Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPINE CHARITY SWEEPSTAKES OFFICE (PCSO), *Petitioner,*	**G.R. No. 232801**
-versus-	
DFNN, INC. (DFNNI), *Respondent.*	
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PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO), *Petitioner,*	**G.R. No. 234193**
-versus-	Members: PERLAS-BERNABE, *S.A.J.*, *Chairperson* LAZARO-JAVIER, M. LOPEZ, ROSARIO, and J. LOPEZ,* *JJ.*
DFNN, INC. (DFNNI), *Respondent.*	Promulgated: JUN 30 2021

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DECISION

LAZARO-JAVIER, *J.*:

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* Designated as additional member per S.O. No. 2822 dated April 7, 2021.

The Cases

In **G.R. No. 232801**, the Philippine Charity Sweepstakes Office (PCSO) assails the following dispositions of the Court of Appeals in **CA–G.R. SP No. 145462** entitled *DFNN, Inc. v. Philippine Charity Sweepstakes Office (PCSO), Hon. Judge Rizalina T. Capco-Umali (in her capacity as Presiding Judge of Branch 212, Regional Trial Court of Mandaluyong City)*:

a. **Decision**[1] dated February 20, 2017 reversing the Order dated April 11, 2016 of the Regional Trial Court-Branch 212, Mandaluyong City (RTC-Mandaluyong) and ordering the consolidation of Civil Case No. MC15-9557 with Special Proceedings No. M-7844 before the Regional Trial Court-Branch 66, Makati City (RTC-Makati); and

b. **Resolution**[2] dated July 10, 2017 denying the motion for reconsideration of PCSO.

On the other hand, in **G.R. No. 234193**, PCSO assails the dispositions of the Court of Appeals in **CA–G.R. SP No. 145983** entitled *Philippine Charity Sweepstakes Office (PCSO) v. DFNN, Inc., viz.*:

a. **Decision**[3] dated November 17, 2016 affirming the Decision dated February 17, 2016 and Order dated May 18, 2016 of the RTC-Makati in Special Proceedings No. M-7844 which increased the award of damages decreed in the subject Arbitral Award in favor of DFNNI; and

b. **Resolution**[4] dated August 31, 2017 denying the motion for reconsideration of PCSO.

Antecedents

On April 9, 2003, petitioner PCSO and respondent DFNNI[5] entered into an Equipment Lease Agreement (ELA) for systems design and development and upgrade of a lotto betting platform *via* Personal Communication Devices (PCD)[6]. Under the ELA, PCSO agreed to exclusively lease from DFNNI all hardware, software and technical skills to design and develop the application of PCD for the acceptance and processing of bets from PCD users in the

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1 Penned by Associate Justice Danton Q. Bueser, concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Renato C. Francisco; G.R. No. 232801, *rollo,* pp. 41-58.

2 *Id.* at 56-58.

3 Penned by Associate Justice Socorro B. Inting, concurred in by Associate Justices Priscilla J. Baltazar-Padilla (a retired member of the Court) and Leoncia R. Dimagiba; G.R. No. 234193, *rollo,* pp. 49-59.

4 *Id.* at 61-62.

5 Sometimes referred to as DFNN in the record.

6 Such as: Text; GPRS; Bluetooth; 3G; WiFi Protocols; and other wireless devices, *id.* at 50.

Philippines. The ELA contained an arbitration clause mandating that any dispute or controversy shall be settled through arbitration.[7]

On March 9, 2005, prior to the launch of the System, PCSO issued Board Resolution No. 080, series of 2005 unilaterally rescinding the ELA for DFNNI's supposed failure to comply with its obligations and commitment, including the implementation of the project within six (6) months from the execution of the contract, *viz.*:

> "**WHEREAS**, DFN[N]I, in a letter to GM Rosario Uriarte, dated January 18, 2005, admitted and confirmed its failure to secure the conformity and cooperation of Smart and Globe and instead (sic) argued that "the signed contracts were the obligations of the PCSO[,]"(sic) despite the clear agreement between the parties that it should be DFN[N]I that should procure the conformity of the telecoms w[h]ile conceding that the final contract should be signed by PCSO[;]
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> **WHEREAS**, to date, only minor telecom players, namely, Sun Cellular and Nextel, has expressed their intention to cooperate in implementing the proposed project. Considering the limited number of subscribers of the Sun Cellular and Nextel, the text betting project is no longer feasible, as it will not generate the projected income, as proposed;
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> **WHEREAS**, PGMC, in its letter dated July 20, 2004, from Mr. Kenny Low, Vice President for Operations, cited the potentially grave risks to the integrity of the PCSO online lottery central system due to the interconnection. Thus, PCSO and its lottery system runs a grave risk in incurring problems relating to technical glitches, validation and claiming of winnings due to the proposed interface of systems;
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> **WHEREAS**, in light of the foregoing, it appears that the System built by DFNN[I] cannot interface into the PGMC's system in a seamless manner, thereby putting grave risks in the PCSO's betting systems, which could generate controversies and negative publicity that will adversely affect the integrity of the lotto project as well as the established trust of the playing public in PCSO's lotto game;
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> **WHEREFORE**, for all the foregoing reasons, to wit: non-fulfillment of a suspensive condition relative to the interconnection cooperation with PGMC and ILTS as well as the non-conformity of Globe and/or Smart making the text betting project no longer feasible, doubts against the legality of the ELA as being contrary to laws, morals and public policy; lack of authority of DFN[N]I to engage in the proposed undertaking; absence of public bidding, as well as doubts arising from the unsigned Minutes of the Meetings where the authority to enter into the ELA was allegedly given, **RESOLVED, THAT THE BOARD NOW RESCIND, AS IT HEREBY RESCINDS, THE ELA DATED APRIL 9, 2003 BETWEEN THE PCSO AND DFN[N]I, COPY OF WHICH IS ATTACHED HERETO AND MADE AN INTEGRAL PART HEREOF**;"[8] (Emphasis retained.)

