



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PLAYINN, INC.,

Petitioner,

G.R. No. 254764

Present:

CAGUIOA, J., *Chairperson,*
INTING,
GAERLAN,**
DIMAAMPAO, and
SINGH, JJ.

- versus -

PRUDENTIAL GUARANTEE
AND ASSURANCE, INC.,*

Respondent.

Promulgated:

November 29, 2023

X-----*Mj & Tol Bato*-----X

DECISION

INTING, J.:

Before the Court is a Petition for Review¹ under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision² dated July 23, 2020, and the Resolution³ dated November 26, 2020, of the Court of Appeals (CA) in CA-G.R. SP No. 162597. The CA, *inter alia*, annulled and set aside the following issuances of the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal in CIAC Case No. 27-

* In the Motion for Additional Time to File Petition for Review, petitioner impleaded Atty. Ismael G. Khan, *et al.* as respondents; *rollo*, pp. 3–6. In the Petition for Review, petitioner prayed that it be allowed to amend the caption to read as “*Playinn, Inc., Petitioner, versus Prudential Guarantee and Assurance, Inc., Respondent,*” *id.* at 209.

** On official leave.

¹ *Rollo*, pp. 205–284.

² *Id.* at 289–317-A. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Ruben Reynaldo G. Roxas.

³ *Id.* at 363–364.

Y

2018 entitled “*Playinn[,] Inc., represented by its President, Lester Lee v. Furacon Builders[,] Inc. and Prudential Guarantee and Assurance, Inc.*”:

1. Order⁴ dated August 2, 2019;
2. Resolution⁵ dated September 5, 2019; and
3. Writ of Execution⁶ dated September 2, 2019

The Antecedents

On December 2, 2016, petitioner Playinn, Inc. (Playinn) and Furacon Builders, Inc. (Furacon), both corporations duly organized and existing under the laws of the Philippines, entered into an Owner-Contractor Agreement⁷ (Construction Agreement) wherein Playinn engaged the services of Furacon as its contractor for the construction of a multi-storey hotel (project). The project, which is located at Upper General Luna St., Baguio City, had a total contract price of PHP 106,001,000.00, to “commence upon receipt of [the] Notice to Proceed (NTP) and shall be completed within [s]ixteen (16) months from [the] date of NTP.”⁸ The Construction Agreement also provided that for failure to complete the project within the specified duration, Furacon shall pay Playinn the amount of one-tenth (1/10) of one percent (1%) of the total contract price per calendar day for every day of delay as liquidated damages.⁹

In order to guarantee the full and faithful performance of the terms and conditions of the Construction Agreement, Furacon, as principal, and with Playinn as obligee, obtained the following from respondent Prudential Guarantee and Assurance, Inc. (Prudential), as surety: (1) Performance Bond No. BD-G13-MLA-0005800 dated January 25, 2017 amounting to PHP 21,200,200.00¹⁰ (performance bond) and (2) Surety Bond No. BD-G16-MLA-0006402 also dated January 25, 2017 amounting to PHP 21,200,200.00¹¹ (surety bond). Both bonds were valid until April 11, 2018.

⁴ *Id.* at 744–748. Issued by Arbitral Tribunal Chairperson Atty. Ismael G. Khan, Jr. and Arbitral Tribunal Member Arch. Rafael A. Briones, Jr. Dr. Primitivo C. Cal did not sign.

⁵ *Id.* at 793–794.

⁶ *Id.* at 884–885. Issued by Arbitral Tribunal Chairperson Atty. Ismael G. Khan, Jr. and Arbitral Tribunal Member Arch. Rafael A. Briones, Jr., Dr. Primitivo C. Cal did not sign. Signed by Commission Chairperson Justice Teresita V. Diaz-Baldos (Ret.) and Commission Members Antonio A. Abola and Emilio Lolito J. Tumbocon.

⁷ *Id.* at 451–464.

⁸ *Id.* at 456.

⁹ *Id.* at 457.

¹⁰ *Id.* at 465–466.

¹¹ *Id.* at 468–469

On February 7, 2017, Playinn paid the amount of PHP 20,000,000.00 to Furacon representing twenty percent (20%) of the total contract price¹² per the terms of payment under Article 7 of the Construction Agreement.¹³ Thereafter, in the NTP¹⁴ dated February 20, 2017, Playinn, through its project manager, WTA Architecture and Design Studio (WTA), directed Furacon “to proceed with the contract for the construction of the [project] on March 1, 2017.”¹⁵

The project was met with delays which prompted Furacon to request for an extension of six months for its completion. Playinn granted the request for extension, but only for three months, or from July 2018 until October 2018.¹⁶ On January 26, 2018, Playinn, through WTA, sent an Ultimatum Letter¹⁷ to Furacon complaining about the slow progress in the work and giving the latter until the end of February 2018 to make significant changes on the site; otherwise, Playinn shall be constrained to file the appropriate legal action.¹⁸

Per Accomplishment Report¹⁹ dated March 14, 2018, Furacon had completed 4.58% of the project covering the period from March 20, 2017 to March 8, 2018. Thus, in view of Furacon’s delay of more than 30 calendar days from the work schedule pursuant to Article 10(1)(c) of the Construction Agreement, Playinn considered Furacon to be in default and sent the latter a final notice of termination in a Letter²⁰ dated March 15, 2018. In the same letter, Playinn demanded that Furacon pay the amount of PHP 50,517,524.16 representing the refund of Playinn’s alleged overpayment of PHP 15,141,614.16 and liquidated damages amounting to PHP 35,375,910.00 in accordance with Article 9(1) of the Construction Agreement. In a Letter²¹ to Prudential on even date, Playinn enforced its claim on the surety bond for the supposed overpayment of PHP 15,141,614.16 and on the performance bond the sum of PHP 21,200,200.00 representing partial satisfaction on the liquidated damages.

As its demands went unheeded, Playinn filed a Request for

¹² *Id.* at 475.

¹³ *Id.* at 454.

¹⁴ *Id.* at 476.

¹⁵ *Id.*

¹⁶ *Id.* at 936.

¹⁷ *Id.* at 937.

¹⁸ *Id.* at 290, 503–504, 937.

¹⁹ *Id.* at 477.

²⁰ *Id.* at 478–481.

²¹ *Id.* at 486–488.

Arbitration/Complaint²² against Furacon and Prudential before the CIAC stating the following claims: (1) Considering its 4.58% accomplishment as of March 14, 2018, Furacon was clearly in delay and, therefore, in breach of its Construction Agreement with Playinn;²³ (2) Furacon received the amount of PHP 20,000,000.00 from Playinn representing 20% of the total contract price, but the value of the 4.58% accomplishment was only at PHP 4,854,845.80; thus, Furacon was unjustly enriched at the expense of Playinn in the amount of PHP 15,145,154.20;²⁴ (3) Furacon is liable for damages under Articles 1167, 1170 and 2201 of the Civil Code;²⁵ (4) Furacon should be held liable for liquidated damages;²⁶ (5) Furacon is liable for exemplary damages, attorney's fees, and cost of suit; and (6) Prudential is solidarily liable with Furacon for the unrecouped downpayment, damages, attorney's fees, and other costs and expenses of litigation.²⁷ The case was docketed as CIAC Case No. 27-2018.

