G.R. Nos. 187552-53 ***(SHANGRI-LA PROPERTIES, INC. [now known as Shang Properties Inc.] v. BF CORPORATION)***

G.R. Nos. 187608-09 ***(BF CORPORATION v. SHANGRI-LA PROPERTIES, INC. (SLPI), [now known as Edsa Properties Holdings, Inc., et al.], THE PANEL OF VOLUNTARY ARBITRATORS (ENGR. ELISEO I. EVANGELISTA, MS. ALICIA TIONGSON, and ATTY. MARIO EUGENIO V. LIM), ET AL.)***

Promulgated: October 15, 2019

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CONCURRING OPINION

REYES, A., JR., *J.*:

I concur with the exhaustive and lucidly written *ponencia* of Chief Justice Lucas P. Bersamin. I write solely to express my views regarding the scope of review of Construction Industry Arbitration Commission (CIAC) decisions by the Court of Appeals (CA) and the Supreme Court.

The *ponencia* upholds the comprehensive scope of review by the CA in appeals from decisions of the CIAC, which includes not only the power to resolve questions of law but also the power to inquire into and resolve questions of fact. On the other hand, the Separate Opinion, utilizing a diversified approach to appeals under Rule 43, takes the view that appeals from CIAC decisions can only cover questions of law.

While I commend the scholarly analysis undertaken in the Separate Opinion, I am convinced that the conclusions therein are somewhat blunted by the omission to apply Republic Act (R.A.) No. 7902, entitled "*An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the purpose Section Nine of Batas Pambansa (BP) Blg. 129, as amended, Known as the Judiciary Reorganization Act of 1980*," in its entirety. In this regard, I write this opinion to address the same.

Executive Order (E.O.) No. 1008,[1] otherwise known as the *Construction Industry Arbitration Law*, was enacted on February 4, 1985. It vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. Initially, pursuant to Section 19[2] of the said law, decisions of the

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1 Creating an Arbitration Machinery in the Construction Industry of the Philippines.

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

CIAC were *unappealable*, except to the Supreme Court on *pure questions of law*.[3]

Thereafter, R.A. No. 7902 was enacted amending BP 129 and clearly vesting the CA with exclusive jurisdiction over appeals from decisions of quasi-judicial agencies. Said law specifically granted the CA with the power to resolve *factual issues* raised in cases falling within its appellate jurisdiction, *viz.*:

> SECTION 1. Section 9 of Batas Pambansa Blg. 129, as amended, known as the Judiciary Reorganization Act of 1980, is hereby further amended to read as follows:
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> "Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:
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> "(3) **Exclusive appellate jurisdiction** over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and **quasi-judicial agencies**, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
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> "The Court of Appeals shall have the **power** to try cases and conduct hearings, receive evidence and perform any and all acts necessary **to resolve factual issues raised in cases falling within its** original and **appellate jurisdiction**, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice." (Emphasis supplied)

In fact, the subsequent promulgation of the 1997 Rules of Court specifically named the CIAC as one of the quasi-judicial agencies whose decisions or awards may be elevated to the CA for review *via* Rule 43.[4] Moreover, Sections 1 and 3 of said Rule categorically provides that this mode of review may include questions of law, questions of fact, or even a mixture of both, *viz.*:

> SECTION 1. *Scope*. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and **from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are** the Civil Service Commission, Central Board of

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3 *F.F. Cruz & Co., Inc., v. HR Construction Corp.*, 684 Phil. 330, 344 (2012).

4 *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 204-205 (2001).

> Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, **Construction Industry Arbitration Commission**, and voluntary arbitrators authorized by law. (Emphasis supplied)
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> SECTION 3. *Where to Appeal.* – An appeal under this Rule may be taken to the **Court of Appeals** within the period and in the manner herein provided, **whether the appeal involves questions of fact, of law, or mixed questions of fact and law**. (Emphasis supplied)

Metro Construction Inc. v. Chatham Properties, Inc.,[5] later on reiterated this expanded scope of review of the CA and discussed how the manner of appeal from decisions and awards of CIAC was effectively modified through the introduction of changes in the relevant laws, *viz.*:

> In sum, under Circular No. 1-91, appeals from the arbitral awards of the CIAC may be brought to the Court of Appeals, and not to the Supreme Court alone. **The grounds for the appeal are likewise broadened to include appeals on questions of facts and appeals involving mixed questions of fact and law.**
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> **The jurisdiction of the Court of Appeals over appeals from final orders or decisions of the CIAC is further fortified by the amendments to B.P. Blg. 129, as introduced by R.A. No. 7902.** With the amendments, the Court of Appeals is vested with appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except "those within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948."
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> There is no controversy on the principle that the right to appeal is statutory. **However, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified provided that vested rights are not impaired.** The Supreme Court is bestowed by the Constitution with the power and prerogative, *inter alia*, to promulgate rules concerning pleadings, practice and

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5 Id.