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[7] *Id.*

[8] *Id.* at 188-189.

By letter dated April 5, 2005, PCSO informed DFNNI of the rescission. On December 12, 2005, DFNNI replied, asking for a possible solution acceptable to all parties concerned.

On December 14, 2007, DFNNI wrote to PCSO requesting, this time, for voluntary proceedings to resolve the issues which led to the cancellation of the ELA. PCSO denied the request.[9] Thus, DFNNI subsequently filed a Request for Arbitration against PCSO where it claimed PhP1,913,948,850.00 as liquidated damages based on the estimated revenue of the project, inclusive of temperate damages, attorney's fees, and litigation costs.

Proceedings before the *Ad Hoc* Arbitration Panel

An *Ad Hoc* Arbitration Panel was consequently constituted, chaired by Atty. Victor N. Alimurung, with members Atty. Fulgencio S. Factoran, Jr. and Atty. Jose Tomas C. Syquia.

During the arbitration proceedings,[10] DFNNI claimed that PCSO had no legitimate ground to rescind the ELA. Since the rescission was void, the ELA should be reinstated and it (DFNNI) should be awarded temperate damages of ₱2,000,000.00 and attorney's fees of ₱1,000,000.00. Should reinstatement no longer be feasible, PCSO should pay ₱1,913,948,850.00 as liquidated damages.

PCSO countered that the rescission was valid because DFNNI failed to: (a) integrate its system with PCSO's existing lessors, Philippine Gaming Management Corporation (PGMC) and Pacific On-line System Corporation; (b) elicit the conformity and cooperation of Globe and Smart to implement PCD betting; and (c) deliver the system within six (6) months from execution of ELA.[11]

In sum, the parties asked the Arbitration Panel to: (a) rule on the validity of the rescission of the ELA; and (b) should the rescission be found invalid, determine the award of damages due DFNNI, if any.[12]

The Arbitral Award

By Arbitral Award dated May 21, 2015,[13] the rescission was declared to be improper, and DFNNI, consequently entitled to liquidated damages of ₱27,000,000.00 and the return of its equipment, *viz.*:

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9 *Id.*
10 *Id.* at 113.
11 *Id.* at 114.
12 *Id.* at 183-202.
13 *Id.*

Claimant DFNNI is entitled to Liquidated damages as provided in the ELA.

As the defaulting party, PCSO's liability for damages is governed by Section 13.2(i) of the ELA, which provides as follows:

> (i) PCSO, if it is the party in default, shall pay DFNN[I] liquidated damages in the amount (sic) equal to the market value of the System plus rental payments for the unexpired term of this Agreement as provided under Section 10.2 and 10.3 hereof, inclusive of a penalty charge of two percent (2%) per month on the amount due computed from the date of termination or cancellation of the Agreement to the actual date of payment. For the purposes of this provision, *"market value" shall be stipulated at Twenty Seven Million Pesos (P27,000,000)* less depreciation of twelve and one half percent (12.5%) per year beginning from execution of this Agreement. "Unexpired term of rental payments" shall be computed based on the lease charge of five percent (5%) of the total value of bets placed through this System provided by DFNN[I] or the amount of Five Pesos (P5.00) per successful registrant under the System, whichever is higher, at the time such default shall have occurred multiplied by the remaining period of the term of this Agreement. PCSO shall also return the System to DFNN[I] in accordance with Section 9.2 hereof.

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In addition to liquidated damages, the parties likewise agreed that PCSO, if the defaulting party, shall pay DFNN[I] for rental for the unexpired term of the ELA.

The Arbitration Panel holds that the award of the stipulated liquidated damages as set forth in the ELA is just and reasonable. PCSO did not present any evidence to prove that the market value of the system as defined in the ELA is excessive, or is iniquitous or unconscionable.

The provision on depreciation cannot be considered (or deducted) since the ELA was terminated even before the System could be launched on a commercial basis. For the same reason, rental payments for the unexpired term of the rental payment cannot be granted since the said rental payments are to be "computed based on the lease charge of five percent (5%) of the total value of bets placed through this system provided by DFNN[I] or the amount of Five pesos (5.00) per successful registrant under the system, whichever is higher, at the time such default shall have occurred multiplied by the remaining period of the term of this Agreement." Since the System was never commercially launched, any claim for the unexpired term of rental payments would be purely speculative.

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DFNN[I] did submit a feasibility study on projected lotto bettings using DFNN[I]'s System. Since there was no commercial launch of the System, however, there obviously were no successful registrants or total

value of bets that could serve as a basis for computing the rental payments for the unexpired term of the ELA. Projections are plainly speculative and based on conjecture. Significantly, DFNN[I] did not present any witness to substantiate or validate its projections. Thus, in the absence of competent/reliable evidence, DFNN[I]'s claim for the rental payments on a System which was never commercially launched cannot be granted.

On the two percent interest, it is evident that the interest referred to unpaid lease rentals. As there are no lease rentals due, neither can there be any interest thereon.

WHEREFORE, ALL ABOVE PREMISES CONSIDERED, the Arbitration Panel rules that respondent Philippine Charity Sweepstakes Office improperly terminated its Equipment Lease Agreement with DFNN[I], Inc. Accordingly, PCSO is hereby ordered to pay DFNN[I], Inc. the amount of Twenty Seven Million Pesos (PhP27,000,000.00) as liquidated damages, in accordance with the terms of the Equipment Lease Agreement."

SO ORDERED[14]

Several cases had since ensued between the parties.

