



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FLEET MARINE CABLE
SOLUTIONS INC.,

Petitioner,

-versus-

MJAS ZENITH GEOMAPPING
& SURVEYING SERVICES, MR.
SAMSON LATO and
TRAVELLERS INSURANCE
AND SURETY CORPORATION,
Respondents.

G.R. No. 267310

Present:

LEONEN, *SAJ.*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:

NOV 04 2024

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DECISION

LOPEZ, J., *J.*:

This Court resolves a Petition for Review on *Certiorari*¹ assailing the Arbitral Award² of the Construction Industry Arbitration Commission (CIAC), which dismissed without prejudice the claims and counterclaims of the parties due to lack of jurisdiction.³

The Antecedents

Fleet Marine Cable Solutions Inc. (FMCS) is engaged in the business of importing, fabricating, and trading all kinds of telecommunication, power cable, pipelines, electronic and ancillary equipment on wholesale or retail basis, with the related services of project management or consultancy, survey, installation, structured cabling, general engineering, civil works construction,

¹ *Rollo*, pp. 41–148.

² *Id.* at 156–179. The May 24, 2023 Arbitral Award in CIAC Case No. 47-2022 was signed by Chairperson Manuel M. Cosico, and Members Demetrio C. Custodio, Jr. and Salvador S. Panga, Jr. of the Construction Industry Arbitration Commission.

³ *Id.* at 179.

maintenance, and marine services.⁴

Eastern Telecommunications Philippines, Inc. (Eastern), Globe Telecom, Inc. (Globe), and InfiniVAN, Inc. (InfiniVAN) planned to build and construct a new high capacity domestic fiber-optic submarine cable network that will connect various islands in Luzon, Visayas, and Mindanao at the highest quality possible but at the most cost-efficient means on an ownership basis.⁵ To carry out this plan, FMCS entered into a Services Agreement with Eastern, Globe, and InfiniVAN (FMCS-Eastern Services Agreement).⁶ FMCS undertook to perform tasks which include, but are not limited to, the following:

- 1) Site Survey, Landing site determination and routing design,
- 2) Archival Research for Desk Top [sic] Study, Submarine cable route design,
- 3) Project planning,
- 4) Final Desk Top Study Report, and
- 5) Vessel Arrangement and Mobilizations[.]⁷

To fulfill its contractual obligations, FMCS entered into another agreement (FMCS-MJAS Services Agreement)⁸ with MJAS Zenith Geomapping & Surveying Services (MJAS) to subcontract some of the tasks it undertook under the FMCS-Eastern Services Agreement. The relevant portion of the FMCS-MJAS Services Agreement states:

WHEREAS, in the Service[s] Agreement by and between Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc., and Fleet Marine Cable Solutions Inc. dated 7 December 2020, it is agreed that Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc. contracted FMCS to carry out the Services required by Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc. Further, FMCS is allowed to subcontract the scope of work in whole or in part to any third party or subcontractor.

WHEREAS, in the Service[s] Agreement by and between Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc., and Fleet Marine Cable Solutions Inc. dated 7 December 2020, parties therein will build and construct a new high capacity domestic fiber-optic submarine network that will connect various islands in Luzon, Visayas and Mindanao at the highest quality possible but at the most cost-efficient means on an ownership basis.⁹ (Emphasis in the original)

⁴ *Id.* at 44–45.

⁵ *Id.* at 698.

⁶ *Id.* at 697–705.

⁷ *Id.* at 701.

⁸ *Id.* at 226–241.

⁹ *Id.* at 228.

Under the FMCS-MJAS Services Agreement, the responsibilities of MJAS include, among others, the following:

4.2.1 Under Phase 1 of the project, the Subcontractor is responsible for the preparation of the report/ output performed by the Third-Party Contractor secured by Contractor to perform the Site Survey, Landing site determination and routing design, Archival Research for Desk Top Study, Submarine cable route design, Project planning and Final Desk Top Study Report. Under Phase 2 of the project, the Subcontractor is responsible for Marine Cable Route Survey and Burial Assessment.¹⁰

On June 5, 2021, FMCS entered into another agreement,¹¹ this time with Kokusai Cable Ship Co., Ltd. (KCS) (FMCS-KCS Services Agreement).¹² This covers the Marine Cable Route Survey and Burial Assessment.¹³

