

*EN BANC*

**G.R. No. 230112 – GLOBAL MEDICAL CENTER OF LAGUNA, INC.,  
Petitioner, v. ROSS SYSTEMS INTERNATIONAL, INC., Respondent;**  
and

**G.R. No. 230119 – ROSS SYSTEMS INTERNATIONAL, INC.,  
Petitioner, v. GLOBAL MEDICAL CENTER OF LAGUNA, INC.,  
Respondent.**

Promulgated:

May 11, 2021

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**SEPARATE CONCURRING AND  
DISSENTING OPINION**

**PERLAS-BERNABE, J.:**

I agree with the *ponencia*'s resulting disposition in this case to reinstate the Construction Industry Arbitration Commission's (CIAC) arbitral award with the modification to direct Global Medical Center of Laguna, Inc. to furnish Ross Systems International, Inc. the pertinent Bureau of Internal Revenue Form No. 2307. Likewise, I agree that, as a rule of prospective application, there are two (2) modes of judicial review by which CIAC arbitral awards may be assailed henceforth, these are: ***first***, a direct appeal to the Supreme Court under Rule 45 on pure questions of law; and ***second***, an original special civil action for *certiorari* to the Court of Appeals (CA) under Rule 65 on the ground of grave abuse of discretion. **Nonetheless, I tender this Opinion to respectfully express my reservations against some of the *ponencia*'s discussions pertaining to this second mode of judicial review.**

**I.**

In particular, the *ponencia* declares that when it comes to the judicial review of CIAC arbitral awards under Rule 65, grave abuse of discretion should be further qualified into: **(1) a challenge on the integrity of the arbitral tribunal** (*i.e.*, award is procured through fraud, corruption, undue means, or evident partiality on the part of the arbitrators, *etc.*); and **(2)** an allegation of the arbitral tribunal's violation of the Constitution or positive law.

The first qualification of "integrity of the arbitral tribunal" has been proposed by the *ponencia* as **a necessary form of contraction of grave abuse**



of discretion that is supposedly warranted by the “unequivocal intent” of the pertinent laws on CIAC arbitration:

Therefore, in the instant case and for purposes of judicial review of the CIAC arbitral awards, **this Court now divines Rule 65, being confined to challenges only to the arbitral tribunal’s integrity or allegations of its actions’ unconstitutionality or illegality, to be a warranted contraction of the breadth of the concept of ‘grave abuse of discretion’, in order to harmonize a Rule 65 resort with the unequivocal intent of E.O. 1008, and other relevant laws, including R.A. 876 and R.A. 9285, which apply supplementarily.** To be sure, although E.O. 1008 applies specifically to the CIAC as a specialized arbitral institution for the construction industry, nothing precludes the Court from applying the umbrella legislation of R.A. 876 and its significant amendment, R.A. 9285.

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Evidently therefore, the intent of the relevant laws with respect to the treatment of arbitral awards is two-tiered: first, that they are final as far as their appreciation of the facts that go into the merit of the dispute is concerned; and second, in case of obvious errors of facts (e.g., miscalculations), they are modifiable or correctible only 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. Such purposively narrow windows for changing the arbitral tribunal’s award are most in consonance with the confined posture towards appeals as unambiguously provided for by E.O. 1008, and as fleshed out by R.A. 9285 and the Special ADR Rules.

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This harmonization is most consistent with the spirit of the law which created the CIAC, as was reaffirmed by R.A. 9285 and the Special ADR Rules. Accordingly, all rules and regulations that allow the contrary, including the pertinent provisions in the Revised Administrative Circular No. 1-95, Rule 43 of the Rules and the CIAC Rules, should be deemed amended to conform to the rule on direct resort to this Court on pure questions of law.<sup>1</sup> (Emphasis and underscoring supplied)

The *ponencia* further elaborates the need for such qualification:

Further, the resort to a petition for *certiorari* under Rule 65 is confined to assailing the integrity of the arbitral tribunal based on any of the aforementioned factual scenarios (e.g., corruption, fraud, evident partiality of the tribunal), or the constitutionality or legality of the conduct of the arbitration process, **and may not remain unqualified as to embrace other badges of grave abuse.** x x x

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<sup>1</sup> *Ponencia*, pp. 49-50 and 53-55.