Judicial Proceedings

On June 25, 2015, **PCSO filed a *Petition for Confirmation***[15] of the Arbitral Award before the **RTC-Mandaluyong** via **Civil Case No. MC15-9557**. A day after, **DFNNI filed a *Petition for Correction*** of the same Arbitral Award with the **RTC-Makati**, docketed as **Special Proceedings No. M-7844**.[16] Both petitions were found to be sufficient in form and substance.

Petition for Correction
Special Proceedings No. M-7844
CA–G.R. SP Nos. 145983 and 150401
G.R. No. 234193

a. Special Proceedings No. M-7844

DFNNI alleged that there was evident miscalculation of the award of damages in the Arbitral Award. It was entitled to ₱310,095,149.70, taking into account the two percent (2%) penalty interest per month on the amount due in accordance with Par. 13.2(i) of the ELA. The Arbitration Panel also failed to

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[14] *Id.* at 200-202.
[15] Assigned to Judge Rizalina T. Capco-Umali, RTC Mandaluyong City, Branch 212, docketed as Civil Case No. MC15-9557. G.R. No. 232801, *rollo,* pp. 103-107.
[16] Assigned to Judge Joselito C. Villarosa, RTC Makati City, Branch 66, docketed as Civil Case No. M-7844. G.R. No. 234193, *rollo,* pp. 208-221.

award temperate damages and attorney's fees.[17] In fine, DFNNI prayed for "correction" of the arbitral award to include the 2% interest, temperate damages and attorney's fees.

PCSO riposted that DFNNI is not entitled to penalty interest as the same only applies to rental payments. Since there is no rental payment involved here, Par. 13.2(i) of the ELA is inapplicable. As for DFNNI's claim for temperate damages and attorney's fees, the same cannot be granted for lack of basis.[18]

As borne in its Decision[19] dated February 17, 2016, the RTC-Makati granted DFNNI's Petition for Correction, increasing the award of liquidated damages to ₱310,095,149.70, plus six percent (6%) interest per annum from finality until fully paid:

> WHEREFORE, premises considered, in accordance with the authority granted by Section 11.4(C) of the ADR Rules to this Court to correct arbitral awards, the award for liquidated damages in the Arbitral Award dated May 21, 2015[,] is hereby corrected to Php310,095,149.70, plus 6% interest from [date] of finality of this Decision until full satisfaction thereof.

It ruled that based on Par. 13.2(i) of the ELA, the 2% penalty charge per month is computed based on "the amount due" which refers to the "market value of System plus rental payments for the unexpired term of this Agreement, inclusive of a penalty charge of two percent (2%) per month on the amount due computed from the date of termination or cancellation of the Agreement to the actual date of payment." Consequently, the RTC-Makati imposed the penalty charge on the ₱27,000,000.00, resulting in liquidated damages of ₱310,095,149.70.[20]

The RTC-Makati denied reconsideration on May 18, 2016. Hence, PCSO went to the Court of Appeals *via* petition for review under Rule 19.12 of A.M. No. 07-11-08-SC or the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules). The petition was docketed as CA–G.R. SP No. 145983.

b. CA–G.R. SP No. 145983

PCSO alleged in the main that the RTC-Makati gravely erred in correcting/modifying the Arbitral Award considering that (a) DFNNI was guilty of forum shopping; (b) the RTC-Makati had no jurisdiction to act on the petition for correction in view of the doctrines of judicial stability and non-

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[17] *Id.*
[18] *Id.* at 63-67.
[19] *Id.*
[20] *Id.*

interference of co-equal courts; and (c) there was no evident miscalculation of figures in the Arbitral Award.[21]

DFNNI argued: (a) there was no intent to commit forum shopping because it filed the petition for correction a day after the petition for confirmation; (b) when the RTC-Makati issued the order taking cognizance of the petition for correction, it had no knowledge of Civil Case No. MC15-9557; and (c) based on Par. 13.2(i) of the ELA, the 2% penalty charge on rental payments should also be imposed on the P27,000,000.00 liquidated damages.[22]

By Decision[23] dated November 17, 2016, the Court of Appeals affirmed, *viz.*:

> **WHEREFORE**, all the above premises considered, the petition is **DISMISSED**. Accordingly, the assailed Decision dated February 17, 2016 of the Regional Trial Court of Makati City, Branch 66, in SP PROC. NO. M-7844 as well as the Order dated May 18, 2016 are hereby **AFFIRMED**.
>
> **SO ORDERED**.

It ruled that DFNNI was not guilty of forum shopping as it could not have known PCSO's filing of its petition for confirmation before the RTC-Mandaluyong when it filed its own petition for correction before the RTC-Makati a day after. For the same reason, the RTC-Makati could not be deemed to have violated the doctrines of judicial stability and non-interference. Finally, on the alleged evident miscalculation, the Court of Appeals adopted the position of the RTC-Makati.[24] PCSO's motion for reconsideration was subsequently denied on August 31, 2017.

Dissatisfied, PCSO appealed to the Court via **G.R. No. 234193** under Rule 19.36 of the Special ADR Rules.

c. CA–G.R. SP No. 150401

Meantime, by Order dated December 7, 2016, the RTC-Makati granted DFNNI's motion for writ of execution and promptly issued the writ on December 9, 2016.

Aggrieved once again, PCSO went back to the Court of Appeals under Rule 9.26 of the Special ADR Rules through **CA-G.R. SP No. 150401**. It sought to nullify on ground of grave abuse of discretion the Order dated December 7, 2016, Writ of Execution dated December 9, 2016 and Order

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[21] *Id.* at 250-269.
[22] *Id.* at 48-59.
[23] *Id.*
[24] *Id.*

dated March 10, 2017, all issued by the RTC-Makati in Special Proceedings No. M-7844.