The contract price of the FMCS-MJAS Services Agreement is USD 4,602,387.38 and is intended to be completed within one year.¹⁴ As downpayment, FMCS paid MJAS the amount equivalent to 20% of the total contract price computed as follows:¹⁵

REFERENCE	BILLED (USD)	12% VAT (USD)	TOTAL AMOUNT DUE (USD)	2% EWT (USD)	TOTAL AMOUNT PAID (USD)
SI No. 1188	616,391.17	73,966.94	690,358.11	12,327.82	678,030.29
SI No. 1261	205,463.72	24,655.65	230,119.37	4,109.27	226,010.10
	821,854.89	98,622.59	920,477.48	16,437.10	904,040.38

MJAS secured a surety bond¹⁶ from Travellers Insurance and Surety Corporation (TRISCO) in the amount of PHP 44,201,928.59 to guarantee the downpayment released to it, and a performance bond¹⁷ in the amount of PHP 66,301,992.40 to assure the faithful implementation of the Project under the FMCS-MJAS Services Agreement.¹⁸

FMCS alleged that MJAS violated its responsibilities and obligations when it failed to complete the works and services it undertook to perform within the timelines and schedules agreed upon. It also accused MJAS of abandoning the project without accomplishing anything in accordance with the FMCS-MJAS Services Agreement.¹⁹ It added that due to its failure to provide the vessel to be used for the surveys, MJAS was not able to

¹⁰ *Id.* at 232.

¹¹ *Id.* at 735-769.

¹² *Id.* at 735.

¹³ *Id.* at 747-750.

¹⁴ *Id.* at 229-230.

¹⁵ *Id.* at 47, 161, 196.

¹⁶ *Id.* at 350-351.

¹⁷ *Id.* at 353-354.

¹⁸ *Id.* at 48, 161.

¹⁹ *Id.* at 49, 200.

immediately begin its undertakings. For FMCS, this caused a prolonged postponement of the implementation of the project.²⁰ It was also averred that upon inspection by FMCS and KCS, the reviewing and approving entity agreed upon by the parties, the marine survey conducted by MJAS in Talisay, Cebu failed to meet the specifications, related industry standards, and quality requirements set by the parties.²¹

In view of the purported violations, FMCS wrote to MJAS terminating its Services Agreement and demanding for the full reimbursement of USD 920,477.48 representing 20% of the contract price within 15 days from receipt of the demand.²² It also wrote a letter to TRISCO, demanding the payment of PHP 70,503,920.99 which represents the value of the surety and performance bonds. For failure to heed its demand, FMCS instituted a Complaint²³ against MJAS and TRISCO with the CIAC.

MJAS and TRISCO filed their separate Answers where they each argued, among others, that the CIAC has no jurisdiction over the case as the FMCS-MJAS Services Agreement is not a construction contract and that the dispute does not arise from or is connected with a contract entered into by the parties involved in construction in the Philippines.²⁴ They also alleged that MJAS had completed Phase 1 of the project and that the reasons why MJAS failed to finish Phase 2 were attributable to FMCS.²⁵ As such, they prayed that FMCS be directed to pay them actual, moral, and exemplary damages, and attorney's fees.²⁶

The CIAC issued its Arbitral Award,²⁷ dismissing the case due to lack of jurisdiction. The dispositive portion states:

WHEREFORE, the foregoing premises considered, the Tribunal rules as follows –

1. Inasmuch as the contract between the claimant and MJAS (Annex B, Complaint) is not a construction contract or does not involve construction in the Philippines, the CIAC and this Tribunal have no jurisdiction or authority to resolve the dispute subject of this arbitration.
2. The claims and counterclaims of the parties against each other are dismissed. Without Prejudice.

²⁰ *Id.* at 200.

²¹ *Id.* at 210.

²² *Id.* at 164.

²³ *Id.* at 186-221.

²⁴ *Id.* at 172.

²⁵ *Id.* at 158-159.

²⁶ *Id.* at 159.

²⁷ *Id.* at 156-179. Dated May 24, 2023

3. The parties shall bear their respective shares of the costs.

SO ORDERED.²⁸

In dismissing the claims and counterclaims of the parties, the CIAC ruled that the FMCS-MJAS Services Agreement does not constitute a construction contract.²⁹ It emphasized that though MJAS undertook to carry out the off-shore and in-shore marine route surveys, and to provide vessel personnel and equipment,³⁰ it made no reference to any activity that would be considered a construction activity. Thus, it concluded that there is no construction dispute to speak of.³¹

In the present Petition,³² FMCS insists that the jurisdiction of the CIAC is broad enough under Executive Order (E.O.) No. 1008 and the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Revised Rules) to cover any dispute arising from or connected with construction contracts, whether these involve mere contractual money claims or execution of the works.³³ It maintains that such disputes may arise not only from the main construction contracts but also from related contracts or subcontracts, so long as these are covered by arbitration agreements and connected with a construction contract or project in the Philippines.³⁴

It also argues that if the parties are bound by an arbitration agreement and the contract is connected with a construction contract or project in the Philippines, any dispute that may arise from it will fall within the original and exclusive jurisdiction of the CIAC.³⁵ Likewise, it claims that the FMCS-MJAS Services Agreement employed highly technical engineering and construction methodologies and equipment³⁶ and that it performed actual works to implement the telecommunication infrastructure construction project based on the marine survey works subject of the agreement as shown in the Supply Contract of Shore End Works for Philippine Domestic Submarine Cable Network (PDSCN),³⁷ and the Supply Contract for Phase 2 with Eastern, Globe, and InfiniVan.³⁸ It also insists that the CIAC has jurisdiction over the claims of FMCS against TRISCO pursuant to the "complementary contracts construed together" doctrine.³⁹

²⁸ *Id.* at 179.

²⁹ *Id.* at 177.

³⁰ *Id.* at 177-178.

³¹ *Id.* at 178.

³² *Id.* at 41-148.

³³ *Id.* at 66-67.

³⁴ *Id.* at 68, 72.

³⁵ *Id.* at 69.

³⁶ *Id.* at 79, 83-85, 96-108.

³⁷ *Id.* at 114-119.

³⁸ *Id.* at 120-127.

³⁹ *Id.* at 180-181.

In its Comment,⁴⁰ MJAS argued that the FMCS-MJAS Services Agreement is not a construction contract as the marine survey project will only give rise to reports and no construction activity is expected from MJAS.⁴¹ It highlighted that the contract does not involve any construction or installation of power and telecommunications pipelines and cables.⁴² It added that it is not engaged in construction business in the Philippines.⁴³

Meanwhile, in the Comment⁴⁴ of TRISCO, it echoed the argument of MJAS that the claim of FMCS should be dismissed⁴⁵ as it does not involve a construction contract or dispute.⁴⁶ It also maintained that the jurisdiction of the CIAC should not be extended to commercial disputes on marine surveys because when E.O. No. 1008 was enacted, disputes relating to marine or submarine surveys were non-existent and could not have been contemplated by its framers.⁴⁷ It also posited that while the jurisdiction of the CIAC extends to disputes which arise from or relate to construction contracts or disputes, a construction contract must exist at the time the alleged dispute occurs.⁴⁸ It stated that to relate the FMCS-MJAS Services Agreement to a construction contract is highly speculative because at the time it was executed, no construction contract existed for the construction or installation of the submarine cables.⁴⁹ As it claimed that there is no construction contract or dispute involved, it insisted that the complementary contracts construed together doctrine cannot be applied.⁵⁰ It also averred that the other agreements executed by FMCS cannot be considered construction contracts because MJAS is not a party to the FMCS-KCS Services Agreement, Supply Contract of Shore End Works for PDSCN, and Supply Contract for Phase 2 with Eastern, Globe, and InfiniVan.⁵¹

Issue

The critical issue to be resolved in this case is whether the FMCS-MJAS Services Agreement, which involves a desktop study and marine survey of the ocean floor for purposes of laying submarine cable networks in the future, constitutes a construction contract or involves a construction dispute that would vest the Construction Industry Arbitration Commission jurisdiction over the claim of Fleet Marine Cable Solutions Inc.

⁴⁰ *Id.* at 1531–1539.

⁴¹ *Id.* at 1535.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 1544–1579.

⁴⁵ *Id.* at 1577–1578.

⁴⁶ *Id.* at 1564–1567.

⁴⁷ *Id.* at 1568–1569.

⁴⁸ *Id.* at 1570–1571.

⁴⁹ *Id.* at 1571–1572.

⁵⁰ *Id.* at 1571.

⁵¹ *Id.* at 1572–1574.