In a Letter²⁸ dated July 12, 2018, CIAC requested Prudential and Furacon to answer the complaint, nominate six arbitrators, and indicate whether they agree with Playinn's preferred mode of arbitration through an Arbitral Tribunal. In response thereto, Prudential filed a Motion to Dismiss the Request for Arbitration/Complaint²⁹ (Motion to Dismiss) alleging that the CIAC does not have jurisdiction over Prudential. It averred that there was no provision in the performance bond nor surety bond that required the parties therein to submit their dispute to arbitration. It pointed out that the complaint failed to allege any exchange of communication between Prudential and the parties therein that would show that Prudential agreed to submit any dispute to arbitration. Thus, Prudential submitted that Playinn's complaint was fatally flawed for being violative of Sections 2.3 and 2.3.1, Rule 2 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (Revised CIAC Rules),³⁰ viz:

SECTION 2.3. *Condition for Exercise of Jurisdiction.* — For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.

2.3.1 Such arbitration agreement or subsequent submission must be alleged in the Complaint. Such submission

²² *Id.* at 498–521.

²³ *Id.* at 510.

²⁴ *Id.* at 511.

²⁵ *Id.* at 511–512.

²⁶ *Id.* at 513.

²⁷ *Id.* at 515.

²⁸ *Id.* at 523–524. Thru Executive Director III Kathryn Josephine T. Dela Cruz.

²⁹ *Id.* at 525–533.

³⁰ *Id.* at 526–527.

may be an exchange of communication between the parties or some other form showing that the parties have agreed to submit their dispute to arbitration. Copies of such communication or other form shall be attached to the Complaint.

Moreover, Prudential maintained that the CIAC failed to acquire jurisdiction over it for the improper service of the Letter dated July 12, 2018. It asseverated that the Letter was served only on the Bonds Department of Prudential and not on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel who were authorized to receive it on its behalf. Further, Prudential contended that the complaint failed to state a cause of action in that both the performance bond and the surety bond were limited to only PHP 21,200,200.00 each; thus, Playinn's demand for Prudential to be solidarily liable with Furacon for the amounts prayed for in the complaint did not have any legal basis.³¹

In its Comment/Opposition³² on the Motion to Dismiss, Playinn argued that the bonds are considered as accessory contracts to the Construction Agreement and are integral parts thereof.³³ Because Prudential was fully aware of the provisions of the agreement, it is estopped from denying its obligation to comply therewith.³⁴ As to the service of summons, Playinn insisted that its improper service did not automatically warrant the dismissal of a complaint in that alias summons can still be served, being the proper and speedy remedy to acquire jurisdiction over the person of Prudential.³⁵

In a Letter³⁶ dated August 2, 2018, CIAC informed Prudential that pursuant to Section 2.4,³⁷ Rule 2 of the Revised CIAC Rules, its Motion to Dismiss shall be referred to, and acted upon by, the appointed arbitrator/s for the case. Hence, it thus reiterated its earlier directive for Furacon and Prudential to agree on a common set of nominees for arbitrator/s and indicate whether they agree with Playinn's preference for an Arbitral Tribunal. In another Letter³⁸ dated August 22, 2018, CIAC informed the parties that it appointed (1) Playinn's nominee, Dr. Primitivo C. Cal; and Architect Rafael A. Briones, Jr., from the CIAC Roster, in

³¹ *Id.* at 528–531.

³² *Id.* at 538–548.

³³ *Id.* at 539.

³⁴ *Id.* at 541.

³⁵ *Id.* at 544–545.

³⁶ *Id.* at 549–550.

³⁷ Section 2.4, Rule 2 of the Revised CIAC Rules provides:

SECTION 2.4 *Jurisdictional Challenge*. — A motion to dismiss based on lack of jurisdiction shall be resolved by the appointed arbitral tribunal.

³⁸ *Rollo*, pp. 551–552.

view of Furacon and Prudential's failure to submit their common nominees, as the first two members of the Arbitral Tribunal; and (2) Atty. Ismael G. Khan, Jr. (Atty. Khan) as the Third Arbitrator and Chair[person] thereof. The parties were further directed to confirm in writing their acceptance of the appointment of Atty. Khan as such.

Thereafter, the Arbitral Tribunal conducted a case management conference³⁹ where Prudential was given a period of 10 days within which to file its answer to Playinn's complaint.⁴⁰ Instead of filing an answer, Prudential filed a Manifestation⁴¹ stating that it is not an indispensable party to the case as it was a mere surety of Furacon; and that its liability, if any, will depend on the Arbitral Tribunal's determination of whether Furacon is liable to Playinn.

On October 12, 2018, Playinn and Furacon entered into a Terms of Reference⁴² wherein Playinn's total claims, *i.e.*, unrecouped down payment, additional amount needed to complete the project, liquidated damages, exemplary damages, and attorney's fees, was pegged at PHP 115,991,013.00; while Furacon's counterclaims, *i.e.*, moral damages, exemplary damages, liquidated damages, and attorney's fees, amounted to PHP 16,900,150.00.⁴³

Ruling of the CIAC Arbitral Tribunal

In the Final Award⁴⁴ dated May 28, 2019, the Arbitral Tribunal ruled in favor of Playinn as follows:

WHEREFORE, award is hereby rendered ordering Respondent Furacon to pay Claimant the total amount of FIFTY FIVE MILLION TWO HUNDRED NINETY NINE THOUSAND ONE HUNDRED PESOS (PhP 55,299,100.00), broken down as follows:

Unrecouped down payment	PhP 15,145,154.20
Additional amount needed to complete the Project	28,853,845.80
Liquidated damages	10,600,100.00
Exemplary damages	200,000.00
Attorney's fees	500,000.00

³⁹ *Id.* at 562–564.

⁴⁰ *Id.* at 292–293.

⁴¹ *Id.* at 565–568.

⁴² *Id.* at 571–579.

⁴³ *Id.* at 575.

⁴⁴ *Id.* at 582–602. Issued by the Arbitral Tribunal with Atty. Ismael G. Khan, Jr. as the Chairperson and Dr. Primitivo C. Cal and Arch. Rafael A. Briones, Jr. as members.

In addition, Respondent Furacon shall reimburse Claimant for the cost of arbitration it initially paid for. The amount payable to Claimant shall earn interest of 6% per annum from date of finality of this Award until full payment. Respondent PGAI shall [be] solidarily liable to the extent of the performance bond it issued to Respondent Furacon.