Petition for Confirmation
Civil Case No. MC15-9557
CA–GR SP No. 145462
G.R. No. 232801

a. Civil Case No. MC15-9557

In the interim, on July 16, 2015, DFNNI filed with the RTC-Mandaluyong, a motion for consolidation of Civil Case No. MC15-9557 with Special Proceedings No. M-7844 before the RTC-Makati. It invoked Rule 11.5 of the Special ADR Rules on consolidation of cases.

PCSO opposed on the ground that the RTC-Mandaluyong had already acquired jurisdiction over the case upon its declaration that the petition for confirmation is sufficient in form and substance. More, DFNNI was guilty of forum shopping.[25]

Under Order dated April 11, 2016, the **RTC-Mandaluyong denied the** motion for consolidation. It noted that Rule 11.5 of the Special ADR Rules uses the word "may" which is permissive and operates to confer discretion.[26]

The RTC-Mandaluyong, thus, proceeded to hear the main petition for confirmation. On the one hand, PCSO invoked Section 23, Republic Act No. 876 (RA 876) to support its petition for confirmation of the Arbitration Award. On the other hand, DFNNI, through its comment *ad cautelam*, manifested that it already filed a petition for certiorari before the Court of Appeals in **CA-G.R. SP No. 145462** assailing the denial of the motion for consolidation. At any rate, it claimed that it was not questioning the Arbitral Award, only the so-called evident miscalculation of the amount of damages granted therein. It reiterated that the RTC-Makati had already resolved Special Proceedings No. M-7844, rendering Civil Case No. MC15-9557 moot. In reply, PCSO countered that the supposed miscalculation was unfounded and that the ruling of the RTC-Makati did not render Civil Case No. MC15-9557 moot.

As borne in its **Decision**[27] **dated January 5, 2017,** the RTC-Mandaluyong confirmed the Arbitral Award. It held that contrary to DFNNI's assertion, there was no evident miscalculation in the amounts granted in the Arbitral Award, thus:

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[25] *Rollo*, G.R. No. 232801, pp. 59-63.
[26] *Id.*
[27] *Id.* at 73-81.

Examining carefully the *Ad Hoc* Arbitration Panel's Arbitral Award dated May 21, 2015, particularly on the discussion on the award of liquidated damages in favor of the Respondent, the latter's claim of evident miscalculation is clearly unfounded. On the contrary, the Panel even painstakingly elaborated on the proper application of the pertinent provision of the ELA, specifically, Section 13.2 (i) thereof and made a detailed discussion as to the proper interpretation of the same as appearing on pages 18 to 20 of subject Arbitral Award. Even the application of the penalty charge of two percent (2%) upon which the Respondent bases its claim of evident miscalculation was clearly interpreted by the *Ad Hoc* Panel as follows:

"On the two percent interest, it is evident that the interest referred to unpaid lease rentals. As there are no lease rentals due, neither can there be any interest thereon."

Nothing more can get any clearer than the foregoing disquisition made by the Panel relative to the penalty charge of two percent (2%). Concededly, the claim of miscalculation, much less an "evident" one, is completely baseless and therefore must necessarily fail. Therefore, the court must strictly apply the provision of Rule 11.9 of the Special ADR Rules which mandates that the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

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In sum, to warrant any correction or modification or even vacation of an arbitral award, the arbiter's findings must clearly, convincingly and unequivocally show that the grounds enumerated in the Special ADR Rule are indeed present. Thus, the settled is that "*courts are without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators. They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgement for that of the arbitrators, since any other rule would make an award the commencement, not the end, of litigation. Errors of law and fact, or an erroneous decision of matters submitted to the judgment of the arbitrators, are insufficient to invalidate an award fairly and honestly made. (**Equitable PCI Banking Corp., et al., vs. RCBC Capital Corp., G.R. No. 182248, December 18, 2008, citing Asset Privatization Trust vs. Court of Appeals, G.R. No. 121171, December 21, 1998**)*"

WHEREFORE, premises considered, the instant Petition is **GRANTED**, accordingly the Ad Hoc Arbitration Panel's Award dated May 21, 2015 is hereby **CONFIRMED**.

SO ORDERED.

b. CA–G.R. SP No. 145462

Exactly forty-six (46) days following the promulgation of the foregoing decision, the Court of Appeals, by **Decision**[28] **dated February 20, 2017,**

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[28] *Id.* at 41-54.

granted the petition of DFNNI and ordered the RTC-Mandaluyong to consolidate Civil Case No. MC15-9557 with Special Proceedings No. M-7844 before the RTC-Makati, *viz.*:

> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. The Order dated 11 April 2016 is hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court, Branch 212, Mandaluyong City is hereby **ORDERED** to consolidated Civil Case No. MC15-9557 with that of Special Proceedings No. M-7844 before the Regional Trial Court, Branch 66, Makati City.
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> **IT IS SO ORDERED.**

In ordering the consolidation, the Court of Appeals cited two reasons. **One**, the RTC-Mandaluyong did not acquire jurisdiction over the case as PCSO's petition for confirmation was prematurely filed on the 29th day from receipt of the Arbitral Award. Under the Special ADR Rules, such petition may only be filed **after** the lapse of 30 days from receipt of the Arbitral Award. **Two,** the RTC-Mandaluyong should have granted the consolidation. Two cases involving the same parties and affecting closely related subject matters must be ordered consolidated and jointly tried.

The Court of Appeals denied reconsideration on July 10, 2017.

PCSO, thus, filed yet another petition for review on certiorari[29] before the Court *via* **G.R. No. 232801** where it seeks to reverse and set aside the dispositions of the Court of Appeals in **CA–G.R. SP No. 145462**.