This Court's Ruling

The CIAC has no jurisdiction over the claim of FMCS arising from the FMCS-MJAS Services Agreement

Alternative dispute resolution is a recognized means of ending litigation through “any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency.”⁵² Arbitration is one of the identified modes of alternative dispute resolution under Republic Act No. 9285.⁵³ Among the critical features of arbitration is party autonomy or “the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts.”⁵⁴

The Special Rules of Court on Alternative Dispute Resolution⁵⁵ (Special ADR Rules) recognizes the principle of Competence-Competence, the policy that bestows an arbitral tribunal the first opportunity to rule on whether it has jurisdiction to decide a dispute submitted for its resolution.⁵⁶ This is clearly expressed in Rule 2.4:

RULE 2.4. Policy Implementing Competence-Competence Principle. — The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues.

Where the court is asked to make a determination of whether the arbitration agreement is null and void, inoperative or incapable of being performed, under this policy of judicial restraint, the court must make no more than a *prima facie* determination of that issue.

Unless the court, pursuant to such *prima facie* determination, concludes that the arbitration agreement is null and void, inoperative or incapable of being performed, the court must suspend the action before it and refer the parties to arbitration pursuant to the arbitration agreement.

⁵² Republic Act No. 9285 (2004), sec. 3 (a), Alternative Dispute Resolution Act of 2004.

⁵³ Otherwise known as the Alternative Dispute Resolution Act of 2004.

⁵⁴ A.M. No. 07-11-08-SC, Rule 2.1.

⁵⁵ A.M. No. 07-11-08-SC, September 1, 2009.

⁵⁶ *Cagayan De Oro City Water District v. Pusal*, 914 Phil. 403 (2021) [Per J. Lazaro-Javier, First Division].

In the present case, the CIAC already ruled that it does not have jurisdiction over the dispute as the FMCS-MJAS Services Agreement makes no reference to any activity that would be considered as a construction activity.⁵⁷ CIAC Arbitrator Salvador S. Panga, Jr. (Arbitrator Panga) dissented, insisting, among others, that while the contract involved only marine survey and does not actually pertain to laying of submarine cables, it is still critical and intimately related to the accomplishment of the main project to build a new high capacity domestic fiber-optic submarine cable network.⁵⁸

Faced with the issue of whether the CIAC validly ruled that it has no jurisdiction over the present case, this Court must analyze the arbitration clause included in the FMCS-MJAS Services Agreement, which was the basis of FMCS in instituting a claim before the CIAC.

The arbitration clause in FMCS-MJAS Services Agreement⁵⁹ states:

Article 11 Applicable Law and Arbitration

11.1 This Agreement shall be construed and governed by the laws of the Republic of the Philippines without reference to any conflicts of law.

11.2 The Parties hereto shall use their best endeavors to settle all disputes arising out of or in connection with this Agreement or its supplement amicably.

11.3 If any dispute, controversy, or claim arising out of or relating to this Agreement cannot be settled by the Parties amicably, whether contractual or tortious, shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The language of the arbitration shall be English, and the place of arbitration shall be in Republic of the Philippines. The arbitration award shall be final and binding upon both Parties. All costs and expenses related to the arbitration shall be borne by the non-prevailing Party.

11.4 In the course of arbitration, both Parties shall continue to perform their respective contractual obligations except those matters referred to arbitration.

11.4.1 Should it be necessary that an action be brought in court to enforce the terms of this Agreement of the duties and rights of the parties thereto, it is agreed that the venue for litigation should be the courts of the City of Makati to the exclusion of any other courts.⁶⁰ (Emphasis in the original)

The foregoing arbitration clause reflects the commitment of the parties to submit disputes arising from the contract. They agreed that any dispute, controversy, or claim arising out of or relating to the FMCS-MJAS Services Agreement shall be referred to and be resolved by arbitration under the Rules

⁵⁷ *Rollo*, p. 178.

⁵⁸ *Id.* at 182.

⁵⁹ *Id.* at 226-241.

⁶⁰ *Id.* at 238.

of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules in the Philippines.⁶¹ The arbitration clause is binding between FMCS and MJAS and they are expected to abide by it in good faith.

Nevertheless, while the parties may stipulate that their dispute shall be referred to a particular arbitral body other than the CIAC, this Court clarified in *National Irrigation Administration v. Court of Appeals*⁶² that:

Under the present Rules of Procedure, for a particular construction contract to fall within the jurisdiction of CIAC, it is merely required that the parties agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the *Tesco* case, the law as it now stands does not provide that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over the same. Rather, it is plain and clear that as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, *i.e.*, E.O. No. 1008.⁶³ (Citation omitted)

In its Complaint,⁶⁴ FMCS justified its resort to the CIAC by stating that the “case involves a construction dispute arising out of a construction project in the Philippines which falls within the original and exclusive jurisdiction of the CIAC, notwithstanding any reference to any other arbitral body.”⁶⁵ This finds support in the CIAC Revised Rules, Rule 4, Section 4.1 which states:

SECTION 4.1. *Submission to CIAC Jurisdiction.* — 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, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.

In examining whether the present case is within the scope of the CIAC, this Court is guided by E.O. No. 1008, Section 4 which states:

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

⁶¹ *Id.*

⁶² 376 Phil. 362 (1999) [Per C.J. Davide, Jr., First Division].

⁶³ *Id.* at 375.

⁶⁴ *Rollo*, pp. 186–223.

⁶⁵ *Id.* at 188–189.

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.

The foregoing provision was reiterated in Rule 2, Section 2.1 of the CIAC Revised Rules, which states:

SECTION 2.1. *Jurisdiction.* — The CIAC shall have original and exclusive jurisdiction over **disputes**, which arose from, or is connected with contracts entered into by parties involved in construction in the Philippines whether the dispute arose before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts.

2.1.1 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 provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost. (Emphasis in the original)

Based on the foregoing provisions, there are three essential requisites for the CIAC to acquire jurisdiction over a case: (1) a dispute arising from or connected with a construction contract; (2) such contract was entered into by parties involved in construction in the Philippines; and (3) the parties agreed to submit their dispute to arbitration.⁶⁶

It must be underscored that analyzing the requisites presupposes the existence of an overarching construction contract, or a dispute or controversy connected with it, to fall under the jurisdiction of the CIAC. In *Spouses Ang v. De Venecia*,⁶⁷ this Court clarified that “while CIAC may have jurisdiction over non-contractual disputes (for instance, a tortious breach of contract), these disputes must still arise from or be connected with a construction contract entered into by parties in the Philippines who agree to submit such disputes to arbitration[.]”⁶⁸ As the concurrence with the requisites is anchored on this premise, it is imperative to determine the nature of the dispute FMCS brought to the CIAC.

⁶⁶ *Spouses Ang v. De Venecia*, 870 Phil. 645, 657 (2020) [Per J. A. Reyes, Jr., Second Division].

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

⁶⁸ *Id.* at 665.

Alternative dispute resolution offers “an inexpensive, speedy and amicable method of settling disputes”⁶⁹ and is viewed as the “wave of the future” in international civil and commercial disputes.⁷⁰ As such, this Court has held that any doubt “should be resolved in favor of arbitration.”⁷¹

In construing arbitration clauses pursuant to E.O. No. 1008, this Court instructs that it “should be interpreted at its widest signification.”⁷² Nonetheless, this should not be understood as enlarging the jurisdiction of the CIAC beyond its contemplated scope. Instead, it merely recognizes that the dispute intended to be covered under the CIAC refers not only to those directly arising out of the execution of construction works but also to other disputes connected with it. Thus, the existence of a construction contract, even if it is not the primary contract being contested, is necessary for the first requisite to be present.

In the present case, FMCS failed to establish that there is an overarching construction contract in place, or even a dispute or controversy related to it, when they entered into the FMCS-MJAS Services Agreement.

Admittedly, the FMCS-Eastern Services Agreement, the contractor’s agreement from which the FMCS-MJAS Services Agreement was derived, recognizes that Eastern, Globe, and InfiniVAN intend to “build and construct a new high[-]capacity domestic fiber-optic submarine network that will connect various islands in Luzon, Visayas and Mindanao at the highest quality possible[.]”⁷³ However, this statement, by itself, is hardly sufficient to establish the existence of an overarching construction contract, or even a controversy or dispute related to it, when the FMCS-MJAS Services Agreement was agreed upon. The statement is merely descriptive of a future plan which may or may not happen. To stress, “mere allegation of construction-related factual matters does not serve to automatically vest jurisdiction in the CIAC.”⁷⁴

Likewise, MJAS will not carry out any construction activity. In *Fort Bonifacio Development Corporation v. Domingo*,⁷⁵ this Court described the concept of construction as referring to “all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment.”⁷⁶

⁶⁹ *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, 447 Phil. 705, 714 (2003) [Per J. Panganiban, Third Division].