SO ORDERED.⁴⁵ (Emphasis omitted)

The Arbitral Tribunal held that (1) the CIAC has jurisdiction over Prudential in that the performance bond is significantly and substantially connected to the construction contract; moreover, Prudential is solidarily liable with Furacon for the amounts prayed for in the complaint pursuant to Article 14 of the Construction Agreement and the bonds;⁴⁶ (2) the delays in the construction are attributable mainly to Furacon's improper implementation of work schedule, negligence, and error in decision-making;⁴⁷ (3) the percentage of the actual completion of the project as of March 14, 2018 was only at 4.58%;⁴⁸ (4) 4.58% of the total contract price amounts to PHP 4,854,845.80; the unrecouped amount is downpayment less accomplishment (PHP 20,000,000.00 – PHP 4,854,845.80) or with the difference of PHP 15,145,154.20 payable to Playinn;⁴⁹ (5) Playinn is entitled to the amount of PHP 28,853,845.80 as additional cost to complete the project;⁵⁰ (6) Furacon is not entitled to moral damages;⁵¹ (7) Playinn is entitled to exemplary damages amounting to PHP 200,000.00;⁵² (8) the percentage of the delay in the project is at 85.24%; while per agreement, liquidated damages is computed at one-tenth (1/10) of one percent (1%) of the total contract price per calendar day for every day of delay which, in the case, amounts to PHP 51,516,486.00, liquidated damages should not exceed ten percent (10%) of the total contract price per industry practice; hence, Playinn is entitled to PHP 10,600,100.00 as liquidated damages;⁵³ (9) Playinn is awarded attorney's fees at PHP 500,000.00;⁵⁴ and (10) Furacon shall reimburse Playinn for the cost of arbitration considering that the former has unjustly refused to pay a valid and just claim.⁵⁵

⁴⁵ *Id.* at 601.

⁴⁶ *Id.* at 588–589.

⁴⁷ *Id.* at 596.

⁴⁸ *Id.* at 597.

⁴⁹ *Id.* at 597–598.

⁵⁰ *Id.* at 598.

⁵¹ *Id.*

⁵² *Id.* at 599.

⁵³ *Id.* at 599–600.

⁵⁴ *Id.* at 600.

⁵⁵ *Id.*

The Writ of Execution issued by the CIAC

Playinn filed a Motion for Issuance of Writ of Execution⁵⁶ on the Final Award. For its part, Prudential filed a Motion *Ad Cautelam*⁵⁷ stating that it is questioning the Final Award before the CA and moving for the approval of the Surety Bond issued by Empire Insurance Company (Empire Insurance) amounting to PHP 21,200,200.00⁵⁸ to stay its execution.

Later, Prudential filed a Rule 43 petition⁵⁹ against Playinn questioning the Final Award, docketed as CA-G.R. SP No. 161151 (Rule 43 Petition).

In the Order/Resolution⁶⁰ dated August 2, 2019, the Arbitral Tribunal granted Playinn's Motion for Issuance of Writ of Execution and treated Prudential's Motion *Ad Cautelam* as a disguised Motion for Reconsideration which is a prohibited pleading under Rule 17.2 of the Revised CIAC Rules.⁶¹ Moreover, it disapproved the surety bond issued by Empire Insurance for its insufficiency and for being inconsistent with the conditions mandated under the Construction Industry Authority of the Philippines Document 102.⁶²

Prudential sought for reconsideration,⁶³ but the Arbitral Tribunal denied it in its Resolution⁶⁴ dated September 5, 2019. Meanwhile, the CIAC issued a Writ of Execution⁶⁵ dated September 2, 2019.

Prudential elevated the matter to the CA *via* a Rule 65 petition, with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, docketed as CA-G.R. SP No. 162597 (Rule 65 Petition).⁶⁶ It prayed, among others, that the Order dated August 2, 2019, Resolution dated September 5, 2019, and the Writ of Execution dated September 2, 2019, in CIAC Case No. 27-2018 be nullified and set aside for having been issued with grave abuse of discretion.⁶⁷

⁵⁶ *Id.* at 603–607.

⁵⁷ *Id.* at 608–613.

⁵⁸ *Id.* at 647–648.

⁵⁹ *Id.* at 660–720.

⁶⁰ *Id.* at 744–748.

⁶¹ *Id.* at 746.

⁶² *Id.* at 746–747.

⁶³ *Id.* at 749–773.

⁶⁴ *Id.* at 793–794.

⁶⁵ *Id.* at 884–885.

⁶⁶ *Id.* at 820–872.

⁶⁷ *Id.* at 870.

Ruling of the CA

On October 7, 2019, the CA issued a temporary restraining order, effective for sixty (60) days, enjoining therein respondents CIAC and Playinn to cease and desist from implementing the Order of the Arbitral Tribunal dated August 2, 2019, and its Resolution dated September 5, 2019, and the Writ of Execution in CIAC Case No. 27-2018.⁶⁸ This was followed by the CA's issuance of a writ of preliminary injunction⁶⁹ in favor of Prudential in a Resolution⁷⁰ dated January 15, 2020.

Meanwhile, the CIAC Sheriff issued a Notice of Garnishment⁷¹ on December 10, 2019 addressed to the President of the Banco De Oro Unibank, Inc., BDO Corporate Center, Makati City upon all the bank deposits and other personal properties of Furacon and Prudential in the amount of PHP 56,413,074.63, plus six percent (6%) interest per annum from the finality of the award until full payment thereof.

Thereafter, in CA-G.R. SP No. 162597, the CA granted the Rule 65 Petition in the assailed Decision⁷² dated July 23, 2020. The *fallo* of the CA decision reads:

WHEREFORE, premises considered, the Petition for Certiorari filed by PGAI is hereby **GRANTED**, as follows: (a) The Writ of Preliminary Injunction enjoining and directing all respondents, its officials and agents, or persons acting for and on their behalf to CEASE and DESIST from implementing the assailed Orders dated 2 August 2019 and 5 September 2019 and Writ of Execution dated 2 September 2019 against petitioner is made **PERMANENT**; (b) A Writ of Certiorari is hereby issued **ANNULLING** and **SETTING ASIDE** the aforesaid Orders and Writ of Execution as well as the Notice of Garnishment dated 10 December 2019 issued against PGAI.

PGAI's Motion to Cite respondent CIAC and Sheriff Allan R. Amon in indirect contempt of court is **DENIED**. The Resolution dated 20 January 2020 requiring them to submit a written explanation why they should not be cited for indirect contempt of court for disobeying the temporary restraining order issued on 15 November 2019 is **RECALLED** and **VACATED**.

PLAYINN's Motion to Dismiss the instant Petition for Certiorari on the ground of forum shopping and to cite PGAI and its counsel for direct contempt of court as well as its Motion to Dissolve

⁶⁸ *Id.* at 1205–1207 and 1365–1366.

⁶⁹ *Id.* at 1432–1434.