Meantime, in compliance with the order of consolidation in CA–G.R. SP No. 145462, the RTC-Mandaluyong forwarded the case to the RTC-Makati which, in turn, directed that the case be archived pending resolution of G.R. No. 232801.[30]

The Present Petitions for Review on Certiorari

In **G.R. No. 232801,** PCSO seeks to reverse and set aside the dispositions of the Court of Appeals in **CA–G.R. SP No. 145462** ordering the consolidation of Civil Case No. MC15-9557 with Special Proceedings No. M-7844 before the RTC-Makati.

We sum up the supporting arguments of PCSO. **First**, a party seeking to correct an award may only seek such relief from the court where a petition for confirmation is pending. Since the petition for confirmation before the RTC-Mandaluyong came first, DFNNI should have requested relief in the same proceeding. If at all, it should be DFNNI's petition before the RTC-

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[29] *Id.* at 16-35.
[30] *Rollo,* G.R. No. 234193, p. 22.

Makati which should have been consolidated with the petition before the RTC-Mandaluyong; **Second**, Rule 11.5 of the Special ADR Rules allowing consolidation rests upon the discretion of the courts; **Third**, the confirmation of a domestic arbitral award is governed by Section 23, RA 876 and Section 40, Republic Act No. 9285, both stating that the confirmation shall be filed at any time **within** one month after the arbitral award is made. Accordingly, the petition for confirmation was not prematurely filed; and **Finally,** consolidation is no longer feasible because the RTC-Makati had already issued a decision completely disposing of the case.

In its Comment,[31] DFNNI posits that an appeal by certiorari to this Court under Rule 19.36 of the Special ADR Rules is a special remedy intended only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. Here, PCSO failed to establish that the Court of Appeals acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction in rendering the decision and resolution. In any event, the RTC-Mandaluyong never acquired jurisdiction over the petition for confirmation as it was filed prematurely based on the Special ADR Rules. Also, it did not willfully or deliberately engage in forum shopping as it filed the petition for correction without knowing that the petition for confirmation had already been commenced. As it was though, the fact that the RTC-Mandaluyong had already forwarded the case to the RTC-Makati is a clear act of deference to the ruling in CA–G.R. SP No. 145462.

In its Reply[32] with leave of court, PCSO reiterates the arguments raised in its petition.

On the other hand, in **G.R. No. 234193,** PCSO faults the Court of Appeals for (a) declaring that DFNNI did not violate the rule against forum shopping under Rule 11.5 of the Special ADR Rules; (b) ruling that the RTC-Makati did not fail to observe the doctrine of judicial stability though it had knowledge of the petition before the RTC-Mandaluyong when it rendered its decision; and (c) adopting the decision of the RTC-Makati despite the fact that there was no evident miscalculation in the Arbitral Award requiring correction under Section 25(a), RA 876.

In its Comment,[33] DFNNI reiterates that an appeal by certiorari under Rule 19.36 of the Special ADR Rules is a special remedy intended only for serious and compelling reasons resulting in grave prejudice to the aggrieved party which PCSO failed to establish here. Assuming there was indeed substantial error in the assailed dispositions of the Court of Appeals, petitioner failed to indicate the same with specificity. It did not commit forum shopping. PCSO prematurely filed its case before the RTC-Mandaluyong. There was also no violation of the doctrine of judicial stability for when RTC-Makati assumed jurisdiction over the petition for correction; it did not have

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31 *Rollo*, G.R. No. 232801, pp. 213-231.
32 *Id.*
33 *Id.* at 246-271.

knowledge of the petition for confirmation before the RTC-Mandaluyong. Finally, the Court of Appeals correctly affirmed the decision of the RTC-Makati as the miscalculation in the Arbitral Award was clear and evident.

In its Reply[34] with leave of court, PCSO echoes the arguments in its petition.

Issues

In **G.R. No. 232801**, did the Court of Appeals commit grave reversible error when it issued the order of consolidation in CA–G.R. SP No. 145462?

In **G.R. No. 234193**, did the Court of Appeals commit grave reversible error when it affirmed the increase in the amount of the Arbitral Award as decreed by the RTC-Makati in Special Proceedings No. M-7844?

Our Ruling

The Court of Appeals erred in ordering the consolidation of Civil Case No. MC15-9557 with Special Proceedings No. M-7844 before RTC-Makati

To briefly recount the events, PCSO filed a Petition for Confirmation of the Arbitral Award before the RTC-Mandaluyong on June 25, 2015. A day after, DFNNI filed a Petition for Correction of the same award with RTC-Makati.

Subsequently, DFNNI filed a Motion for Consolidation dated July 16, 2015 before the RTC-Mandaluyong for the consolidation of Civil Case No. MC15-9557 with Special Proceedings No. M-7844 before RTC-Makati. While said motion was pending, the RTC-Makati rendered its Decision dated February 17, 2016 granting DFNNI's Petition for Correction in Special Proceedings No. M-7844.

RTC-Mandaluyong then issued its Order dated April 11, 2016 denying the motion for consolidation in Civil Case No. MC15-9557. The proceedings eventually culminated in Decision dated January 5, 2017, confirming the arbitral award.

As keenly observed by Senior Associate Justice Estela M. Perlas-Bernabe during deliberations, the trajectory of events precludes the

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[34] *Id.* at 213-231.

consolidation of Civil Case No. MC15-9557 with Special Proceedings No. M-7844 before either court the RTC-Mandaluyong or RTC-Makati.

In ***Puncia v. Toyota Shaw/Pasig, Inc.***,[35] the Court clarified that the rationale for consolidation is to have all cases, which are intimately related, acted upon by one branch of the court to avoid the possibility of conflicting decisions being rendered and in effect, prevent confusion, unnecessary costs, and delay. ***An essential requisite of consolidation, however, is that the actions to be consolidated are pending before the court.***

Here, when RTC-Mandaluyong resolved DFNNI's motion for consolidation in Civil Case No. MC15-9557 on April 11, 2016, RTC-Makati had already rendered its Decision dated February 17, 2016 in Special Proceedings No. M-7844. Hence, there was no more pending case before the RTC-Makati which could be consolidated with Civil Case No. MC15-9557.

The Court of Appeals nevertheless granted consolidation citing two reasons. **One**, the RTC-Mandaluyong did not acquire jurisdiction over the case as PCSO's petition for confirmation was prematurely filed on the 29th day from receipt of the Arbitral Award; and **Two,** the RTC-Mandaluyong should have granted the consolidation since the two cases involving the same parties and affecting closely related subject matters must be ordered consolidated and jointly tried.

But whether the RTC-Mandaluyong properly acquired jurisdiction over Civil Case No. MC15-9557 and whether the parties and issues involved before the RTC-Mandaluyong and RTC-Makati are similar, have become wholly irrelevant in the issue of consolidation since Special Proceedings No. M-7844 was no longer pending and, hence, could no longer be consolidated with another case.

Verily, the Court of Appeals erred when it ordered the consolidation of both cases before the RTC-Makati. The Order dated April 11, 2016 of the RTC-Mandaluyong in Civil Case No. MC15-9557 denying the consolidation and the Decision dated January 5, 2017 confirming the Arbitral Award should therefore be reinstated.

The Court of Appeals erred when it affirmed the increase of the arbitral award in favor of DFNNI

Under the Special ADR Rules, review by the Supreme Court of an appeal by certiorari, while not a matter of right, may nevertheless be permitted under very limited and specific grounds, thus:

> RULE 19.36. Review Discretionary. - A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be

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[35] 788 Phil. 464, 475 (2016).

granted only for ***serious and compelling reasons resulting in grave prejudice to the aggrieved party***. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and
necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, ***when the Court of Appeals***:

a. ***Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules*** in arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. ***The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto***.

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition. (Emphasis and italics supplied)

The first ground applies here.

To recall, **G.R. No. 234193** originated from Special Proceedings No. M-7844, which DFNNI filed pursuant to Section 25(a), RA 876 for purposes of correcting purported miscalculations in the Arbitral Award. The provision ordains:

Section 25. Grounds for modifying or correcting award. - In any one of the following cases, the court must make an order modifying or correcting the award, upon the application of any party to the controversy which was arbitrated:

(a) Where ***there was an evident miscalculation of figures***, or an evident mistake in the description of any person, thing or property referred to in the award; or

(b) Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted; or

(c) Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the court.

The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties.

The alleged miscalculated figure DFNNI seeks to correct is the refusal of the Arbitration Panel to impose the 2% monthly interest provided in Par. 13.2(i) of the ELA, *viz.*:

> On the two percent interest, it is evident that the interest referred to unpaid lease rentals. As there are no lease rentals due, neither can there be any interest thereon.[36]

DFNNI, too, seeks an award of temperate damages and attorney's fees.

We clarify though that the supposed refusal of the Arbitration Panel to impose the 2% penalty and DFNNI's claim for the award of temperate damages and attorney's fees is not the ***evident miscalculation of figures*** contemplated under Section 25(a), RA 876. To be sure, the provision is cut from the same fabric as 9 U.S.C. § 11(a) of the US Federal Arbitration Act (FAA):

> ***Section 11, Same; modification or correction; grounds; order, U.S. Federal Arbitration Act.*** In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration:
>
> (a) Where there was ***an evident material miscalculation of figures*** or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.
>
> The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

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[36] *Rollo*, G.R. No. 234193, p. 202.

From a recent decision of the United States Court of Appeals Tenth Circuit,[37] we quote the discussion of the common meaning of "***evident miscalculation of figures***," which embodied the so called "***face-of-the-award limitation***":[38]

> Let's start with § 11(a)'s plain meaning. See *Jones v. Comm'r*, 560 F.3d 1196, 1200 (10th Cir. 2009). That section says, in relevant part, that a court may modify an award if it contains "an evident material miscalculation of figures." 9 U.S.C. § 11(a). ***In ordinarily English, a "miscalculation of figures" refers to mathematical, not legal, errors.*** *See Calculate*, NEW OXFORD AMERICAN DICTIONARY 242 (2d ed. 2005) ("Determine (the amount or number of something) mathematically."); Figure, id. at 626 (defining "figures" as "arithmetical calculations"). Likewise, "material" in this context takes its ordinary meaning of "important; essential; relevant." Material, id. at 1045. **The word "evident," too, takes its ordinary meaning of "plain or obvious."** *Evident, id.* at 585.5 The parties do not appear to dispute the ordinary meaning of these terms. *See, e.g.*, Mid Atlantic's Opening Br. at 19–21; Ms. Bien & Mr. Wellman's Resp. & Principal Br. at 17. **Putting these definitions together, we read § 11(a) to allow courts to correct obvious, significant mathematical errors.**
>
> But even with these dictionary definitions, the meaning of § 11(a) – particularly the word "evident" – is not clear. Must a miscalculation be obvious on the face of the award or must it be obvious after one looks to the arbitration record? x x x
>
> x x x x

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[37] Mid Atlantic Capital Corporation v. Beverly Bien; David H. Wellman, Nos. 18-1195 and 18-1200.

[38] *Id.* The FAA's history supports this reading. "When a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart v. Lorenzen*, 587 U.S. ----, 139 S. Ct. 1795, 1801 (2019) (quoting *Hall v. Hall*, 584 U.S. ----, 138 S. Ct. 1118, 1128 (2018)); *see also AIG Baker*, 508 F.3d at 1000 (noting that it was "be[ing] guided by the established meaning that the words of section 11(a) had at the time they were adopted"). Congress enacted the FAA in 1925 and lifted the statute's text from "New York's [1920] arbitration statute." *Hall St.*, 552 U.S. at 589 n.7; *accord AIG Baker*, 508 F.3d at 1000; *see also Hall St.*, 552 U.S. at 589 n.7 ("The text of the FAA was based upon that of New York's arbitration statute. . . . The New York Arbitration Law incorporated pre-existing provisions of the New York Code of Civil Procedure."). Section 11(a)'s text, in particular, was "virtually identical" to New York's provision in effect in 1925. *Hall St.*, 552 U.S. at 589 n.7; see *AIG Baker*, 508 F.3d at 1000 ("The language of section 11(a) of the federal Act matched almost verbatim the language of section 2375 of the New York Code of Civil Procedure, which had long been a part of New York law and the New York Arbitration Law incorporated by reference."). That provision allowed courts to modify an arbitration award to correct "an evident miscalculation of figures." N.Y. CODE CIV. P. § 2375 (Frank B. Gilbert & Austin B. Griffin 1920).

By the time Congress transplanted that language into § 11(a), New York courts had long interpreted the language "an evident miscalculation of figures" to mean a miscalculation that appeared in the award "on its face." *In re Burke*, 84 N.E. 405, 406 (N.Y. 1908); *see Remington Paper Co. v. London Assurance Corp. of Eng.*, 12 A.D. 218, 225 (N.Y. App. Div. 1896) (affirming order concluding that "[t]he party who seeks to set aside an award upon the ground of mistake must show, from the award itself, that but for the mistake the award would have been different" (quoting *Sweet v. Morrison*, 22 N.E. 276, 280 (N.Y. 1889))); see also AIG Baker, 508 F.3d at 1001 (collecting New York cases showing that this reading has "been part of New York jurisprudence for many years").

The face-of-the-award limitation therefore "was part of the 'old soil'" that § 11(a) brought with it from New York law. *AIG Baker*, 508 F.3d at 1001. Over the intervening decades, Congress has left the "evident material miscalculation" language untouched. *Compare* Pub. L. No. 68-401, § 11(a), 43 Stat. 883, 885 (1925), with 9 U.S.C. § 11(a) (2019). Therefore, we must not, in effect, do what Congress has not done by effacing the face-of-the-award limitation that has long been old soil attached to § 11(a).

> **Consider the FAA's purposes.** *See Abramski v. United States*, 573 U.S. 169, 179 (2014) (noting the importance of considering a statute's textually derived purpose in interpreting a provision). ***Its "'principal purpose' . . . is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'"*** x x x
>
> x x x x
>
> **Reading this statutory term "evident" as relating to a material miscalculation that appears on the face of the award furthers the FAA's purposes. A face-of-the-award limitation preserves the integrity of the parties' bargain.** Specifically, it preserves the parties' deal for an arbitrator's, rather than a court's, resolution of their dispute. **This bargain essentially negates the risk that a court may substitute its judgment (inadvertently or otherwise) for that of the arbitrator when it goes beyond the award's face in search of obvious, material mathematical errors. Further, a face-of-the-award approach also ensures that arbitration remains an efficient means to resolve disputes rather than "merely a prelude to a more cumbersome and time-consuming judicial review process."** x x x
>
> x x x x

"***Evident miscalculation of figures***," therefore, ***means obvious mathematical errors that relates to miscalculation that appears on the face of the award***. It does not pertain to any allegation of fraud, corruption, or grave abuse. It is limited to clerical errors and honest mistake and are, thus, correctible insofar as they do not affect the merits of the controversy. Such is the restrained attitude that courts were intended to maintain with respect to arbitral awards.

Here, under the guise of correcting an "***evident miscalculation of figures***," the RTC-Makati **reviewed the findings** of the Arbitration Panel, thus:[39]

> The Court agrees with DFNN[I] that there was an evident miscalculation of the figures in the award of damages in favor of DFNN[I] contained in the Arbitral Award. Thus, the Court resolves to GRANT the instant Petition.
>
> Section 13.2 of the ELA prescribes the proper computation of liquidated damages in case an event of default should occur. Section 13.2 of the ELA states:
>
> > "(i) PCSO, if it is the party in default, shall pay DFNN[I] ***liquidated damages in the amount (sic) equal to the market value of the System plus rental payments for the unexpired term of this Agreement as provided under Section 10.2 and 10.3 hereof, inclusive of a penalty charge of two percent***

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[39] *Rollo*, G.R. No. 234193, pp. 63-67.

(2%) per month on the amount due computed from the date of termination or cancellation of the Agreement to the actual date of payment.

For the purposes of this provision, "market value" shall be stipulated at Twenty Seven Million Pesos (P27,000,000) less depreciation of twelve and one half percent (12.5%) per year beginning from execution of this Agreement. "Unexpired term of rental payments" shall be computed based on the lease charge of five percent (5%) of the total value of bets placed through this System provided by DFNN[I] or the amount of Five Pesos (P5.00) per successful registrant under the System, whichever is higher, at the time such default shall have occurred multiplied by the remaining period of the term of this Agreement. PCSO shall also return the System to DFNN[I] in accordance with Section 9.2 hereof."

Based on the foregoing-quoted Section of the ELA, DFNN[I] claims a total amount of Php310,095,149.70 in liquidated damages. The Court agrees with this claim.

A reading of the controlling provision in the ELA shows that the two percent (2%) penalty charge per month is computed based on "the amount due." The amount due in this case refers to the "market value of the System plus rental payments for the unexpired term of this Agreement, inclusive of a penalty charge of two percent (2%) per month on the amount due computed from the date of termination or cancellation of the Agreement to the actual date of payment." The Arbitral Tribunal determined the amount due to be Php27,000,000.00. The 2% penalty charge per month should therefore be imposed on the Php27,000,000.00 initially. Thereafter, the 2% penalty charge should be computed based on the Php27,000,000.00 plus the previously incurred penalty charges. The Court[,] therefore[,] corrects the computation of liquidated damages (sic) to Php310,095,149.70.

As to the legal interest that must be imposed on the award, it must be noted that the case of **Nacar vs. Gallery Frames** (G.R. No. 189871, August 13, 2013) already modified the rates stated in **Eastern Shipping Lines vs. Court of Appeals** (G.R. No. 97412, July 12, 1994) and now prescribes the uniform rate of 6% legal interest per annum from date of finality of this Decision until full satisfaction thereof.

WHEREFORE, premises considered, in accordance with the authority granted by Section 11.4(C) of the ADR Rules to this Court to correct arbitral awards, the award for liquidated damages in the Arbitral Award dated May 21, 2015 is hereby corrected to Php310,095149.70, plus 6% interest from [date] of finality of this Decision until full satisfaction thereof.

SO ORDERED."

Clearly, the RTC-Makati passed off its decision as mere correction of the Arbitral Award. But in truth, it reversed and set aside the findings of the Arbitration Panel with respect to the 2% penalty provided in Par. 13.2(i) of the ELA, substituting its decision for that of the Arbitration Panel.

In ***Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation***,[40] this Court explained the basic principles surrounding an arbitral award:

> Arbitration is an alternative mode of dispute resolution ***outside of the regular court system.*** Although adversarial in character, arbitration is technically not litigation. It is a voluntary process in which one or more arbitrators – appointed according to the parties' agreement or according to the applicable rules of the Alternative Dispute Resolution (ADR) Law – resolve a dispute by rendering an award.[41] While arbitration carries many advantages over court litigation, in many ways these advantages also translate into its disadvantages.
>
> Resort to arbitration is voluntary. It requires ***consent from both parties*** in the form of an arbitration clause that ***pre-existed the dispute or a subsequent submission agreement***. This written arbitration agreement is an independent and legally enforceable contract that must be complied with in good faith. By entering into an arbitration agreement, the parties agree to submit their dispute to an arbitrator (or tribunal) of their own choosing and be bound by the latter's resolution.
>
> However, this **contractual** and **consensual** character means that the parties cannot implead a third-party in the proceedings even if the latter's participation is necessary for a complete settlement of the dispute. The tribunal does not have the power to compel a person to participate in the arbitration proceedings without that person's consent. It also has no authority to decide on issues that the parties did not submit (or agree to submit) for its resolution.
>
> As a **purely private mode of dispute resolution**, arbitration proceedings, including the records, the evidence, and the arbitral award, are confidential unlike court proceedings which are generally public. This allows the parties to avoid negative publicity and protect their privacy. Our law highly regards the confidentiality of arbitration proceedings that it devised a judicial remedy to prevent or prohibit the unauthorized disclosure of confidential information obtained therefrom.
>
> The contractual nature of arbitral proceedings affords the parties substantial **autonomy over the proceedings**. The parties are free to agree *on the procedure to be observed* during the proceedings. This lends considerable flexibility to arbitration proceedings as compared to court litigation governed by the Rules of Court.
>
> The parties likewise **appoint the arbitrators** based on agreement. There are no other legal requirements as to the competence or technical qualifications of an arbitrator. Their only legal qualifications are: (1) being of legal age; (2) full-enjoyment of their civil rights; and (3) the ability to read and write. The parties can tailor-fit the tribunal's composition to the nature of their dispute. Thus, a specialized dispute can be resolved by experts on the subject.

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[40] 800 Phil. 721 (2016).
[41] Sec. 3 (d), Alternative Dispute Resolution Act of 2004.

> **However, because arbitrators do not necessarily have a background in law, they cannot be expected to have the legal mastery of a magistrate. There is a greater risk that an arbitrator might misapply the law or misappreciate the facts *en route* erroneous decision.**
>
> **This *risk of error* is compounded by the absence of an effective appeal mechanism. The errors of an arbitral tribunal are not subject to correction by the judiciary. As a private alternative to court proceedings, arbitration is meant to be an end, not the beginning, of litigation. Thus, the arbitral award is final and binding on the parties by reason of their contract the arbitration agreement.** (Emphases and underscoring supplied)

In other words, a party may not invoke the grounds for correction of arbitral awards under Section 25(a), RA 876, including the correction of "evident miscalculation of figures", as a ruse to ask for a review of the substantive findings of an arbitral tribunal. The mere fact that a party disagrees with the arbitral tribunal's factual findings and legal conclusions does not warrant the modification or correction of the arbitral award, much less a review thereof.

All told, the Court of Appeals gravely erred when it affirmed the ruling of the RTC-Makati which granted DFNNI's petition for correction. PCSO's liability to DFNNI must be set at ₱27,000,000.00 of liquidated damages in accordance with the Arbitral Award.

ACCORDINGLY, the petition in **G.R. No. 232801** is **GRANTED**. The Decision dated February 20, 2017 and Resolution dated July 10, 2017 of the Court of Appeals in CA-G.R. SP No. 145462 are **REVERSED and SET ASIDE**. The Order dated April 11, 2016 of Regional Trial Court-Branch 212, Mandaluyong City in Civil Case No. MC15-9557 denying the consolidation is **REINSTATED**.

On the other hand, the petition in **G.R. No. 234193** is **GRANTED**. The Decision dated November 17, 2016 and Resolution dated August 31, 2017 of the Court of Appeals in CA-G.R. SP No. 145983 are **REVERSED and SET ASIDE**. The Arbitral Award dated May 21, 2015 is **REINSTATED**.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

Please see Concurring Opinion

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

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

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson – Second Division

CERTIFICATION

Pursuant to Section 13, Article VII 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