⁷⁰ *Id.* at 714.

⁷¹ *Camp John Hay Development Corporation v. Charter Chemical and Coating Corporation*, 858 Phil. 970, 991 (2019) [Per J. Leonen, Third Division].

⁷² *Licomcen, Inc. v. Foundation Specialists, Inc.*, 662 Phil. 441 (2011) [Per J. Brion, Third Division].

⁷³ *Id.* at 228.

⁷⁴ *Spouses Ang v. De Venecia*, 870 Phil. 645, 660 (2020) [Per J. A. Reyes, Jr., Second Division].

⁷⁵ 599 Phil. 554, (2009) [Per J. Chico-Nazario, Third Division].

⁷⁶ *Id.* at 564, citing *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, 516 Phil. 561 (2006) [Per J. Tinga, Third Division].

An analysis of the scope of activities intended to be undertaken by the parties under the FMCS-Eastern Services Agreement reveals that FMCS will not perform any construction activity. To recall, the responsibilities of FMCS as a contractor under the FMCS-Eastern Services Agreement, include, among others, the following:

- 1) Site Survey, Landing site determination and routing design,
- 2) Archival Research for Desk Top Study, Submarine cable route design,
- 3) Project planning,
- 4) Final Desk Top Study Report, and
- 5) Vessel Arrangement and Mobilizations[.]⁷⁷

Even the FMCS-MJAS Services Agreement, the subcontractor's agreement emanating from the FMCS-Eastern Services Agreement, does not involve any construction activity. To recall, the tasks MJAS committed to perform as subcontractor are as follows:

4.2.1 Under Phase 1 of the project, the Subcontractor is responsible for the preparation of the report/ output performed by the Third-Party Contractor secured by Contractor to perform the Site Survey, Landing site determination and routing design, Archival Research for Desk Top Study, Submarine cable route design, Project planning and Final Desk Top Study Report. Under Phase 2 of the project, the Subcontractor is responsible for Marine Cable Route Survey and Burial Assessment.⁷⁸

Given the foregoing definition of construction, it is clear that the cause of action of FMCS does not proceed from any construction contract or any controversy or dispute connected with it. To construe E.O No. 1008, Section 4, and CIAC Revised Rules, Rule 2, Section 2.1 as to include a suit for the collection of money and damages arising from a purported breach of a contract involving purely marine surveying activities and supply of vessel personnel and equipment would unduly and excessively expand the ambit of jurisdiction of the CIAC to include cases that are within the jurisdiction of other tribunals.

As it has been sufficiently established that the CIAC has no jurisdiction over any dispute arising from the FMCS-MJAS Services Agreement, it necessarily follows that it also does not have jurisdiction over the claim of FMCS arising from the Surety Bond and Performance Bond secured from TRISCO in connection with it.

Considering that the CIAC has no jurisdiction over the claims of the parties, this Court shall refrain from discussing and ruling on the remaining arguments the parties raised. The case is dismissed without prejudice to its re-filing in the appropriate tribunal.

⁷⁷ *Rollo*, p. 701.

⁷⁸ *Id.* at 232.

ACCORDINGLY, the instant Petition is **DENIED**. The May 24, 2023 Arbitral Award of the Construction Industry Arbitration Commission in CIAC Case No. 47-2022 is **AFFIRMED**. The Complaint of Fleet Marine Cable Solutions Inc. and the counterclaims of MJAS Zenith Geomapping & Surveying Services, Samson Lato, and Travellers Insurance and Surety Corporation are **DISMISSED** without prejudice to their re-filing in the proper tribunal.

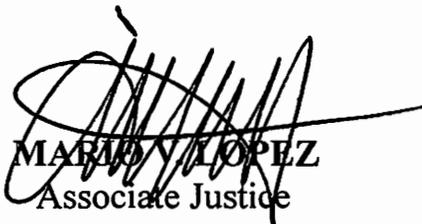
SO ORDERED.


JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR: *see separate dissenting opinion*

MARVIC M.V.F. LEONEN
Senior Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

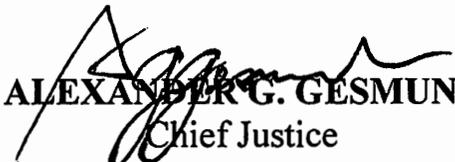
ATTESTATION

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.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice