



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THE CONSORTIUM OF
HYUNDAI ENGINEERING
CO., LTD. AND HYUNDAI
CORPORATION,

G.R. No. 214743

Petitioner,

- versus -

NATIONAL GRID
CORPORATION OF THE
PHILIPPINES,

Respondent.

THE CONSORTIUM OF
HYUNDAI ENGINEERING
CO., LTD. AND HYUNDAI
CORPORATION,

G.R. No. 248753

Petitioner,

Present:
CAGUIOA, *J.*, Chairperson,
INTING,
ZALAMEDA,*
DIMAAMPAO,** and
SINGH, *JJ.*

- versus -

NATIONAL GRID
CORPORATION OF THE
PHILIPPINES, and NATIONAL

* Designated additional Member per raffle dated May 31, 2023. Gaerlan, *J.*, recused from the case for having penned the assailed Decision of the Court of Appeals in G.R. No. 214743.

** On official leave.

**TRANSMISSION
CORPORATION,**

Respondents.

Promulgated:

December 4, 2023

X-----~~MsPDCB#~~-----X

DECISION

SINGH, J.:

These are two consolidated petitions filed by the petitioner The Consortium of Hyundai Engineering Co., Ltd. and Hyundai Corporation (**Hyundai**) and docketed as G.R. No. 214743 and G.R. No. 248753.

In G.R. No. 214743, Hyundai filed a Petition for Review (**First Petition**),¹ dated October 24, 2014, seeking the review and reversal of the Court of Appeals (CA) Decision (**First CA Decision**),² dated May 27, 2014, and the Resolution (**First CA Resolution**),³ dated October 14, 2014, in CA-G.R. SP No. 132509 entitled *The National Grid Corporation of the Philippines v. Construction Industry Arbitration Commission and The Consortium of Hyundai Engineering Co., Ltd. And Hyundai Corporation*. The First CA Decision reversed the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal (**CIAC Tribunal**) Resolution (**CIAC Resolution**), dated August 22, 2013, in CIAC Case No. 01-2013, which in turn denied the respondent the National Grid Corporation of the Philippines' (NGCP) Motion to Dismiss, dated February 7, 2013, and the National Transmission Corporation's (**TransCo**) separate Motion to Dismiss, dated February 4, 2013, filed against Hyundai's Request for Arbitration (**Request for Arbitration**),⁴ dated November 12, 2012.

In G.R. No. 248753, Hyundai filed a Petition for Review on *Certiorari* (**Second Petition**),⁵ dated September 23, 2019, assailing the CA Decision (**Second CA Decision**),⁶ dated March 7, 2019, and the CA Resolution (**Second CA Resolution**),⁷ dated August 1, 2019, in CA-G.R. SP No. 136812 entitled *The Consortium of Hyundai Engineering Co. Ltd and Hyundai Corporation v. The National Grid Corporation of the Philippines and National Transmission Corporation*. The Second CA Decision and

¹ *Rollo* (G.R. No. 214743), pp. 9–41.

² *Id.* at 60–72. Penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court) and concurred in by Associate Justices Remedios A. Salazar-Fernando and Apolinario D. Bruselas, Jr. of the Second Division, Court of Appeals, Manila

³ *Id.* at 74–75.

⁴ *Id.* at 77–100.

⁵ *Rollo* (G.R. No. 248753), pp. 17–35.

⁶ *Id.* at 48–64. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Geraldine C. Fiel-Macaraig of the Ninth Division, Court of Appeals, Manila

⁷ *Id.* at 46–47.

Resolution denied Hyundai's Petition for Review under Rule 43 (**CA Petition**),⁸ dated September 8, 2014, which challenged, in turn, the CIAC Tribunal's Award (**CIAC Award**),⁹ dated August 8, 2014. The CIAC Award dismissed without prejudice Hyundai's Request for Arbitration in accordance with the First CA Decision.¹⁰

The Facts

Hyundai is a consortium of corporations organized and existing under the laws of the Republic of Korea.¹¹ On November 12, 2007, Hyundai entered into the Contract for the Survey, Supply of Materials/Equipment and Erection/Installation and Commissioning of Maramag-Bunawan 230kV Transmission Backbone Project (**the Construction Contract**)¹² with TransCo for the construction and commissioning of the Maramag-Bunawan Transmission Backbone Project.

Section 2, clause 18.6 of the Construction Contract's General Conditions of the Contract¹³ provides that any dispute between TransCo and Hyundai arising out of the contract, or the execution of the works shall be submitted to arbitration.¹⁴

During the effectivity and implementation of the Construction Contract, TransCo and the Power Sector Assets and Liabilities Management Corporation (**PSALM**) entered into the Concession Agreement for the Construction, Installation, Financing, Management, Improvement, Expansion, Operation, Maintenance, Rehabilitation, Repair and Refurbishment of the Nationwide Transmission and Sub-Transmission Systems in the Republic of the Philippines (**Concession Agreement**),¹⁵ dated February 28, 2008, with NGCP. The Concession Agreement was entered into pursuant to Section 21 of Republic Act No. 9136 or the *Electric Power Industry Reform Act of 2001* (**EPIRA**).¹⁶ Under the Concession Agreement, NGCP undertook to "take over and operate the whole of TRANSCO's regulated transmission business as a going concern and shall, as between TRANSCO and itself, be the sole representative of the Regulated Entity [TransCo] before the ERC."¹⁷

⁸ *Id.* at 85–116.

⁹ *Id.* at 65–84.

¹⁰ *Id.* at 84.

¹¹ *Rollo* (G.R. No. 214743), p. 10, First Petition.

¹² *Id.* at 676–899

¹³ *Id.* at 780–849.

¹⁴ *Id.* at 848.

¹⁵ *Id.* at 544–581.

¹⁶ Entitled "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES," approved on June 8, 2001.

¹⁷ *Rollo*, (G.R. No. 214743) p. 550, Concession Agreement, sec. 3.01.



With respect specifically to TransCo's existing contracts, the Concession Agreement's Section 4.01 provided that NGCP shall have the right to exercise all of TransCo's rights and discharge all of its obligations. It further stated that as to TransCo's projects which were under construction at the commencement date of the Concession Agreement, TransCo and NGCP will enter into a separate agreement. Section 4.01 stated in part:

4.01. Transferred Contracts. From the Commencement Date and subject to Subsection 4.01 (e), the Concessionaire [NGCP] shall be entitled to exercise all of TRANSCO's rights and shall discharge all of TRANSCO's liabilities (other than the Excluded Liabilities) and perform all of its obligations under all existing contracts relating to the operation of its regulated transmission businesses, including contracts for Related Businesses and any rights under any security deposits, letters of credit and other forms of credit support provided by TRANSCO's counterparties to such contracts (the "*Transferred Contracts*").

- a. Insofar as the benefits and obligations under any Transferred Contracts may be effectively assigned by TRANSCO to the Concessionaire without the consent of a third party:
 - (i) TRANSCO agrees to assign and transfer all the benefit of them to the Concessionaire with effect from the Commencement Date; and
 - (ii) the Concessionaire shall perform all of TRANSCO's obligations under them except for any such obligations that were required to have been performed prior to the Commencement Date and any obligations that TRANSCO was in breach of on the Commencement Date.
- b. Insofar as the benefits or obligations under any Transferred Contracts or any other contract may not be effectively assigned by TRANSCO to the Concessionaire without the consent of a third party then:
 - (i) TRANSCO and the Concessionaire shall each use their reasonable endeavors to procure an effective assignment of those contracts (as the Concessionaire may require), provided that neither Party shall be obliged to make any payment, give any security or provide any guarantee as the basis for, or in connection with, any such assignment, except for contracts relating to Intellectual Property Rights which shall be governed by Section 4.05 (*Intellectual Property Rights*);
 - (ii) unless and until any such contracts shall be assigned with consent, TRANSCO shall, insofar as may be permissible and lawful, give the benefit under such contracts to the Concessionaire as if they had already been assigned to the Concessionaire and the Concessionaire shall perform all of TRANSCO's obligations except for any obligations



that TRANSCO was in breach of on the Commencement Date;

- (iii) contracts relating to the Projects Under Construction shall be treated in accordance with the Construction Management Agreement; and
- (iv) on and after the Commencement Date, TRANSCO shall not do anything as a party to the Transferred Contracts without the written consent of the Concessionaire (which shall not be unreasonably withheld) and shall keep the Concessionaire fully informed of all communication it may have with other parties to the Transferred Contracts and any other material information regarding such contracts it may obtain.

In accordance with the Concession Agreement, NGCP, TransCo, and PSALM entered into the Construction Management Agreement¹⁸ (CMA). Section 2.01 of the CMA reads:

Section 2.01 Appointment. The Owner hereby appoints the Concessionaire to act as its Construction Manager to perform the matters particularly set forth herein, and authorizes the Concessionaire in the capacity of Construction Manager to take such action on its behalf and to exercise and enforce such rights, powers and discretions delegated to the Construction Manager by the term hereof together with all such rights, powers and discretions reasonably incidental hereto and thereto. The Concessionaire hereby accepts its appointment as Construction Manager together with all rights and obligations pertaining thereto, on and subject to the terms and conditions set out in the Agreement. In the performance of its functions under this Agreement, the Construction Manager acts as an independent contractor and no employer-employee relationship shall be created between the Owner and the Construction Manager's employees, representatives and agents. Nothing in this Agreement shall be construed as a guarantee by the Construction Manager of the performance of any Construction Contractor.¹⁹

On April 3, 2009, Hyundai received a Letter from TransCo²⁰ (**TransCo Letter**), dated March 16, 2009, which stated the following, among others:

To effectively operate and maintain the transmission assets and successfully complete the Projects Under Construction pursuant to the Construction Management Agreement entered into between TransCo and NGCP, it is necessary for NGCP or the Concessionaire to assume the rights and obligation of TransCo in the contracts related to transmission business entered into by the latter. In connection with this, we would like to request for your confirmation or consent on the transfer/assignment of the contract/s listed in Annex A, including all rights and obligations of TransCo therein, to NGCP effective 15 January 2009.

¹⁸ *Id.* at 625–637.

¹⁹ *Id.* at 627.

²⁰ *Id.* at 464–465.



We will highly appreciate your response within fifteen (15) days after your receipt of this letter. Should we not receive your response within the said period, we will consider the same as consent on your part.²¹

Hyundai did not respond to this letter which, in accordance with the TransCo Letter, signified its consent to the “transfer/assignment” of the Construction Contract to NGCP.²²

Based on the records of the case, following its receipt of the TransCo Letter, Hyundai began dealing with NGCP in the implementation of the Construction Contract. In particular, in requesting and obtaining extensions of the original term of the Construction Contract, Hyundai transacted exclusively with NGCP.

The dispute arose when NGCP informed Hyundai that it would charge Hyundai liquidated damages for delays in the completion of the Maramag-Bunawan Transmission Project.²³ Invoking the dispute resolution clause in the Construction Contract, Hyundai served a notice upon NGCP for the appointment of a dispute resolution board. NGCP did not respond to this notice. Thus, Hyundai filed its Request for Arbitration against NGCP and TransCo before the CIAC.²⁴

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TransCo filed its Motion to Dismiss arguing that the Request for Arbitration failed to state a cause of action against it considering that NGCP is its assignee for the Construction Contract.

NGCP also filed its own Motion to Dismiss where it argued that there is no existing arbitration agreement between it and Hyundai which would justify the filing of the arbitration case before the CIAC.

The CIAC Tribunal rendered the assailed CIAC Resolution denying TransCo’s and NGCP’s respective motions to dismiss.

²¹ *Id.* at 464.

²² *Id.* at 63.

²³ *Id.* at 63–64.

²⁴ *Id.* at 77.



The Ruling of the CA

NGCP filed a Petition for *Certiorari* (**NGCP Petition**) under Rule 65 of the Rules of Court before the CA seeking the reversal of the CIAC Resolution. The CA granted the NGCP Petition.²⁵

The CA agreed with NGCP that there is no arbitration agreement between it and Hyundai. According to the CA, Hyundai invoked the arbitration provision of the Construction Contract between it and TransCo. NGCP was not a party to this contract and thus cannot be bound by its provisions, including its arbitration clause.²⁶

The CA also concluded that NGCP is not an assignee of TransCo and that TransCo never intended to transfer its title over Maramag-Bunawan Transmission Project to NGCP. The CA relied on Section 2.01 of the Construction Contract which stated that TransCo appointed NGCP as the Construction Manager only for its Projects Under Construction, which includes the Maramag-Bunawan Transmission Project.²⁷

The CA also ruled that this case should be distinguished from *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc. (Prudential Guarantee)*.²⁸ According to the CA, the Court ruled that the surety under a performance bond is bound by the arbitration clause in the Construction Contract because the performance bond is an accessory contract and is “significantly and substantially connected to the construction contract.”²⁹ The CA found that this element is not present in this case.³⁰

Finally, the CA ruled that while there is an existing arbitration agreement between Hyundai and TransCo, the continuation of the arbitration proceeding between only Hyundai and TransCo in the CIAC would not be efficient since any decision would not be binding on NGCP. The CIAC Tribunal would also not be able to fully dispose of the issues without NGCP. Thus, it ruled that “the interest of justice would only be served if the trial court hears and adjudicates the case in a single and complete proceeding.”³¹

The dispositive portion of the First CA Decision states:

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The assailed Resolution dated 22 August 2013 of the public

²⁵ *Id.* at 72.

²⁶ *Id.* at 68–69.

²⁷ *Id.* at 69.

²⁸ 644 Phil. 634 (2010). [Per J. Villarama, Jr., Third Division].

²⁹ *Rollo* (G.R. No. 214743), p. 71.

³⁰ *Id.*

³¹ *Id.* at 71–72.



respondent Construction Industry Arbitration Commission is hereby **REVERSED and SET ASIDE**. Judgment is hereby rendered **GRANTING** petitioner NGCP's Motion to Dismiss in CIAC Case No. 01-2013. Accordingly, all orders or issuances rendered, and proceedings conducted, in CIAC Case No. 01-2013, insofar as they involve petitioner NGCP, are hereby **NULLIFIED**, for having been made by CIAC without jurisdiction. Finally, all further proceedings insofar as they affect petitioner NGCP are hereby **ENJOINED**.

SO ORDERED.³² (Emphasis in the original)

Hyundai filed a Motion for Reconsideration which the CA denied in the First CA Resolution.³³

Hyundai filed the First Petition before the Court seeking a reversal of the First CA Decision.

In its First Petition, Hyundai raised the following arguments:

First, the CA selectively applied the concept of relativity of contracts when it ruled that NGCP is not bound by the arbitration clause in the Construction Contract without similarly recognizing that Hyundai is a stranger to the CMA which laid out the relationship between NGCP and TransCo.³⁴

Second, TransCo and NGCP repeatedly represented to Hyundai that NGCP is TransCo's assignee of the Construction Contract. This estops NGCP from setting up its supposed limited personality with respect to the Construction Contract and impugning the binding effect of the arbitration clause.³⁵

Third, even assuming that NGCP is a mere Construction Manager, it is nonetheless bound by the Construction Contract in accordance with Articles 1900 and 1902 of the Civil Code of the Philippines (**Civil Code**). Under these provisions, a third party is not required to inquire beyond the written authorization granted to an agent and the act of agent is deemed to be within the terms of their power of attorney although the agent has in fact exceeded the limits of his actual authority according to the "secret understanding between him and the principal."³⁶

Fourth, *Prudential Guarantee* should apply in this case. The test established in *Prudential Guarantee* is the "test of significant and substantial

³² *Id.* at 72.

³³ *Id.* at 74.

³⁴ *Id.* at 27, First Petition.

³⁵ *Id.* at 30-31.

³⁶ *Id.* at 31-32.



connection.” The CMA, contrary to the CA’s ruling, arose from and is intimately connected to the Construction Contract.³⁷

Finally, the CA exceeded its authority when it ruled that the arbitration between Hyundai and TransCo is ineffectual. TransCo is not a party to the appeal. Moreover, the CA’s conclusion that the arbitration proceedings between Hyundai and TransCo would be ineffectual even as it recognized the existence of a valid arbitration agreement between them is full of glaring contradictions.³⁸

NGCP filed its Comment/Opposition (**Comment**)³⁹, dated July 13, 2015. NGCP argued:

First, the existence of an arbitration agreement or a subsequent agreement to submit a dispute to arbitration is essential before the CIAC can acquire jurisdiction over a case. There is no existing agreement to arbitrate between NGCP and Hyundai. While Hyundai invoked the arbitration clause in the Construction Contract, this provision does not bind NGCP which was not a party to the contract.⁴⁰

Second, TransCo did not assign the Construction Contract to NGCP. TransCo and NGCP’s relationship is governed by the Concession Agreement. Under the Concession Agreement, the Construction Contract falls under the Projects Under Construction which are, in turn, governed by the CMA. Under the CMA, NGCP was appointed as the Construction Manager only and was never designated as the assignee of the Construction Contract.⁴¹ Moreover, in the TransCo Letter and in the NGCP’s March 3, 2009 letter, there was no express statement that NGCP was the assignee of all of TransCo’s rights and obligations under the Construction Contract.⁴²

Third, the ruling of the Court in *Prudential Guarantee* does not apply in this case. In *Prudential Guarantee*, the Court ruled that the CIAC had jurisdiction over the surety because the surety contract was an accessory to the construction contract. Further, the surety was solidarily liable with the contractor. None of these circumstances are present in this case because the CMA is not an accessory contract to the Construction Contract and NGCP assumed no liability solidarily with TransCo.⁴³

³⁷ *Id.* at 33–35.

³⁸ *Id.* at 37–39.

³⁹ *Id.* at 3137–3157.

⁴⁰ *Id.* at 3145–3150.

⁴¹ *Id.* at 3150–3153.

⁴² *Id.*

⁴³ *Id.* at 3154–3155.



Finally, the CA correctly observed that the CIAC Arbitral Tribunal cannot proceed with the dispute with only Hyundai and TransCo as the parties considering that NGCP is an indispensable party to the dispute over which the CIAC has no jurisdiction.⁴⁴

Hyundai filed a Reply,⁴⁵ dated November 20, 2015, in response to NGCP's Comment. In addition to the arguments already raised in the First Petition, Hyundai further argued:

First, Section 35 of Republic Act No. 9285 or the *Alternative Dispute Resolution Act of 2004*⁴⁶ (R.A. No. 9285) provides that the CIAC has jurisdiction over construction disputes "between and 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."⁴⁷ Thus, NGCP's assertion that it was not a party to the Construction Contract and only served as a Construction Manager does not preclude it from being bound by the arbitration agreement.⁴⁸

Second, NGCP is TransCo's assignee of the Construction Contract. The TransCo Letter clearly identified the Construction Contract as one of the TransCo contracts assigned to NGCP. This was even confirmed by NGCP in its March 3, 2009 letter where it stated that it assumed TransCo's transmission business as of January 15, 2009.⁴⁹

Moreover, under Section 4.01 of the Concession Agreement, NGCP undertook to exercise all of TransCo's rights, discharge all of its liabilities, and perform all of its obligations under all existing contracts. This would include the duty to submit to arbitration under the Construction Contract.⁵⁰

Third, NGCP is estopped from disclaiming that it is TransCo's assignee for the Construction Contract because of TransCo's and its representations to Hyundai in their letter.⁵¹

Further, NGCP is estopped from questioning the CIAC Tribunal's jurisdiction over it considering that it has actively participated in the

⁴⁴ *Id.* at 3155–3156.

⁴⁵ *Id.* at 3171–3193.

⁴⁶ 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.

⁴⁷ *Rollo* (G.R. No. 214743), p. 3173.

⁴⁸ *Id.*

⁴⁹ *Id.* at 3173–3176

⁵⁰ *Id.* at 3177–3178.

⁵¹ *Id.* at 3178–3180.



proceedings and has even already submitted its draft decision. In addition, NGCP has also sought relief from CIAC on several occasions, including the filing of counterclaims against Hyundai.⁵²

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After the CA promulgated the First CA Decision and Resolution, but during the pendency of Hyundai's Motion for Reconsideration, the CIAC Tribunal issued the CIAC Award which dismissed Hyundai's Request for Arbitration.

The Ruling of the CIAC Tribunal

The CIAC Tribunal declared that the CA, in the First CA Decision, has effectively ousted NGCP from its jurisdiction.⁵³

Moreover, it ruled that based on Hyundai's pleadings filed before the CA, it purportedly practically absolved TransCo of any responsibility arising from the imposition of liquidated damages. Further, the CIAC Tribunal found that Hyundai had already confirmed that it was NGCP and not TransCo which imposed the disputed liquidated damages. Given these, it ruled that it can no longer resolve the issue of whether Hyundai is entitled to an extension of the term of the Construction Contract and whether the Construction Contract's provision on liquidated damages is unenforceable because doing so "will impair the independence of the forum that will decide the dispute between Claimant and NGCP."⁵⁴ The CIAC Tribunal clarified that its dismissal of the Request for Arbitration is without prejudice to the final outcome of the First CA Decision which may be reversed by the CA or by the Court.⁵⁵

The dispositive portion of the CIAC Award provides:

WHEREFORE, premises considered, this arbitration is ordered
DISMISSED without prejudice.⁵⁶

The Ruling of the CA

Hyundai filed the Second CA Petition assailing the CIAC Award. Hyundai raised two arguments in the Second CA Petition. First, it asserted that the CIAC Tribunal erred in dismissing its Request for Arbitration with

⁵² *Id.* at 3180–3183.

⁵³ *Rollo* (G.R. No. 248753), p. 82.

⁵⁴ *Id.* at 84.

⁵⁵ *Id.*

⁵⁶ *Id.*



regard to NGCP because the question as to whether the CIAC has jurisdiction over Hyundai's claims has not yet been resolved with finality. Second, Hyundai argued that the CIAC Tribunal erroneously dismissed the Request for Arbitration as to TransCo and insisted that it never waived any of its claims against TransCo, who is still a party to the Construction Contract.⁵⁷

The CA denied the Petition in the Second CA Decision. According to the CA, Hyundai's first argument was moot "considering that the Former Second Division of this Court has already denied the motion for reconsideration of the decision dated May 27, 2014 in its resolution dated October 14, 2014. Nothing in the record shows that the Supreme Court reversed this Court's decision dated May 27, 2014."⁵⁸

The CA also ruled that the CIAC Tribunal correctly dismissed the Request for Arbitration as to TransCo because Hyundai "had absolved the latter from any liability pursuant to provision 3.03 (g) of the Concession Agreement."⁵⁹ The CA also found that if the CIAC Tribunal did not dismiss the Request for Arbitration, this would impair the independence of the proper forum who will decide the dispute between Hyundai and NGCP. The Court concluded that the CIAC Arbitral Tribunal is not the proper forum to resolve the dispute because it did not have jurisdiction over the NGCP which is an indispensable party.⁶⁰

Hyundai filed a Motion for Reconsideration which the CA denied in the Second CA Resolution.⁶¹

Thus, Hyundai filed the Second Petition seeking a reversal of the Second CA Decision and Resolution. Hyundai raises the following arguments:

First, the CIAC Tribunal had already confirmed its jurisdiction over NGCP in the CIAC Resolution. There is no justifiable reason for the CIAC Tribunal to reverse itself because of the First CA Decision, which has not yet become final and executory.⁶²

Second, when the CIAC Tribunal issued the CIAC Award, it, in effect, prematurely executed the First CA Decision which had not yet attained finality because Hyundai's motion for reconsideration was still pending at the time. Executing a decision pending the resolution of a motion for

⁵⁷ *Id.* at 59–60, Second CA Decision.

⁵⁸ *Id.* at 60.

⁵⁹ *Id.* at 62.

⁶⁰ *Id.* at 62–63.

⁶¹ *Id.* at 46–47.

⁶² *Id.* at 25.



reconsideration deprives the party who filed the motion due process and is tantamount to grave abuse of discretion.⁶³

Third, Hyundai did not absolve TransCo of liability. In fact, it has consistently asserted in its pleadings the alternative argument that TransCo served as NGCP's principal and thus should be bound by NGCP's actions. Moreover, Hyundai has also asserted that the Request for Arbitration should not be dismissed as to TransCo because there is a need to determine the real role of TransCo with respect to the Construction Contract.⁶⁴

Finally, the dismissal of the Request for Arbitration defeats the declared policy of promoting the speedy disposition of cases through arbitration. At the time the CIAC Tribunal dismissed the case, the parties had already completed the presentation of their respective evidence and the case was already submitted for resolution. Dismissing the case means that at a future time, Hyundai, NGCP, and TransCo may have to re-file the arbitration case and undergo a repetition of the process of presenting evidence. The CIAC Arbitral Tribunal should have merely suspended the proceedings in the exercise of judicial courtesy.⁶⁵

The Issues

1. Does the CIAC have jurisdiction over the dispute?
2. Did the CIAC Tribunal correctly dismiss the Request for Arbitration?

The Ruling of the Court

The Court grants both of Hyundai's Petitions.

The CIAC has jurisdiction over the dispute

Section 4 of Executive Order No. 1008 or the *Construction Industry Arbitration Law*⁶⁶ provides for the CIAC's jurisdiction as follows:

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

⁶³ *Id.* at 27–29.

⁶⁴ *Id.* at 30–31.

⁶⁵ *Id.* at 33.

⁶⁶ Entitled "CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES," approved on February 4, 1985.



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)

In *Spouses Ang v. De Venecia*⁶⁷ (*Spouses Ang*), the Court identified the three (3) requisites for the CIAC's exercise of its jurisdiction. The Court explained:

This provision lays down three requisites for acquisition of jurisdiction by the CIAC, first: a dispute arising from or connected with a construction contract; second, such contract must have been entered into by parties involved in construction in the Philippines; and third, an agreement by the parties to submit their dispute to arbitration.⁶⁸

In addition, the Court said in *Spouses Ang* that provisions of law which define a quasi-judicial agency's jurisdiction "must be viewed in the light of the nature and function" of the agency.⁶⁹ In this regard, the Court said that an examination of the whereas clauses of Executive Order No. 1008 shows that the CIAC was established as a tribunal to expeditiously resolve disputes within the construction industry. According to the Court:

It is glaringly apparent from the foregoing that the CIAC was established to serve as a tribunal which will expeditiously resolve disputes within the construction industry. The CIAC was formed to resolve disputes involving transactions and business relationships within the construction industry; and it is for this reason that Section 4 prescribes that the CIAC shall only have jurisdiction over "disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines." The foregoing phrase limits the jurisdiction of the CIAC not only as to subject matter jurisdiction but also as to jurisdiction over the parties. Thus, the CIAC can acquire jurisdiction if the dispute arises from or is connected with the construction industry, both parties to such dispute are involved in construction in the Philippines, and they agree to submit their dispute to arbitration.⁷⁰

Generally, disputes that fall under the jurisdiction of the CIAC are disputes arising from or connected with a construction contract in the

⁶⁷ 870 Phil. 645 (2020). [Per J. A. Reyes, Jr., Second Division].

⁶⁸ *Id.* at 657.

⁶⁹ *Id.* at 658.

⁷⁰ *Id.* at 659-660.



Philippines involving the contractual parties. However, in accordance with the language of Executive Order No. 1008 and the intent which animated the creation of the CIAC, non-parties to a construction contract can fall within the ambit of the Court's jurisdiction in certain cases.

This is affirmed in Section 35 of R.A. No. 9285 which states:

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. (Emphasis supplied)

The Court, in *Spouses Ang*, succinctly explained the factors which the Court took into account in ascertaining whether a dispute is cognizable by the CIAC. The Court elucidated:

In *Manila Insurance*, the Court did state that “*Section 4 of Executive Order (E.O.) No. 1008, otherwise known as the Construction Industry Arbitration Law, is broad enough to cover any dispute arising from, or connected with construction contracts, whether these involve mere contractual money claims or execution of the works.*” However, this pronouncement must be read within the context of the factual circumstances in the case. *Manila Insurance* involved a collection suit filed by a party to a construction agreement against the surety companies who put up the performance bonds for the project, after the contractor failed to complete the project. It was likewise established that the construction agreement therein included an arbitration clause. Therefore, the three requisite elements of CIAC jurisdiction were present; and the Court correctly held that “[t]he fact that petitioner is not a party to the CCA cannot remove the dispute from the jurisdiction of the CIAC because the issue of whether respondent-spouses are entitled to collect on the performance bond, as we have said, is a dispute arising from or connected to the CCA.” **The fact that the surety companies were not direct parties to the construction contract is of no moment, because their obligations as sureties are inseparable from the obligation of the contractor. The claim of the client against the contractor's performance bond is obviously a dispute which arises from and is connected with the construction contract which it is meant to secure.** These factual matters distinguish the case from the present one, which involves no contract whatsoever between respondents and the spouses Ang.

Likewise, while this Court in *Gammon Philippines* did state that “*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;” this statement must again be appreciated within the factual milieu of the case. **The case involved a dispute between a client and the contractor, Gammon, who was unable to complete the works after the client changed the specifications thereof.** The appellate court held that the CIAC had no jurisdiction over the case since the original contract between Gammon and its client had been extinguished by novation when the client changed the project specifications. Thus, the Court said:

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.**

...

Meanwhile, *Excellent Quality Apparel* revolved around the implications of the contractor's shift from a sole proprietorship to a corporation. It was indisputably proven that there was a construction contract with an arbitration clause which was entered into by the parties in dispute. Lastly, in *Fort Bonifacio Development*, the suit was filed by an assignee of the contractor's receivables, against the client with whom the contractor entered the construction contract. This Court held that the CIAC had *no jurisdiction, as the assignee's cause of action arose not from the construction contract but from the non-payment of the contractor's debts to the assignee.*

A thorough reading of the foregoing cases cited by the respondents only bolsters the principle that for the CIAC to acquire jurisdiction, three things must concur: there must be a construction contract; there must be a dispute arising from or connected therewith between the parties, and said parties must agree to submit their dispute to arbitration.⁷¹ (Citations omitted; italics in the original; emphasis supplied)

In *Prudential Guarantee*, the Court ruled that a surety under a performance bond is bound by the arbitration clause in the construction contract even if the surety is not party to the contract. The Court ratiocinated that the “primary and only reason” behind the contractor’s acquisition of the performance bond was to secure the performance of its obligations to the project owner. The Court further found that the performance bond “was so connected with the construction contract” that the parties agreed to make it a condition for the contract to push through. Thus, the Court concluded that the performance bond is “significantly and substantially connected to the

⁷¹ *Id.* at 661–664.



construction contract that there can be no doubt it is the CIAC, under Section 4 of [Executive Order] No. 1008, which has jurisdiction over any dispute arising from or connected with it.”⁷²

As to the issue of whether a surety may be construed to have agreed to the arbitration clause even if it is not a party to the construction contract, the Court held that the surety which undertook to secure the performance of the contractor cannot claim that it had nothing to do with the construction contract. Its liability is solidary with the contractor and is thus an indispensable party to the construction contract.⁷³

In contrast, in *Stronghold Insurance Company, Inc. v. Spouses Stroem (Stronghold)*,⁷⁴ the Court ruled that the surety in a performance bond is not bound by the arbitration clause in the construction contract. Differentiating *Stronghold* from *Prudential Guarantee*, the Court explained that in *Prudential Guarantee*, the performance bond was expressly incorporated in the construction contract. In *Stronghold*, the construction contract merely stated that a performance bond shall be issued in favor of the owner. Moreover, the performance bond merely referenced the construction contract. The Court further noted in *Stronghold* that the surety had already actively participated in the collection suit filed before the trial court and is estopped from assailing the trial court’s jurisdiction. The ruling in *Stronghold* was applied in the more recent case *El Dorado Consulting Realty and Development Group Corp., v. Pacific Union Insurance Company*.⁷⁵

What can be gleaned from the foregoing rulings is that a non-party to a construction contract containing an arbitration clause can be bound by such arbitration clause depending on such party’s ties to the construction contract subject of the dispute. To reiterate, in *Prudential Guarantee* and *The Manila Insurance Co. Inc. v. Spouses Amurao*,⁷⁶ the Court ruled that the surety is bound by the arbitration clause in the construction contract because (a) the dispute pertains to the enforcement of the construction contract, *i.e.*, the right to the performance bond because of the contractor’s contractual breach; and (b) the surety secured the contractor’s contractual obligation. In cases like these, there is a “substantial and significant connection” between the party sought to be impleaded and the construction contract subject of the arbitration.

Thus, in determining whether the dispute in this case should fall within the CIAC’s jurisdiction, there is, first, a need to determine the nature of the dispute and its relation to the Construction Contract containing the arbitration clause. Here, the dispute pertains to the propriety of imposing liquidated

⁷² *Supra* note 28, at 643.

⁷³ *Id.* at 644.

⁷⁴ 751 Phil. 262 (2015). [Per J. Leonen, Second Division].

⁷⁵ 889 Phil. 1192 (2020). [Per J. Carandang, First Division].

⁷⁶ 701 Phil. 557 (2013). [Per J. Del Castillo, Second Division].



damages on Hyundai for its alleged delays in performing its obligations under the Construction Contract. Hyundai has impleaded NGCP because it is the primary entity which has dealt and transacted with Hyundai following the TransCo Letter and the NGCP Letter, which both stated that NGCP has assumed TransCo's transmission business. It is clear that whether Hyundai has the obligation to pay liquidated damages is a matter that is determined by the provisions of the Construction Contract. Significantly, both Hyundai and NGCP agree that the dispute is one that arises out of or is connected with a construction between parties involved in construction in the Philippines.

However, NGCP alleges that it has not agreed to submit to arbitration because it is not a party to the Construction Contract containing the arbitration clause. According to NGCP, under the Concession Agreement and the CMA between it and TransCo, NGCP is only TransCo's Construction Manager tasked to supervise the implementation of the Construction Contract. On the other hand, Hyundai argues that NGCP is TransCo's assignee for the Construction Contract and is contractually obligated to perform all of TransCo's obligations under the Construction Contract, including the duty to arbitrate in case a dispute arose.

Consistent with the jurisprudence discussed above, there is a need to determine NGCP's ties to the Construction Contract and the dispute in this case. This entails an analysis of the Concession Agreement and the CMA, the relevant contracts between NGCP and TransCo which paved the way for NGCP to be involved in the implementation of the Construction Contract. The Court rules that these contracts, while not incorporated into the Construction Contract nor referenced in its provisions, are nevertheless significantly and substantially linked to the Construction Contract because they determine the precise contours of NGCP's role in the Maramag-Bunawan Transmission Backbone Project as well as the extent by which NGCP assumed TransCo's duties and obligations under the Construction Contract. The Concession Agreement and the CMA are the very reason why the NGCP could participate in the implementation of the Construction Contract and transacted with Hyundai.

The Concession Agreement is the main document which lays out the relationship between TransCo and NGCP. Through the Concession Agreement, NGCP took over TransCo's transmission business. Section 3.01 of the Concession Agreement states:

Section 3.01 Rights and Obligations. From the Commencement Date and subject to the terms of this Agreement, **the Concessionaire shall take over and operate the whole of TRANSCO's regulated transmission business as a going concern** and shall, as between TRANSCO and itself, be the sole representative of the Regulated Entity before the ERC. The Concessionaire may, but shall not be obligated to carry on any Related Business, provided that the Concessionaire must assume and



perform contracts for Related Business entered into by TRANSCO prior to Commencement Date being those set out in the Disclosure Letters as defined in the Direct Agreement.⁷⁷ (Emphasis supplied)

Moreover, Section 3.02 (c) of the Concession Agreement reads:

- (c) Notwithstanding and without limiting Subsection 3.03(a) above, the Concessionaire shall during the Concession Period **assume all of the responsibilities as if it is an owner of the Transmission Assets (other than the Excluded Assets), Documented Property Rights and Intellectual Property Rights** including the obligation to pay license fees, taxes, renewal fees and other charges payable that fall due for payment during the Concession Period, **and shall defend and indemnify PSALM and TRANSCO and hold them harmless against any and all liabilities, claims, losses, costs and expenses (including attorney[']s fees) that they may incur during the Concession Period unless they are incurred as a result of PSALM's or TRANSCO's breach of any of the Transaction Documents.**⁷⁸ (Emphasis supplied)

Further, under the Concession Agreement, NGCP also became entitled to exercise all the rights and became responsible to fulfill all obligations of TransCo in all existing contracts related to the operation of TransCo's transmission business. In connection with this, Section 4.01 of the Concession Agreement provides in part:

4.01 Transferred Contracts. From the Commencement Date and subject to Subsection 4.01(e), **the Concessionaire shall be entitled to exercise all of TRANSCO's rights and shall discharge all of TRANSCO's liabilities (other than the Excluded Liabilities) and perform all of its obligations under all existing contracts** relating to the operation of its regulated transmission business, including contracts for Related Business and any rights under any security deposits, letters of credit and other forms of credit support provided by TRANSCO's counterparts to such contracts (the "*Transferred Contracts*").

...

(b) Insofar as the benefits or obligations under any Transferred Contracts or any other contract may not be effectively assigned by TRANSCO to the Concessionaire without the consent of a third party then:

- (i) TRANSCO and the Concessionaire shall each use their reasonable endeavor to procure an effective assignment of these contracts (as the Concessionaire may require), provided that neither Party shall be obliged to make any payment, give any security or provide any guarantee as the basis for, or in connection with, any such assignment, except for contracts relating to Intellectual Property Rights which shall be governed by Section 4.05 (*Intellectual Property Rights*);

⁷⁷ *Rollo* (G.R. No. 214743), p. 550.

⁷⁸ *Id.* at 551.



(ii) unless and until any such contracts shall be assigned with consent, TRANSCO shall, insofar as may be permissible and lawful, give the benefit under such contracts to the Concessionaire as if they had already been assigned to the Concessionaire and the Concessionaire shall perform all of TRANSCO's obligations except for any obligations that TRANSCO was in breach of on the Commencement Date;

(iii) **contracts relating to Projects Under Construction shall be treated in accordance with the Construction Management Agreement;** and

...

(c) This Agreement shall not constitute an assignment or attempt to assign any contract if the assignment or attempt would constitute a breach of that contract or violate Applicable Law

(d) TRANSCO shall indemnify the Concessionaire against all actual losses, liabilities, costs, claims, proceedings, damages and expenses that arise as a result of any breach by TRANSCO of its obligations under this Section 4.01 (including obligations under the Transferred Contracts that TRANSCO was in breach of on the Commencement Date) except insofar as they are attributable to the Concessionaire's acts or omission, in which case, the Concessionaire shall be solely liable for such losses, costs, claims, proceedings, damages and expenses.⁷⁹ (Emphasis supplied)

At the time the Concession Agreement was entered into, TransCo had ongoing projects under construction. While the construction contracts for these projects were included in the Transferred Contracts, the Concession Agreement provided for specific terms to govern the relationship of TransCo and NGCP as to these projects as provided in Section 4.01 (b) (iii). In particular, Section 4.02 (a) of the Concession Agreement provides that NGCP shall manage the construction and completion of all Projects Under Construction. Moreover, pursuant to the Concession Agreement, TransCo and NGCP entered into the CMA.

Under the CMA, TransCo appointed NGCP as its Construction Manager. Section 2. 01 of the CMA reads:

Section 2.01 Appointment. The Owner hereby appoints the Concessionaire to act as its Construction Manager to perform the matters particularly set forth herein, and authorizes the Concessionaire in the capacity of Construction Manager to take such action on its behalf and to exercise and enforce such rights, powers and discretions delegated to the Construction Manager by the term hereof together with all such rights, powers and discretions reasonably incidental hereto and thereto. The Concessionaire hereby accepts its appointment as Construction Manager together with all rights and obligations pertaining thereto, on and subject to

⁷⁹ *Id.* at 552–553.



the terms and conditions set out in the Agreement. In the performance of its functions under this Agreement, the Construction Manager acts as an independent contractor and no employer-employee relationship shall be created between the Owner and the Construction Manager's employees, representatives and agents. Nothing in this Agreement shall be construed as a guarantee by the Construction Manager of the performance of any Construction Contractor.⁸⁰

In addition, the CMA also provides that NGCP will not receive any additional compensation as Construction Manager and that the CMA forms *part of the consideration for the award of the concession to NGCP*.⁸¹

It is clear from Concession Agreement that, as part of the concession, TransCo's contracts will be transferred to NGCP. Under the Concession Agreement, this "transfer" means that NGCP shall have the right to exercise all of TransCo's rights and discharge all of its liabilities under the said transferred contracts. The Concession Agreement classified the Transferred Contracts into different categories – *i.e.*, those that may be transferred without the consent of third parties and those that may not be transferred without such consent. In instances where the contract may not be transferred without the consent of third parties, the Concession Agreement provides that both TransCo and NGCP shall endeavor to, among others, obtain a proper assignment of the contract. Moreover, Section 4.01 (b) (iii) provides that as to Projects Under Construction, the contracts shall be treated in accordance with the CMA. Since Projects Under Construction fall under the category of Transferred Contracts which cannot be assigned without the consent of a third party, contracts pertaining to Projects Under Construction are Transferred Contracts *which are subject to additional rights and obligations as between NGCP and TransCo under the CMA*. Significantly, Hyundai is deemed to have agreed to the assignment of the Construction Contract to NGCP when it did not respond to the TransCo Letter within the period provided and when it subsequently dealt with NGCP in the implementation of the Construction Contract.

Stated more simply, Projects Under Construction are Transferred Contracts and thus, NGCP has the right to exercise all of TransCo's rights and the duty to perform all of TransCo's obligations under these contracts. Moreover, the CMA *additionally* provides that, because these contracts pertain to ongoing construction, the NGCP shall *also* serve as TransCo's Construction Manager. This means that apart from taking over the TransCo's rights and duties under these contracts, it shall also have an active role in managing the ongoing construction. The CMA provides for an additional set of rights and obligations on top of those existing under the Concession Agreement. The Concession Agreement provides for the terms by which NGCP assumed TransCo's rights and obligations under the Construction

⁸⁰ *Id.* at 627.

⁸¹ *Id.* at 558.



Contract while the CMA is the contract which additionally governs NGCP's rights and duties as the Construction Manager.

To be clear, there is no dispute here that the Construction Contract is a Transferred Contract and a Project Under Construction as defined under the Concession Agreement. This means that by virtue of the Concession Agreement, NGCP has the right to exercise all of TransCo's rights and the duty to discharge all of TransCo's obligations under the Construction Contract. Additionally, the CMA also appointed NGCP as the Construction Manager. The existence of the CMA did not exclude the Construction Contract from the Transferred Contracts nor alter NGCP's role. The CMA only added an additional layer of rights and obligations but did not cancel, as to these contracts, the very purpose of the Concession Agreement. The Court, therefore, cannot agree with the NGCP's position that as to the Construction Contract, it was merely a Construction Manager and that the contract was never transferred to it. That is an inaccurate reading of the Concession Agreement and the CMA, and one that NGCP should not hastily pursue considering that such a view could potentially affect its rights and obligations under all Projects Under Construction covered by the Concession Agreement and the CMA. Indeed, the position that NGCP is a mere construction manager of contracts pertaining to Projects Under Construction appear to diminish its rights as the concessionaire of TransCo's transmission business.

Precisely because NGCP is the transferee of all of TransCo's rights and obligations under the Construction Contract and because NGCP contractually obligated itself to perform all of TransCo's contractual obligations thereunder, it is necessarily bound by the arbitration clause. NGCP cannot pick and choose which contractual obligations will bind it and which contractual provisions will not. When NGCP agreed to the terms of the Concession Agreement, particularly the provisions which bound it to discharge all of TransCo's obligations under the Transferred Contracts, this necessarily included an agreement to submit to arbitration as provided in the arbitral clause of Construction Contract.

The contractual nature of an agreement to arbitrate subjects it to principles governing contracts, including the doctrine on relativity of contracts under Article 1311 of the Civil Code. Article 1311 provides in part:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent... (Emphasis supplied)

A contract binds the parties, their assigns, and heirs. Here, as it is clear that NGCP is TransCo's assignee of the Construction Contract, it is



necessarily bound by its terms, including the arbitral clause. In this regard, CIAC's jurisdiction under Section 4 of Executive Order No. 1008 does not distinguish as to whether the parties are original parties to the construction contract. As long as the parties are bound by an arbitration agreement, the CIAC shall exercise jurisdiction over a dispute arising from construction in the Philippines.

Here, to reiterate, in accordance with Article 1311 of the Civil Code on the privity of contracts, NGCP is bound by the Construction Contract and may be compelled to submit to arbitration.

This reading of the Concession Agreement and the CMA is also consistent with TransCo's and NGCP's conduct subsequent to their execution as evidenced by the TransCo and NGCP letters where they both confirmed to Hyundai that NGCP has assumed TransCo's transmission business and has been appointed as the assignee of the Transferred Contracts.

Moreover, even as a Construction Manager, NGCP is still bound by the arbitration clause of the Construction Contract.

This is clear from Section 35 of R.A. No. 9285 which states:

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. (Emphasis supplied)

Section 35 recognizes that the CIAC has jurisdiction over construction disputes which involve not just the parties expressly bound by an arbitration clause but also those who are “otherwise bound.” Thus, it is possible for project managers, contractors, and subcontractors, among others, to be bound by an arbitration clause between the parties to a construction contract. The necessity and logic of binding third parties like a project manager are easy to see when one considers the very purpose for which the CIAC was created. To reiterate, the CIAC was created to provide for a tribunal possessing the expertise necessary to properly and speedily resolve construction disputes among parties within the construction industry. If project managers were allowed to claim that the CIAC has no jurisdiction over it because it did not sign the construction contract and did not agree to the arbitration clause, this



would result to the splitting of cases. Under such an interpretation, a party filing a case against a counter-party in a construction contract would be forced to file an arbitration claim before the CIAC and, at the same time, a separate civil action before a court against third parties to the contract such as a project manager. Parties who wish to avoid the CIAC's jurisdiction or delay and make unnecessarily difficult and costly the resolution of a construction dispute can simply raise the argument that the construction manager should be impleaded and the case should be instituted in a regular court since the CIAC has no jurisdiction over the construction manager. This is certainly not the intent for creating the CIAC. The very goal for the creation of the CIAC, which is to provide for an expert body capable of resolving construction disputes efficiently, would be defeated.

Moreover, an entity such as a project or construction manager, which acts on behalf of a project owner, acts through the authority of and in representation of such project owner. As a representative of the project owner in the implementation of a construction contract, a construction manager who performed acts for which it could be directly held liable under the construction contract and which would give rise to a construction dispute cannot refuse arbitration simply because it did not sign the arbitration agreement for the inclusion of an arbitration clause in the construction contract. A construction manager's ties to the construction contract and the construction dispute is "significant and substantial" so as to fall under the CIAC's jurisdiction.

In addition, in this case, even the CMA repeatedly reiterated that as a Construction Manager, NGCP has the duty to act in a manner that is consistent with the Construction Contract. Section 2.03 of the CMA states in part:

2.03 Specific Requirements. Without limiting the generality of Section 2.02 (General Requirements), the Construction Manager, for and on behalf of the Owner, shall:

- (a) **ensure each Construction Contract performs its obligations under the applicable PUC Contract in a diligent and continuous manner** in accordance with the terms and provisions of the applicable PUC Contracts to which it is a party;
- (b) **at all times act in a manner consistent with the Owner's obligations and responsibilities under each of the PUC Contracts and Funding Agreements;**⁸² (Emphasis supplied)

NGCP undertook to act in a manner that is consistent with TransCo's obligations under the Construction Contract. This includes the duty to honor the arbitration clause. NGCP cannot seek to implement the provisions of the Construction Contract for and on behalf of TransCo yet at the same time

⁸² *Rollo* (G.R. No. 214743), p. 627.



refuse to honor the arbitration clause. To reiterate, NGCP cannot pick and choose which provisions of the Construction Contract will bind it.

Given the foregoing, NGCP's contractual duty to recognize the arbitration clause arises from first, the Concession Agreement which states that NGCP shall perform all of TransCo's obligations under the Transferred Contracts, including the Construction Contract; and second, the CMA which obligates NGCP to ensure that it, at all times, acts in a manner that is consistent with TransCo's obligations under the transferred contracts.

Thus, the Court disagrees with the CA and the CIAC Tribunal that the CIAC has no jurisdiction over the dispute between Hyundai and NGCP. As explained above, NGCP is bound by the arbitral clause in the Construction Contract. The CIAC Tribunal, therefore, can proceed to resolve the construction dispute.

The Court thus reverses the First CA Decision and Resolution. The CIAC Resolution is reinstated.

The CIAC should not have dismissed the case

Considering that the CIAC Tribunal has jurisdiction over the dispute among Hyundai, TransCo, and NGCP, it should not have dismissed the case and should have instead proceeded to resolve the dispute.

Significantly, the CIAC Tribunal's grounds for dismissing the Request for Arbitration were, first, that Hyundai's claim is against NGCP and it has absolved TransCo of liability, and second, the CA, in the First CA Decision had removed NGCP from the CIAC Tribunal's jurisdiction.

The CA, in the Second CA Decision, affirmed this. It agreed that Hyundai no longer has any claim against TransCo. In addition, it stated that the issue of whether CIAC has jurisdiction over the dispute was rendered moot by the First CA Decision, which, at the time the Second CA Decision was rendered, had not yet been reversed by the Court.

With respect to the propriety of TransCo's continued participation in the case, the Court agrees with Hyundai that TransCo should continue to be impleaded. Hyundai asserts claims against TransCo arising from events that occurred before NGCP assumed its transmission business. In this regard, Section 5.08 of the Concession Agreement provides that even as NGCP has taken over TransCo's transmission business, TransCo retains certain liabilities. The relevant portions of Section 5.08 read:



5.08 TRANSCO-Retained Obligations. TRANSCO shall be liable for the following:

...

(b) claims relating to existing rights of way whose cause of action accrued prior to Commencement Date, provided that should the Concessionaire through any act or omission cause any liability or claim to arise or be aggravated, it shall be liable for the incremental liability resulting from such act or omission;

...

(e) existing or future claims against TRANSCO or the Concessionaire made after the Commencement Date arising from TRANSCO's acts or omissions before the Commencement Date;⁸³

Thus, based solely on the allegations in Hyundai's Request for Arbitration, and without preempting the CIAC Tribunal's determination of TransCo's liabilities, if any, the Court rules that it was error for the CIAC Tribunal to conclude that TransCo should be dropped as a party to the arbitration. It is clear that Hyundai asserts certain claims specifically against TransCo. It is equally clear that under the Concession Agreement, TransCo continues to be liable for certain claims even after NGCP has taken over its transmission's business. It is for the CIAC Tribunal to determine whether there is evidence supporting Hyundai's claims against TransCo and whether such claims fall under the obligations which TransCo retained under the Concession Agreement.

Further, as to the CIAC and the CA's second ground for dismissing the Request for Arbitration, *i.e.*, that the CA had already ruled that the CIAC has no jurisdiction over NGCP, the Court, in this *ponencia*, has already reversed the First CA Decision and concluded that the CIAC has jurisdiction over the dispute.

Given the foregoing, the Court must also necessarily reverse the CIAC Award and the Second CA Decision. Consistent with this, the CIAC Tribunal is directed to proceed with the resolution of the dispute.

WHEREFORE, the Court **GRANTS** the Petition for Review, dated October 24, 2014, in G.R. No. 214743. The Court of Appeals Decision, dated May 27, 2014, and Resolution, dated October 14, 2014, in CA-G.R. SP No. 132509 are **REVERSED**. The Construction Industry Arbitration Commission Resolution, dated August 22, 2013, is **AFFIRMED**.

⁸³ *Id.* at 559-560



Further, the Court **GRANTS** the Petition for Review on *Certiorari*, dated September 23, 2019, in G.R. No. 248753. The Court of Appeals Decision, dated March 7, 2019, and CA Resolution, dated August 1, 2019, in CA-G.R. SP No. 136812 and the Construction Industry Arbitration Commission Award, dated August 8, 2014, are **REVERSED**.

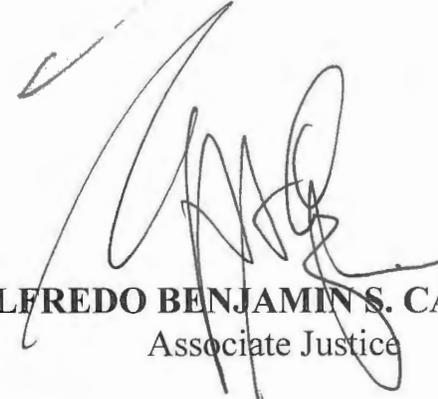
As this case has been pending for several years, the CIAC is directed to resolve the dispute with dispatch.

SO ORDERED.



MARIA FILOMENA D. SINGH
Associate Justice

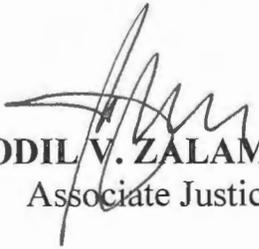
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

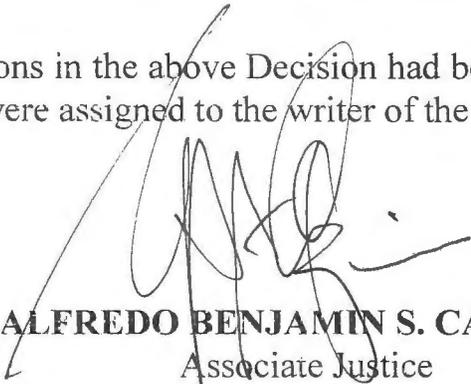


RODIL V. ZALAMEDA
Associate Justice

(On official leave)
JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

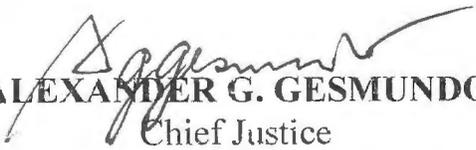
I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13, 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 cases were assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice

