 9-10.
51 Id. at 26.
52 *Rollo* (G.R. No. 244216), pp. 38-39.

A

THE COURT OF APPEALS ERRED IN RULING THAT THE RTC ACTED IN EXCESS OF JURISDICTION WHEN IT PASSED UPON THE ISSUE OF WHETHER THE FPIC AND CERTIFICATE PRECONDITION MAY BE VALIDLY IMPOSED AS REQUIREMENTS FOR THE RENEWAL OF MPSA 001-90.

B

THE COURT OF APPEALS ERRED IN RULING THAT THE RTC MAY NOT SET ASIDE THE ARBITRAL AWARD ON THE GROUND THAT IT AMOUNTS TO A VIOLATION OF LAW AND PUBLIC POLICY.

C

THE COURT OF APPEALS ERRED IN RULING THAT THE ARBITRAL TRIBUNAL MADE A COMPLETE, FINAL AND DEFINITE AWARD UPON THE SUBJECT MATTER SUBMITTED TO THEM.

D

THE COURT OF APPEALS ERRED IN RULING THAT THE ARBITRAL TRIBUNAL DID NOT EXCEED ITS AUTHORITY IN RENDERING THE ARBITRAL AWARD.[53]

*Issues*

Submitted for resolution are the following core issues:

1. Whether the CA erred in denying the motion for leave to intervene of the District of Benguet in respondents' petition against the RTC Branch 141 Resolution vacating the Arbitral Award.

2. Whether the CA correctly sustained the Arbitral Award.

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[53] Id. at 38-39.

*The Court's Ruling*

*G.R. No. 244216: The CA correctly denied District of Benguet's sought intervention.*

The District of Benguet faults the CA in denying its motion for leave to intervene based on a procedural technicality; that is, it failed to timely intervene in the arbitration and RTC proceedings. The District of Benguet maintains that it has legal interest in the case, asserting that it represents the interests of its constituents falling as ICCs/IPs, whose rights are claimed to be affected by the renewal of MPSA No. 001-90.[54]

The arguments of the District of Benguet fail to persuade.

It is apparent that the provisions of the Rules of Court are being referred to in the arguments of the District of Benguet, as well as in the CA's reason for denying its sought intervention. However, the remedy of intervention does not extend to arbitration cases.

A.M. No. 07-11-08-SC was promulgated setting forth the Special ADR Rules as a procedure for achieving speedy and efficient means of resolving cases pending before all courts in the Philippines.[55] The distinguishing feature of arbitration as an alternative mode of dispute resolution is *party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes* with the greatest cooperation of and the least intervention from the courts.[56]

Notably, the Special ADR Rules do not include a mechanism for intervention provided under the Rules of Court. Rule 1.1 of the Special ADR Rules enumerates the instances when the Special ADR Rules shall apply, namely: "(a) Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement; (b) Referral to Alternative Dispute Resolution; (c) Interim Measures of Protection; (d) Appointment of Arbitrator; (e) Challenge to Appointment of Arbitrator; (f) Termination of Mandate of Arbitrator; (g) Assistance in Taking

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[54] *Rollo* (G.R. No. 244063), pp. 26-27.
[55] See Section 2 of Republic Act No. 9285.
[56] See Rule 2.1 of the Special ADR Rules.

Evidence; (h) Confirmation, Correction or Vacation of Award in Domestic Arbitration; (i) Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration; (j) Recognition and Enforcement of a Foreign Arbitral Award; (k) Confidentiality/Protective Orders; and (l) Deposit and Enforcement of Mediated Settlement Agreements."[57]

That a resort to the rule on *intervention* under the Rules of Court even in a suppletory manner is *not allowed*[58] is evident from Rule 22.1 of the Special ADR Rules, which explicitly states that "[t]he provisions of the Rules of Court that are applicable to the proceedings enumerated in Rule 1.1 of [the] Special ADR Rules have either been *included and incorporated in* [*the*] *Special ADR Rules* or *specifically referred to* [therein]."[59] Further, Rule 1.13 thereof provides that "[i]n situations where no specific rule is provided under the Special ADR Rules, the court shall *resolve such matter summarily and be guided by the spirit and intent of the Special ADR Rules and the ADR Laws.*"

The lack of a mechanism for intervention in arbitration proceedings must necessarily be interpreted according to the spirit or intent of the Special ADR Rules and ADR Laws. This flows from the principle "*ratio legis est anima*," which provides that "a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and that which is within the letter but not within the spirit is not within the statute."[60] Thus, every interpretation of the Special ADR Rules and ADR Laws should be made consistent with their objectives, *i.e.*, to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes, as well as to achieve speedy and efficient resolution of disputes, and curb a litigious culture.[61]

In any event, the District of Benguet failed to timely intervene in the RTC proceedings where the Republic sought to vacate the Arbitral Award.

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57 See Rule 1.1 of the Special ADR Rules.

58 *Department of Environment and Natural Resources v. United Coconut Planters Consultants, Inc.*, 754 Phil. 513, 531 (2015).

59 See Rule 22.1 of the Special ADR Rules.

60 See *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 273 (1987).

61 See Rule 2.1 of the Special ADR Rules.

Section 2, Rule 19 of the Rules of Court provides that a "motion to intervene may be filed at any time before rendition of judgment by the trial court."[62] Here, the District of Benguet filed its motion for leave to intervene only before the CA in respondent mining companies' petition seeking to reverse and set aside the Decision of the RTC Branch 141, which vacated the Arbitral Award. As noted by the CA, the motion was filed only after it directed respondent mining companies and the Republic to file their respective memoranda.

Suffice it to state that the CA already decided on respondent mining companies' petition, and rendered the assailed Decision and Resolution subject of the instant petitions before the Court. Indeed, to entertain the sought intervention at this late stage would only further delay the resolution of the cases. It bears underscoring, as well, that it is the State, or the Republic, through the MGB-DENR, that has the legal interest to represent the rights and interests of the Mankayan ICCs/IPs sought to be affected by the renewal of MPSA No. 001-90. This flows from the State's policy on the protection of the rights of indigenous cultural communities, as well as of ensuring their economic, social, and cultural well-being.[63]

*G.R. No. 244216: The Arbitral award in favor of respondent mining companies must be vacated.*

Arbitration is an alternative mode of dispute resolution outside of the regular court system governed by RA 876[64] (Arbitration Law), RA 9285[65] (2004 ADR Act) and the Special ADR Rules. It is a voluntary dispute resolution process in which one or more arbitrators—appointed in accordance with the agreement of the parties, or relevant ADR laws and rules—resolve a dispute of the parties by rendering an arbitral award.[66] Being essentially a contractual undertaking, resort to arbitration

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62 See Section 2, Rule 19 of the Rules of Court.

63 Section 5, Article XII of the Constitution.

64 Entitled, "An Act to Authorize the Making of Arbitration and Submission Agreements, to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and For Other Purposes," approved on June 19, 1953.

65 Entitled, "An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and For Other Purposes," approved on April 2, 2004.

66 Section 3(d) of Republic Act No. 9285 provides:

SECTION 3. *Definition of Terms.* — For purposes of this Act, the term:

x x x x

requires consent from both parties in the form of an arbitration clause that pre-exists the dispute.[67] The parties, by entering into an arbitration agreement, undertake to submit their dispute to a tribunal of arbitrators of their own choosing and to be bound by its resolution.[68]

In the case, respondents insist on the rule on autonomy of arbitral awards, while the Republic invokes the exceptions thereof, more particularly, violation of public policy, as will be thoroughly addressed in the following discussion.

*The rule on autonomy of arbitral awards is not absolute.*

Under the 2004 Arbitration Act, an arbital award may be questioned before the regional trial court, which may confirm, vacate, set aside, modify, or correct the award.[69] The nature of this remedy against an arbitral award is embodied in the 2009 Special ADR Rules, *viz*:

> Rule 19.7. *No appeal or certiorari on the merits of an arbitral award.* – An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding. Consequently, a party to an arbitration *is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award.* (Italics supplied.)

In *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*,[70] the Court underscored on the contemplated lack of appeal or *certiorari* mechanism, as follows:

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(d) "Arbitration" means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act, resolve a dispute by rendering an award;

x x x x

67 *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, 800 Phil. 721, 741 (2016).

68 Id.

69 Section 46 of Republic Act No. 9285 provides:

SECTION 46. *Appeal from Court Decisions on Arbitral Awards.* — A decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

x x x x

70 800 Phil. 721 (2016).

> [A]n arbitral award is not appealable via Rule 43 because: (1) there is no statutory basis for an appeal from the final award of arbitrators; (2) arbitrators are not quasi-judicial bodies; and (3) *the Special ADR Rules specifically prohibit the filing of an appeal to question the merits of an arbitral award.*[71]
>
> x x x x
>
> A *losing party is likewise precluded from resorting to certiorari* under Rule 65 of the Rules of Court. *Certiorari* is a prerogative writ designed to correct errors of jurisdiction committed by a judicial or quasi-judicial body. Because an arbitral tribunal is not a government organ exercising judicial or quasi-judicial powers, it is removed from the ambit of Rule 65.
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> *Not even the Court's expanded certiorari jurisdiction under the Constitution can justify judicial intrusion into the merits of arbitral awards.* While the Constitution expanded the scope of *certiorari* proceedings, this power remains limited to a review of the acts of "any branch or instrumentality of the Government." *As a purely private creature of contract, an arbitral tribunal remains outside the scope of certiorari.*[72] (Italics supplied.)

While the lack of an effective appeal mechanism reflects the arbitration policy of non-intervention on the substantive merits of arbitral awards,[73] *this rule of autonomy of arbitral awards is not absolute.*

Under Section 24 of the Arbitration Law, one seeking to vacate an arbitral award must prove affirmatively the following:

> (a) [The] award is procured by corruption, fraud, or other undue means; or
>
> (b) [That] there was evident partiality or corruption in the arbitrators or any of them; or

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[71] Id. at 751.

[72] Id. at 754-756.

[73] Rule 2.1 of the Special ADR Rules provides:

> Rule 2.1. *General policies.* — It is the policy of the State to actively promote the use of various modes of ADR and to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts.
>
> x x x x

> (c) [That] the arbitrators were guilty of misconduct [that materially prejudiced the rights of any party]; or
>
> (d) [That] 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.[74] (Italics supplied.)

An arbitral award may also be vacated in cases where an arbitrator, otherwise disqualified to act, willfully refrained from disclosing his or her disqualification to the parties.[75]

The foregoing grounds contemplate *integrity of the arbitral tribunal* (*i.e.*, award is procured through fraud, corruption, undue means, or evident partiality on the part of the arbitrators, among others),[76] and the *irregularites in the arbitration proceedings*, as grounds for vacating a domestic arbitral award.

Another exception to the autonomy of arbitral awards, a notable one, is based on public policy considerations in reference to Article 34 of the 1985 United Nations Commission on International Trade Law Model Law. This is reproduced in Chapter 4 of the Implementing Rules and Regulations (IRR) of the 2004 ADR Act which provides that an arbitral award may be vacated if it is *in conflict with the public policy* of the Philippines.[77] While this applies particularly to International Commercial Arbitration, the ground is made applicable to domestic arbitration by the Special ADR Rules.[78] Rule 19.10 thereof reads:

> Rule 19.10. *Rule on judicial review on arbitration in the Philippines.* — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an

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74 Section 24 of Republic Act No. 876, referred to under Rule 19.10 of the Special ADR Rules.

75 See Rule 19.10 of the Special ADR Rules.

76 See *Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.*, G.R. Nos. 230112 & 230119, May 11, 2021.

77 Article 4.34 of the Implementing Rules and Regulations of Republic Act No. 9285:

> Article 4.34. Application for Setting Aside an Exclusive Recourse against Arbitral Award.
>
> (ii) The Court finds that:
>
> (aa) the subject-matter of the dispute is *not capable of settlement by arbitration under the law of the Philippines;* or
>
> (bb) the award is *in conflict with the public policy of the Philippines.* (Italics supplied.)

78 *Fruehauf Electronics Philippines Corp. v. Technology Electronics Assembly and Management Pacific Corp.*, supra note 67 at 754, citing Rule 19.10, Special ADR Rules.

> arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.
>
> If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award *only if the same amounts to a violation of public policy.*
>
> The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal.[79] (Italics supplied.)

The Republic maintains that the public policy underlying the enactment of the IPRA requiring the FPIC and NCIP as precondition to the renewal of MPSA No. 001-90 is the State's policy "to protect and promote the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social, cultural and well-being." For the Republic, the Arbitral Award in favor of respondents sanctions violation of the law effectively disenfranchising the ICCs/IPs from enforcing the certifications mandated by the IPRA. The Republic argues that the CA erred in summarily dismissing this public policy consideration that impelled the RTC Branch 141 to vacate the questioned Arbitral Award.[80]

The Republic's invocation of violation of public policy as a ground for vacating an arbitral award raises a pure question of law taking into consideration the restrained attitude of court intervention in that even in the face of errors of law committed by an arbitral tribunal, the arbitral award would *generally* not be disturbed or vacated.

The pressing question, then, is whether the Arbitral Tribunal's determination that respondents may be exempted from complying with the FPIC and NCIP Certification Precondition required by the IPRA, as a precondition for the renewal of MPSA No. 001-90, constitutes a violation of public policy that would justify *vacatur* of the arbitral

[79] Rule 19.10, Special ADR Rules.
[80] *Rollo* (G.R. No. 244316), p. 34.

award, *or* a mere error in the interpretation or application of the said law, as maintained by respondents, in which case, the award would nevertheless be sustained.

The Republic's invocation of violation of public policy is *impressed with merit.*

Contrary to the proposition of respondents, the Arbitral Tribunal's determination—that respondents be excused from the IPRA requirement on the FPIC and NCIP Certification Precondition—does *not* relate to a mere interpretation of law, or its application to the established facts, within the context of arbitration. The non-application of the requirement contravenes a strong and compelling public policy on the protection of the rights of the Mankayan ICCs/IPs to their ancestral domains.

It bears underscoring that the protection of the "rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being," is a Constitutionally declared policy of the State.[81] This is also reflected as a State Policy under the Philippine Mining Act of 1995, safeguarding the environment and protecting the rights of affected communities, more particularly the ICCs/IPs to their ancestral domains.[82] In recognition of this policy, Section 16 of the Act mandates that "[*n*]*o ancestral land shall be opened for mining-operations without prior consent of the indigenous cultural community concerned.*"[83] As aptly observed by Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa), this general

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[81] Section 5, Article XII of the Constitution.

[82] Sections 2 and 4 of Republic Act No. 7942 reads:

> Section 2
> Declaration of Policy
>
> All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.
>
> x x x x
>
> Section 4
> Ownership of Mineral Resources
>
> Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors.
>
> The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution.

[83] Section 16 of Republic Act No. 7942.

requirement of consent on the part of the affected ICCs/IPs is now made more specific and concrete through the FPIC and Certification Precondition explicitly mandated in Section 59 of the IPRA, thus :

> SECTION 59. *Certification Precondition.* — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, *without prior certification from the NCIP that the area affected does not overlap with any ancestral domain.* Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, *That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned:* Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (Italics supplied.)

Rooted in no less than the Constitution, as well as being clearly, categorically and positively reflected in the IPRA, the existence and mandate of the invoked public policy ensuring the protection of the rights of the ICCs/IPs to their ancestral domains cannot be undermined, worse disregarded. As characterized by then Associate Justice Reynato S. Puno in his separate opinion in *Cruz v. Sec. of Environment & Natural Resources*,[84] the IPRA is a novel piece of legislation crafted "to address the centuries-old neglect of the Philippine indigenous peoples," thus:

> The struggle of the Filipinos throughout colonial history had been plagued by ethnic and religious differences. These differences were carried over and magnified by the Philippine government through the imposition of a national legal order that is mostly foreign in origin or derivation. Largely unpopulist, the present legal system has resulted in the alienation of a large sector of society, specifically, the indigenous peoples. The histories and cultures of the indigenes are relevant to the evolution of Philippine culture and are vital to the understanding of contemporary problems. It is through the IPRA that an attempt was made by our legislators to understand Filipino society not in terms of myths and biases but through common experiences in the course of history. The Philippines became a democracy a

[84] 400 Phil. 904 (2000).

> centennial ago and the decolonization process still continues. If the evolution of the Filipino people into a democratic society is to truly proceed democratically, *i.e.*, if the Filipinos as a whole are to participate fully in the task of continuing democratization, it is this Court's duty to acknowledge the presence of indigenous and customary laws in the country and affirm their co-existence with the land laws in our national legal system.[85]

As keenly noted by Associate Justice Amy C. Lazaro-Javier, the invoked public policy is clear, explicit, well-defined and dominant, *i.e.*, "it is directly ascertainable by reference to a statute, implementing administrative rules and court decisions and not merely from ambiguous and murky general considerations of supposed public interests." Verily, in excusing respondents from the FPIC and Certification Precondition requirement, the Arbitral Tribunal cannot be said to have *merely* erred in the interpretation or application of the law. *It manifestly disregarded the same, and the law's underlying public policy.*

In *Asset Privatization Trust v. Court of Appeals*,[86] the Court vacated an arbitral award rendered in "manifest disregard of the law." The Court cited the United States case of *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jaros*,[87] holding that there is manifest disregard of the law where: "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrators refused to heed that legal principle."[88] Guided by these parameters, the Court held in *Equitable PCI Banking Corp. v. RCBC Capital Corp.*[89] that "*to justify the vacation of an arbitral award on account of 'manifest disregard of the law,' the arbiter's findings must clearly and unequivocally violate an established legal precedent.*"[90] Here, the two elements clearly attend. The Arbitral Tribunal refused to heed the strong and compelling public policy on the protection and promotion the rights of the Mankayan ICCs/IPs, more particularly to their ancestral lands.

Also, in so manifestly disregarding the FPIC and Certification Precondition requirement under the IPRA, the Arbitral Tribunal undoubtedly "*exceeded* [*its*] *powers,* [*and*] *so imperfectly executed them,*

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85 Id. at 1015-1016. (Citations omitted).
86 360 Phil. 768 (1998).
87 70 F.3d 418; cited in *Equitable PCI Banking Corp. v. RCBC Capital Corp.*, 595 Phil. 537 (2008).
88 *Equitable PCI Banking Corp. v. RCBC Capital Corp.*, supra at 558-559. (Underscoring supplied).
89 595 Phil. 537 (2008).
90 Id. at 559.

*that a mutual, final and definite award upon the subject matter submitted to [it] was not made.*"[91] This is another ground for *vacatur* of the award under Section 24[92] of the Arbitration Law. Here, the Arbitral Tribunal's determination on the non-application of the FPIC and Certification Precondition mandated by Section 59 of the IPRA cannot be said to affect *exclusively* the parties to the MPSA and the arbitration proceedings. It has far reaching effects to the Mankayan ICCs/IPs whose rights to their ancestral domains recognized by the State would be prejudiced. As the Mankayan ICCs/IPs cannot be deprived of their rights to their ancestral domains without their consent, *the Arbitral Award cannot be said to be complete, final and definite, worse binding upon them.*

Further, respondents do not have vested right for the renewal of MPSA 001-90 under the same terms and conditions thereof. It bears underscoring that the mining agreement partakes of a *mere privilege*, license or permit granted by the State to respondents for the conduct of mining operations on a vast tract of land in the Municipality of Mankayan. In *Southeast Mindanao Gold Mining Corp. v. Balite Portal Mining Coop.*,[93] the Court ruled on the nature of a "natural resource exploration permit" similar to respondent's Mineral Production Sharing Agreement; thus:

> As correctly held by the Court of Appeals in its challenged decision, EP No. 133 merely evidences a *privilege granted by the State, which may be amended, modified or rescinded when the national interest so requires*. This is necessarily so since the *exploration, development and utilization of the country's natural mineral resources are matters impressed with great public interest.* Like timber permits, mining exploration permits do not vest in the grantee any permanent or irrevocable right within the purview of the non-impairment of contract and due process clauses of the Constitution, since the State, under its all-encompassing police power, may alter, modify or amend the same, in accordance with the demands of the general welfare.[94] (Italics and underscoring supplied.)

The imposition of the FPIC and Certification Precondition does not deprive respondent mining companies of any right or obligation

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91 See Section 24 of Republic Act No. 876, referred to under Rule 19.10 of the Special ADR Rules.
92 Id.
93 429 Phil 668 (2002).
94 Id. at 682.

under the MPSA for the renewal thereof, as would legally support their argument on the non-impairment of the obligation of contracts under the Constitution. As underscored by Associate Justice Caguioa, contrary to respondents' proposition, the renewal of the MPSA is not guaranteed under the contract's renewal clause, as it clearly provides that renewal is subject to conditions "*as may be provided by law.*" Necessarily, respondents' invocation of the non-impairment clause must "yield to the loftier purposes targeted by the government."[95] Notably, the Arbitral Award is in the nature of a contract, it having proceeded from an arbitration agreement. Thus, deemed written into this contract are the provisions of existing laws and *a reservation of the State's exercise of police power*, most especially so that the questioned Arbitral Award covers a subject impressed with public welfare and interest.[96]

The Arbitral Tribunal, in apparently seeking to strike a balance between the contending interests of respondent mining companies and that of the Mankayan ICCs/IPs, simply had no factual and legal bases to arbitrate favorably to the former *dispensing with* the FPIC requirement under the IPRA. As the Court emphasizes, the consent requirement proceeds from public policy and social justice finding support in no less than the Constitution. This requirement cannot be done away with arbitration, the basis of which is the mere contractual will of the mining companies and the State granting them mere mining privileges. The CA, therefore, gravely erred in affirming the subject Arbitral Award in favor of respondents, it being rendered in manifest disregard of the IPRA and in contravention with a strong and compelling public policy on the promotion and protection of the rights of ICCs/IPs.

*The foregoing, notwithstanding*, while the interests of respondent mining companies, indeed, cannot outweigh that of the ICCs/IPs, due process and fairness dictate that respondent mining companies be given the opportunity to fully comply with the consent requirement under the IPRA for the renewal of MPSA No. 001-90.

Admittedly, the FPIC and NCIP Certification Precondition was not contemplated by the parties under the original MPSA No. 001-90. As underscored by the Arbitral Tribunal, respondent mining companies heavily spent for and engaged in mining operations over the years *with*

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[95] *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393, 406 (1988).
[96] *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87, 101 (1996).

*the renewal provision in mind.* This reasonably flows from the huge and long-term nature of investment inherent in mining ventures. It further noted that the Republic failed to refute respondents' documents showing that respondents spent billions of pesos as exploration and other pre-development costs, which include, among others, the construction of the Tailings Dam.[97] Indeed, the sought renewal of MPSA 001-90 is burdened by the supervening IPRA, as well as the Philippine Mining Act, making it now dependent upon the consent of the Mankayan ICCs/IPs.

Suffice it to state that as early as May 22, 2014, or about 11 months prior to the expiration of the original term of MPSA No. 001-90 on March 18, 2015, respondent mining companies wrote MGB-CAR a letter expressing their intention to renew the agreement for a period of another 25 years under the same terms and conditions pursuant to Section 3.1 thereof. The MGB-CAR already found respondent mining companies to have substantially complied with the requirements for the renewal of the questioned MPSA *save only as regards the FPIC* and *NCIP Certification Precondition.*[98] This is bolstered by the fact that the MGB-CAR itself advised respondents that their joint application for the renewal of the MPSA would be endorsed to the NCIP for appropriate action on the FPIC and NCIP Certification Precondition required by the IPRA.[99]

The NCIP Administrative Order No. 1-98,[100] which outlines the procedures and guidelines for the implementation of the IPRA, provides that existing contracts within the ancestral domains "shall not be renewed without the free and prior informed consent of the [concerned] IP community members and upon renegotiation of all terms and conditions thereof."[101] It further provides that the required consent shall

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97 *Rollo* (G.R. No. 244216), p. 253.

98 Id. at 290.

99 Id.

100 Entitled, "Rules and Regulations Implementing Republic Act No. 8371, otherwise known as 'The Indigenous Peoples Rights Act of 1997,'" approved on June 9, 1998.

101 Section 6, Part II, Rule VIII, NCIP Administrative Order No. 1-98 provides:

> Section 6. *Existing Contracts, Licenses, Concessions, Leases, and Permits Within Ancestral Domains.* — Existing contracts, licenses, concessions, leases and permits for the exploitation of natural resources within the ancestral domain may continue to be in force and effect until they expire. *Thereafter, such contracts, licenses, concessions, leases and permits shall not be renewed without the free and prior informed consent of the IP community members and upon renegotiation of all terms and conditions thereof.* All such existing contracts, licenses, concessions, leases and permits may be terminated for cause upon violation of the terms and conditions thereof.

be signed by at least a majority of the representatives of all households comprising the concerned ICCs/IPs.[102]

Thus, to underscore on the indispensability of the consent requirement under the IPRA, as well as to balance the contending interests of respondent mining companies and that of the Mankayan ICCs/IPs in this case, the *vacatur* of the Arbitral Award shall be *without prejudice to respondent mining companies' full compliance with the requirement* of the FPIC of the Mankayan ICCs/IPs as a condition for the renewal of MPSA No. 001-90.

**WHEREFORE**, the petition in G.R. No. 244216 is **GRANTED**. The Decision dated April 30, 2018 and the Resolution dated January 14, 2019 of the Court of Appeals in CA-G.R. SP No. 146806 are **REVERSED** and **SET ASIDE** insofar as it sustained the Final Arbitral Award dated November 27, 2015 issued by the Arbitral Tribunal.

Accordingly, the Final Award dated November 27, 2015 issued by the Arbitral Tribunal in favor of respondents Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc. is **VACATED** *without prejudice* to their full compliance with the requirement of the "Free and Prior Informed and Written Consent" of the Mankayan Indigenous Cultural Communities/Indigenous Peoples as a condition for the renewal of Mineral Production Sharing Agreement No. 001-90.

On the other hand, the petition in G.R. No. 244063 is **DENIED**.

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[102] Section 9, Part II, Rule VIII, NCIP Administrative Order No. 1-98 provides:

Section 9. Certification Precondition Prior to Issuance of any Permits or Licenses.

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b) Procedure for Issuance of Certification by NCIP.

(2) The certification shall be issued only upon the free, prior, informed and written consent of the ICCs/IPs who will be affected by the operation of such concessions, licenses or leases or production-sharing agreements. A written consent for the issuance of such certification shall be signed by at least a majority of the representatives of the all households comprising the concerned ICCs/IPs.

**SO ORDERED.**

**HENRI JEAN PAUL B. INTING**
*Associate Justice*

WE CONCUR:

**ALEXANDER G. GESMUDO**
*Chief Justice*

**MARVIC M.V.F. LEONEN**
*Senior Associate Justice*

**ALFREDO BENJAMIN S. CAGUIOA**
*Associate Justice*

**RAMON PAUL L. HERNANDO**
*Associate Justice*

**AMY C. LAZARO-JAVIER**
*Associate Justice*

(No Part)
**RODIL V. ZALAMEDA**
*Associate Justice*

**MARIO V. LOPEZ**
*Associate Justice*

**SAMUEL H. GAERLAN**
*Associate Justice*

**RICARDO R. ROSARIO**
*Associate Justice*

**JHOSEP Y. LOPEZ**
*Associate Justice*

**JAPAR B. DIMAAMPAO**
*Associate Justice*

**JOSE MIDAS P. MARQUEZ**
*Associate Justice*

**ANTONIO T. KHO, JR.**
*Associate Justice*

**MARIA FILOMENA D. SINGH**
*Associate Justice*

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

**ALEXANDER G. GESMUNDO**
*Chief Justice*