However, far from being static, the very contours of what constitutes grave abuse of discretion have always been traced by the Court in a judicious but fragmentary manner, as called for by each case in jurisprudence. Distinctively, therefore, although the remedy of petition for *certiorari*, as the procedural vehicle, is purposefully rigid and unyielding in order to avoid overextension of the same over situations that do not raise an error of jurisdiction, the concept of grave abuse of discretion which must be alleged to avail of the *certiorari* remedy is, in the same degree, deliberately flexible, in order to enable it to capture a whole spectrum of permutations of grave abuse. **If the case were otherwise, i.e., if the concept of grave abuse were rigid, and the *certiorari* remedy loose, the same would be exposed to the possibility of having a clear act of whim and caprice placed beyond the ambit of the court's *certiorari* power because of a definitional discomfiture in the legal procedure.**

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Indicatively, going by the jurisprudential construction of grave abuse of discretion as contemplated by Rule 65, the same decidedly casts a wider net than that which is consistent with the narrower confines of factual review of CIAC arbitral awards, and covers numerous other scenarios apart from that which may amount to a challenge of the integrity of a tribunal. The above cases demonstrate badges of grave abuse that could not have been contemplated as far as factual review of CIAC awards is concerned. To leave this Rule 65 resort unqualified is, therefore, to leave it overinclusive, at the expense of the weight and conclusiveness of findings of fact of the CIAC. Stated differently, precisely because challenging the integrity, constitutionality or legality of the tribunal or its actions in the arbitral process are only some of the many permutations of grave abuse within the construction of Rule 65, the delimitation is crucial for purposes of factual review of CIAC arbitral awards, if a resort to a petition for *certiorari* under Rule 65 is to be made consistent with E.O. 1008.<sup>2</sup> (Emphases and underscoring supplied)

While I have no qualms about the possibility of contracting/qualifying grave abuse of discretion into a narrower permutation, it is my view that the same must be justified by the Constitution or the law. Indeed, it is my position that absent any clear constitutional or statutory basis, the Court should not contract grave abuse of discretion.

As will be explained herein, there is simply no constitutional or statutory basis that warrants the contraction of grave abuse of discretion into the *ponencia*'s qualification of "a challenge on the integrity of the arbitral tribunal," therefore, the *ponencia*'s qualification/contraction of grave abuse of discretion is not justified.

To recount, "integrity of the arbitral tribunal" is a term that was first coined in the case of *CE Construction Corporation v. Araneta Center, Inc.*<sup>3</sup>

<sup>2</sup> *Ponencia*, pp. 44, 45, and 47.

<sup>3</sup> 816 Phil. 221 (2017).

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(*CE Construction*). The term is, in concept, a collective category that was meant to encapsulate the grounds stated under Section 24 of Republic Act No. (RA) 876<sup>4</sup> (**Section 24 grounds**), or the general Arbitration Law of 1953. These grounds are as follows:

- (a) The award was procured by corruption, fraud, or other undue means; or
- (b) That there was evident partiality or corruption in the arbitrators or any of them; or
- (c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or
- (d) That 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.

The difference between *CE Construction* and the *ponencia* is that the former merely adopted previous jurisprudence which referred to the Section 24 grounds as mere prototypical examples.

Upon careful scrutiny, the *ponencia*, in some of its parts, has referred to the said grounds as prototypical examples of grave abuse of discretion;<sup>5</sup> however, in other parts, it perceives “integrity of the arbitral tribunal” not as mere examples, but in itself, a contracted version of grave abuse of discretion. These latter portions do not only create the impression that the Section 24 grounds are the exclusive grounds to assail a CIAC arbitral award, but also renders the *ponencia* inconsistent.

This inconsistency becomes more magnified by the fact that it takes great pains to justify the bases for contracting grave abuse of discretion into a “challenge on the integrity of the arbitral tribunal” (to the extent of delving into the boundaries of the Court’s rule-making power under the Constitution<sup>6</sup>), but, in the end, ultimately recognizes that, as stated above, “the arbitral tribunal’s violation of the Constitution or positive law” is an accepted ground to assail a CIAC arbitral award under Rule 65.<sup>7</sup> To be sure, this latter recognition was actually a modification of the original *ponencia*, which was

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<sup>4</sup> Entitled “AN ACT TO AUTHORIZE THE MAKING OF ARBITRATION AND SUBMISSION AGREEMENTS, TO PROVIDE FOR THE APPOINTMENT OF ARBITRATORS AND THE PROCEDURE FOR ARBITRATION IN CIVIL CONTROVERSIES, AND FOR OTHER PURPOSES,” approved on June 19, 1953.

<sup>5</sup> See *ponencia*, p. 21.

<sup>6</sup> See *id.* at 44-49.

<sup>7</sup> See *id.* at 20-21.

borne from my submissions during the deliberations in this case, which I have presented in this wise:

Essentially, while I concur in the *ponencia*'s result, I express reservations on its proposal to contract grave abuse of discretion into a narrower permutation called "integrity of the arbitral tribunal" insofar as *certiorari* challenges against Construction Industry Arbitration Commission (CIAC) arbitral awards are concerned. It is my submission that absent any clear constitutional or statutory basis, the Court should not contract grave abuse of discretion, especially considering the repercussions of this novel approach to other cases. Instead, when it comes to CIAC arbitration, it is already settled that the grounds under Section 24 of Republic Act No. (RA) 876 (to which the phrase "integrity of the arbitral tribunal" collectively refers to) are only treated as prototypical examples and not exclusive grounds, by and of themselves. **To contract grave abuse into the above-stated narrower form is to exclude from judicial review other permissible grounds that also constitute jurisdictional errors, such as "when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence."**<sup>8</sup> (Emphasis and underscoring supplied)

As the present *ponencia* now recognizes that a restriction of Rule 65 exclusively to the Section 24 grounds (*i.e.*, challenge on the integrity of the arbitral tribunal) would be problematic in that it may "exclude from judicial review other permissible grounds that also constitute jurisdictional errors, such as 'when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence,'" it now expressly acknowledges that "an allegation of a violation of the Constitution or positive law" is a ground to assail CIAC arbitral awards via Rule 65:

Far from being absolute, however, the general rule proscribing against judicial review of factual matters admits of exceptions, with the standing litmus test that which **pertain to either a challenge on the integrity of the arbitral tribunal, or otherwise an allegation of a violation of the Constitution or positive law.** x x x

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In other words, the scenarios that will trigger a factual review of the CIAC's arbitral award must fall within either of the following sets of grounds:

- (1) Challenge on the integrity of the arbitral tribunal (*i.e.*, (i) the award was procured by corruption, fraud or other undue means; (ii) there was evident partiality or corruption of the arbitrators or of any of them); (iii) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (iv) one or more of the arbitrators were disqualified to act as such under Section 9 of R.A. 876 or "The Arbitration Law", and willfully refrained

<sup>8</sup> See letter to the Court *En Banc* dated April 20, 2021.

from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (v) 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) and;

**(2) Allegation of the arbitral tribunal's violation of the Constitution or positive law.**

In addition to the **prototypical examples** that exceptionally trigger a factual review of the CIAC's arbitral awards, the Court here discerns the merit in adding the otherwise forgotten presumption that factual findings of the CIAC arbitral tribunal may also be revisited by the Court upon an allegation that the arbitral tribunal committed an act that is violative of the Constitution or other positive laws. **To abate fears, the delimitation discerned in the Court's power to review factual findings of the CIAC shall in no way plausibly allow for a situation wherein the Court's hand is stayed from correcting a blatant Constitutional or legal violation because the autonomy of the arbitral process is paramount.** Contrarily, the Court underscores that the **contracted or very limited grounds** for alleging grave abuse of discretion on the part of the CIAC arbitral tribunal, however narrow, are still principally tethered to the courts' primary duty of upholding the Constitution and positive laws. The addition of the second ground makes plain that no amount of contracting or expanding grounds for grave abuse will ever be permitted to lay waste to the original purpose of the courts and their mandate to uphold the rule of law.<sup>9</sup> (Emphases and underscoring supplied)

It should be highlighted that the arbitral tribunal's "violation of the Constitution or positive law" is just a **reiteration of the traditional notion of grave abuse of discretion as per the prevailing case law on Rule 65.**<sup>10</sup> This traditional notion of grave abuse of discretion has been consistently applied to cases elevated on *certiorari* in general.

Thus, as may be gleaned from the above-cited passage in the *ponencia*, it, **on the one hand**, purports to contract grave abuse of discretion into **very limited grounds** (*i.e.*, challenge on the integrity of the arbitral tribunal) **but in the same breath**, recognizes that a CIAC arbitral award may nonetheless be assailed by **the general and traditional conception** of grave abuse of discretion (*i.e.*, allegation of the arbitral tribunal's violation of the Constitution or positive law). **With all due respect, this approach is clearly inconsistent, as it begs the question – Is the Rule 65 ground to assail a CIAC arbitral award, (1) a specifically contracted ground (*i.e.*, challenge on the integrity of the arbitral tribunal); (2) a general ground as grave abuse of discretion has been understood to apply in all other cases in general (*i.e.*, allegation of the arbitral tribunal's violation of the Constitution or positive law); or (3) is it**

<sup>9</sup> *Ponencia*, pp. 20-21.

<sup>10</sup> "Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence." (*Ifurung v. Carpio-Morales*, G.R. No. 232131, April 24, 2018, 362 SCRA 684, 701, citing *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 [2013]).

*both?* More so, it is observed that if the *ponencia* already recognizes that CIAC arbitral awards can already be assailed by the traditional conception of grave abuse of discretion, then there is no more practical value to contract/calibrate grave abuse of discretion into a limited ground.

Furthermore, the *ponencia*'s discussions on "challenge on the integrity of the arbitral tribunal" is equally inconsistent: on the one hand, it deems that the Section 24 grounds falling under such term are mere prototypical examples; but on the other hand, it labels them as "contracted" or "very limited grounds." "Prototypical" means "having the typical qualities of a particular group or kind of person or thing[.]"<sup>11</sup> Thus, when something is a mere "prototypical example," it is only a prime example of a greater class, *i.e.*, grave abuse of discretion, and hence, not exclusive or exhaustive of said class. In contrast, when the treatment is that the Section 24 grounds are, by and of themselves, contracted grounds, then the said grounds are deemed exclusive and exhaustive, so as not to allow other instances of grave abuse of discretion to assail a CIAC arbitral award. Overall, one may therefore ask – *Are the grounds under Section 24 to assail a CIAC arbitral award, exclusive or not? Or are they both exclusive and not exclusive since after all a litigant may assail a CIAC arbitral award based on the traditional conception of grave abuse, i.e., allegation of the arbitral tribunal's violation of the Constitution or positive law?*

Respectfully, I am impelled to point out these inconsistencies (which I have, in fact, already identified during the deliberations of this case<sup>12</sup> but to

<sup>11</sup> See Merriam-Webster Online Dictionary, *Prototypical*, available at <<https://www.merriam-webster.com/dictionary/prototypical>> (last visited May 11, 2021).

<sup>12</sup> See letter to the Court *En Banc* dated May 10, 2021, which stated that:

[D]espite the above-stated changes in the *ponencia*, I must respectfully point out that the *ponencia* still retains its previous discussions made in refutation of my Reflections, which, to my mind, are inconsistent with its current position already recognizing violations of the Constitution and the law as grounds to assail a CIAC arbitral award, in addition to the ground of integrity of the arbitral tribunal, which ground contemplates the situations listed under Section 24 of RA 876 only as prototypical examples. Specifically, these discussions pertain, in essence, to the following points: (a) Section 24 of RA 876 must be replicated as the limited grounds to assail a CIAC arbitral award x x x; (b) pursuant to the Court's rule-making power, the "elastic" concept of grave abuse of discretion permits a narrow contraction of grave abuse of discretion to the exclusive grounds listed under Section 24 of RA 876 x x x; and (c) the relevant laws (*e.g.*, RA 876, RA 9285, Special ADR Rules) supposedly demonstrate a clear legislative intent to contract grave abuse of discretion only to the grounds listed under Section 24 of RA 876 x x x (collectively referred to as "subject discussions").

To my mind, the subject discussions in the *ponencia* are inconsistent with its current position that (a) the grounds in Section 24 of RA 876 are not exclusive grounds but only prototypical examples that affect the integrity of the tribunal; and (b) *certiorari* challenges are allowed if there are constitutional or legal violations. Anent the latter, the ground of violation of the Constitution or positive law is not a peculiar ground listed in Section 24 of RA 876, but is one which squares with the more traditional understanding of grave abuse of discretion, *i.e.*, where there is a patent violation of the Constitution, the law or jurisprudence. As such, for the sake of consistency, it is respectfully requested that these discussions be revisited. Ultimately, the subject discussions all purport to contract grave abuse of discretion to the peculiar grounds listed in Section 24 of RA 876; this contraction

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no avail) if only to draw attention to the possible confusion that this may cause aggrieved litigants who wish to assail CIAC arbitral awards.

In any case, I submit that, in the final analysis, **there is really no basis to contract grave abuse of discretion into a “challenge on the integrity of the arbitral tribunal” because the grounds under Section 24 of RA 876, refer to a different remedy, i.e., a motion to vacate, and not a petition for certiorari, which remedy is, in fact, unavailable in arbitration proceedings instituted before the CIAC.**

To expound, Section 26, in relation to Section 24, of RA 876 states:

**Section 26. Motion to Vacate, Modify or Correct Award: When Made.** – Notice of a motion to vacate, modify or correct the award must be served upon the adverse party or his counsel within thirty days after award is filed or delivered, as prescribed by law for the service upon an attorney in an action.

**Section 24. Grounds for Vacating Award.** – In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

(a) The award was procured by corruption, fraud, or other undue means; or

(b) That there was evident partiality or corruption in the arbitrators or any of them; or

(c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

(d) That 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.

Where an award is vacated, the court, in its discretion, may direct a new hearing either before the same arbitrators or before a new arbitrator or arbitrators to be chosen in the manner provided in the submission or contract for the selection of the original arbitrator or arbitrators, and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

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is, however, not necessary anymore since the present version of the *ponencia* already goes beyond the ambit of Section 24 by recognizing that the arbitral tribunal's violation of the Constitution and the law are grounds to assail the arbitral award.

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Where the court vacates an award, costs, not exceeding fifty pesos and disbursements may be awarded to the prevailing party and the payment thereof may be enforced in like manner as the payment of costs upon the motion in an action. (Emphases and underscoring supplied)

**It should be stressed that RA 876, being the general law on arbitration that was passed in 1953, or way before the creation of the CIAC in 1985, is not squarely applicable when it comes to CIAC arbitration.** As stated in the law itself, RA 876 contemplates a **special proceeding in the court** specified in the contract or submission, or if none be specified, the Court of First Instance (now, Regional Trial Court) for the province or city in which one of the parties resides or is doing business, or in which the arbitration was held.<sup>13</sup> On the other hand, CIAC arbitration, as its name denotes, is a quasi-judicial proceeding that involves disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, where parties agree to submit the dispute to voluntary arbitration, *e.g.*, pursuant to an arbitration clause, **specifically instated before the CIAC.**<sup>14</sup>

**It is well-established that when it comes to CIAC arbitration, it is the CIAC Law, *i.e.*, Executive Order No. [EO] 1008,<sup>15</sup> and the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules) that govern.** This is explicitly recognized in Section 34 of RA 9285,<sup>16</sup> or the Alternative Dispute Resolution Act of 2004, which provides:

Section 34. *Arbitration of Construction Disputes: Governing Law.*  
– The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

In fact, the Court, in the 2013 case of *J Plus Asia Development Corporation v. Utility Assurance Corporation*<sup>17</sup> (*J Plus*), already recognized that **CIAC arbitral awards “are x x x not covered by Rule 11 of the Special ADR Rules, as they continue to be governed by EO No. 1008 [(or the CIAC Law)] x x x and the rules of procedure of the CIAC,”**<sup>18</sup> *viz.*:

On the procedural issues raised, we find no merit in petitioner’s contention that with the institutionalization of alternative dispute resolution under Republic Act (R.A.) No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004, the CA was divested of jurisdiction to review the decisions or awards of the CIAC. Petitioner erroneously relied

<sup>13</sup> See Section 22 of RA 876.

<sup>14</sup> See Section 4 of EO 1008.

<sup>15</sup> Entitled “CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES” (February 4, 1985).

<sup>16</sup> Entitled “AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES,” approved on April 2, 2004.

<sup>17</sup> 712 Phil. 587 (2013).

<sup>18</sup> *Id.* at 601; emphasis and underscoring supplied.

on the provision in said law allowing any party to a domestic arbitration to file in the Regional Trial Court (RTC) a petition either to confirm, correct or vacate a domestic arbitral award.

We hold that R.A. No. 9285 did not confer on regional trial courts jurisdiction to review awards or decisions of the CIAC in construction disputes. On the contrary, Section 40 thereof expressly declares that confirmation by the RTC is not required, thus:

SEC. 40. *Confirmation of Award.* – The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The confirmation of a domestic award shall be made by the regional trial court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

A CIAC arbitral award need not be confirmed by the regional trial court to be executory as provided under E.O. No. 1008.

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. x x x

Petitioner misread the provisions of A.M. No. 07-11-08-SC (Special ADR Rules) promulgated by this Court and which took effect on October 30, 2009. Since R.A. No. 9285 explicitly excluded CIAC awards from domestic arbitration awards that need to be confirmed to be executory, said awards are therefore **not covered by Rule 11** of the Special ADR Rules[, entitled **RULE 11: CONFIRMATION, CORRECTION OR VACATION OF AWARD IN DOMESTIC ARBITRATION**], as they continue to be governed by EO No. 1008, as amended and the rules of procedure of the CIAC.<sup>19</sup> (Emphases and underscoring supplied)

Under the CIAC Law, the only remedy stated is a Rule 45 appeal to the Supreme Court on pure questions of law:

Section 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.

Meanwhile, under the CIAC Rules, only a motion to correct an arbitral award is stated in Rule 17 on Post-Award Proceedings:

<sup>19</sup> Id. at 600-601.

## RULE 17: POST-AWARD PROCEEDINGS

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

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

The motion shall be acted upon by the Arbitral Tribunal or the surviving/remaining members.

17.1.1 The filing of the motion for correction shall interrupt the running of the period for appeal.

17.1.2 A motion for correction upon grounds other than those mentioned in this section shall not interrupt the running of the period for appeal.

Section 17.2 *Motion for Reconsideration or New Trial.* – A motion for reconsideration or new trial shall be considered a prohibited pleading.

**Notably, the CIAC Law and the CIAC Rules did not explicitly or implicitly carry over the grounds under Section 24 of RA 876; only Section 25<sup>20</sup> (which lists different grounds for modification of an arbitral award) was carried over to Rule 17 of the CIAC Rules.**

**There is also no provision that states that the rules on domestic arbitration are suppletoryly applicable to CIAC arbitration. In fact, with**

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<sup>20</sup> **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. (Emphasis supplied)

respect to Section 24 of RA 876, its amendatory law, *i.e.*, RA 9285, had already removed the grounds of fraud, collusion, *etc.* in order to vacate a domestic arbitral award. Instead, Section 41 of RA 9285 expressly states that the grounds to vacate a domestic arbitral award shall be “only on those grounds enumerated in Section 25 of [RA] 876” or those grounds to correct or modify an award found in the old law. The same provision states that “[a]ny other ground raised x x x shall be disregarded by the Regional Trial Court.”

Neither does existing jurisprudence furnish sufficient basis for RA 876’s suppletory application to CIAC arbitration. To be sure, the *ponencia* cites the 2003 case of *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*<sup>21</sup> to justify the applicability of Section 24 of RA 876 in CIAC arbitration. However, upon careful study, the Court, in the said case, *merely suggested* that RA 876, pursuant to Section 7 thereof, be applied to stay the regular court proceeding (in which the complaint was first filed) and **not the CIAC arbitration proceedings**. This remedy was suggested so that the arbitration proceedings could continue in the CIAC, which continues to be solely governed by the CIAC Law and the corresponding CIAC Rules.<sup>22</sup> Nonetheless, as already held in the more recent 2013 case of *J Plus*, the Court already clarified that when it comes to CIAC arbitration, the CIAC Law and CIAC Rules govern, and not the general arbitration law, *i.e.*, RA 9285 amending RA 876.<sup>23</sup>

Based on the foregoing, it is therefore clear that there is no constitutional or statutory basis to justify the *ponencia*’s contraction of grave abuse of discretion into a narrower permutation thereof, *i.e.*, a challenge on the integrity of the arbitral tribunal.

## II.

If anything, the Section 24 grounds encompassing the phrase “**a challenge on the integrity of the arbitral tribunal**” are mere prototypical examples of grave abuse of discretion. As mentioned, the *ponencia* is inconsistent on this matter. But to settle the matter once and for all, it should be made clear that existing case law has, all the while, held that the Section 24 grounds are mere prototypical examples and not exclusive Rule 65 grounds. This is evident from the cases of *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*<sup>24</sup> (*Hi-Precision*) and *Spouses David v. CIAC*<sup>25</sup> (*Sps. David*), which were cited and adopted in *CE Construction and Tondo Medical Center v. Rante*<sup>26</sup> (*Tondo Medical*).

<sup>21</sup> 447 Phil. 705 (2003).

<sup>22</sup> See *id.* at 715-716.

<sup>23</sup> See *J Plus*, *supra* note 17, at 601.

<sup>24</sup> 298-A Phil. 361 (1993).

<sup>25</sup> 479 Phil. 578 (2004).

<sup>26</sup> See G.R. No. 230645, July 1, 2019.

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To recount, in the 1993 case of *Hi-Precision*, the Court stated that “[it] will **not review the factual findings of an arbitral tribunal** upon the artful allegation that such body had ‘misapprehended the facts’ and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as ‘legal questions.’”<sup>27</sup> On this score, it referred to the Section 24 grounds as **prototypical examples of grave abuse of discretion:**

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had “misapprehended the facts” and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as “legal questions.” The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. **The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators.** Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.<sup>28</sup> (Emphasis and underscoring supplied)

*Hi-Precision* was later cited in the 2004 case of *Sps. David* where the Court likewise stressed the general rule that factual findings of an arbitral tribunal should not be disturbed. To flesh out this point, the Court quoted the pronouncement in *Hi-Precision* that the Section 24 grounds were mere prototypical examples of grave abuse of discretion.<sup>29</sup>

Eventually, in 2017, the Court promulgated *CE Construction*, where the phrase “integrity of the arbitral tribunal” was inspired from by the *ponencia*. Similar to its predecessor cases, *CE Construction* never characterized the Section 24 grounds as the exclusive grounds of grave abuse of discretion. Rather, in coining the phrase “integrity of the arbitral tribunal,” *CE Construction* only emphasized that “factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled.”<sup>30</sup>

<sup>27</sup> *Hi-Precision*, supra, at 373; emphasis supplied.

<sup>28</sup> Id. at 373-374.

<sup>29</sup> See *Sps. David*, supra, at 591-592.

<sup>30</sup> *CE Construction*, supra note 3, at 261.

In the same light, the Court, in *Tondo Medical*, citing *Sps. David*, held that “factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or 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 nine 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; or (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.”<sup>31</sup> Again, as in previous cases, the Court, in *Tondo Medical*, never made any qualification that these grounds are contracted permutations of grave abuse of discretion.

Thus, contrary to the *ponencia*, there is actually no case that can be cited as authority to support its notion that the Section 24 grounds were already “exported” or “appropriated”<sup>32</sup> by statutory or case law when it comes to CIAC arbitration.

In fact, aside from the above-stated cases which merely treated the Section 24 grounds as prototypical examples, the Court, in the latest 2020 case of *Department of Public Works and Highways v. Italian-Thai Development Public Company, Ltd.*<sup>33</sup> (*DPWH*), citing *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*<sup>34</sup> (*Shinryo*), expressly declared that **grounds other than those in Section 24 of RA 876 may constitute grave abuse of discretion in CIAC arbitration proceedings.** In *Shinryo*, the Court reiterated that:

It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal.

This rule, however, admits of certain exceptions. In *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation* [540 Phil. 350 (2006)], we said:

<sup>31</sup> *Tondo Medical*, supra note 26.

<sup>32</sup> See *ponencia*, p. 52, which states:

To note, although Section 24 of R.A. 876 has not been transplanted verbatim into the CIAC Rules, the logic behind its adaption into the judicial review of the arbitral awards remains unrefuted. It likewise remains to be negated the fact that the Court has already jurisprudentially appropriated Section 24 of R.A. 876 as the very same situations that may justify the Court’s examination of CIAC arbitral award’s findings of fact.

<sup>33</sup> See G.R. No. 235853, July 13, 2020.

<sup>34</sup> 648 Phil. 342 (2010).

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In [*Sps. David*], we ruled that, as exceptions, factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that: (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 nine 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; or (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.

**Other recognized exceptions are as follows: (1) 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, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.**<sup>35</sup>  
(Emphasis and underscoring supplied)

### III.

In fine, absent any clear constitutional or statutory basis, the *ponencia's* contraction of grave abuse of discretion is not justified.

Furthermore, as herein discussed, the *ponencia's* contraction creates a logical inconsistency, considering how its discussions contain both the general rule (*i.e.*, violation of the Constitution and positive law) and a specific rule (*i.e.*, challenging the integrity of the arbitral tribunal). This inconsistency becomes more problematic with the *ponencia's* categorization of Section 24 of RA 876 as both a source of exclusive grounds and prototypical examples of grave abuse of discretion in CIAC arbitration proceedings, which this Opinion has clarified to be deemed as only prototypical examples consistent with prevailing case law. Indeed, albeit its noble intentions, this endeavor leads to more confusion than a definite calibration.

And finally, the *ponencia's* contraction is also unnecessary since it creates the impression that there are two (2) ways in order to obtain the remedy of *certiorari* under Rule 65 when in fact the ground of challenging the integrity of the arbitral tribunal should already fall within the traditional understanding of grave abuse of discretion. In my view, the traditional conception of grave abuse of discretion already subsumes the term "integrity of the arbitral tribunal" since after all, an arbitral award procured through

<sup>35</sup> *Shinryo*, supra, at 349-350, citing *IBEX International, Inc. v. Government Service Insurance System*, 618 Phil. 304, 312-313 (2009).

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fraud, corruption, undue means, or evident partiality on the part of the arbitrators, *etc.* is tantamount to the tribunal's violation of the Constitution and positive law.

Ultimately, it is discerned that the *ponencia's* motivation for contracting grave abuse of discretion is to promote the policy of deference to party autonomy and to accord respect to the CIAC's factual findings due to its expertise on the matter. Nevertheless, with all due respect, the solution to this should not be made at the expense of stretching the law and settled jurisprudence. To my mind, the more prudent approach would be to strictly exhort courts to follow Rule 65's truly limited nature by strongly emphasizing its extraordinary nature, especially when it comes to assailing factual findings of the CIAC. As was cautioned in the case of *DPWH*:

The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, **save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples** would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators.<sup>36</sup> (Emphasis and underscoring supplied)

All told, while I agree in the result, I dissent against the *ponencia's* pronouncements pertaining to the contraction of grave abuse of discretion. To recapitulate, my disagreement can be summarized into three (3) points: (a) there is no clear constitutional or statutory basis that justifies the contraction of grave abuse of discretion when it comes to a Rule 65 review of CIAC arbitral awards; (b) the *ponencia* already acknowledges that the instances mentioned in Section 24 of RA 876 are mere prototypical examples of grave abuse of discretion and hence, should not be deemed as exclusive grounds therefor; and (c) the *ponencia* already considers the arbitral tribunal's violation of the Constitution or positive law as a ground to assail CIAC arbitral awards on *certiorari* and hence, a party may already assail a CIAC arbitral award based on grave abuse of discretion's traditional conception that perforce negates its further contraction, which after all, lacks basis in law.

  
ESTELA M. PERLAS-BERNABE  
Senior Associate Justice

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<sup>36</sup> *DPWH*, supra note 33.