> procedure in all courts, as well as to review rules of procedure of special courts and quasi-judicial bodies, which, however, shall remain in force until disapproved by the Supreme Court. This power is constitutionally enshrined to enhance the independence of the Supreme Court.
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> The right to appeal from judgments, awards, or final orders of the CIAC is granted in E.O. No. 1008. The procedure for the exercise or application of this right was initially outlined in E.O. No. 1008. While R.A. No. 7902 and circulars subsequently issued by the Supreme Court and its amendments to the 1997 Rules on Procedure effectively modified the manner by which the right to appeal ought to be exercised, nothing in these changes impaired vested rights. **The new rules do not take away the right to appeal allowed in E.O. No. 1008. They only prescribe a new procedure to enforce the right. No litigant has a vested right in a particular remedy, which may be changed by substitution without impairing vested rights; hence, he can have none in rules of procedure which relate to remedy.**[6] (Citations omitted and emphasis supplied)

These changes and its effects were succinctly explained by the Court in the recent case of *J Plus Asia Dev't Corp. v. Utility Assurance Corp.*[7] as follows:

> Executive Order (EO) No. 1008 vests upon the CIAC 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. By express provision of Section 19 thereof, the arbitral award of the CIAC is final and unappealable, except on questions of law, which are appealable to the Supreme Court. **With the amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the CA in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law, or of fact and law.**[8] (Emphasis supplied)

Instead of traversing the statutory mandate of R.A. No. 7902, the Separate Opinion takes an approach which effectively emasculates Rule 43, *viz.*:

> Rule 43 of the 1997 Rules of Civil Procedure standardizes appeals from quasi-judicial agencies. Rule 43, Section 1 explicitly lists CIAC as among the quasi-judicial agencies covered by Rule 43. Section 3 indicates that appeals through Petitions for Review under Rule 43 are to "be taken to the Court of Appeals .... Whether the appeal involves questions of fact, of law, or mixed questions of fact and law."
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> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether

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6 Id. at 203-206.
7 712 Phil. 587 (2013).
8 Id. at 601.

> the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enables questions of law, and there those that enabled mixed questions of fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law any appeal from CIAC arbitral tribunals must remain limited to questions of law.[9]

The assertion that "*Section 3 of Rule 43 merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes*" strikes me as an unrequited transmutation of the plain meaning of the phrase "*whether the appeal involves questions of fact, of law, or mixed questions of fact and law,*" as it appears in Rule 43, Section 3. What has been up to now a straightforward statement on the possible grounds for appeal under Rule 43 has been transformed into "variances in the disparate modes of appeal:" a conclusion that I find baseless and therefore, objectionable.

It is a basic rule of statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[10] A close reading of Rule 43 should clearly and plainly show that there is no word or phrase therein that would support the existence of "disparate modes of appeal." I submit that Rule 43 contemplates only one single mode of appeal, *i.e.,* an appeal by petition for review.

The Separate Opinion propounds a *diversified approach* to the scope of review of decisions of quasi-judicial agencies under Rule 43. It proposes that the enabling statute of each agency primarily determines which parts of their decisions may be reviewed on appeal: there are statutes that only enable review of factual questions; there are statutes that only enable review of questions of law; and there are statutes that enable review of mixed questions of fact and law. Under this approach, Rule 43 merely operates as a funnel into which all appeals from the decisions of the wide array of quasi-judicial agencies flow into, always subject to the prescription of the scope of review granted by the agencies' enabling statutes. As applied to the CIAC, this means that, in keeping with the enabling statute of the CIAC (specifically, Section 19 of E.O. No. 1008), any appeal from the CIAC must remain limited to questions of law.

There are two faults in this approach. First, it overlooks R.A. No. 7902 and the *Metro Construction* ruling. It must be noted that R.A. No. 7902 is a substantive law which explicitly *expands the jurisdiction* of the CA and vests it with "the power to try cases and conduct hearings, receive evidence

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9 Separate Opinion of Justice Leonen, pp. 14-15.

10 *Phil. Amusement and Gaming Corp. (PAGCOR) v. Phil. Gaming Jurisdiction Inc. (PEJI), et al.,* 604 Phil 547, 553 (2009).

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and perform any and all acts necessary to resolve factual issues raised in cases falling within its x x x appellate jurisdiction." As such, it modified Rule 43 and any such change made by R.A. No. 7902 must be read into Rule 43 as an integral part thereof. Indeed, the phrase in Section 19 of E.O. No. 1008 that an arbitral award shall be appealable to the Supreme Court on questions of law is incompatible with the provision in R.A. No. 7902 that the CA has the power to resolve factual issues raised in appeals from decisions of quasi-judicial agencies. In turn, *Metro Construction* explains that, although the right to appeal has not been taken away, the manner of exercising such a right had been effectively modified, *i.e.*, the appeal is no longer taken to the Supreme Court, but to the CA, and that the grounds for appeal are not limited to questions of law, but may also involve questions of fact and mixed questions of law and fact. Clearly, Rule 43 should not be read as a mere procedural conduit through which Section 19 of E.O. No. 1008 must flow. I submit that the correct view is that Rule 43 must be read together with R.A. No. 7902, which modified Section 19 of E.O. No. 1008, as held by this Court in the *Metro Construction* line of cases.

The plain meaning of Rule 43, as modified by R.A. No. 7902, cannot be explained away by mere invocation of distinctions between general and special laws. As mentioned earlier, R.A. No. 7902 is a jurisdictional statute which provides for an expanded definition of the CA's judicial power. Furthermore, the rule *generalia specialibus non derogant* is subject to a very important qualification. The rule does not apply if the legislature's intent to repeal or alter is manifest.[11] It is axiomatic that a later law prevails over a prior statute,[12] more so when the later law expressly provides for the repeal or amendment of prior inconsistent statutes and rules, as Section 2[13] of R.A. No. 7902 does.

The second fault in the diversified approach to appeals under Rule 43 is that it places too much emphasis on expediency. The function of an appeal is to review errors of judgment committed by the court or tribunal with jurisdiction over the subject matter and the parties; or any such error committed by the court or tribunal in the exercise of jurisdiction amounting to nothing more than an error of judgment.[14] While the CIAC was indeed formed to expedite the resolution of construction industry disputes, it must not be forgotten that the overriding concern in the resolution of cases is the dispensation of justice. Thus, I submit that the CA must likewise be allowed to fully exercise its vested statutory powers to review cases appealed to it; and this power includes the discretion to review factual questions. Such review serves not to undermine, but rather, to enhance, the integrity of arbitration, by ensuring an opportunity for an impartial review of the factual

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11 *Valera v. Tuason, Jr.*, 80 Phil. 823, 827-828 (1948).

12 *Daud v. Collector of Customs of the Port of Zamboanga City*, 160-A Phil. 798, 802-803 (1975).

13 Section 2. All provisions of laws and rules inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

14 *Silverio v. CA*, 225 Phil. 459, 473 (1986).

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findings of the arbitral tribunal. Justice contemplates not only the speedy disposition of cases but also the accurate and fair adjudication thereof.

Given the foregoing, I agree with the *ponencia's* ruling that given the prevailing laws and jurisprudence surrounding the scope of review of the CA over decisions and awards rendered by the CIAC, to confine the former's review exclusively to legal issues would only create confusion and irreconcilable conflict.[15]

As for the Supreme Court's jurisdiction over appeals from decisions of the CIAC, suffice it to say that while the CA was vested by R.A. No. 7902 with near-plenary power to consider factual questions in appeals brought under Rule 43, the Supreme Court does not have this power. As made abundantly clear in the *ponencia* and in the case of *Metro Rail Transit Development Corporation v. Gammon Philippines, Inc.*,[16] the Supreme Court's power to review decisions of the CA in CIAC cases appealed *via* Rule 43 is limited to questions of law. The rule however is not absolute. Jurisprudence has recognized exceptions to the rule in which the Supreme Court in a petition for review on *certiorari* may delve into the factual findings of the arbitral tribunal.[17] In the case at bar, the conflicting factual findings of the CIAC and the CA necessitated an inquiry into the factual issues in order to arrive at an optimal resolution of the case.

I conclude by reiterating that there is no need to take a restrictive or liberal construction of E.O. No. 1008 and R.A. No. 7902. All that is needed is to apply the plain meaning of said statutes and read them together. In the first place, those laws do not suffer from any ambiguity that would require interpretation, strict or liberal.

IN VIEW OF THE FOREGOING, I concur in the *ponencia*.

ANDRES B. REYES, JR.
Associate Justice

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15 *Ponencia*, p. 27.

16 G.R. No. 200401, January 17, 2018, 851 SCRA 378.

17 *Werr Corp. International v. Highlands Prime, Inc.*, 805 Phil. 415 (2017) lays down the following exceptions: (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section 10 of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the arbitral tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the CA are contrary to those of the CIAC; or (8) when a party is deprived of administrative due process. See also *Metro Rail Transit Development Corp. v. Gammon Philippines, Inc.*, id. at 403-407, citing *CE Construction Corporation v. Araneta Center, Inc.*, 816 Phil. 221, 252 (2017).