⁷⁰ *Id.* at 1426–1431.

⁷¹ *Id.* at 1407.

⁷² *Id.* at 298–317-A.

the Writ of Preliminary Injunction are ***DENIED*** for lack of merit. Likewise, its Motion to Consolidate is ***DENIED*** for lack of merit.

SO ORDERED.⁷³ (Emphasis and italics in the original)

The CA ruled as follows:

First, the Arbitral Tribunal’s judgment against Prudential is null and void for lack of jurisdiction over its person. The letter of CIAC dated July 12, 2018 requiring Prudential to file its answer on the Request for Arbitration/Complaint within 15 days was not properly served on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel pursuant to Section 11, Rule 14 of the 1997 Rules of Civil Procedure. Instead, it was addressed to an unnamed President at “Room 38-40, 3rd Floor, P&C Building, Perez Boulevard, Dagupan City” and stamped received by one “Donna Razon” of the “PGAI-Coyiuto House.”⁷⁴

Moreover, nowhere was it expressly provided in the performance and surety bonds that Prudential is bound by an arbitration agreement; neither was it alleged in Playinn’s Request for Arbitration/Complaint that Prudential executed an arbitration agreement or that the parties agreed to submit the dispute to voluntary arbitration. As shown by the records, Prudential questioned CIAC’s jurisdiction over the subject matter and its person from the very beginning.⁷⁵ It filed a Motion to Dismiss stating such grounds, but the Arbitral Tribunal rendered the Final Award without resolving the motion.⁷⁶

Second, the CIAC committed grave abuse of discretion when it altered or modified the Final Award. In the Final Award, it was stated that Prudential shall be solidarily liable to the extent of the performance bond it issued to Furacon. However, in its subsequent Order dated August 2, 2019, granting Playinn’s Motion for Issuance of Writ of Execution, and in the Writ of Execution dated September 2, 2019, the Arbitral Tribunal altered or modified Prudential’s liability in that the latter shall be solidarily liable to the extent of the performance *and* surety bonds it issued to Furacon. Thus, there was a variance between the dispositive portion of the Final Award and the Writ of Execution.⁷⁷

⁷³ *Id.* at 317–317-A.

⁷⁴ *Id.* at 311.

⁷⁵ *Id.* at 312.

⁷⁶ *Id.* at 310.

⁷⁷ *Id.* at 315–316.

Third and last, Prudential did not commit forum shopping. Playinn argued that the Rule 65 petition, CA-G.R. SP No. 162597, should be dismissed on the ground of forum shopping in view of the Rule 43 petition earlier filed by Prudential docketed as CA-G.R. SP No. 161151 involving the same parties, facts, and issues. However, the CA explained that the Rule 65 petition before it questions the Arbitral Tribunal's Orders and Writ of Execution which were issued after the issuance of the Final Award; while the Rule 43 petition questions the Final Award itself.⁷⁸

Playinn filed a Motion for Partial Reconsideration⁷⁹ questioning the CA decision, but the CA denied it in the herein assailed Resolution⁸⁰ dated November 26, 2020.

Meanwhile, Prudential filed a Motion/Notice⁸¹ before the CA dated March 10, 2020 withdrawing its Rule 43 Petition. This was later granted by the CA in the Decision⁸² dated January 28, 2021 in the said case.

Hence, the present petition.

The Petition

In the present petition, Playinn avers that the CA gravely erred (1) in not holding that Prudential is estopped from denying its express undertaking that it will respect and abide by whatever decision which the Arbitral Tribunal may render; (2) in finding that the CIAC failed to acquire jurisdiction over the person of Prudential as the Rules of Civil Procedure regarding the service of summons do not apply thereto; (3) in finding that the CIAC has no jurisdiction over the subject matter as Prudential was fully aware of the provisions of the Construction Agreement and its obligations thereunder when it issued the bonds; (4) in finding that the deferment of the resolution of Prudential's Motion to Dismiss was not proper because it was the latter which opted to defer its resolution; (5) in finding that the assailed Order and Resolution of the Arbitral Tribunal and the Writ of Execution were not in accord with the Final Award; (6) in not holding Prudential to be guilty of forum shopping; and (7) in denying the consolidation of CA-G.R. SP No. 162597 and CA-G.R. SP No. 161151 both filed by Prudential before the CA.⁸³

⁷⁸ *Id.* at 306-308.

⁷⁹ *Id.* at 318-348.

⁸⁰ *Id.* at 363-364.

⁸¹ *Id.* at 1742-1745.

⁸² *Id.* at 188-201. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Florencio M. Mamauag, Jr.

⁸³ *Id.* at 241-244.

In its Comment⁸⁴ to the petition, Prudential counters that the petition is a mere rehash of the issues and arguments raised by Playinn before the CA and ruled upon by the latter in the assailed Decision and Resolution. It argues that the CA did not err when it ruled that Prudential did not expressly and voluntarily bind itself to abide by the Arbitral Tribunal's Final Award; in finding that the CIAC failed to acquire jurisdiction over its person and the subject matter of the case; in finding that the Arbitral Tribunal erred in deferring the resolution of Prudential's Motion to Dismiss; in finding that the Arbitral Tribunal's Order, Resolution, and Writ of Execution were not in accord with the Final Award; in finding that there was no forum shopping when Prudential filed the Rule 43 and Rule 65 Petitions before the CA; and when it opted not to consolidate the two petitions.⁸⁵

Playinn maintains in its Reply⁸⁶ that Prudential, by its very nature as an issuer of an insurance policy, is solidarily liable with its principal, Furacon, under both the performance and security bonds.⁸⁷ It points out that Prudential is now estopped from challenging the jurisdiction of the CIAC because it already withdrew its appeal questioning the Final Award;⁸⁸ in any case, there was a valid service of summons upon Prudential and the latter voluntarily submitted itself to CIAC's jurisdiction.⁸⁹ Moreover, Playinn insists that during the Case Management Conference before the Arbitral Tribunal, Prudential was given the option to either have its Motion to Dismiss resolved immediately or file an answer to the Complaint, and Prudential chose the latter option. Later, however, Prudential filed a Manifestation stating that it will no longer file an answer. Thus, the deferment of the resolution of the issue on jurisdiction was occasioned by Prudential's own actuations.⁹⁰

Issue

The main issue in the case is whether the CA erred in ruling that the CIAC committed grave abuse of discretion when it issued the assailed issuances that rendered Prudential solidarily liable to the extent of both the performance and surety bonds it issued to Furacon.

⁸⁴ *Id.* at 1936–1994.

⁸⁵ *Id.* at 1936–1938.

⁸⁶ *Id.* at 2000–2032.

⁸⁷ *Id.* at 2001.

⁸⁸ *Id.* at 2007–2008.

⁸⁹ *Id.* at 2011.

⁹⁰ *Id.* at 2020–2021.

The Court's Ruling

CIAC Final Award already binding as to the parties.

Preliminary, the Court notes that most of the issues raised in the petition, *i.e.*, CIAC's jurisdiction over the person of Prudential and the subject matter of the complaint, and the resolution of Prudential's Motion to Dismiss – pertain to the merits of the Final Award rendered by the Arbitral Tribunal and already threshed out therein. To recall, from CIAC, Prudential questioned the Final Award before the CA *via* Rule 43 in CA-G.R. SP No. 161151, but it later withdrew its petition.⁹¹ On the other hand, there is nothing in the records that would show that Playinn questioned the Final Award before any court or tribunal; in fact, Playinn moved for the execution of the Final Award which eventually gave rise to the herein assailed Decision and Resolution.⁹²

Hence, insofar as both parties are concerned, there is no more issue as to the Final Award in that they recognize it as already final and binding as to them.

The Arbitral Tribunal validly acquired jurisdiction over the person of Prudential and the subject matter of the case.

At any rate, while Prudential did not raise any issue on jurisdiction in its Rule 65 petition before the CA, the Court deems it proper to discuss the propriety of the CA ruling in this regard to finally put the issue to rest, considering that the CA anchored its ruling on these grounds.

Playinn faults the CA in ruling that the Arbitral Tribunal did not acquire jurisdiction over the person of Prudential on the ground of improper service of summons; it asserts that the CIAC has its own rules on serving notices to a respondent regarding a request for arbitration. Prudential, on the other hand, argues that the provisions of the Rules of Court on service of summons suppletorily apply to arbitration proceedings before the CIAC.

⁹¹ *Id.* at 188–201.

⁹² *Id.* at 603–607.

The application of the Rules of Court on service of summons in proceedings before the CIAC, as Prudential insists, is erroneous.

Under Section 21⁹³ of Executive Order No. (EO) 1008,⁹⁴ the CIAC is empowered to formulate its own rules and procedures for construction arbitration. Pursuant to this mandate, the CIAC promulgated the Revised CIAC Rules, which govern arbitration proceedings before it.

Significantly, under the Revised CIAC Rules, there is no rule on service of summons upon domestic private juridical entities similar to that provided in Section 11,⁹⁵ Rule 14 of the 1997 Revised Rules of Court. Instead, Section 3.3, Rule 3 of the Revised CIAC Rules merely provides that when there has been a request for arbitration, “[t]he CIAC Secretariat shall within three (3) days from filing, transmit to the Respondent a request for his Answer, attaching thereto a copy of the complaint and the Request for Arbitration together with the annexed documents.” In relation thereto, Section 6.2, Rule 6 of the Revised CIAC Rules provides that “[n]otifications or communications from the Secretariat and/or the Arbitrator(s) shall be validly made if they are delivered personally by an authorized representative of CIAC, by private courier, by registered mail to the address(es) or last known address(es) of the party(ies) for whom the same are intended appearing in the record, and/or by email sent to the email addresses of the party(ies) on record, at the option of the Secretariat/arbitrator(s).”

Still, Prudential maintains that the rule on service of summons under Section 11, Rule 14 of the 1997 Revised Rules of Court suppletorily applies to arbitration proceedings before the CIAC. The Court does not agree.

Contrary to Prudential’s position, the Revised CIAC Rules do not provide for the suppletory application of the Rules of Court to proceedings before the CIAC. On the contrary, Section 1.3, Rule 1 of the Revised CIAC Rules provides that judicial rules are not controlling in arbitration proceedings before it:

⁹³ Section 21 of EO 1008 provides:

SECTION 21. *Rule-Making Power.* — The CIAC shall formulate and adopt necessary rules and procedures for construction arbitration.

⁹⁴ “Construction Industry Arbitration Law,” approved on February 4, 1985.

⁹⁵ Section 11, Rule 14 of the 1997 Revised Rules of Court provides:

SEC. 11. *Service upon domestic private juridical entity.* -- When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

SECTION 1.3 Judicial rules not controlling — In any arbitration proceeding under these Rules, the judicial rules of evidence need not be controlling, and it is the spirit and intention of these Rules to ascertain the facts in each case by every and all reasonable means without regard to technicalities of law or procedure.

Section 13.4, Rule 13 and Section 21.2, Rule 21 of the Revised CIAC Rules further grant complete control over arbitration proceedings to the Arbitral Tribunal:

SECTION 13.4 *Expeditious procedures* — The Arbitral Tribunal shall at all times adopt the most expeditious procedures for the introduction and reception of evidences, and shall have complete control over the proceedings, but in any case shall afford full and equal opportunity to all parties to present relevant evidence.

x x x x

SECTION 21.2 *Control over Proceedings* — The Arbitral Tribunal shall exercise complete control over all proceedings to insure a speedy, adequate and justifiable disposition of the disputes and cases submitted to them for resolution.

Consequently, applying Section 3.3 in relation to Section 6.2 of the Revised CIAC Rules, the Court finds that the Arbitral Tribunal validly acquired jurisdiction over the person of Prudential.

It bears to emphasize that Prudential never disputed that it received a notice from the CIAC to file its answer to the complaint. Instead, its Motion to Dismiss questioned only the supposed improper service of summons upon its person, the lack of an arbitration agreement with Playinn, and the failure of Playinn to state a cause of action against it. As admitted by Prudential in the Motion to Dismiss:

12. It must be noted that the Order dated 12 July 2018 of this Honorable Commission was served only on the Bonds Department of [Prudential] and was not properly received by any of [Prudential's] president, managing partner, general manager, corporate secretary, treasurer or in-house counsel.⁹⁶

Evidently, the aforestated Order dated July 12, 2018 pertained to the notice of arbitration which was, in fact, received by the Bonds Department of Prudential. It is also for the very same reason why Prudential was able to intelligently address the claims of Playinn in its

⁹⁶ *Rollo*, p. 529.

Motion to Dismiss. There is, therefore, compliance with the Revised CIAC Rules on notice to and service of the Complaint upon Prudential; hence, the Arbitral Tribunal acquired jurisdiction over the person of Prudential.

Anent the jurisdiction over the subject matter, the Court agrees with Playinn that the Arbitral Tribunal acquired jurisdiction over the subject matter of the case.

In *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*⁹⁷ (*Anscor*), the Court explained that although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. Thus, under Section 4⁹⁸ of EO 1008, it is the CIAC which has jurisdiction over any dispute arising from or connected with it. Thus:

EO No. 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes *arising from or connected with* construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. Under the aforementioned provision, it is apparent that a dispute must meet two (2) requirements in order to fall under the jurisdiction of the CIAC: *first*, the dispute must be somehow connected to a construction contract; and *second*, the parties must have agreed to submit the dispute to arbitration proceedings.

As regards the first requirement, the Performance Bond issued by the petitioner was meant to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. A guarantee or a surety contract under Article 2047 of the Civil Code of the Philippines is an accessory contract because it is dependent for its existence upon the principal obligation guaranteed by it.

In fact, the primary and only reason behind the acquisition of the performance bond by KRDC was to guarantee to ALI that the construction project would proceed in accordance with the contract terms and conditions. In effect, the performance bond becomes liable for the completion of the construction project in the event KRDC fails in its contractual undertaking.

Because of the performance bond, the construction contract between ALI and KRDC is guaranteed to be performed even if KRDC fails

⁹⁷ 644 Phil. 634 (2010).

⁹⁸ Section 4 of EO 1008 provides:

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

in its obligation. In practice, a performance bond is usually a condition or a necessary component of construction contracts. In the case at bar, the performance bond was so connected with the construction contract that the former was agreed by the parties to be a condition for the latter to push through and at the same time, the former is reliant on the latter for its existence as an accessory contract.

Although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it.⁹⁹ (Underlining and citations omitted)

The Court finds that the ruling in *Anscor* is applicable in the case. The CIAC has jurisdiction over the dispute between the parties because there is an arbitration agreement between Playinn and Prudential *by reference* to the Construction Agreement.

As correctly pointed out by Playinn, the Construction Agreement itself indicates that the performance bond and surety bond form integral parts thereof. Moreover, the Construction Agreement states that it should be read in harmony with its annexes, including the performance bond and surety bond:

ARTICLE 1
AGREEMENT ANNEXES

1. The following annexes shall form an integral part of this Agreement:

x x x x

- e. Guarantee Repayment Bond, Performance Bond and Contractor's All-Risk Insurance (CARI). All bonds must be in the form of Surety Bond, callable on demand and shall be valid within the duration of this Contract (Annex "E");

x x x x

2. The provisions of this Agreement and the Agreement Annexes should be read in harmony with one another, with the end view of giving each and every provision hereof and thereof full force, effect and applicability.¹⁰⁰

While Prudential did not sign the Construction Agreement where

⁹⁹ *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*, *supra* note 97, at 642–643.

¹⁰⁰ *Rollo*, pp. 451--452.

the arbitration clause is found, it nonetheless signed the performance bond and surety bond, which both make the Construction Agreement an integral part thereof:

PERFORMANCE BOND

x x x x

THE CONDITIONS OF THIS OBLIGATION ARE AS FOLLOWS:

To guarantee the full and faithful performance by the Principal to complete the construction of a Multi-Storey Concrete Hotel located at 84 Upper General Luna St., Baguio City, Benguet. Per Owner-Contractor Agreement dated December 02, 2016, a copy of which is hereto attached to form an integral part of this bond.¹⁰¹

x x x x

SURETY BOND

x x x x

THE CONDITIONS OF THIS OBLIGATION ARE AS FOLLOWS:

To guarantee the repayment of unliquidated portion of the advance payment in the event of Principal's failure to complete the construction of a Multi-Storey Concrete Hotel located at 84 Upper General Luna St., Baguio City, Benguet. Per Owner-Contractor Agreement dated December 02, 2016, a copy of which is hereto attached to form an integral part of this bond.¹⁰²

Accordingly, the performance and surety bonds, being accessory contracts to the Construction Agreement, shall acquiesce to the arbitration clause of the latter. Being the beneficiary under the bonds,¹⁰³ as well as the Project Owner under the Construction Agreement, Playinn could rightfully enforce the arbitration clause and implead both Prudential and Furacon in its Request for Arbitration/Complaint before the CIAC. This is especially considering that under the bonds, Prudential's liability to Playinn, as surety, is direct, primary, and absolute.¹⁰⁴

¹⁰¹ *Id.* at 465.

¹⁰² *Id.* at 468.

¹⁰³ See *Coquia v. Fieldmen's Insurance Co., Inc.*, 135 Phil. 251 (1968) and *Bases Conversion Development Authority v. DMCI Proj Developers, Inc.*, 776 Phil. 192 (2016), where it was discussed that a third-party beneficiary under a contract may demand the enforcement of the said contract, including the arbitration clause found therein.

¹⁰⁴ *Stronghold Insurance Co., Inc. v. Tokyu Construction Co., Ltd.*, 606 Phil. 400, 413 (2009).

There was no forum shopping.

As stated earlier, Prudential filed the Rule 43 petition against Playinn before the CA questioning the Final Award in CA-G.R. SP No. 161151. Meanwhile, Playinn sought for its execution which the CIAC granted, and thereafter became the subject of Prudential's Rule 65 petition before the CA in CA-G.R. SP No. 162597.

Playinn then submits that Prudential engaged in deliberate forum shopping because it filed both the Rule 43 and Rule 65 petitions before the CA involving the same parties and with the same prayer to nullify the effects of the final award.

Section 5, Rule 7 of the 1997 Rules of Civil Procedure requires that a Certification against Forum Shopping be appended to every complaint or initiatory pleading asserting a claim for relief. It also provides for the consequences of willful and deliberate forum shopping.¹⁰⁵ Thus:

SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. *If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.*

¹⁰⁵ *City of Taguig v. City of Makati*, 787 Phil. 367, 385 (2016).

“Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes of action or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party’s chances of obtaining a favorable decision or action.”¹⁰⁶ To determine whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. In other words, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.¹⁰⁷

Here, while there may be identity of parties in the Rule 43 and Rule 65 petitions, the former sought to reverse and set aside the Arbitral Tribunal’s Final Award in CIAC Case No. 27-2018¹⁰⁸ whereas the latter sought to nullify the Order dated August 2, 2019, Resolution dated September 5, 2019, and the Writ of Execution in the said case.¹⁰⁹ Moreover, in the Rule 43 petition, Prudential raised the issues of CIAC’s jurisdiction, Playinn and Furacon’s supposed extension of the duration of the Construction Agreement without its knowledge and consent, and prescription;¹¹⁰ while in the Rule 65 petition, Prudential’s grounds revolved around the incidents after the issuance of the Final Award such as the order for the issuance of the writ of execution that did not conform with the Final Award and the sufficiency of the supersedeas bond to stay its execution.¹¹¹ Verily, while there is identity of parties in both cases, the rights or causes of action and reliefs sought in the two petitions are entirely different which belies Playinn’s contention of forum shopping on the part of Prudential.

At this point and, to put things into perspective, because the issuances in question before the CA referred to the grant of the writ of execution as prayed for by Playinn, the Court shall now focus its resolution on the incidents arising from the Final Award’s execution stage.

The Arbitral Tribunal altered or modified the Final Award in the execution stage.

¹⁰⁶ *Top Rate Construction & Gen. Services, Inc. v. Paxton Dev’t Corp.*, 457 Phil. 740, 747- 748 (2003).

¹⁰⁷ *Yap v. Chua*, 687 Phil. 392, 400 (2012).

¹⁰⁸ *Rollo*, p 718.

¹⁰⁹ *Id.* at 870.

¹¹⁰ *Id.* at 676.

¹¹¹ *Id.* at 845.

027

In the assailed Decision, the CA ruled that the Arbitral Tribunal committed grave abuse of discretion when it altered or modified the Final Award in its Order dated August 2, 2019. In the Final Award, it was stated that Prudential shall be solidarily liable to the extent of the performance bond it issued to Furacon. On the other hand, in the Order dated August 2, 2019, the Arbitral Tribunal stated that Prudential shall be solidarily liable to the extent of the performance and surety bonds it issued to Furacon.¹¹²

The Court agrees with the CA in this regard. The dispositive portion of the Final Award is clear in that:

WHEREFORE, award is hereby rendered ordering Respondent Furacon to pay Claimant the total amount of FIFTY FIVE MILLION TWO HUNDRED NINETY NINE THOUSAND ONE HUNDRED PESOS (PhP 55,299,100.00), broken down as follows:

Unrecouped down payment	PhP 15,145,154.20
Additional amount needed to complete the Project	28,853,845.80
Liquidated damages	10,600,100.00
Exemplary damages	200,000.00
Attorney's fees	500,000.00

In addition, Respondent Furacon shall reimburse Claimant for the cost of arbitration it initially paid for. The amount payable to Claimant shall earn interest of 6% per annum from date of finality of this Award until full payment. Respondent PGAI shall [be] solidarily liable to the extent of the *performance bond* it issued to Respondent Furacon.

SO ORDERED.¹¹³ (Emphasis omitted and supplied)

Thereafter, on Playinn's motion, the Arbitral Tribunal granted the issuance of the Writ of Execution in its Order dated August 2, 2019. However, its decretal portion states:

WHEREFORE, UNDER THE FOREGOING PREMISES, the Writ of Execution prayed for by Claimant [Playinn] is hereby granted. Accordingly, award is hereby rendered ordering Respondent Furacon to pay Claimant [Playinn], represented by its President, Lester Lee[,] the total amount of FIFTY-FIVE MILLION TWO HUNDRED NINETY-NINE THOUSAND ONE HUNDRED PESOS (PhP55,299,100.00), broken down as follows:

¹¹² *Id.* at 315-316.

¹¹³ *Id.* at 601.

Unrecouped down payment	PhP 15,145,154.20
Additional amount needed to complete the Project	PhP 28,853,845.80
Liquidated damages	PhP 10,600,100.00
Exemplary damages	PhP 200,000.00
Attorney's fees	PhP 500,000.00

The Surety/Supersedeas Bond issued by Empire Insurance Company amounting to Php21,200,00[0].00 which is posted to stay execution of the Final Award is HEREBY DISAPPROVED not only for its insufficiency but also for being inconsistent with the conditions mandated under CIAP Document 102.

In addition, Respondent Furacon shall reimburse Claimant for the cost of arbitration it initially paid for. The amount payable to Claimant shall earn interest of 6% per annum from date of finality of this Award until full payment. Respondent Prudential Guarantee and Assurance, Inc. ("Respondent Prudential") shall be solidarily liable to the extent of the *performance and surety bonds* it issued to Respondent Furacon.

SO ORDERED.¹¹⁴ (Emphasis omitted and supplied)

Consequently, in the Writ of Execution dated September 2, 2019, Prudential was made solidarily liable to the extent of both the performance *and* surety bonds:

TO: Sheriff Allan R. Amon
Trade and Industry Development Specialist
Construction Industry Authority of the Philippines
5th Floor Executive Building Center
369 Sen. Gil J. Puyat Avenue, Makati City

By virtue of the power vested in US, WE hereby command you that of the goods and chattels of Respondents Furacon Builders, Inc[.], and Prudential Guarantee and Assurance, Inc. (solidarily liable to the extent of the *performance and surety bonds* it issued to Respondent Furacon Builders, Inc.) you cause to be made, in accordance with Rule 39 of the Revised Rules of Court, and/or pertinent guidelines on execution of the (NLRC/DTI-FTEB/IPOPhil/Others) for the amount of Fifty Six Million Four Hundred Thirteen Thousand Seventy Four Pesos & 63/100 (P56,413,074.63), plus 6% interest per annum from finality of award until full payment thereof shall have been made, that was awarded in favor of the prevailing party, Claimant Playinn, Inc., in the Final Award promulgated on May 28, 2019 by this Arbitral Tribunal of the Construction Industry Arbitration Commission (CIAC), together with your lawful fees for service rendered in the execution of this award in accordance with your Sheriff's manual on execution of judgment, all in Philippine currency, and that you render the amount realized from the execution to said prevailing party, Claimant Playinn,

¹¹⁴ *Id* at 746--747.

Inc. You are, likewise, required to make a return of this Writ unto this Commission/Arbitral Tribunal within fifteen (15) days from date of receipt hereof, with your proceedings duly endorsed.¹¹⁵ (Emphasis supplied)

In this regard, the Court finds that the CA did not err insofar as it ruled that the CIAC committed grave abuse of discretion when it altered or modified the final award in its Order, Resolution, and the Writ of Execution.¹¹⁶ Relevant at this point are the provisions of Rule 17 of the Revised CIAC Rules on Post-Award Proceedings, to wit:

Rule 17
Post-award Proceedings

SECTION 17.1. *Motion for Correction of Final Award.* — Any of the parties may file a motion for correction of the Final award within fifteen (15) days from receipt thereof upon any of the following grounds:

- a. an evident miscalculation of figures, a typographical or arithmetical error;
- b. an evident mistake in the description of any party, person, date, amount, thing or property referred to in the award;
- c. where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;
- d. where the arbitrators have failed or omitted to resolve certain issue/s formulated by the parties in the Terms of Reference (TOR) and submitted to them for resolution; and
- e. where the award is imperfect in a matter of form not affecting the merits of the controversy.

Verily, Playinn no longer questioned the final award; neither did it move to correct any perceived error thereon pursuant to the aforementioned provision. In the present petition, however, Playinn insists that the Final Award never intended to limit Prudential's solidary liability to the amount of the performance bond, and that there was nothing in the Final Award that would show that the CIAC absolved Prudential from its liability under the surety bond. Moreover, Playinn emphasized that Prudential's liability under the surety bond automatically arose from the moment when Furacon failed to complete the construction of the project and did not require an adjudication by the CIAC for it to attach. It went on to stress that

¹¹⁵ *Id.* at 884.

¹¹⁶ *Id.* at 316.

Prudential's liability under the surety bond is based on law and contract, particularly Article 2047¹¹⁷ of the Civil Code.¹¹⁸

Playinn is clutching at straws. The stated policy and objective of the Revised CIAC Rules is to provide a fair and expeditious resolution of disputes as an alternative to judicial proceedings.¹¹⁹ In this regard, an arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction.¹²⁰ This is precisely why Playinn filed a Request for Arbitration/Complaint¹²¹ against Furacon and Prudential before the CIAC when its demands to the latter went unheeded. Thus, to say that Prudential's liability under the surety bond automatically arose from the moment when Furacon failed to complete the construction of the project and did not require an adjudication by the CIAC for it to attach goes against the very reason why it filed the complaint in the first place.

Corollarily, it is a settled general principle that "a writ of execution must conform substantially to every essential particular of the judgment promulgated. Execution not in harmony with the judgment is bereft of validity. It must conform, more particularly, to that ordained or decreed in the dispositive portion of the decision."¹²² Corollary thereto, the Court, in *National Power Corp. v. Tarcelo*,¹²³ explained that an order of execution is based on the disposition, and not on the body of the decision. Thus:

It has always been the rule that "[t]he only portion of the decision that may be the subject of execution is that which is ordained or decreed in the dispositive portion. Whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the court and serve only as guides to determine the *ratio decidendi*." "[W]here there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of what appears in the body of the decision. While the body of the decision, order or resolution might create some ambiguity in the manner of the court's reasoning preponderates, it is the dispositive portion thereof that finally invests rights upon the parties, sets

¹¹⁷ Article 2047 of the Civil Code provides:

ARTICLE 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

¹¹⁸ *Rollo*, pp. 265–266.

¹¹⁹ Section 1.1, Rule 1, CIAC Revised Rules.

¹²⁰ Section 4.1, Rule 4, CIAC Revised Rules.

¹²¹ *Rollo*, pp. 498–521.

¹²² *Solbank Corp. v. Court of Appeals*, 428 Phil. 949, 957–958 (2002).

¹²³ 742 Phil. 463 (2014).

conditions for the exercise of those rights, and imposes corresponding duties or obligation.” Thus, with the decretal portion of the trial court’s November 7, 2005 Decision particularly stating that NPC shall have the lawful right to enter, take possession and acquire easement of right-of-way over the affected portions of respondents’ properties upon the payment of just compensation, any order executing the trial court’s Decision should be based on such dispositive portion. “An order of execution is based on the disposition, not on the body, of the decision.”¹²⁴ (Citations omitted)

At any rate, nowhere in the body of the Final Award was it expressly mentioned that Prudential shall be solidarily liable to the extent of *both* the performance bond and the surety bond. This is also why in the present petition, Playinn went on to discuss about the supposed intent of the CIAC to make Prudential liable on both bonds. However, to the mind of the Court, this supposed intent gathered from the wordings of the Final Award cannot prevail over the express statement in its dispositive portion. *For one*, had it been the intent of the CIAC to make Prudential liable on both bonds, it could have easily stated such without particularly referring to the performance bond in the dispositive portion of the Final Award. *For another*, the insertion of the phrase “and surety bonds” in the Writ of Execution is obviously a mere afterthought, done *motu proprio* by the CIAC, which is no longer allowed at the Final Award’s execution stage.

At this point, the ruling of the Court in *Sps. Golez v. Sps. Navarro*¹²⁵ is instructive:

Clearly, the RTC exceeded its authority when it insisted on applying its own construal of the dispositive portion of the CA Decision when its terms are explicit and need no further interpretation. It would also be inequitable for the petitioners to pay and for the respondents, who did not appeal the CA decision or questioned the deletion of the 12% *per annum* interest, to receive more than what was awarded by the CA. The assailed RTC order of execution dated December 21, 2009 and the *alias* writ of execution dated May 17, 2010 are, therefore, void. Time and again, it has been ruled that an order of execution which varies the tenor of the judgment, or for that matter, exceeds the terms thereof is a nullity.¹²⁶ (Citation omitted)

The Writ of Execution issued by the CIAC must conform to the dispositive portion of the Final Award which makes Prudential solidarily liable only to the extent of the performance bond it issued to Furacon. Be that as it may, while the Court agrees that it was grave abuse of discretion

¹²⁴ *Id.* at 483.

¹²⁵ 702 Phil. 618 (2013).

¹²⁶ *Id.* at 632.

on the part of the CIAC when it modified the Final Award in its assailed Order dated August 2, 2019, Resolution dated September 5, 2019, and Writ of Execution dated September 2, 2019, the CA erred when it nullified and set aside the said issuances altogether. Verily, the CIAC issuances were still anchored on the Final Award where Prudential was held liable. Thus, there was a valid and legal basis for the CIAC issuances, albeit excessively made. At this point, it is only proper to *modify* the CIAC issuances instead of nullifying and setting them aside altogether, and leave Playinn without any recourse despite the Final Award having rendered in its favor.

Accordingly, the CA should have instead modified the CIAC issuances and held Prudential solidarily liable with Furacon to Playinn *only to the extent of the performance bond* it issued in favor of Furacon.

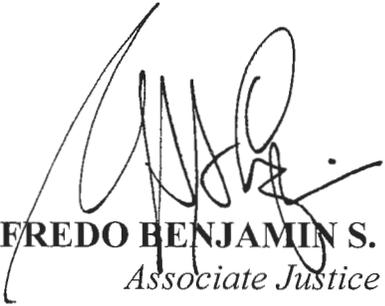
WHEREFORE, the Petition is **PARTLY GRANTED**. The Decision dated July 23, 2020, and the Resolution dated November 26, 2020, of the Court of Appeals in CA-G.R. SP No. 162597 are **REVERSED** and **SET ASIDE** insofar as they nullified the Order dated August 2, 2019, the Resolution dated September 5, 2019, and the Writ of Execution dated September 2, 2019, issued by the Construction Industry Arbitration Commission in CIAC Case No. 27-2018.

The Order dated August 2, 2019, the Resolution dated September 5, 2019, and the Writ of Execution dated September 2, 2019 issued by the Construction Industry Arbitration Commission in CIAC Case No. 27-2018 are **REINSTATED**, but **MODIFIED** in that respondent Prudential Guarantee and Assurance, Inc. shall be solidarily liable with Furacon Builders, Inc. to petitioner Playinn, Inc. *only to the extent of the performance bond* it issued in favor of Furacon Builders, Inc.

SO ORDERED.

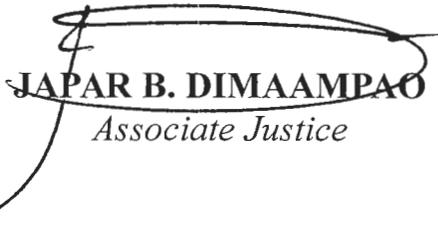

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On official leave
SAMUEL H. GAERLAN
Associate Justice



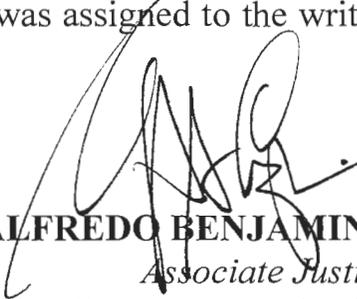
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice