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[G.R. No. 230112; May 11, 2021]

GLOBAL MEDICAL CENTER OF LAGUNA, INC., *Petitioner*, *v.* **ROSS SYSTEMS INTERNATIONAL, INC.,** *Respondent*.

[G.R. No. 230119; May 11, 2021]

ROSS SYSTEMS INTERNATIONAL, INC., *Petitioner*, *v.* **GLOBAL MEDICAL CENTER OF LAGUNA, INC.,** *Respondent*.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are Consolidated[1] Petitions[2] for Review on *Certiorari* (petitions) under Rule 45 of the Rules of Court (Rules) filed by Ross Systems International, Inc., (RSII) and Global Medical Center of Laguna, Inc. (GMCLI), both assailing the Decision[3] dated October 28, 2016 (assailed Decision) of the Court of Appeals, Sixth Division (CA), in CA-G.R. SP No. 145753.

The assailed Decision affirmed with modification the arbitral award[4] dated May 10, 2016 of the Construction Industry Arbitration Commission (CIAC), which mainly adjudged: (1) GMCLI was without authority to withhold and remit the 2% Creditable Withholding Tax (CWT) on the cumulative amount of 15 progress

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[1] *Rollo* (G.R. No. 230119), pp. 97-99. As recommended in the Memorandum Report dated August 8, 2017.

[2] Id. 3-18, dated March 13, 2017; *rollo* (G.R. No. 230112), pp. 9-21, dated April 12, 2017.

[3] Id. at 22-29; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas-Peralta and Nina G. Antonio-Valenzuela.

[4] Id. at 54-69. Composed of Chairman Primitivo C. Cal and Members Custodio O. Parlade and Felipe T. Cuison.

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billings of RSII; (2) RSII was not entitled to the release of the amount of ₱4,884,778.92, equivalent to the 2% CWT withheld; and (3) RSII was still entitled to the amount of ₱1,088,214.33, representing the balance due after deducting from ₱8,131,474.83 the 2% CWT on Progress Billing Nos. 1 to 15 (in the amount of ₱3,941,769.00) and the payment already made to RSII (in the amount of ₱3,101,491.00).[5]

The CA likewise denied the motion for reconsideration of RSII through its Resolution[6] dated February 21, 2017.

Factual Antecedents

GMCLI engaged the services of RSII for the construction of its hospital in Cabuyao, Laguna, in accordance with a Construction Contract[7] (Contract) which valued the entire construction project at ₱248,500,000.00,[8] with 15% of said contract price to be paid to RSII as down payment, and the remaining balance to be paid in monthly installments based on the percentage of work accomplished.[9] Under Section 9[10] of the Contract, all taxes[11] on the services rendered were for the account of RSII. Finally, an arbitration clause[12] additionally stipulated the parties' resort to arbitration in the event of dispute.

On April 12, 2015, RSII submitted to GMCLI its Progress Billing No. 15, which indicated that it had already accomplished 79.31% of the project, equivalent to ₱9,228,286.77, inclusive of

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[5] Id. at 28.

[6] Id. at 30-31.

[7] Id. at 33-42.

[8] Id. at 34.

[9] Id.

[10] Id. at 38.

[11] Excluding Value-Added Tax (VAT), fees, dues and other impositions that shall become due as a result of RSII performance of the work.

[12] *Rollo* (G.R. No. 230119), p. 37. The clause provides: "It is agreed by the parties that before any of them may submit any controversy arising out of, in connection with or incidental to this Contract for adjudication by the regular courts, arbitration proceedings shall first be exhausted. The arbitrator shall be chosen by mutual agreement of the parties to this contract."

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VAT. After receipt and upon evaluation of GMCLI, however, it estimated that the accomplished percentage was only at 78.84% of the entire contract price or equivalent to ₱7,043,260.00 for Progress Billing No. 15,[13] to wit:

Accomplishment Percent as of April 12, 2015:

As submitted by [RSII]: 79.31% x 248,500,000.00 = ₱197,088,497.00

As submitted by [GMCLI]: 78.84% x 248,500,000.00 = ₱195,920,749.00[14]

GMCLI, after its internal audit, learned that it was unable to withhold and remit 2% CWT on RSII's Progress Billings Nos. 1 to 14.[15] On April 29, 2015, in order to make up for its previous non-remittances, GMCLI withheld the 2% CWT not only from Progress Billing No. 15 (or from the amount of ₱7,043,260.00) but from the cumulative amount of all Progress Billings Nos. 1-15[16] (or from the amount of ₱197,088,497.00, equivalent to the submitted 79.31% accomplishment of RSII).[17] Thus, for RSII's Progress Billing No. 15 priced at ₱7,043,260.00, GMCLI only paid a total of ₱3,101,491.00, with computation as cited by the CIAC arbitral award[18] as follows:

Evaluated billing at 78.84% accomplishment	₱7,043,260.00
Less: 2% of ₱197,088,497.01 (submitted billing of RSII, instead of ₱195,920,749.00, as submitted by GMCLI)	(₱3,941,769.00)
Payment	₱3,101,491.00

[13] Id. at 59.

[14] Id.

[15] Id. at 24.

[16] Id.

[17] Id. at 59.

[18] Id.

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RSII sent two demand letters[19] to GMCLI, claiming that it still had a balance of ₱4,884,778.92 to collect from the latter, under the following allegations: (1) GMCLI's outstanding obligation under Progress Billing No. 15 should have been ₱8,131,474.83, and not merely ₱7,043,260.00; and (2) GMCLI should not have belatedly withheld the 2% CWT on Progress Billings Nos. 1 to 14, but should only have withheld the 2% CWT from Progress Billing No. 15.[20]

Proceedings before the CIAC

With its demand unheeded, RSII filed a complaint and request for arbitration before the CIAC on August 6, 2015.[21] GMCLI filed a motion to dismiss on August 27, 2015,[22] assailing the jurisdiction of the CIAC. A Case Management Conference was held on October 20, 2015,[23] followed by a Preliminary Conference on November 23, 2015,[24] where a set of Terms of Reference (TOR) was signed.[25] After the parties submitted their respective affidavits and pieces of documentary evidence,[26] and presented their respective witnesses,[27] both RSII and GMCLI submitted their Supplemental Draft Awards to the CIAC on April 26, 2016.[28]

On May 10, 2016, the CIAC promulgated its Final Award,[29] which ruled that:

1. The CIAC has jurisdiction over the instant case as it involves a construction dispute.

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[19] Id. at 24; dated May 15 and 25, 2015, respectively.

[20] Id.

[21] Id. at 55.

[22] Id.

[23] Id.

[24] Id. at 56.

[25] Id.

[26] Id. at 57.

[27] Id.

[28] Id.; albeit the Supplemental Draft Award of RSII was merely noted for having been filed out of time.

[29] Id. at 54-69.

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2. [GMCLI] is not authorized to withhold and remit the CWT of 2% on the cumulative amount based on Progress Billings Nos. 1 to 15.
3. [RSII] is not entitled to the release of the amount of [P]4,884,778,92 as the balance for Progress Billing No. 15.
4. [GMCLI] is not entitled to moral damages.
5. No attorney's fees shall be paid by either party to the other.
6. The cost of arbitration shall be shouldered by the Parties in proportion to their respective claims.[30]

The CIAC held that the crux of the controversy was the correct computation of the amount due RSII under Progress Billing No. 15, and since the same claim stemmed from a construction contract, said controversy qualified as a construction dispute within the contemplation of Executive Order No. (E.O.) 1008,[31] and within the ambit of the CIAC.

The CIAC further determined that with respect to the propriety of GMCLI's act of withholding and remitting the 2% CWT on the cumulative amount based on Progress Billings Nos. 1 to 15, GMCLI had no more authority to withhold and remit the same,[32] reasoning thus:

> Both [RSII] and GMCLI agree that, citing Revenue Regulations No. 2-98, as amended (RR 2-98), the 2% withholding tax must be withheld or deducted by the latter, as the withholding agent, from its payments for the former's services at the time said payments were made. x x x.
>
> x x x x
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> Applying the above provision to this case, [GMCLI]'s obligation to withhold the 2% withholding tax on the income derived by the [RSII] from the former's payments of Progress Billings Nos. 1 to 14 arose at the time it paid for each of said progress billings submitted to it by [RSII]. Not later, or worse, **much** later spanning at least three years, as what [GMCLI] did.
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> To justify its action of applying the 2% CWT deduction on the cumulative amount from Progress Billing[s] No[s]. 1 to [ ] 15, GMCLI recorded the amount in two installments as incomes of [RSII] for 2015.

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[30] Id. at 68.

[31] CREATING AN ARBITRATION MACHINERY IN THE PHILIPPINE CONSTRUCTION INDUSTRY, February 4, 1985.

[32] *Rollo* (G.R. No. 230119), p. 65.

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x x x This is falsehood and contrary to the above-cited provision of the Rules and Regulations of the BIR.[33]

However, the CIAC held that despite GMCLI's lack of authority to withhold the 2% CWT on the cumulative bill, RSII was still not entitled to the release of ₱4,884,778.92, or the amount equivalent to the 2% CWT withheld on the cumulative billings. Apart from observing that there was actually no dispute as to the computation[34] as the same was not contested by GMCLI,[35] the CIAC held that RSII was no longer entitled to the said amount because at the time the same was remitted to the Bureau of Internal Revenue (BIR), RSII had not yet paid income taxes on the payments from Progress Billings Nos. 1 to 15.[36]

In addition, the CIAC held that the fact that RSII did declare the income taxes on those payments on March 22, 2016, or after GMCLI remitted the cumulated 2% CWT to BIR, was of no moment. Applying the doctrine of Last Clear Chance[37] analogously, the CIAC held that RSII, having knowledge of GMCLI's prior remittance, had the last clear opportunity to avoid the loss through a double payment of the 2% CWT. It held that RSII's failure to avert the effective double payment could only be held on its own account.[38]

Finally, the CIAC held that GMCLI was not entitled to its claim of moral damages, as it could not be considered faultless, and that neither party could be awarded attorney's fees due to both parties' contributory lapses.[39]

Proceedings before the CA

Aggrieved, RSII filed a petition for review under Rule 43 of the Rules before the CA and assailed the CIAC arbitral award,

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[33] Id. at 65-66.

[34] Id. at 66.

[35] Id.

[36] Id.

[37] Id. at 67.

[38] Id.

[39] Id. at 68.

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imputing the following as errors: (1) the ruling that it was not entitled to the release of ₱4,884,778.92 as the balance of the payment for Progress Billing No. 15, and (2) the finding that it was not entitled to attorney's fees.

In its Decision[40] dated October 28, 2016, the CA partially granted the petition, the dispositive portion of which reads:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The Final Award dated [May 10, 2016] issued by the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 20-2015 is **AFFIRMED with MODIFICATION** in that [RSII] is still entitled to the payment of the amount of [₱]1,088,214.83, which represents the balance after deducting from [₱]8,131,474.83 (at 78.84% work accomplishment) the 2% CWT on Progress Billing[s] Nos. 1 to 15 in the amount of [₱]3,941,769.00 and the payment already made to RSII in the amount of [₱]3,101,491.00.[41]

In affirming the CIAC's award, the CA ruled that the amount of ₱3,815,996.50, equivalent to the 2% CWT on Progress Billing Nos. 1 to 14 was already remitted to the BIR,[42] and it would be unjust to require GMCLI, as the withholding agent, to effectively shoulder the amount of tax which RSII had the legal duty to pay.[43]

With respect to granting RSII's entitlement to ₱1,088,214.83, the CA reasoned thus:

[RSII] is still, however, entitled to collect the amount of ₱1,088,214.83.

To recall, [GMCLI] initially evaluated [RSII]'s accomplishment at 78.84% and computed the amount due to [RSII] at [₱]7,043,260.00. Subtracted from this amount was the 2% CWT on the amount of [₱]197,088,497.01, equivalent to [₱]3,941,769.00, which [GMCLI] already remitted to the BIR. Thus, [GMCLI] paid [RSII] the amount of [₱]3,101,491.00.

[RSII] accepted [GMCLI]'s evaluation of its work accomplishment at 78.84% but argued that the amount due for Progress Billing No. 15 was

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[40] Id. at 22-29.

[41] Id. at 28. Emphasis in the original.

[42] Id. at 26.

[43] Id. at 27.

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[₱]8,131,474.83, and not [₱]7,043,260.00, and computed the amount it is still entitled to collect from [GMCLI] as follows:

Submitted billing at 78.84% Accomplishment	₱8,131,474.83
Less:	
2% withholding tax for ProgressiveBilling No. 15	₱145,204.91
	₱7,986,269.92
Less:	
Payment made to [RSII]	₱3,101,491.00
Amount due/collectible	₱4,884,778.92

The CIAC ruled that there is no issue on the [RSII]'s computation since [GMCLI] did not contest the same. This said, [RSII] is still entitled to the amount of ₱1,088,214.83, which is computed as follows:

Submitted billing at 78.84% Accomplishment	₱8,131,474.830
Less:	
Payment made to [RSII]	₱3,101,491.00
2% withholding tax for Progressive Billing[s] Nos. 1 to 15	₱3,941,769.00
Amount due/collectible	₱1,088,214.83[44]

Both RSII's Motion for Partial Reconsideration and GMCLI's Motion for Reconsideration were denied through the CA's Resolution[45] dated February 21, 2017. Hence the separate, now consolidated, petitions filed by GMCLI and RSII before the Court.

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[44] Id. at 27-28. Underscoring supplied.

[45] Id. at 30-31.

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On the one hand, GMCLI prays that the assailed Decision be partially modified and the CIAC arbitral award be reinstated *in toto*.[46] On the other, RSII claims that it is entitled not only to the balance of ₱1,088,214.83, but to the amount of ₱3,815,996.50, equivalent to the allegedly improperly withheld 2% CWT, or that, in the alternative, GMCLI should be ordered to issue BIR Form 2307 (Certificate of Creditable Tax Withheld at Source) in favor of RSII.[47]

Issues

The parties come before the Court bearing the following consolidated issues: (1) whether RSII is entitled to the release of ₱3,815,996.50 or the equivalent of 2% CWT on Progress Billings Nos. 1 to 14, in addition to the award of ₱1,088,214.83 and (2) whether GMCLI may be ordered to issue BIR Form 2307 to RSII.

The Court's Ruling

The Court's resolution of the case before it is three-pronged and involves: (1) a revisit and untangling of the relevant laws and case pronouncements on the extent of judicial review of CIAC arbitral awards; (2) a decisive harmonization of the standing laws on CIAC review *vis-à-vis* perceptible Constitutional limitations; and finally, (3) a determination of rights of the parties in accordance with existing tax laws on creditable withholding tax.

I — Extent of Judicial Review vis-à-vis CIAC awards

The case at bar presents the Court a timely opportunity to review and demarcate the laws and rules relevant to the relationship between the courts and the CIAC. Seen through the lens of the national policy of enabling alternatives to dispute resolution, the Court here takes a second look at judicial review and the specific mandate and authority of the CIAC, with the end of tracing how the extent of the former's reach over the latter, or the understanding thereof, has evolved over the years.

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[46] Id. at 98.

[47] Id. at 10-16.

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As will be seen in the succeeding discussions, the historical arc of this relationship appears to maintain the early, original legislative intent of judicial restraint in favor of the empowerment of arbitration. More particularly, a historical survey informs the Court of the intent of affording parties with a direct recourse to this Court in challenging a CIAC arbitral award on pure questions of law[48] or one where only the application of the law as to uncontroverted facts is raised, which, under CIAC's original charter, and apart from the most excepting of circumstances, are the only questions that may be raised against it.

Original and Affirmed Intent of E.O. 1008

The construction industry, in and of itself wrought with factual complexity, is not a stranger to the industry-specific arbitration. In its international history, as early as the turn of the 20th century, the peculiar intricacies of the construction processes and contracts have led to the call for industry-focused dispute resolution that implored professional decision-making and arbitration mechanisms.[49]

In the Philippines, the birth of construction arbitration can be traced back to the issuance of Presidential Decree No. (P.D.) 1746,[50] which created the Construction Industry Authority of the Philippines (CIAP). Recognizing the need to provide a national environment conducive for its expansion, P.D. 1746 was issued to address the then non-cohesive government policies by providing a

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[48] In *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, G.R. No. 187521, March 14, 2012, 668 SCRA 302, we differentiated questions of fact and law thus:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Id. at 317.

[49] Philip L. Bruner, *The Historical Emergence of Construction Law*, WILLIAM MITCHELL LAW REVIEW (2007), <http://open.mitchellhamline.edu/wmlr/vol34/iss1/6>.

[50] CREATING THE CONSTRUCTION INDUSTRY AUTHORITY OF THE PHILIPPINES (CIAP), November 29, 1980.

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central agency tasked to accelerate as well as regulate the growth of the industry.

On February 4, 1985, with the growth of the construction industry in full swing, then President Ferdinand E. Marcos issued E.O. 1008 which created the Construction Industry Arbitration Commission (CIAC) as the arbitration machinery for the Philippine construction industry. Its policy sought to ensure "early and expeditious settlement of disputes" in order to provide stability for its enterprises, and fairly insulate them from bureaucratic lags.[51] Its whereas clause[52] clearly provided for the law's resolve to remove the disputes of the industry from the languid and problematic machinery of the courts, with the full awareness that disputes held up in the judiciary's dockets easily translated to infrastructure projects that halted to a standstill.

The law likewise designed the CIAC awards to be decisive and conclusive, to wit:

SECTION 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and [u]nappealable except on questions of law which shall be appealable to the Supreme Court.

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[51] E.O. 1008, Sec. 2 provides:

SECTION 2. Declaration of Policy. — It is hereby declared to be the policy of the State to encourage the early and expeditious settlement of disputes in the Philippine construction industry.

[52] Id., the Whereas clauses provide:

WHEREAS, there is a need to establish an arbitral machinery to settle such disputes expeditiously in order to maintain and promote a healthy partnership between the government and the private sector in the furtherance of national development goals;

WHEREAS, Presidential Decree No. 1746 created the Construction Industry Authority of the Philippines (CIAP) to exercise centralized authority for the optimum development of the construction industry and to enhance the growth of the local construction industry;

WHEREAS, among the implementing agencies of the CIAP is the Philippine Domestic Construction Board (PDCB) which is specifically authorized by Presidential Decree No. 1746 to "adjudicate and settle claims and disputes in the implementation of public and private construction contracts and for this purpose, formulate and adopt the necessary rules and regulations subject to the approval of the President"[.]

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SECTION 20. Execution and Enforcement of Awards. — As soon as a decision, order or award has become final and executory, the Arbitral Tribunal or the single arbitrator, with the concurrence of the CIAC, shall [*motu proprio*] or on motion of any interested party, issue a writ of execution requiring any sheriff or other proper officer to execute said decision, order or award.

Section 19 of the CIAC Charter provides that findings of fact of the CIAC are no longer open to challenge on appeal, but its legal conclusions may be assailed before the Court. This narrow corridor of remedies against a CIAC award as categorically provided for in its Charter was broadened by two succeeding procedural rules which significantly altered the review mode of a CIAC award, with the final sum a scenario akin to procedural laws defeating specialized substantive law and its inceptive spirit.

Procedural Departures:
Revised Administrative Circular No. 1-95 and
Rule 43 of 1997 Rules of Civil Procedure

The first procedural law which effectively expanded the reach of judicial review *vis-à-vis* CIAC arbitral awards is Revised Administrative Circular No. 1-95,[53] issued for the Court by then Chief Justice Andres R. Narvasa on May 16, 1995, which amended Circular No. 1-91 and prescribed the rules governing appeals to the CA from final orders or decisions of the Court of Tax Appeals and quasi-judicial agencies. For the first time, the CIAC was included in the enumeration of quasi-judicial agencies, the decisions of which may be appealed to the CA.[54] This inclusion is

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[53] RULES GOVERNING APPEALS TO THE COURT OF APPEALS FROM JUDGMENTS OR FINAL ORDERS OF THE COURT OF TAX APPEALS AND QUASI-JUDICIAL AGENCIES, December 15, 1995.

[54] REVISED ADMINISTRATIVE CIRCULAR NO. 1-95, paragraph 1 provides:

1. *Scope*. — These rules shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Office of the President, Civil Aeronautics Board, Bureau of Patents, Trademarks

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the first clear departure from E.O. 1008's original provision that a CIAC arbitral award may only be appealed to this Court. Further, Revised Administrative Circular No. 1-95 also substantially extended judicial review powers in its categorical inclusion of questions of fact as those that may be appealed, to wit:

> 3. *WHERE TO APPEAL*. — An appeal under these rules may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves **questions of fact, of law, or mixed questions of fact and law**. (Emphasis supplied)

This procedural expansion was affirmed by the 1997 Rules of Civil Procedure, as amended, particularly Rule 43 thereof,[55] which once more included the CIAC as among the quasi-judicial agencies the decisions of which may be appealed to the CA with respect to either points of fact, or law, or both.

In retrospect, what may be gleaned is that the enabling of the CA to review questions of fact pertaining to the CIAC awards departed from E.O. 1008's original design of the relationship between

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and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act [No.] 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, and **Construction Industry Arbitration Commission**. (Emphasis supplied)

[55] RULES OF COURT, Rule 43, Secs. 1 and 3 provide:

> **SEC. 1.** *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, **Construction Industry Arbitration Commission**, and voluntary arbitrators authorized by law. (n)
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the courts and the CIAC, when it created the latter. In effect, the authoritative expertise of the CIAC was undone with these two new procedural changes because with the CA's power to review the arbitral tribunal's factual determinations, the CA then acts as a trial court, before which factual assertions already threshed out in the CIAC are litigated anew. Needless to say, one may be reasonably hard-pressed to find sound basis for a court's exercise of reviewing a specialized tribunal's findings of fact that are well within its specialized competence and well-outside the court's.

More so, such a factual review easily runs the peril of being speculative, as it overly extends the review powers that may invite ridicule upon the courts, which are forced to venture into industry-specific technical findings that they are not designed to do.

To be sure, the Court dispels with utmost import any conclusion to the effect that upholding the CIAC's authoritative expertise on questions of facts before it necessarily translates to even the slightest implication of inadequacy of intelligence or inferiority of competence on the part of appellate judges. This inference is as unintended as it is unsupported by the succeeding exhaustive discussion of the history and the constitutional schema within which this particular mode of review is found.

The Court's iteration of the original limits set upon judicial review of the CIAC arbitral awards must not be considered impertinence against appellate judges, lest all rulings that delineate limits be seen as a put-down of the competence of the jurisdiction they confine. The Court here simply upholds the persuasive weight of factual findings of the CIAC, and consequently rules against a factual judicial review that effectively undermines the CIAC's conclusive and authoritative findings, consistent with the prevailing laws as outlined.

It further goes without saying that appellate judges are fully equipped to conduct factual review by evaluating whether or

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SEC. 3. *Where to appeal*. — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. (n) (Emphasis supplied)

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not factual findings of lower courts or tribunals are supported by evidence. This fact is affirmed not in the least by the fact that in the event that a factual review of the CIAC arbitral awards is merited in the narrowest of sense, the same may be brought before the CA through the appropriate petition. Demonstratively, therefore, the CA is ultimately not divested of any review powers that it was not intended to wield, to begin with, but merely donned with the authority of review of the CIAC arbitral awards that falls within the original extent of E.O. 1008.

Finally, this factual review of the courts also weighs heavily in costs for the parties, in that instead of having an abridged resolution of their disputes, the same is, in fact, lengthened, with resort to the CIAC becoming no more than an additional layer in the process, and its resolution of construction disputes no longer the alternative to litigation, but only the beginning.

Substantive Realignment towards
Deference to CIAC:
R.A. 9285 and the Special ADR Rules

Significantly, however, on July 28, 2003, this departure would be unequivocally corrected and realigned with the passing of R.A. 9285,[56] also known as the Alternative Dispute Resolution Law of 2004. Preliminarily, telling are the exchanges during the deliberations of the House Committee on Justice of its provisions. Then deliberated as House Bill 5654, its records reflected the legislative desire to provide alternative modes of dispute resolution in order to provide dispute settlement machineries that are far removed from notoriously cumbersome judicial mechanisms, in order, for one, to decongest the courts' dockets:

THE CHAIRMAN [(Rep. Marcelino C. Libanan)]: x x x x

x x x I think from the Philippine Judicial Academy who raised the issue on separation of powers. Nevertheless, it is the impression of the Chair that

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[56] 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.

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this is a very good bill and that this will de-clog our cases in our regular courts and so we have to pass this if possible this 12th [C]ongress.

x x x x

MR. ANTONIO M. MARTINEZ (Vice Chancellor, Philippine Judicial Academy): Thank you, Mr. Chairman.

Just like Atty. Pilando and Dean Parlade, I would like to voice out also the sentiments of the Judiciary on this aspect that we certainly welcome this bill. It is really a laudable piece of legislation and would, in effect, be a very helpful device to decongest the courts of [their] clogged dockets.

x x x x

As a matter of fact, recently, we launched the mediation project in the appellate level. We hope that in due time, we will be able to eventually saturate all of the courts nationwide with mediators and will be able to help us in decongesting the clogged docket of court.[57]

R.A. 9285 was also designed to draw a broad and bright line between litigation and alternative resolutions of disputes, as was shown by the comment of the head of the Chartered Institute of Arbitrators:

MR. MARIO VALDERAMA (Representative, Chartered Institute of Arbitrators): Thank you, Your Honor.

Now, now to go directly to the point, when we talked about ADR, Your Honor, please, we talk about party autonomy and of course the promotion of ADR is only the means resulting to the effect, among them, the declogging of courts, and probably, we can do something about the declaration of policy instead of promoting, merely promoting ADR, then probably, **what would have to be upheld would be the autonomy of the parties insofar as their dispute resolution is concerned**. The thinking being that . . . since we are adults, with sufficient discretion, then we may . . . **we should have the option of choosing whether to go to litigation or to go ADR**.[58]

Consistent with the above rationale for demarcating options for parties in dispute, as well as relieving the courts of the workload that may no longer necessitate litigation, Sections 34-40, Chapter

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[57] Deliberation of the House Committee on Justice, October 15, 2002, pp. 6-7.

[58] Id. at 9. Emphasis supplied.

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6 of R.A. 9285, on the governing laws over construction disputes, distinctly resolved all doubts in favor of the restrictive limitation of judicial review only to questions of law, and a categorical deference to the CIAC with respect to its findings of fact.

First, Section 34 positively provided for the return to E.O. 1008, as the original applicable law, which in turn rules out judicial review of the CIAC's factual determination, and exclusively provides that appeal may only be to the Court, and on the narrow limit of questions of law only:

SEC. 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.

Second, evidencing the legislative intent to defer the threshing of facts to the CIAC and not the courts, Section 39 likewise fittingly provides that in the event that a trial court is notified of a construction arbitration clause between parties who are litigating before it, the court is bound to dismiss the case, unless the parties agree to the contrary:

SEC. 39. Court to Dismiss Case Involving a Construction Dispute. — A regional trial court where a construction dispute is filed shall, upon becoming aware, not later than the pretrial conference, that the parties had entered into an arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the regional trial court a written agreement exclusive for the Court, rather than the CIAC, to resolve the dispute.

Finally, on September 1, 2009, for the avoidance of uncertainties as to where the line of review is drawn, the Supreme Court, through Chief Justice Reynato S. Puno, issued Administrative Matter No. (A.M.) 7-11-08-SC,[59] also known as the Special ADR Rules, which definitively affirmed the bright-line rule on judicial restraint with regard to factual review. Undeniably clear are Rules 19.7 and 19.10 of the Special ADR Rules, which provide:

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[59] SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION, September 1, 2009.

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PART VI

RULE 19: MOTION FOR RECONSIDERATION, APPEAL AND CERTIORARI

x x x x

B. GENERAL PROVISIONS ON APPEAL AND *CERTIORARI*

RULE 19.7. ***No appeal or certiorari on the merits of an arbitral award***. — An agreement to refer a dispute to arbitration shall mean that the **arbitral award shall be final and binding. Consequently, a party to an arbitration is precluded from filing an appeal or a petition for *certiorari* questioning the merits of an arbitral award**. (Emphasis supplied)

x x x x

RULE 19.10. ***Rule on judicial review on arbitration in the Philippines***. — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal. (Emphasis supplied)

In December of the same year, the Department of Justice (DOJ) likewise issued Department Circular No. 98,[60] which resonated R.A. 9285's intent to restore E.O. 1008's pertinent provisions on the CIAC, as provided in Chapter 6 thereof:

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[60] IMPLEMENTING RULES AND REGULATIONS OF THE ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004, October 26, 2009.

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CHAPTER 6
ARBITRATION OF CONSTRUCTION DISPUTES

The Construction Industry Arbitration Commission (CIAC), which has original and exclusive jurisdiction over arbitration of construction disputes pursuant to Executive Order No. 1008, s. 1985, otherwise known as the "Construction Industry Arbitration Law," shall promulgate the Implementing Rules and Regulations governing arbitration of construction disputes, incorporating therein the pertinent provisions of the ADR Act.

A slight, recent digression from this bright-line demarcation occurred in the 2011 amendment of CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules), specifically Section 18.2 thereof,[61] which echoed Rule 43 of the Rules with respect to appeal of the CIAC award to the CA on questions of fact.

It is crucial to note, however, that the CIAC Rules only iterated the procedural license provided in Rule 43 of the Rules, which, as seen, was already reconsidered by R.A. 9285.

In the final analysis, it appears that a circumspect consideration of the evolution of laws illustrates that although the procedural rules have expanded the judicial review to include questions of fact, R.A. 9285 in 2003, as seconded by the Special ADR Rules in 2009, recalibrated said extent and restated the limit of the Court's review powers as to include only questions of law.

Exceptions to the Rule on Pure Questions of Law

Numerous cases decided both prior to and after the passage of R.A. 9285 have confirmed the persuasive authority of the CIAC in determining merits in a construction dispute. The vital role of the neutral expertise of the arbitral tribunal in such disputes has been underscored in a 2011 New York State Bar Report on the advantages of arbitration in the field of construction:

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[61] CIAC REVISED RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION, Sec. 18.2 provides:

SECTION 18.2. ***Petition for review***. — A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

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In arbitration, the experienced construction neutral requires much less "setting the stage" for the context of the dispute. He or she will understand substantive case law in the area, for instance case law regarding change orders, betterment, *"quantum meruit"* claims and other specialties of construction law. These concepts will not be "new" to the arbitrator so while time may be spent on describing the application of these laws to the particular case, the arbitrator will not need to be introduced to the concepts.

An experienced construction arbitrator will also have the ability to understand complex construction disputes on a technical level. Construction disputes are usually resolved on the facts and the contract. In cases that haven't settled, there is often a disagreement on the facts and the contract. Was there a material delay by the engineer in approving shop drawings? Were the shop drawings complete? Do the disputed Change Orders actually represent work outside the scope of the contract? Were proper procedures followed during drilling? Does the contract promise payment for unanticipated sub-surface site conditions or not? Experienced arbitrators frequently commiserate that attorneys inexperienced in arbitration often spend their time proving the failings of character or ethics in the participants, while neglecting to address that which every arbitrator cares about, the facts and the contract. Construction cases do not deserve to be settled on emotion, but rather on a matrix of complex facts and contractual responsibilities.[62]

In related fashion, several notable decisions have illustrated how CIAC awards serve the premium of persuasive factual determination, but are nevertheless not insulated from judicial review on grounds that go into the integrity of the arbitral tribunal.

In *Metropolitan Cebu Water District v. Mactan Rock Industries, Inc.*,[63] the Court repeated the early recognition of the peculiar nature of the construction industry as one that is considered "x x x vital for the fulfilment of national development goals x x x"[64] and the corresponding need to have its disputes decided with dispatch. In similar import, in *R.V. Santos Company,*

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[62] *See* John Rusk, et al., *The Benefits of Alternative Dispute Resolution for Resolving Construction Disputes*, NEW YORK STATE BAR ASSOCIATION, April 2011, at 1, 7, available at <http://www.constructivedecisions.com/images/The_Benefits_of_Alternative_Dispute_Resolution_for_Resolving_Construction_Disputes.pdf.>

[63] G.R. No. 172438, July 4, 2012, 675 SCRA 577.

[64] Id. at 857.

Inc. v. Belle Corporation,[65] the Court expounded on the deference to the factual findings of the CIAC, to wit:

> Section 19 [of E.O. 1008] makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. **Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and [u]nappealable**.
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> x x x x
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> 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**.

In another case, we have also held 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,

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[65] G.R. Nos. 159561-62, October 3, 2012, 682 SCRA 219.

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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.[66]

In 2015, in *Philippine Race Horse Trainer's Association, Inc. v. Piedras Negras Construction and Development Corporation*[67] the Court found that the matters the parties brought for resolution essentially required factual determination, which it held must "rightly be left to the CIAC's sound expertise."[68] Subsequently, in the case of *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*,[69] the Court upheld the autonomy of arbitral awards, and refrained from reviewing factual findings thereof, reasoning thus:

> We have deliberately refrained from passing upon the merits of the arbitral award — not because the award was erroneous — but because it would be improper. None of the grounds to vacate an arbitral award are present in this case and as already established, the *merits* of the award cannot be reviewed by the courts.
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> Our refusal to review the award is not a simple matter of putting procedural technicalities over the substantive merits of a case; it goes into the very legal substance of the issues. There is no law granting the judiciary authority to review the merits of an arbitral award. If we were to insist on reviewing the correctness of the award (*or consent to the CA's doing so*), it would be tantamount to expanding our jurisdiction without the benefit of legislation. This translates to judicial legislation — a breach of the fundamental principle of separation of powers.
>
> **The CA reversed the arbitral award — *an action that it has no power to do* — because it disagreed with the tribunal's factual findings and application of the law.** However, the alleged incorrectness of the award is insufficient cause to vacate the award, given the **State's policy of upholding the autonomy of arbitral awards**.[70]

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[66] Id. at 233-235. Emphasis and underscoring supplied; citations omitted.

[67] G.R. No. 192659, December 2, 2015, 775 SCRA 631.

[68] Id. at 639.

[69] G.R. No. 204197, November 23, 2016, 810 SCRA 280.

[70] Id. at 319. Emphasis supplied.

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More, in *CE Construction Corporation v. Araneta Center, Inc.*,[71] the Court was similarly inclined to refrain from reviewing the CIAC's factual conclusions, ruling in this wise:

> x x x When their awards become the subject of judicial review, courts must defer to the factual findings borne by arbitral tribunals' technical expertise and irreplaceable experience of presiding over the arbitral process. Exceptions may be availing but only in instances when the integrity of the arbitral tribunal itself has been put in jeopardy. These grounds are more exceptional than those which are regularly sanctioned in Rule 45 petitions.
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> x x x x
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> The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates *authoritative* **dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields.** The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."
>
> x x x x
>
> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions of fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. **However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC arbitral tribunals must remain limited to questions of law**.[72]

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[71] G.R. No. 192725, August 9, 2017, 836 SCRA 181.

[72] Id. at 186-219. Emphasis supplied.

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In his *Concurring Opinion*, Associate Justice Marvic M.V.F. Leonen (Justice Leonen) adds on the rationale for the high degree of deference accorded to CIAC awards, to wit:

> The CIAC serves the interest not only of speedy dispute resolution, but also of *authoritative* dispute resolution. It was created with a particular view of enabling "early and expeditious settlement of disputes" aware of the exceptional role of construction to "the furtherance of national development goals." x x x.
>
> x x x x
>
> *CE Construction* further discussed how "[t]he creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields." It drew attention to how the CIAC is a quasi-judicial administrative agency equipped with the technical proficiency that enables it to efficiently and promptly resolve conflicts. x x x.[73]

This judicial restraint and deference was further reaffirmed in the subsequent cases of *Metro Rail Transit Development, Corporation v. Gammon Philippines, Inc.*,[74] *Camp John Hay Development Corporation v. Charter Chemical and Coating*

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[73] Concurring Opinion of J. Leonen, pp. 2-6.

[74] G.R. No. 200401, January 17, 2018, 851 SCRA 378. The Court here held:

> While Rule 43 petitions may pertain to questions of fact, questions of law, or both questions of law and fact, it has been established that factual findings of CIAC may not be reviewed on appeal. In *CE Construction v. Araneta*, this Court explained that appeals from CIAC may only raise questions of law:
>
> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: that there were those that enabled questions of fact, there were those that enabled questions of law, and there were those that enabled mixed questions of fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC Arbitral Tribunals must remain limited to questions of law. Id. at 404.

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Corporation,[75] and *Metro Bottled Water Corporation v. Andrada Construction & Development Corporation, Inc.*[76]

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.** The 2019 case of *Tondo Medical Center v. Rante*[77] illustrates:

Thus, questions on **whether the CIAC arbitral tribunals conducted their affairs in a haphazard and immodest manner that the most basic integrity of the arbitral process was imperiled** are not insulated from judicial review. Thus:

> x x x We reiterate the rule 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**

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[75] G.R. No. 198849, August 7, 2019, accessed at <https://sc.judiciary.gov.ph/6600/>. The Court observed:

This dispute is better left to the expertise of the Construction Industry Arbitration Commission, a quasi-judicial body with the technical expertise to resolve disputes outside the expertise of regular courts. Aptly, it should adjudicate and determine the claims and rights of petitioner and respondent with respect to the construction contract and all its incidents.

[76] G.R. No. 202430, March 6, 2019, 895 SCRA 217. Here the Court reasoned:

On the other hand, arbitral awards by the Construction Industry Arbitration Commission may only be appealed on pure questions of law, though not all will justify an appeal. Consistent with the strict standards for judicial review of arbitral awards, only those appeals which involve egregious errors of law may be entertained.

Given its technical expertise, the Construction Industry Arbitration Commission is given a wide latitude of discretion so that it may resolve all issues before it in a fair and expeditious manner x x x. Id. at 223-224.

[77] G.R. No. 230645, July 1, 2019, accessed at <https://sc.judiciary.gov.ph/6024/>.

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> **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.** x x x.[78]

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[79] or "The Arbitration Law," and willfully refrained 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

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[78] Id., citing *Spouses David v. Construction Industry and Arbitration Commission*, 479 Phil. 578, 583 (2004). Emphasis supplied.

[79] 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.

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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.

Given the above Court pronouncements on judicial restraint in favor of animating and upholding the autonomy of the CIAC, as well as the more reasonable exceptions that all only involve a determination of whether the arbitral award in question was tainted with a challenge on the integrity of the arbitrators themselves or otherwise a violation of the Constitution or positive law in the course of the arbitral process, the Court deems it high time to revisit prior decisions that include among the exceptions meriting a factual review the mere disagreement of the factual findings of the CA *vis-à-vis* those made by the CIAC, as in the oft-cited case of *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*[80] and the more recent case of *Shangri-La Properties, Inc. v. B.F. Corporation*.[81]

All told, the Court must now, sitting *en banc*, inescapably re-weigh the applicable laws and harmonize them in order to make the pertinent rules consistent with the spirit of the law that gave form to the CIAC, along with the overriding and uncontroverted

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[80] G.R. No. 126619, December 20, 2006, 511 SCRA 335.

[81] G.R. Nos. 187552-53 & 187608-09, October 15, 2019, accessed at <https://sc.judiciary.gov.ph/9755/>.

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national policy of favoring the unfettered and enabled operations of the alternative modes of resolutions such as the CIAC.

II - Mode of Appeal of CIAC awards vis-à-vis Constitutional Limitations

Unmistakably, the tracing of the evolution of laws relating to judicial review of the CIAC awards as shown above demonstrates that the mode of appeal of the CIAC awards exists within a latticework of constitutional licenses and restraints. These constitutional parameters converge on three key points: (1) the prescriptive apportionment of the powers and appellate jurisdictions of both the CA and the Court, (2) the correlated limitation on the Congress' power to determine and confer a court's jurisdiction, and (3) the limitations on the Court's rule-making power. These constitutional conditions bear upon the ultimate question of whether E.O. 1008, as echoed by the R.A. 9285, validly provided for a direct resort to this Court for appeals on the CIAC awards.

The Court here deems it fit that navigating these constitutional considerations be informed, foremost, by the spirit of the CIAC Charter and the CIAC's primary function and design, with the end in view of clearing road blocks where the Constitution and other laws have placed none.

The construction industry necessitates the constant and supported availability of speedier and more efficient modes of resolving disputes precisely because of the very nature of the industry itself, where an unsettled dispute can easily run projects to the ground with serious delays and irreparable damage. Major international construction projects typically opt for arbitration as the final tier of dispute resolution for a variety of reasons that serve the parties' interest best, with courts limited to a supportive role.[82]

The fundamental advantage of arbitration over litigation in the specialized context of a construction dispute goes into the general flexibility of tailoring the resolution of disputes in a way

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[82] Jane Jenkins & Simon Stebbings, INTERNATIONAL CONSTRUCTION ARBITRATION LAW, SECOND EDITION, KLUWER LAW INTERNATIONAL 49-84 (2nd ed. 2013).

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that serves nuanced business priorities.[83] Arbitration also allows players in this highly competitive and collaborative industry to realize their intentions of resolving conflicts while avoiding courts and preserving professional relationships:

> In each of its niches, construction cases can involve a number of contractors, subcontractors, material suppliers and design professionals. Mediation with a knowledgeable industry professional can not only resolve the dispute, but resolve the dispute with a consensus regarding the cause of the dispute that allows the parties to accept responsibility for their respective obligations.
>
> This can lead to a resolution of the conflict which helps maintain relationships and allows companies to work together again.[84]

With benefits to parties that include the cost and time-efficient process facilitated by neutral and qualified decision makers or the "knowledgeable neutral" which are typically architects, engineers or other industry professionals,[85] the availability of arbitration as a mode for resolving construction disputes in the country has served as the impetus for the chartering of the CIAC. Primarily grounded on matters of policy, the CIAC was created precisely to forestall delays that resolution of construction disputes encounters in court litigation, with the recognized net effect of frustrating national development.[86]

After recapturing the original legislative intent inclined towards promoting arbitration in the area of the CIAC awards, it is next incumbent upon this Court to determine **with a firm degree of finality and conclusiveness** whether that precedent design was carried out with procedural and substantive validity, and ultimately whether it cleared all the relevant constitutional hurdles and conditions.

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[83] Thomas J. Stipanowich, *Arbitration and Choice: Taking Charge of the 'New Litigation',* 7 DE PAUL BUS. & COMM. L.J. 401, 454 (2009), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1372291.>

[84] Rusk, supra note 62, at 8.

[85] Id. at 6-7.

[86] *Gammon Philippines, Inc. v. Metro Rail Transit Development Corporation*, G.R. No. 144792, January 31, 2006, 481 SCRA 209, 212.

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Appellate Jurisdiction of the Court

The first constitutional limitation that the CIAC's direct appeal to the Court must hurdle is the constitutionally detailed jurisdiction of the Court. Article VIII of the 1987 Constitution outlines the powers of the Judiciary, and Section 5 (2) thereof prescribed the Court's appellate jurisdiction, to wit:

> *Section 5*. The Supreme Court shall have the following powers:
>
> x x x x
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
>
> (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
>
> (c) All cases in which the jurisdiction of any lower court is in issue.
>
> (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
>
> (e) All cases in which only an error or question of law is involved.
>
> x x x x

Section 5 (2), Article VIII has also been considered textually exclusive to courts and does not contemplate quasi-judicial bodies.[87] In *Fabian v. Desierto*[88] (*Fabian*), the Solicitor General

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[87] Pursuant thereto, RULES OF COURT, Rule 45, Sec. 1 echoes:

SECTION 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a).

Notably, the text of Rule 45, Section 1 of the present Rules of Court was different with Rule 45, Section 1 of the 1964 Rules of Court, which only referred to an appeal by *certiorari* from a final judgment of the Court of Appeals. As

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invoked the application of this provision to support its argument that Section 27[89] of R.A. 6770 does not increase the Court's appellate jurisdiction, as the Court already has jurisdiction over questions of law by virtue of Section 5(2)(e), Article VIII of the Constitution. This argument was, however, rejected by the Court, which interpreted this constitutional grant of appellate jurisdiction to cover only "courts composing the integrated judicial system":[90]

We are not impressed by this discourse. It overlooks the fact that by jurisprudential developments over the years, this Court has allowed appeals by [*certiorari*] under Rule 45 in a substantial number of cases and instances even if questions of fact are directly involved and have to be resolved by the appellate court. Also, the very provision cited by petitioner specifies that the appellate jurisdiction of this Court contemplated

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such, Rule 45, Section 1 of the 1964 Rules of Court had to be adopted in statutes creating and providing for appeals from certain administrative or quasi-judicial agencies, whenever the purpose was to restrict the scope of the appeal to questions of law. *Fabian* observed that while the intended limitation on appellate review was not fully subserved by recourse to the former Rule 45, at that time, there was no uniform rule on appeals from quasi-judicial agencies. This was exactly the case with the creation of CIAC by virtue of E.O. 1008, which was enacted on February 4, 1985. Hence, Sec. 19 thereof on Finality of Awards provided that the arbitral award shall be final and unappealable except on questions of law which shall be appealable to the Supreme Court.

[88] G.R. No. 129742, September 16, 1988, 295 SCRA 470.

[89] ***Section 27. Effectivity and Finality of Decisions***. — x x x All provisionary orders at the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

x x x x

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

[90] *Fabian v. Desierto,* supra note 88, at 485.

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therein is to be exercised over "final judgments and orders of *lower courts*," that is, the courts composing the integrated judicial system. It does not include the quasi-judicial bodies or agencies, hence **whenever the legislature intends that the decisions or resolutions of the quasi-judicial agency shall be reviewable by the Supreme Court or the Court of Appeals, a specific provision to that effect is included in the law creating that quasi-judicial agency and, for that matter, any special statutory court**. No such provision on appellate procedure is required for the regular courts of the integrated judicial system because they are what are referred to and already provided for, in Section 5, Article VIII of the Constitution.[91]

Further, this constitutionally determined appellate jurisdiction is prescribed as the minimum breadth of the Court's jurisdiction, as Section 2, Article VIII provides that Congress may not diminish the apportioned appellate jurisdiction of the Court:

Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

In elucidating on the operative interaction of Section 2, Article VIII of the Constitution with Section 5 (2), Article VIII, the Court in *Morales v. Court of Appeals*[92] (*Morales*) held that:

Jurisdiction is, of course, conferred by the Constitution or by Congress. **Outside the cases enumerated in Section 5(2) of Article VIII of the Constitution, Congress has the plenary power to define, prescribe and apportion the jurisdiction of various courts.** Accordingly, Congress may, by law, provide that a certain class of cases should be exclusively heard and determined by one court. Such would be a special law and must be construed as an exception to the general law on jurisdiction of courts, namely, the Judiciary Act of 1948 as amended, or the Judiciary Reorganization Act of 1980. In short, the special law prevails over the general law.[93]

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[91] Id. at 485-486. Emphasis supplied.

[92] G.R. No. 126623, December 12, 1997, 283 SCRA 211.

[93] Id. at 225-226. Emphasis supplied.

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This same constitutionally prescribed appellate jurisdiction of the Court is, however, not incapable of increase, for as long as the Court's advice and concurrence under Section 30, Article VI are secured:

> *Section 30*. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

Stated differently, Congress may pass a law that increases the Court's jurisdiction, but not one which decreases it. In case of a law increasing the Court's appellate jurisdiction, such would only violate the constitutional proscription under Section 30, Article VI of the Constitution if it increases the appellate jurisdiction of *this Court*, not lower courts, without the former's advice and concurrence.

Proceeding from the doctrine in *Morales*, it follows that by the legislation of E.O. 1008, as reiterated by R.A. No. 9285, which articulated the law's intent to provide a direct route of appeal from the CIAC to this Court, Congress effectively increased the appellate jurisdiction of this Court to include awards of the CIAC. This increase in appellate jurisdiction, in turn, brings to fore the question of whether the requisite advice and concurrence of the Court under Section 30, Article VI were triggered.

Thus, the first question distilled for the Court is whether the direct appeal of the CIAC awards to this Court was an effective increase of the Court's appellate jurisdiction which therefore required the Court's blessing through its advice and concurrence.

The Court finds that there was no such increase in the Court's jurisdiction that required such concurrence. It is decisive to remember that when the 1987 Constitution was created, the Court was already enjoying the jurisdiction over appeal from CIAC awards on pure questions of law, as conferred to it by Congress for two years, by its passage of E.O. 1008. The direct resort to this Court from the CIAC awards on purely legal questions was an increase of the Court's jurisdiction that was already in place prior to the 1987 Constitution's Article VIII, Section 30 which required this Court's advice and concurrence.

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To be sure, when E.O. 1008 was enacted in 1980, no such condition of the Court's advice and concurrence was required anywhere in the 1973 Constitution, and hence at that time, no such concurrence was needed. With the earlier 1935 Constitution, under Section 2, Article VIII thereof, Congress was expressly authorized to define and determine the Court's jurisdiction, without foreclosing the authority to *increase the same*, the only limitation being against any *diminishing* of the existing jurisdiction conferred upon it, to wit:

ARTICLE VIII

Judicial Department

x x x x

SECTION 2. **The Congress shall have the power to define, prescribe and apportion the jurisdiction of various courts, but may not deprive the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, *certiorari*, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts** in —

(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question.

(2) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(3) All cases in which the jurisdiction of any trial court is in issue.

(4) All criminal cases in which the penalty imposed is death or life imprisonment.

(5) All cases in which an error or question of law is involved.

SECTION 3. Until the Congress shall provide otherwise the Supreme Court shall have such original and appellate jurisdiction as may be possessed and exercised by the Supreme Court of the Philippine Islands at the time of the adoption of this Constitution. The original jurisdiction of the Supreme Court shall include all cases affecting ambassadors, other public ministers, and consuls.[94]

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[94] 1935 CONSTITUTION, as amended. Emphasis supplied.

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Similarly, the 1973 Constitution likewise granted Congress with the authority to define and apportion the Court's jurisdiction, with the sole limitation that its jurisdiction be not diminished. Section 1, Article X, in relation to Section 5 provided:

ARTICLE X

The Judiciary

SECTION 1. The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law. **The Batasang Pambansa shall have the power to define, prescribe and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section five hereof**.

x x x x

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*.

(2) Review and revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in —

(a) All cases in which the constitutionality or validity of any treaty, executive agreement, law, ordinance, or executive order or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any inferior court is in issue.

(d) All criminal cases in which the penalty imposed is death or life imprisonment.

(e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of inferior courts to other stations as public interest may require. Such temporary assignment shall not last longer than six months without the consent of the judge concerned.

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(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

(6) Appoint its officials and employees in accordance with the Civil Service Law.[95]

Demonstrably, the 1973 Constitution and its immediate predecessor allowed Congress to apportion the Court's jurisdiction, without any concomitant requirement of the Court's prior acceptance or subsequent concurrence. It stands to undeniable reason therefore that when E.O. 1008 vested this Court with the direct and exclusive jurisdiction over appeals from CIAC awards, the Court's jurisdiction was increased without any need for it to first accede to said increase.

With all the constitutional conditions met for enabling a direct appeal to the Court, the next question for the Court's determination is the proper remedial route through which the direct appeal of the CIAC awards to this Court may be submitted.

Based on the prior discussions, appeal from the CIAC awards may no longer be filed under Rule 43. This leaves only appeal by *certiorari* under Rule 45, which provides:

RULE 45

Appeal by *Certiorari* to the Supreme Court

SECTION 1. *Filing of Petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a)

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[95] 1973 CONSTITUTION, as amended. Emphasis supplied.

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As it stands, Rule 45 contemplates only appeals from final judgments and orders of *lower courts*, and does not include quasi-judicial bodies or agencies. This differs from the former Rule 45 of the 1964 Rules of Court which made mention only of the CA, and had to be adopted in statutes creating and providing for appeals from certain administrative or quasi-judicial agencies whenever the purpose was to restrict the scope of the appeal to questions of law.

In furtherance of the animating basis for the direct appeal of the CIAC awards to this Court, CIAC awards may reasonably be considered as an exemption to Rule 45's exclusive contemplation of lower courts. An interpretation otherwise would create a scenario where a procedural limitation, which may be hurdled, *i.e.*, jurisdiction may be increased provided it complies with Section 30, Article VI, operatively prevails over a substantive intendment to the contrary provided by no less than the CIAC's very own charter. Given the unique import of the CIAC's design as a specialized and expedient mode of resolving construction disputes with persuasive finality, its substantive design must be granted primacy over procedural rules that, as will be discussed further, place no insurmountable obstacle before it.

Appellate Jurisdiction of the Court of Appeals as provided by Batas Pambansa Blg. 129

With the increase in the Court's appellate jurisdiction found valid, the next constitutional condition that confronts this issue is whether E.O. 1008, issued on February 4, 1985, violated Batas Pambansa Blg. (B.P.) 129,[96] which was earlier passed on August 14, 1981 and amended by R.A. 7902,[97] on February 23, 1995,[98] when E.O. 1008 provided for the direct appeal of the

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[96] THE JUDICIARY REORGANIZATION ACT OF 1980, August 14, 1981.

[97] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF APPEALS, AMENDING FOR THE PURPOSE SECTION NINE OF BATAS PAMBANSA BLG. 129, AS AMENDED, KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980, February 23, 1995.

[98]. R.A. 7902 conferred upon the CA appellate jurisdiction over awards of quasi-judicial bodies.

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CIAC awards to this Court, particularly, Section 9(3), Chapter I of B.P. 129, which provides:

SEC. 9. *Jurisdiction*. — The Court of Appeals shall [e]xercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

(2) Exclusive original jurisdiction over actions for annulment of judgments of Regional Trial Courts; and

(3) Exclusive appellate jurisdiction over all final judgements, resolutions, orders or awards of **Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commission**, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, [e]xcept those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trial or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice. *(As amended by R.A. No. 7902.)* (Emphasis supplied)

This appellate jurisdiction of the CA is likewise textually exclusive. Section 1, Rule 43 of the Rules echoes the grant of this appellate jurisdiction to the CA, *to wit*:

SECTION 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any **quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National

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Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, **Construction Industry Arbitration Commission**, and voluntary arbitrators authorized by law. (Emphasis supplied)

The language of the enumeration of quasi-judicial tribunals under Section 9(3) of B.P. 129, on the other hand, indicates that it is not an exclusive list, so that if the enabling statute of a tribunal, later found to be a quasi-judicial agency, does not categorically provide for an aggrieved party's judicial recourse, Section 9(3) of B.P. 129 seems to serve to fill the gap.[99]

In a number of cases, this Court has relied on Section 9(3) of B.P. 129 to designate the CA, *via* Rule 43, as the proper court to which appeals from quasi-judicial agencies should be made, in spite of laws vesting jurisdiction directly to the Court. In *First Lepanto Ceramics, Inc. v. Court of Appeals*,[100] involving Article 82 of E.O. 226, which provided for a direct appeal from the decisions or final orders of the Board of Investments directly with the Court, this Court ruled that Circular 1-91, which implements B.P. 129 with respect to appeals to the CA from final orders or decisions of the quasi-judicial agencies, is controlling over said provision of E.O. 226.

In *Carpio v. Sulu Resources Development Corporation*,[101] which involved the application of Section 79 of R.A. 7942,[102] which states that decisions of the Mines Adjudication Board (MAB) may be reviewed by this Court through a petition for review by *certiorari*, the Court found that because said law increased

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[99] In *United Coconut Planters Bank v. E. Ganzon, Inc.*, G.R. Nos. 168859 & 168897, June 30, 2009, 591 SCRA 321, the Court ruled that the proper recourse from decisions of the BSP Monetary Board, which carries out adjudicatory functions, is to the CA under Rule 43 of the Rules. The Court ruled in this wise even if there is nothing in the New Central Bank Act or the General Banking Law that explicitly provides for this remedy.

[100] G.R. No. 110571, March 10, 1994, 231 SCRA 30.

[101] G.R. No. 148267, August 8, 2002, 387 SCRA 128.

[102] THE PHILIPPINE MINING ACT OF 1995, March 3, 1995.

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its appellate jurisdiction without its concurrence, appeals from decisions of the MAB shall be taken to the CA through Rule 43 of the Rules, in accordance with B.P. 129, Circular No. 1-91, and its rule-making power under the Constitution.

Still particularly with respect to the CIAC awards, this Court categorized the CIAC in *Metro Construction, Inc. v. Chatham Properties, Inc.*[103] (*Chatham*) as a quasi-judicial agency. There it held that arbitral awards may be brought to the CA, pursuant to Circular No. 1-91, which provided a uniform procedure for appeals from quasi-judicial agencies. The Court also ruled that said circular, together with B.P. 129, as amended by R.A. 7902, Revised Administrative Circular No. 1-95, and Rule 43 of the Rules, effectively modified E.O. 1008.[104] Consequently, the appeals from arbitral awards of the CIAC were also deemed to cover questions of fact or mixed questions of fact and law.[105]

This apparent conflict between B.P. 129 and R.A. 9285, with respect to the mode of appeal of the CIAC awards, presents the Court with the overdue opportunity to crystallize with doctrinal precedent which between the two laws must prevail.

On this point and in accordance with the elementary statutory construction principles of precedence of specific laws over general laws, and later laws over earlier laws, this Court rules that R.A. 9285 prevails over B.P. 129, as the former enjoys preference over the latter with respect to both temporal precedence as well as that of greater degree of particularity.

First, with respect to superiority in time, it is a canon of statutory construction that in case of conflict between two laws, one a later law and the other an earlier law, the later law prevails as the prevailing law, being the most current articulation of legislative intent. As applied to the case at bar, B.P. 129 is also an

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[103] G.R. No. 141897, September 24, 2001, 365 SCRA 697.

[104] THE OMNIBUS INVESTMENTS CODE OF 1987, July 16, 1987.

[105] *But see Metro Bottled Water Corporation v. Andrada Construction & Development Corporation, Inc.,* supra note 76, where the Court noted that this ruling in *Chatham* was modified in the subsequent case of *CE Construction Corp. v. Araneta Center, Inc.,* supra note 71, which confined appeals to the Court of Appeals from CIAC arbitral awards to questions of law only.

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earlier law, 1980 vintage, whereas E.O. 1008 and R.A. 9285 are later laws, E.O. 1008 having been promulgated five years after B.P. 129, and R.A. 9285, which iterated E.O. 1008, being issued in 2004. Therefore, E.O. 1008 and R.A. 9285, as laws that were promulgated subsequent to B.P. 129 and are the later expressions of the legislative will[106] on the matter of CIAC's awards' mode of appeal, must prevail over B.P. 129, thereby carving out CIAC awards as an exception to the CA's appellate jurisdiction over appeals from quasi-judicial agencies.

Second, with respect to the level of specificity in its application, the statutory canon that also finds bearing in this case is the canon of *generalia specialibus non derogant*, or a general law does not nullify a specific or special law,[107] which provides that where two statutes are of equal theoretical application to a particular case, the one designed therefor should prevail.[108] It is a rule of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special law is to be considered as an exception to the general law.[109] In the earlier case of *Valera v. Tuason, Jr.*,[110] the Court explained the rationale of the hierarchy of laws, to wit:

> x x x A special law is not regarded as having been amended or repealed by a general law unless the intent to repeal or alter is manifest. *Generalia specialibus non derogant*. And this is true although the terms of the general act are broad enough to include the matter in the special statute. ([*Manila Railroad Company v. Rafferty*], 40 Phil., 224.) **At any rate, in the event harmony between provisions of this type in the same law or in two laws is impossible, the specific provision controls unless the statute, considered in its entirely, indicates a contrary intention upon the part of the legislature**. Granting then that the two laws cannot be

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[106] *See Development Bank of the Phils. v. Court of Appeals*, G.R. No. 86625, December 22, 1989, 180 SCRA 609.

[107] *Laureano v. Court of Appeals*, G.R. No. 114776, February 2, 2000, 324 SCRA 414, 421.

[108] Id.

[109] *Lopez, Jr. v. Civil Service Commission*, G.R. No. 87119, April 16, 1991, 195 SCRA 777, 782. *See also Butuan Sawmill, Inc. v. City of Butuan*, G.R. No. L-21516, April 29, 1966, 16 SCRA 755.

[110] 80 Phil. 823 (1948).

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reconciled, in so far as they are inconsistent with each other, [S]ection 73 of the Code of Civil Procedure, being a specific law, should prevail over, or be considered as an exception to [S]ection 211 of the Administrative Code, which is a provision of general character. A general law is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class, while a special act is one which relates to particular persons or things of a class.[111]

A more acute case in point, involving a demonstration of a presidential decree carving out an exception in the jurisdictions conferred under B.P. 129, is the case of *Tomawis v. Balindong*.[112] Here, the Court settled the issue of jurisdiction over appeals from the Shari'a District Court, and ruled that B.P. 129 was enacted to reorganize only existing civil courts and is a law of general application to the judiciary, whereas P.D. 1083 is a special law that only applies to Shari'a courts, and therefore must prevail in application to Shari'a courts over the former, *viz.*:

> We have held that a general law and a special law on the same subject are statutes in *pari materia* and should be **read together and harmonized**, if possible, with a view to giving effect to both. In the instant case, we apply the principle *generalia specialibus non derogant*. **A general law does not nullify a special law. The general law will yield to the special law in the specific and particular subject embraced in the latter. We must read and construe [B.P.] 129 and [P.D.] 1083 together, then by taking [P.D.] 1083 as an exception to the general law to reconcile the two laws.** This is so since the legislature has not made any express repeal or modification of [P.D.] 1083, and it is well-settled that repeals of statutes by implication are not favored. Implied repeals will not be declared unless the intent of the legislators is manifest. Laws are assumed to be passed only after careful deliberation and with knowledge of all existing ones on the subject, and it follows that the legislature did not intend to interfere with or abrogate a former law relating to the same subject matter.[113]

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[111] Id. at 827-828. Emphasis supplied.

[112] G.R. No. 182434, March 5, 2010, 614 SCRA 354.

[113] Id. at 365-366, citing *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19, 2007, 525 SCRA 11 and *Social Justice Society v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92. Emphasis supplied.

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A more recent application of this basic principle of statutory construction is in the case of *Philippine Amusement and Gaming Corporation (PAGCOR) v. Bureau of Internal Revenue*:[114]

> x x x The Legislature consider and make provision for all the circumstances of the particular case. ***The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act.*** (*Lewis [v.] Cook County*, 74 III. App., 151; *Philippine Railway Co. [v.] Nolting*, 34 Phil., 401).[115]

Bringing the case at bar through this second frame of statutory construction, the Court finds that with respect to the level of generality or specialty, B.P. 129 is a general law of procedure and jurisdiction, and must therefore yield to the more specific laws of E.O. 1008 and its iteration in R.A. 9285, which distinctively pertain to the CIAC and other alternative modes of arbitration.

In other words, this reconciliation of laws and rules stands on the uncontroverted premise that when E.O. 1008 conferred on this Court the jurisdiction over appeals from CIAC awards, said conferment survived the subsequent **procedural** digressions, so that R.A. 9285 and the Special ADR Rules needed no Court concurrence, for they could no more restore to this Court a jurisdiction that it never validly lost. **Stated differently, when R.A. 9285 reiterated the direct recourse of appeals from CIAC awards to this Court, it did not endow the Court with any new jurisdiction that it did not already have as validly apportioned to it as early as 1980.** There is therefore no need for the Court's concurrence as required under the 1987 Constitution, as there was, in fact, no *increase* to concur with.

Pursuant to these two canons of reconciling apparent conflicts in application of laws, it inevitably appears that with respect to the conferment of jurisdiction to the CA of appellate jurisdiction over

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[114] G.R. No. 215427, December 10, 2014, 744 SCRA 712.

[115] Id. at 727. Emphasis and italics in the original.

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CIAC awards, both E.O. 1008 and R.A. 9285 have sufficiently carved CIAC awards as an exception therefrom.

Exclusive Rule-Making Power of the Court

The third and final circumscription that CIAC's awards' mode of appeal to the Court must consider is the relation of the power of Congress under Section 2, Article VIII *vis-à-vis* Section 5(5), Article VIII of the Constitution, with regard to the rule-making power of the Court. Section 5(5), Article VIII provides:

Section 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

x x x x

Presently, Congress does not have the power to repeal, alter, or supplement the rules of the Court concerning pleading, practice, and procedure. In *Echegaray v. Secretary of Justice*[116] the evolution of the rule-making power of the Court was laid down, and its discussion was later iterated in *Estipona, Jr. v. Lobrigo*[117] where it was held that:

While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court under Section 5(5), Article VIII of the Constitution x x x.

x x x x

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[116] G.R. No. 132601, January 19, 1999, 297 SCRA 754.

[117] G.R. No. 226679, August 15, 2017, 837 SCRA 160.

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The separation of powers among the three co[-]equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court. **Viewed from this perspective, We have rejected previous attempts on the part of the Congress, in the exercise of its legislative power, to amend the Rules of Court [x x x], to wit**:

1. *Fabian v. Desierto* — Appeal from the decision of the Office of the Ombudsman in an administrative disciplinary case should be taken to the Court of Appeals under the provisions of Rule 43 of the *Rules* instead of appeal by *certiorari* under Rule 45 as provided in Section 27 of R.A. No. 6770.

2. *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.* — The Cooperative Code provisions on notices cannot replace the rules on summons under Rule 14 of the *Rules*.

3. *RE: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees; Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Judge Cabato-Cortes; In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees*; and *Rep. of the Phils. v. Hon. Mangotara, et al*. — Despite statutory provisions, the GSIS, BAMARVEMPCO, and NPC are not exempt from the payment of legal fees imposed by Rule 141 of the *Rules*.

4. *Carpio-Morales v. Court of Appeals (Sixth Division)* — The first paragraph of Section 14 of R.A. No. 6770, which prohibits courts except the Supreme Court from issuing temporary restraining order and/or writ of preliminary injunction to enjoin an investigation conducted by the Ombudsman, is unconstitutional as it contravenes Rule 58 of the *Rules*.

Considering that the aforesaid laws effectively modified the *Rules*, this Court asserted its discretion to amend, repeal or even establish new rules of procedure, to the exclusion of the legislative and executive branches of government. To reiterate, the Court's authority to promulgate rules on pleading, practice, and procedure is exclusive and one of the safeguards of Our institutional independence.[118]

Balanced against the authority of Congress to grant or define the jurisdiction of courts, the rule-making power of the Court is

[118] Id. at 178-181. Emphasis supplied.

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proscribed against promulgating rules that diminish, increase, or modify substantive rights.

In *Fabian*, the question was raised as to whether the Court, in holding that the CA is the proper court to review the final judgements of quasi-judicial agencies even in light of a law vesting the Court with the power to do so, would be disregarding a substantive right. The Court ruled in the negative, explaining in this wise:

> x x x This brings to fore the question of whether Section 27 of [R.A.] 6770 is substantive or procedural.
>
> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. **In fact, a particular rule may be procedural in one context and substantive in another**. It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>
> In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is **whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure**.
>
> In the situation under consideration, a transfer by the Supreme Court, in the exercise of its rule-making power, of pending cases involving a review of decisions of the Office of the Ombudsman in administrative disciplinary actions to the Court of Appeals which shall now be vested with exclusive appellate jurisdiction thereover, relates to procedure only. This is so because it is not the right to appeal of an aggrieved party which is affected by the law. That *right* has been preserved. Only the *procedure* by which the appeal is to be made or decided has been changed. The rationale for this is that no litigant has a vested right in a particular remedy, which may be changed by substitution without impairing vested rights, hence he can have none in rules of procedure which relate to the remedy.

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Furthermore, it cannot be said that the transfer of appellate jurisdiction to the Court of Appeals in this case is an act of creating a new right of appeal because such power of the Supreme Court to transfer appeals to subordinate appellate courts is purely a procedural and not a substantive power. Neither can we consider such transfer as impairing a vested right because the parties have still a remedy and still a competent tribunal to administer that remedy.[119]

In *Fabian*, the Court went on to elucidate that the transfer by this Court, in the exercise of its rule-making power, of pending cases involving a review of decisions of the Ombudsman (OMB) in administrative disciplinary actions to the CA which shall now be vested with exclusive appellate jurisdiction over these, relates to *procedure only*. This is so because it is not the right to appeal of an aggrieved party which is affected by the law, as that *right* has been preserved, with only the *procedure* by which the appeal is to be made or decided changed.

A sharp distinction on the matter of the effect of the rule pulls the case of CIAC awards far from that of *Fabian*, as in the latter, the Court's act of transferring appellate jurisdiction over the OMB decisions to the CA did not undermine or significantly alter the party's right to appeal.

In clear contrast, the Court's act of including CIAC awards among those situations the appeal from which must be brought before the CA *via* Rule 43, instead of on a direct recourse to it as specified under E.O. 1008, did not provide a *mere* procedure of appeal of CIAC awards, **but correspondingly *diminished the substantive rights* of parties who, pre-conflict, had elected arbitration as their speedier recourse in case of dispute**.

The compelling weight of the preservation of the speed, autonomy and finality of CIAC awards is best validated by the kind of tailor-made fit with which the design of arbitration serves the unique demands of the construction industry. **Parties in construction disputes have also been known to predictably choose arbitration over litigation due to the limitation of the right to appeal thereto, particularly in that laws of many**

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[119] *Fabian v. Desierto,* supra note 88, at 491-493. Emphasis and underscoring supplied.

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jurisdictions permit appeals of arbitral awards only on limited grounds.

Demonstrably, construction is a specialized industry with projects that are prone to disputes owing to multiple parties, performance standards, as well as financing and profit considerations.[120] The construction businesses' resort to alternative modes of resolution that seek to settle controversies as opposed to pursuit of lawsuits was even called a paradigm shift, which resulted from the wave of increasing need for dispute resolutions, and the inversely proportional decrease of incentives for litigation.[121] Parties in construction disputes were afforded, by legislation, with the alternative route to an expedited and authoritative resolution of their disputes. The availability of this conclusive alternative mode, which had been hailed as the preferred method of resolving high-value disputes, is vital to the growth of the construction industry, and diluting the same undoubtedly amounts to the diminishing of the parties' substantive right.

Once more, the substantive right is contained in the parties' preference to avail of speed, flexibility, cost efficiency and industry knowledge to obtain the most autonomous arbitration result possible. Autonomous arbitration is one which is initiated, conducted and concluded without any need or desire for judicial intervention,[122] with the United States Supreme Court even affirming early on that the unmistakable purpose of Congress in affording parties with the arbitration procedure was so that the resolution of the dispute between parties who opt for arbitration be "speedy and not subject to delay and obstruction

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[120] Darrick M. Mix, *ADR in the Construction Industry: Continuing the Development of a More Efficient Dispute Resolution Mechanism*, 12 OHIO STATE J.D.R. 463, 463-484 (1997), available at <https://kb.osu.edu/bitstream/handle/1811/87700/1/OSJDR_V12N2_463.pdf.>

[121] Id. at 464.

[122] Liaquat Ali Khan, *Arbitral Autonomy*, 74 LA. L. REV. 1, 3 (2013) citing *Developments in the Law — The Paths of Civil Litigation*, 113 HARV. L. REV. 1851, 1862-63 (2000), stating that courts and commentators are conflicted over the efficiency benefits and fairness concerns of arbitration. Also available at <https://digitalcommons.law.lsu.edu/lalrev/vol74/iss1/5>.

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of the courts."[123] The paradigm of autonomy likewise gives the parties the confidence to invite specialists to resolve complex issues which are beyond the proficiency of court judges.

This substantive right to access this arbitration autonomy is unambiguously subverted by the Court's overreaching exercise of its rule-making power, in its act of delegating to the CA what the legislative wisdom otherwise categorically conferred directly and exclusively upon this Court. The defeat of this right is evident in the frustration of the reasons that prompted the parties to choose arbitration over litigation in the first place. More particularly, the inclusion of the CIAC under Rule 43 weakened if not altogether destroyed the authoritative autonomy of the CIAC, as well as eroded if not totally obliterated its very nature as the expedited, economical, independent alternative dispute resolution to the otherwise protracted and costly court litigation.

To be sure, the inclusion of the CIAC under Rule 43 is a clear **impairment** of the central substantive right which animates the overall design of the CIAC, and is therefore invalid for overstepping the positive limitation of the rule-making power of this Court under Section 5 (5), Article VIII of the Constitution on non-modification of substantive rights. Thus, nothing prevents this Court from correcting this over-inclusion, as it now does in the case at bar.

In all, the nexus between the judiciary and the arbitral tribunal is nothing short of paradoxical, in that on the one hand, the courts often ensure the integrity of the arbitration, but on the other, the apprehensions regarding court involvement have precisely led parties to opt for arbitration, in the first instance.[124] As the case at bar exhibits, perhaps the point has always been not complete severance between the two, but only a guarantee that judicial involvement is limited to a minimum to promote the rationale of

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[123] Id., citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967).

[124] Robert E. Lutz, *International Arbitration and Judicial Intervention*, 10 LOY. L.A. INT'L. & COMP. L. REV. 621, 621 (1988), available at <http://digitalcommons.lmu.edu/ilr/vol10/iss3/6>.

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arbitration, so that it is not so much judicial control, as it is judicial encouragement through restraint.

All told and reconciled, the Court sitting *en banc* takes this overdue opportunity to straighten out the route that an appeal from a CIAC arbitral award may take, and inevitably carve its remedial recourse out of procedural tiers that are wholly inconsistent with the very *animus* of this arbitral tribunal.

A harmonization of these conflicting rules leaves the Court with the conclusion that the inclusion of the CIAC under Rule 43 appeals is without footing in the legal history of the CIAC, and therefore must be unequivocally reversed.

More specifically, the Court holds that the direct recourse of an appeal of a CIAC award on questions of law directly to this Court is the rule, pursuant to E.O. 1008 and R.A. 9285, notwithstanding Rule 43 on the CA's jurisdiction over quasi-judicial agencies, and Rule 45 in its exclusive application to lower courts. Thus, an appeal from an arbitral award of the CIAC may take either of two tracks, as determined by the subject matter of the challenge.

On the one hand, if the parties seek to challenge a finding of law of the tribunal, then the same may be appealed only to this Court under Rule 45. To determine whether a question is one of law which *may* be brought before the Court under Rule 45, it is useful to recall that a question of law involves a doubt or controversy as to what the law is on a certain state of facts, as opposed to a question of fact which involves a doubt or difference that arises as to the truth or falsehood of facts, or when the query necessarily calls for a review and reevaluation of the whole evidence, including the credibility of witnesses, existence of specific surrounding circumstances, and the decided probabilities of the situation.[125] The test here is not the party's characterization of the question before the Court, but whether the Court may resolve the issue brought to it by solely inquiring as to whether the law was properly applied and without going into a review of the evidence.

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[125] *Mandaue Realty & Resources Corporation v. Court of Appeals*, G.R. No. 185082, November 28, 2016, 810 SCRA 447, 456 citing *China Road and Bridge Corporation v. Court of Appeals*, G.R. No. 137898, December 15, 2000, 348 SCRA 401.

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On the other hand, if the parties seek to challenge the CIAC's finding of fact, the same may only be allowed under either of two premises, namely assailing the very integrity of the composition of the tribunal, or alleging the arbitral tribunal's violation of the Constitution or positive law, in which cases the appeal may be filed before the CA on these limited grounds through the special civil action of a petition for *certiorari* under Rule 65, in accordance with Section 4 in relation to Section 1, Rule 65 of the Rules:

SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

SEC. 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)-day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

In election cases involving an act or omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections in aid of its appellate jurisdiction. *(As amended by A.M. No. 07-7-12-SC, December 12, 2007.)*

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As observed by Chief Justice Alexander Gesmundo (Chief Justice Gesmundo) during the deliberations, it would be entirely unsupported for appeal under Rule 43 to remain available for CIAC awards after a clear demonstration to the contrary.

Furthermore, Justice Leonen, in his *Concurring Opinion*, sharply summarizes the utter lack of basis in this erroneous inclusion of the CIAC under Rule 43 appeals, which he calls out to be an "unfortunate mistake":

> Since the Construction Industry Arbitration Law's adoption in 1985, procedural law and related jurisprudence have made it appear that appeals may also be taken to the Court of Appeals. There, the factual findings of CIAC arbitral tribunals may supposedly be assailed. This has been an unfortunate mistake. **The Court of Appeal's supposed appellate jurisdiction to freely review factual issues finds no basis in substantive law**.
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> x x x x
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> It is opportune to repudiate the mistaken notion that appeals on questions of fact of CIAC awards may be coursed through the Court of Appeals. No statute actually vests jurisdiction on the Court of Appeals to entertain petitions for review emanating from the CIAC. *Metro Construction*'s reference to a "procedural mutation" effected by Circular No. 1-91, 1095 and Rule 43 of the 1997 Rules of Civil Procedure do not broaden the jurisdiction of the Court of Appeals. Neither do the amendments introduced to Batas Pambansa Blg. 129 by Republic Act No. 7902 effect a broadening of the Court of Appeals' appellate jurisdiction thereby extending it to a factual review of CIAC arbitral awards.[126]

The resort to Rule 65, instead of Rule 43, further finds support in the very nature of the factual circumstances which trigger said exceptional factual review — those that center not on the actual findings of fact but on the integrity of the tribunal that makes these findings, or their compliance with the Constitution or positive law, *i.e.*, any of the following factual allegations: (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 hear evidence pertinent and material to the controversy; (4) one

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[126] Concurring Opinion of *J.* Leonen, pp. 9-13. Emphasis supplied.

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or more of the arbitrators were disqualified to act as such under Section 9 of R.A. 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.[127]

These are the scenarios that Chief Justice Gesmundo, keenly referred to as "tribunal-centered" and not "fact-centered" which must necessarily reframe whether the CA may or may not review the decisions of the CIAC, to wit:

> If a legal remedy exists for the review of factual findings of the arbitral tribunal in the context of assailing the integrity of its composition, the question that should be asked is, should the subject matter of the appeal pertain to the alleged errors in the factual findings of the arbitral tribunal, or should the appeal center on the lack of integrity of the composition of the arbitral tribunal? Definitely, if there is no question on the integrity of the composition of the arbital tribunal, its award may not be subject to appeal on factual considerations. Consequently, the remedy contemplated is tribunal-centered and not fact-centered. This issue is important because it will determine whether the CA has jurisdiction over the subject matter of the appeal in the first place.[128]

Proceeding from this framing of factual issues which fall within the narrow window of the Court's factual review of CIAC awards, the Court holds that these challenges to the CIAC tribunal's integrity or allegations of constitutional or statutory violations on the part of the arbitral tribunal, as further enumerated under Section 24[129] of R.A. 876, partake of the nature of imputations

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[127] *Tondo Medical Center v. Rante,* supra note 77.

[128] As aptly explained by Chief Justice Gesmundo during the deliberations.

[129] Section 24 thereof provides:

> 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:
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> (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

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of grave abuse which more accurately belong within the purview of a special civil action of a petition for *certiorari* under Rule 65. Stated differently, the Court recognizes, as earlier distilled in jurisprudence, that although the challenges to the integrity of the CIAC arbitral tribunal are first enumerated in Section 24 of R.A. 876, the same grounds are also descriptive of the narrow set of situations that may warrant the Court's review of the same, as an exception to the more general rule that factual findings of the CIAC arbitral tribunal are beyond review. Once more, as correctly noted by Chief Justice Gesmundo, this appears to be the Court's understanding in its discussion of the said grounds in the case of *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*[130] (*Hi-Precision*), when it reiterated that it will not relitigate issues of fact previously resolved by an arbitral tribunal, save for the instance of a clear showing of grave abuse of discretion, citing as examples thereof those very instances referred to under Section 24 of R.A. 876, *viz.*:

> 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

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(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 wilfully 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.

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.

[130] G.R. No. 110434, December 13, 1993, 228 SCRA 397.

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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.[131]

Collectively, these factual scenarios, when alleged, essentially challenge the integrity of the arbitral tribunal or the constitutionality or legality of the conduct of the arbitral process, and therefore warrant an entertainment of doubt with respect to the factual findings of said tribunal. These factual allegations, which replicate the grounds for vacating an arbitral award as provided in Section 24 of R.A. 876, have been found by the Court to be the same factual allegations that will trigger an exceptional factual review of CIAC arbitral awards, as this Court has laid down in *Spouses David v. Construction Industry and Arbitration Commission*,[132] *CE Construction Corp. v. Araneta Center, Inc.*,[133] and *Tondo Medical Center v. Rante*.[134] The Court, in these cases, saw it fit to exemplify the breadth of what may constitute grave abuse of discretion with the enumeration of scenarios carried over from Section 24 of R.A. 876, in order to fine-tune the operative examples of grave abuse in the context of the CIAC arbitral tribunals. This is further consistent with the caution of the Court in *Hi-Precision* when it

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[131] Id. at 405-407. Emphasis supplied; citations omitted.

[132] Supra note 78.

[133] Supra note 71.

[134] Supra note 77.

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warned that "x x x [a]ny other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration x x x."[135] The Court's consistent pronouncement in the above cases only reinforce its attitude towards CIAC arbitral awards, *i.e.*, that factual findings of the CIAC arbitral tribunal are final unless the integrity of said tribunal or the constitutionality or legality of its actions are put in question.

Told differently, the limited instances which parties may cite as impetus for a judicial factual review of a CIAC award pertain to integrity-centered or Constitution or law-anchored flaws which, in turn, translate to grave abuses of discretion that are within the ambit of a petition for *certiorari* under Rule 65. The correspondence is made clear given the very nature of a Rule 65 petition, and the metes and bounds of the issues it is designed to resolve. Demonstrably, in the case of *Tagle v. Equitable PCI Bank*,[136] the Court spoke plainly:

> A special civil action for *Certiorari*, or simply a Petition for *Certiorari*, under Rule 65 of the Revised Rules of Court is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Such cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.
>
> For a petition for *certiorari* to prosper, the essential requisites that have to concur are: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

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[135] *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.,* supra note 130, at 406-407.

[136] G.R. No. 172299, April 22, 2008, 552 SCRA 424.

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The phrase "*without jurisdiction*" means that the court acted with absolute lack of authority or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. "*Excess of jurisdiction*" occurs when the court transcends its power or acts without any statutory authority; or results when an act, though within the general power of a tribunal, board or officer (to do) is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. While that of "*grave abuse of discretion*" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[137]

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. The design and intent of the relevant laws on judicial review of CIAC arbitral awards do not empower the CA to look into the factual findings of the CIAC apart from the foregoing circumscribed grounds, lest the authoritative and conclusive factual findings of the CIAC be nevertheless defeated, albeit *via* a petition other than Rule 43.

This operative limiting of the grounds under Rule 65 with respect to judicial review of CIAC arbitral awards remains consistent with the Court's constitutionally granted authority, owing chiefly to the conceptually dynamic nature of grave abuse of discretion. To be sure, the Constitution provided the Court's power to take cognizance of petitions alleging grave abuse of discretion, with the second paragraph of Section 1, Article VIII of the Constitution particularly stating:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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[137] Id. at 436-437. Citations omitted.

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Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

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.

On point is the case of *Oposa v. Factoran, Jr.*,[138] where the Court, citing Justice Isagani A. Cruz, described the dynamic property of the concept of grave abuse in the context of the expanded judicial review power, and succinctly described it thus:

> As worded, the new provision vests in the judiciary, and particularly the Supreme Court, the power to rule upon even the wisdom of the decisions of the executive and the legislature and to declare their acts invalid for lack or excess of jurisdiction because tainted with grave abuse of discretion. **The catch, of course, is the meaning of 'grave abuse of discretion,' which is a very elastic phrase that can expand or contract according to the disposition of the judiciary**.[139]

The elasticity of the Court's use of its power of judicial review under the 'grave abuse of discretion' standard has also been suggested as that which significantly depends on a variety of

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[138] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

[139] Id. at 810.

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considerations, even including the "rationality, predispositions, and value judgments"[140] of the Court's members. This conceptual malleability of 'grave abuse of discretion' allows it to stretch as it needs to cover vast permutations of grave abuse, but also contracts, as the Court here deems it fit, so as not to negate categorical legislative intent as provided for by E.O. 1008.

In point of fact, grave abuse as a ground for judicial review covers a multitude of scenarios, with each operative definition colored with caprice or whim, but fleshed out in a variety of commissions, and embraces not only those which betray a possible challenge on the integrity of an arbitral tribunal.

Early jurisprudence has laid down a broad construction of what constitutes grave abuse of discretion. In the 1939 case of *Santos v. Province of Tarlac*,[141] the concept of abuse of discretion was construed as that which contemplates such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. This was later echoed in the 1941 case of *Alafriz v. Nable*,[142] where the Court defined grave abuse as that where the court has acted "x x x with absolute want of jurisdiction x x x"[143] or where the court has transcended its jurisdiction or "x x x acted without any statutory authority x x x."[144]

In the 1960 case of *Hamoy v. Hon. Sec. of Agriculture and Natural Resources, et al.*,[145] the Court added that the abuse of discretion must be shown to be attended by "x x x passion, prejudice, or personal hostility amounting to an evasion of positive duty x x x."[146] Still, in 1966, in the case of *Palma and Ignacio v. Q.*

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[140] DESIERTO, DIANE A, A UNIVERSALIST HISTORY OF THE 1987 PHILIPPINE CONSTITUTION (II), UNIVERSIDAD DE OVIEDO 433 (2010).

[141] 67 Phil. 480 (1939).

[142] 72 Phil. 278 (1941).

[143] Id. at 280 citing *Leung Ben v. O'Brien*, 38 Phil. 182 (1918); *Salvador Campos y Cia. v. Del Rosario*, 41 Phil. 45 (1920).

[144] Id.

[145] 106 Phil. 1046 (1960).

[146] Id. at 1054.

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& S., Inc., et al.,[147] the Court further qualified abuse of discretion and added that an error of judgment is not abuse of discretion, as the same must be colored with despotism or whim, *viz.*:

> x x x [A]n abuse of discretion is not sufficient by itself to justify the issuance of a writ of [*certiorari*]. x x x [T]he abuse must be grave and patent, and it must be shown that the discretion was exercised arbitrarily or despotically x x x.[148]

In 1979, in *Dimayacyac v. Court of Appeals*,[149] the trial court therein was found to have committed grave abuse of discretion for declaring a party before in default and rendering judgment against them hurriedly, for mere failure of the party in default to file a pre-trial brief. In the case of *Producers Bank of the Phils. v. NLRC*,[150] grave abuse of discretion was construed as such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction and involves power that is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. Grave abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

To note, in the 1999 case of *Nepomuceno v. Court of Appeals*,[151] the Court ruled that "grave abuse of discretion is indeed a relative term"[152] and admits of exceptions in the interest of substantial justice.

Recent jurisprudential iterations have further maintained this construction of grave abuse of discretion. In the case of *Dueñas, Jr. v. House of Representatives Electoral Tribunal*,[153] grave abuse of discretion was defined as the capricious and whimsical exercise of judgment, or the exercise of power in an arbitrary manner,

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[147] G.R. No. L-20366, May 19, 1966, 17 SCRA 97.

[148] Id. at 100.

[149] G.R. No. 50907, September 27, 1979, 93 SCRA 265.

[150] G.R. No. 76001, September 5, 1988, 165 SCRA 281.

[151] G.R. No. 126405, February 25, 1999, 303 SCRA 679.

[152] Id. at 682.

[153] G.R. No. 191550, May 4, 2010, 620 SCRA 78.

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where the abuse is so patent and gross as to amount to an evasion of positive duty.[154] In *Cruz v. People*,[155] manifest disregard of basic rules and procedures constituted grave abuse of discretion. In *Comilang v. Belen*,[156] a showing of manifest bias and partiality likewise amounted to grave abuse. *Neri v. Yu*,[157] also defined grave abuse as that which includes not only palpable errors of jurisdiction or violations of the Constitution, the law, and jurisprudence, but also includes gross misapprehension of facts.

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.

By extension, if the petition for *certiorari* under Rule 65 route for review of CIAC arbitral awards remains as indiscriminate as the scope of Rule 65 as it is more generally applied, it would entertain grounds for factual review that E.O. 1008 and other relevant rules intended to keep out.

The Court herein emphasizes that the qualification and contraction of the concept of grave abuse of discretion under Rule

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[154] Id. at 80.

[155] G.R. No. 224974, July 3, 2017, 828 SCRA 685.

[156] A.M. No. RTJ-10-2216, June 26, 2012, 674 SCRA 477.

[157] G.R. No. 230831, September 5, 2018, 879 SCRA 611.

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65 with respect to a CIAC arbitral award calibrates, instead of confuses, the grounds for a Rule 65 petition. It is a contraction that is imperative if remedial law is to promote, and not frustrate, the unique configuration of the CIAC, and enable it to unfold as designed within the structure of the present remedial rules. It does not proceed from the presumption that said contraction is being made in order to address what may experientially be seen as a loose treatment of the *certiorari* action in practice. On the contrary, the contraction is being made not because the *certiorari* power is being indiscriminately employed, but because in itself, even with its rigid application, said *certiorari* power is still not narrow enough given the framework that the persuasive authority of CIAC awards must be ascribed primacy.

The Court also holds with particular import that there is nothing procedurally problematic or constitutionally abhorrent in distilling the prototypical grounds under Section 24 of R.A. 876 as reflective of the very grounds which show a grave abuse of discretion in relation to CIAC arbitral awards. There is nothing precarious in the Court's acknowledgment that the concept of grave abuse is elastic enough to lend itself to the Court's calibration depending on the context within which it is to be appreciated.

Contrary to the caution offered that the concept of grave abuse of discretion is tantamount to judicial legislation, the Court here discerns that its appropriation of the prototypical grounds as provided under Section 24 of R.A. 876 into the judicial review of CIAC arbitral awards, as well as its appreciation of the nuanced expressions of grave abuse of discretion in this specific context squarely fall within the rule-making power of the Court. The authority is rooted in Section 5(5), Article VIII of the Constitution, and the impetus therefor described as thus:

> x x x This deliberate expansion of both judicial review and rule-making powers of the Philippine Supreme Court typifies the active re-direction of the Court's role, away from the passivity under the standard political question doctrine that had predominated earlier constitutional eras under the 1973 and 1935 Constitutions.
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> x x x x

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When the 1986 EDSA "People Power" Revolution successfully ousted Marcos, one of the first acts of the new government under Corazon Aquino (and facilitated by now Constitutional Commissioner Roberto Concepcion) was to strengthen the independence and judicial review powers of the Philippine Supreme Court. Under the 1987 Constitution, the Philippine Supreme Court was intentionally entrusted with broader judicial review and rule-making powers. The framers of the 1987 Constitution envisioned that the Court as the institution most critical to safeguarding democracy in the Philippines' post-dictatorship constitutional order. Wary of the Court's reputational decline in *Javellana*, the Philippine Supreme Court under the 1987 Constitutional reiterated fidelity to the Constitution as the foremost mandate of judicial conduct: "Justices and judges must ever realize that they have no constituency, serve no majority nor minority but serve only the public interest as they see it in accordance with their oath of office, guided only by the Constitution and their own conscience and honour."[158]

Markedly, as the Court has held in *Echegaray v. Secretary of Justice*[159] and *Estipona, Jr. v. Lobrigo*,[160] the independent rule-making power of the Court is a reaction to the prevenient disposition of the Court that consigns it to sidestep matters of inequity or injustice in the court proceedings because of its lack of power to procedurally address them. The Court therefore holds that this is not a dangerous precedent but a mere exercise of extant rule-making and *certiorari* powers of the Court. This authority also since pivoted the Court away from the previous institutional attitude of avoidance.

More, the exercise of contracting grave abuse of discretion in order to correct what has been shown to be a procedural confoundment in the instant case is not new either in the Court's jurisprudential history or its immediate horizon. Perhaps, there will be future inadequacies in procedure that the Court will be moved to remedy, and that the same will require its reconciliation or

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[158] Diane A. Desierto, *Justiciability of Socio-Economic Rights: Comparative Powers, Roles and Practices in the Philippines and South Africa*, 11 APLPJ, Vol. 114, at 115-119 (2009). Also accessible at https://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_11.1_desierto.pdf.

[159] Supra note 116.

[160] Supra note 117.

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harmonization with substantive laws. The reinforced rule-making power of the Court straightforwardly allows it to undertake the same, as it now does.

As is apparent in the two grounds that trigger the exceptional factual review of CIAC arbitral awards, *i.e.*, those that pertain to either the lack of integrity or the imputed unconstitutionality or illegality of the arbitrators or the arbitral process, the contracted grounds are tight enough, but nevertheless embrace and preserve the courts' power to re-examine factual findings of a CIAC arbitral tribunal, precisely when the latter's lack of integrity, or its unconstitutional or illegal actions taint the same. Most assuredly, the power of the courts to uphold the Constitution and preserve observance of positive law are woven into the very fabric of the judicial system, and remain undiminished in the Court's present interpretation of the available remedial routes from CIAC arbitral awards.

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.

Undoubtedly, R.A. 876, R.A. 9285 and E.O. 1008, while distinct, are conceptually and operatively related in the sphere of arbitration law. For one, R.A. 9285 expressly references E.O. 1008 as the rules of procedure that apply to construction disputes. The whole of its Chapter 6 pertains to arbitration of construction disputes where, substantively: (1) Section 17 (d)[161] thereof provides

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[161] R.A. 9285, Sec. 17 provides:

SEC. 17. Enforcement of Mediated Settlement Agreements. — The mediation shall be guided by the following operative principles:

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its application to mediated construction disputes, (2) Sections 28[162] and 29[163] thereof outline the availability of interim measures

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(a) A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsel, if any, and by the mediator.

The parties and their respective counsels shall endeavor to make the terms and condition thereof complete and make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement.

(b) The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in a language known to them.

(c) If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court.

(d) The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act. No. 876, otherwise known as the Arbitration Law, notwithstanding the provisions of Executive Order No. 1008 for mediated disputes outside of the CIAC. (Emphasis supplied)

[162] Id., Sec. 28 provides:

SEC. 28. Grant of Interim Measure of Protection. — (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

The following rules on interim or provisional relief shall be observed:

(1) Any party may request that provisional relief be granted against the adverse party.

(2) Such relief maybe granted:

(i) to prevent irreparable loss or injury;

(ii) to provide security for the performance of any obligation;

(iii) to produce or preserve any evidence; or

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of protection in construction arbitration, (3) Section 35[164] thereof enumerates the kinds of disputes that fall within the purview of the CIAC's jurisdiction, and (4) Section 39[165] thereof relatedly

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(iv) to compel any other appropriate act or omission.

(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.

(5) The order shall be binding upon the parties.

(6) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

[163] Id., Sec. 29 states:

SEC. 29. Further Authority for Arbitrator to Grant Interim Measure of Protection. — Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute following the rules in Section 28, paragraph 2. Such interim measures may include but shall not be limited to preliminary injunction directed against a party, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration. Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

[164] Id., Sec. 35 provides:

SEC. 35. Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

[165] Id., Sec. 39 provides:

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authorizes the regional trial courts to dismiss a construction dispute before it, if the same involves an arbitration clause that was not previously resorted to.

As well, the Special ADR Rules further categorically refer to R.A. 876 when it laid down the grounds for which, as a general rule, the court may vacate or set aside the decision of an arbitral tribunal. Specifically, Rule 19.10 of the same provides:

RULE 19.10. ***Rule on judicial review on arbitration in the Philippines***. — As a general rule, **the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law** in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal. (Emphasis supplied)

Still, illustratively, in the case of *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*,[166] the Court found no impediment in applying R.A. 876 in a suppletory nature to an otherwise purely CIAC-governed dispute, in order to stay the court proceedings where the dispute was found to be arbitrable before the CIAC:

SEC. 39. Court to Dismiss Case Involving a Construction Dispute. — A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.

[166] G.R. No. 141833, March 26, 2003, 399 SCRA 562.

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The arbitral clause in the Agreement is a commitment on the part of the parties to submit to arbitration the disputes covered therein. Because that clause is binding, they are expected to abide by it in good faith. And because it covers the dispute between the parties in the present case, either of them may compel the other to arbitrate.

Since petitioner has already filed a Complaint with the RTC without prior recourse to arbitration, the proper procedure to enable the CIAC to decide on the dispute is to request the stay or suspension of such action, as provided under [R.A.] 876 [the Arbitration Law].[167]

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.

Furthermore, and assuredly, the resort to the courts was legislatively designed to succeed other remedies that disputants before the CIAC may avail themselves of in case of errors in an arbitral tribunal's award that merit its modification. The current CIAC Rules provide a remedy that allows the parties to winnow through their arbitral award and effect the correction of gross errors such as mathematical miscalculations and the like. The more general R.A. 876, particularly, Section 25 thereof provides:

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

[167] Id. at 571-572.

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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 and underscoring supplied)

This enumeration of grounds for correction of errors in arbitral awards was adopted and echoed in the CIAC Rules,[168] specifically Section 17 thereof:

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. (Emphasis and underscoring supplied)

Crucially, however, the above grounds that merit a modification or correction of an arbitral award, whether in the earlier

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[168] As amended by CIAC Resolution Nos. 15-2006, 16-2006, 18-2006, 19-2006, 02-2007, 07-2007, 13-2007, 02-2008, 03-2008, 11-2008, 01-2010, 04-2010, 07-2010, 08-2014, and 07-2016.

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provisions under R.A. 876 or in the recent iterations under the CIAC Rules, importantly: (1) do not pertain to any allegation of fraud, corruption, or grave abuse; and (2) pertain only to honest mistakes, miscalculations of figures, and do not affect the arbitral tribunal's findings with respect to the very merit of the dispute.

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.

For more than preserving expediency and convenience, this restrained attitude against challenging arbitral awards on their merits most importantly respects party-autonomy, which is the essence of arbitration[169] and the pro-arbitration State policy of the country. So that when the courts deem a CIAC arbitral award as final, barring exceptions, the courts are really upholding the substantive rights of the disputing parties and their exercise of autonomy in deciding in what manner, for how long, and before which forum their dispute is to be resolved. This is but the Court's recognition that party-autonomy underpins the very option of disputing parties to refer their construction dispute before the CIAC, and that the same has been central in the legislative intendment of a more limited and restricted mode of judicial review of CIAC arbitral awards.

For the avoidance of doubt, the Court now holds that the judicial review of CIAC arbitral awards takes either of two remedial routes, depending on the issue being raised. *First*, if the issue raised is a pure question of law, the petition should be filed directly and exclusively with the Court, notwithstanding Rule 43. *Second*, in cases where the

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[169] *Mabuhay Holdings Corp. v. Sembcorp Logistics Limited*, G.R. No. 212734, December 5, 2018, 888 SCRA 364.

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petition takes issue on the integrity of the arbitral tribunal and its decision, (*i.e.*, allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal), or the unconstitutionality or invalidity of its actions in the arbitral process[170] then the parties can and should appeal the CIAC award before the CA under Rule 65, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction, where a factual review may then be had by the CA.

Concomitantly, the availability of a resort to the CA *via* a Rule 65 petition under these circumstances must also necessarily amend Rule 19.7 of the Special ADR Rules which proscribes any filing of a special civil action of a petition for *certiorari*. This necessary amendment will allow for the narrowest of grounds for a factual review of a CIAC arbitral award to be brought before the proper court through the correct action. This amendment is also merited so that the Special ADR Rules may not, without their intention, frustrate instead of facilitate the modes of appeal from CIAC arbitral awards.

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. As well, all the previous cases of *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*[171] and the more recent case of *Shangri-La Properties, Inc. v. B.F. Corporation*[172] are now deemed abandoned.

Be that as it may, the Court nevertheless clarifies that this instant carving out of the CIAC from the enumeration under Rule 43, along with the effective reversal of jurisprudence that provide otherwise,

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[170] *Spouses David v. Construction Industry and Arbitration Commission*, supra note 78, at 583.

[171] Supra note 80.

[172] Supra note 81.

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is **prospective** in application, as judicial decisions applying or interpreting laws form part of the legal system of the Philippines until they are reversed, and remain good law until abandoned.[173] The prospective application of the present ruling on the proper modes of appeal from a CIAC arbitral award applies in favor of parties who have relied on the old doctrine and have acted in good faith.[174] As the Court elaborated in *Benzonan v. Court of Appeals*:[175]

> x x x [P]ursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.[176]

The Court hereby sets the following guidelines with respect to the application of the present ruling on modes of judicial review *vis-à-vis* CIAC arbitral awards:

1. For appeals from CIAC arbitral awards that have already been filed and are currently pending before the CA under Rule 43, the prior availability of the appeal on matters of fact and law thereon applies. This is only proper since the parties resorted to this mode of review as it was the existing procedural rules at the time of filing, prior to the instant amendment.

2. For future appeals from CIAC arbitral awards that will be filed after the promulgation of this Decision:

   a. If the issue to be raised by the parties is a pure question of law, the appeal should be filed directly and exclusively with the Court through a petition for review under Rule 45.

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[173] *See Office of the Ombudsman v. Vergara*, G.R. No. 216871, December 6, 2017, 848 SCRA 151.

[174] *People v. Jabinal*, G.R. No. L-30061, February 27, 1974, 55 SCRA 607.

[175] G.R. No. 97973, January 27, 1992, 205 SCRA 515.

[176] Id. at 527.

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b. If the parties will appeal factual issues, the appeal may be filed with the CA, but only on the limited grounds that pertain to either a challenge on the integrity of the CIAC arbitral tribunal (*i.e.*, allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal) or an allegation that the arbitral tribunal violated the Constitution or positive law in the conduct of the arbitral process, through the special civil action of a petition for *certiorari* under Rule 65, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction. The CA may conduct a factual review only upon sufficient and demonstrable showing that the integrity of the CIAC arbitral tribunal had indeed been compromised, or that it committed unconstitutional or illegal acts in the conduct of the arbitration.

3. Under no other circumstances other than the limited grounds provided above may parties appeal to the CA a CIAC arbitral award.

III- Judicial Review of the CIAC award in the case at bar

With the terrain on the mode of appeal from CIAC awards defined for bright-line prospective application, this Court finally proceeds to the merit of the parties, as seen from the lens of this limited scope of judicial review.

The narrow exception to the general deference to the expert findings and conclusions of the CIAC attends the present consolidated petitions, as the petition presents a pure question of law on which the construction dispute turns, *i.e.*, the nature and legal effect of a withholding agent's belated withholding and remitting of the 2% CWT.

Further, even without applying to the instant case the foregoing considerations on the history of judicial review *vis-à-vis* CIAC awards, the Court nevertheless chiefly observes that the CA misapplied its appellate function when it delved into settling the factual matters and modified the mathematical computation of the CIAC with respect to the presence or absence of an outstanding balance payable to RSII. This mathematical re-computation is an error not because the new ruling on judicial review of CIAC awards

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is applicable to this case (as it applies prospectively) but because the amounts reimbursable to RSII were not specifically raised by the RSII as an issue in its Rule 43 petition before the CA, since the issues raised before it were confined to the release of the amount deducted by GMCLI from its Progress Billing No. 15 to cover the CWT of 2% on payments for the first 14 Progress Billings.[177]

In addition, that the CA made a precipitate factual conclusion of the correctness of RSII's mathematical computation over that of GMCLI after citing gossamer-thin basis perhaps betrays the general impropriety of an appellate court's review of factual findings of more specialized tribunals and quasi-judicial agencies, which were legally ascribed primacy.

As has been said, the referral of construction disputes to the CIAC is grounded on the need for construction efforts to, as far as possible, remain unfettered by lengthy and belabored court cases, and for parties in the construction industry to be given enough breathing room to maneuver the same for the farsighted benefit of national development.

Disputes such as the one presented by the petitions at bar, which to date already ran a lifespan of over four years, illustrate the need for CIAC arbitral awards to henceforth be given the authoritative sway and deference that they merit, as well as demonstrates the call for courts to stay their hands until a pure question of law can be distilled from the dispute and brought before it.

The CWT Issue

Secondly, with regard to the tax issue, and without leaving RSII deprived of any remedy under the law, the Court finds that the CIAC, as affirmed by the CA, correctly found GMCLI to be without the authority to belatedly withhold the 2% withholding tax, but that despite the lack of authority of GMCLI to belatedly withhold and remit the 2% CWT, RSII is nevertheless still not entitled to the release of the amount equivalent to that withheld in the cumulative.

The axis of the present dispute, as well as the remaining remedy herein, lies in the definition and design of the CWT. The Expanded

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[177] *Rollo* (G.R. No. 230119), p. 54.

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CWT, as defined under Section 2.57 (B) of Revenue Regulations (RR) No. 2-98[178] reads:

> (B) *Creditable Withholding Tax*. — Under the CWT system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income. The income recipient is still required to file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the NIRC, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income. Taxes withheld on income payments covered by the expanded withholding tax (referred to in Sec. 2.57.2 of these regulations) and compensation income (referred to in Sec. 2.78 also of these regulations) are creditable in nature.

Among the classifications of withholding taxes, the CWT is a tax imposed on certain income payments and is creditable against the income tax due of the payee for the taxable quarter/year in which the particular income was earned.[179] Essentially, the CWT is an advance income tax on the payee. Prior to the actual filing of income tax return, the taxpayer already pays a portion of its foreseeable income tax liability in the form of the creditable income tax, withheld and remitted for him on his behalf by the withholding agent.

Upon the filing of the payee's income tax return, the income of the payee which was subject to the CWT is still reported in the income tax return, for the computation of the income tax due on it. In the event that the income tax computed is more than the CWT paid earlier, the difference shall be paid by the payee in order for his income tax to be paid in full. Conversely, in case the income tax calculated is less than the CWT paid, the overpayment of CWT shall either be carried over to the next taxable period for the payee, or refunded in his favor.

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[178] IMPLEMENTING REPUBLIC ACT NO. 8424, "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED" RELATIVE TO THE WITHHOLDING ON INCOME SUBJECT TO THE EXPANDED WITHHOLDING TAX AND FINAL WITHHOLDING TAX, WITHHOLDING OF INCOME TAX ON COMPENSATION, WITHHOLDING OF CREDITABLE VALUE-ADDED TAX AND OTHER PERCENTAGE TAXES, April 17, 1998.

[179] *See* <https://www.bir.gov.ph/index.php/tax-information/withholding-tax/10-tax-information.html>.

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RR No. 2-98, Section 2.57.3, further recites the persons required to be withholding agents, under which GMCLI falls, to wit:

SECTION 2.57.3. *Persons Required to Deduct and Withhold*. – The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:

(A) In general, any judicial person, whether or not engaged in trade or business:

x x x x

Agents, employees or any person purchasing goods or services, paying for and in behalf of the aforesaid withholding agents shall likewise withhold in their behalf, provided that the official receipts of payments/sales invoice shall be issued in the name of the person whom the former represents and the **corresponding certificates of taxes withheld (BIR Form No. 2307) shall immediately be issued upon withholding of the tax**.

x x x x.[180] (Emphasis supplied; underscoring omitted)

Finally, the same RR likewise appoints the time when the 2% CWT should be withheld, under Section 2.57.4 thereof:

SECTION 2.57.4. *Time of Withholding*. — The obligation of the payor to deduct and withhold the tax under Section 2.57 of the Regulations arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The terms [sic] "payable" refers to the date the obligation becomes due, demandable or legally enforceable.

The CWT's design, therefore, for tax creditability, stands on the twin conditions of the withholding agent's withholding the CWT, on the one hand, and the payee's crediting of said amount in its income tax return, on the other.

The black letter of the law is demonstrably clear and, as applied to the present case, prescribes that GMCLI should have remitted the 2% CWT as soon as each Progress Billing was paid and accordingly should have also issued the corresponding BIR Form

[180] As amended by Sec. 5 of RR No. 30-03.

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2307 to RSII in order for the latter to have had a tax credit claim on the same. GMCLI should therefore issue to RSII the pertinent BIR Form 2307 for all its belated withholding of CWT, so that RSII may exhaust the remedies available to it in the law.

It also warrants mentioning that withholding agents who delay the withholding and remittance of the CWT, are liable to pay the 25% surcharge in accordance with Section 248[181] of the National Internal Revenue Code of 1997 (NIRC), 12% interest rate in accordance with R.A. 10963[182] or the TRAIN Law, and the compromise penalty of not less than ₱40,000.00, in compliance with Section 255[183] of the NIRC, and more specifically Annex A[184] of the Revenue Memorandum Order (RMO) No. 7-2015.

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[181] NATIONAL INTERNAL REVENUE CODE OF 1997, Sec. 248 provides:

SEC. 248. ***Civil Penalties***. —

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

[182] OTHERWISE KNOWN AS THE TAX REFORM FOR ACCELERATION AND INCLUSION "TRAIN," December 19, 2017, as implemented by RR No. 21-2018.

[183] NATIONAL INTERNAL REVENUE CODE OF 1997, Sec. 225 provides:

SEC. 255. ***Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation***. — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld

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Finally, this dispute over the construction of a hospital has already been pending for over four years, which in the construction industry exponentially translates to increasingly damaging delay, all the more necessitating resolution at the soonest possible time.

Conclusion

It has been said that earlier forms of arbitration predated laws and organized courts,[185] and that contrary to the notion that arbitration modes are novel and untested, they are actually the courts' "next-of-kin,"[186] perhaps even their progenitors. Along the same vein, the ability of a society to empower alternative modes of dispute resolution is a hallmark of a democracy,[187] with courts exercising their ability to stay their own hands, thereby allowing space for the parties to a dispute to exercise their voluntary autonomy in the name and under the principle of expedited conflict resolutions. This need to enable the quickest and most conclusive conflict resolution possible finds exacting relevance in the case of the

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on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten Thousand Pesos ([₱]10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten Thousand Pesos ([₱]10,000) but not more than Twenty Thousand Pesos ([₱]20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[184] Page 5 of Annex A of RMO No. 7-2015 provides that in case of failure to file and/or pay any internal revenue tax at the time or times required by law or regulation, to compromise the criminal penalty of the fine of not less than ₱10,000 and imprisonment of not less than one (1) year but not more than 10 years, the delinquent taxpayer or withholding agent, as the case may be shall pay ₱40,000.00 if the tax unpaid exceeds ₱1,000,000.00 but does not exceed ₱5,000,000.00.

[185] Frank D. Emerson, *History of Arbitration Practice and Law*, 19 Clev. St. L. Rev. 155 (1970), available at <http://engagedscholarship.csuohio.edu/clevstlrev/vol19/iss1/19>.

[186] Id. at 157.

[187] Id.

construction industry, with its inherently complex dynamics, and with the stakes that involve national interests, not in the least of which are public infrastructure and safety.

The attributes and functions of the CIAC also operatively place it in a hybrid classification, in that it is categorized as a quasi-judicial agency, but its very nature as an arbitral tribunal effectively places it at par with other commercial arbitral tribunals, with their characteristic speed, subject matter authoritativeness and overall autonomy. This amalgamation of its design and utilities created a whole new legal animal, which, like all things novel, poses for the Court a challenge of ascertaining its parameters and remedial routes set by law. Perhaps, unless the legislature deems it fit to create a new and independent set of rules that apply to the CIAC more responsively, the Court must continue to contend with harmonizing varying material rules, all in a manner that is as just as it is tenable under existing laws.

It is central, therefore, that the CIAC be empowered and enabled to fulfill its function as the professionally authoritative venue for settlement of construction disputes, and not straitjacketed to fit into the mold of the court system which it was meant to be an alternative of. To this end, and perhaps somewhat ironically, the courts can contribute best through non-participation, save on the narrowest of grounds. The courts are, after all, ultimately dealers of justice, more so in industries that are of greater consequence, and must remain true to this highest mandate, even if it means relinquishing review powers that, in the sum of things, it was demonstrably not meant to bear.

Further, the Court in this wise irretrievably unravels the previous hesitation to completely remove CIAC awards from the purview of Rule 43 appeals. A clear historical affirmation of their exclusion begs no other consequence, and the Court would be remiss if it insists on maintaining the existing procedural route after the same has been shown to be not only substantively counterintuitive but more so unfounded.

As has been fleshed out by the present controversy, this overarching attempt towards less court litigation and more of alternative conflict resolution in the construction industry must

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only get support from the Court through its own restraint, lest it be accused of being eager towards copious and lengthy litigations, or worse, indifferent to their costs.

WHEREFORE, the Petitions are hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated October 28, 2016 of the Court of Appeals, Sixth Division, in CA-G.R. SP No. 145753 is **PARTIALLY REVERSED** with respect to Ross Systems International, Inc.'s entitlement to the amount of ₱1,088,214.83. The Construction Industry Arbitration Commission's Final Award dated May 10, 2016 is hereby **REINSTATED** with **MODIFICATION**, in that Global Medical Center of Laguna, Inc. is further **ORDERED** to furnish Ross Systems International, Inc. with the pertinent BIR Form 2307, in compliance with Section 2.57.3, Revenue Regulation No. 2-98.

Furthermore, the new ruling of the Court with respect to the modes of judicial review of the Construction Industry Arbitration Commission arbitral awards is accorded **PROSPECTIVE** application and does not apply to appeals therefrom that are currently pending before the Court of Appeals.

SO ORDERED.

Gesmundo, C.J., Inting, Zalameda, M. Lopez, Delos Santos, Gaerlan, and *J. Lopez, JJ.*, concur.

Leonen, J., see separate concurring opinion.

Perlas-Bernabe and *Lazaro-Javier, JJ.*, see separate concurring and dissenting opinions.

Hernando, Carandang, and *Rosario, JJ.*, join the separate concurring and dissenting opinion of *S.A.J* Perlas-Bernabe.

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SEPARATE OPINION

LEONEN, *J.*:

I concur with Associate Justice Alfredo Benjamin S. Caguioa's *ponencia*. These consolidated cases are an opportune time for this Court, sitting *en banc*, to "untangl[e] the relevant laws and case pronouncements on the extent of judicial review of [Construction Industry Arbitration Commission (CIAC)] arbitral awards[,] [and come to] a decisive harmonization of the standing laws on CIAC review[.]"[1]

With this opportunity, I write separately to amplify points previously articulated in *CE Construction Corporation v. Araneta Center, Inc.*[2] and other decisions in which I had served as *ponente*. These had been referenced by the present *ponencia* as informing its conclusions.

An immense degree of deference is due to the findings of arbitral tribunals of the Construction Industry Arbitration Commission (CIAC). The law that created the CIAC, Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law, delineates appellate jurisdiction from rulings of CIAC arbitral tribunals. It stipulates that appeals from such rulings may only be entertained on pure questions of law and only before this Court.

Thus, Rule 43 of the 1997 Rules of Civil Procedure — a provision of procedural, and not of substantive law, which is ill-equipped to vest jurisdiction — is mistaken in allowing appeals to be taken to the Court of Appeals.

Still, CIAC arbitral tribunals' factual findings are not entirely beyond the reach of judicial review. The capacity to pass upon any "grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government"[3] is a constitutionally-enshrined, inalienable dimension of judicial power. Thus, a petition for review on certiorari under Rule 65 — over which the Court of Appeals

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[1] *Ponencia*, p. 8.

[2] 816 Phil. 221 (2017) [Per J. Leonen, Second Division].

[3] CONST., art. VIII, sec. 1, par. 2.

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has jurisdiction — can touch upon factual findings in CIAC arbitral tribunal rulings.

Nevertheless, entertaining Rule 65 petitions must entail an extraordinarily narrow conception of grave abuse of discretion committed by CIAC arbitral tribunals. Entertaining such petitions must be consistent with our general framework on vacating arbitral awards, as seminally expressed in Section 24 of Republic Act No. 876, otherwise known as the Arbitration Law.[4]

Thus, in the context of a Rule 65 petition, the Court of Appeals can review the factual findings of CIAC arbitral tribunals only "in instances when the integrity of the arbitral tribunal itself has been put in jeopardy."[5]

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[4] Republic Act. No. 876 (1953), sec. 24 states:

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 wilfully 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.

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.

[5] *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 229 (2017) [Per J. Leonen, Second Division].

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In addition, because of the basic primacy of the Constitution and the imperative of harmonious application of laws, the Court of Appeals may also review factual findings when there is grave abuse of discretion made by way of violation of the Constitution or our laws. Review of factual findings on any ground which goes into considerations other than the very integrity of a CIAC arbitral tribunal (as contemplated in Section 24 of Republic Act No. 876) or those tribunals' outright violation of the Constitution or laws is an excessive, invalid review via certiorari.

I

The CIAC serves the interest not only of speedy dispute resolution, but also of *authoritative* dispute resolution.[6] It was created with a particular view of enabling "early and expeditious settlement of disputes[,]"[7] aware of the exceptional role of construction to "the furtherance of national development goals."[8] *CE Construction* detailed the legal framework within which the CIAC operates:

> The Construction Industry Arbitration Commission was a creation of Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law. At inception, it was under the administrative supervision of the Philippine Domestic Construction Board which, in turn, was an implementing agency of the Construction Industry Authority of the Philippines (CIAP). The CIAP is presently attached to the Department of Trade and Industry.
>
> The CIAC was created with the specific purpose of an "early and expeditious settlement of disputes" cognizant of the exceptional role of construction to "the furtherance of national development goals."
>
> Section 4 of the Construction Industry Arbitration Law spells out the jurisdiction of the CIAC:
>
> > Section 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the

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[6] Id. at 253.

[7] Executive Order No. 1008 (1995), sec. 2.

[8] Executive Order No. 1008 (1995), Third Whereas Clause.

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> completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Though created by the act of a Chief Executive who then exercised legislative powers concurrently with the Batasang Pambansa, the creation, continuing existence, and competence of the CIAC have since been validated by acts of Congress.

Republic Act No. 9184 or the Government Procurement Reform Act, enacted on January 10, 2003, explicitly recognized and confirmed the competence of the CIAC:

> Section 59. Arbitration. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

Arbitration of construction disputes through the CIAC was formally incorporated into the general statutory framework on alternative dispute resolution through Republic Act No. 9285, the Alternative Dispute Resolution Act of 2004 (ADR Law). Chapter 6, Section 34 of ADR Law made specific reference to the Construction Industry Arbitration Law, while Section 35 confirmed the CIAC's jurisdiction:

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CHAPTER 6
ARBITRATION OF CONSTRUCTION DISPUTES

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.

Section 35. Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitrations is "commercial" pursuant to Section 21 of this Act.[9] (Citations omitted)

The CIAC is a statutory creation. It was created by an executive order promulgated by then President Ferdinand E. Marcos (President Marcos) in the exercise of legislative powers which were then lodged in him. The statute that created it spelled out not only the CIAC's jurisdiction in its Section 4, but also the finality of CIAC decisions and mode of appeal in its Section 19.[10]

CE Construction detailed the intricacies of the CIAC as a statutory creation, even though President Marcos did not use the usual modality (i.e., presidential decree) of his legislative enactments:

Though nominally an "executive order," the Construction Industry Arbitration Law is a statute.

Jurisprudence has clarified that, in exercising legislative powers, then President Marcos did not only use the modality of presidential decrees,

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[9] *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 250-253 (2017) [Per J. Leonen, Second Division].

[10] Executive Order No. 1008 (1995), sec. 19 states:

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.

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but also of executive orders and letters of instruction. Though, this is not to say that all executive orders and letters of instruction issued by him are statutes.

In *Parong, et al. v. Enrile*:

> To form part of the law of the land, the decree, order or [letter of instruction] must be issued by the President in the exercise of his extraordinary power of legislation as contemplated in Section 6 of the 1976 amendments to the Constitution, whenever in his judgment, there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasan[g] Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action.

Associate Justice Irene Cortes noted that certain executive orders and letters of instruction have indeed been on par with President Marcos' more commonly used mode of legislation (i.e., presidential decrees):

> Another problem arises from lack of precision in the appropriate use of one form of issuance as against another. A presidential decree is equivalent to a statute enacted by the legislature, and is thus superior to implementing rules issued as executive orders or letter of instructions. But, it is not unheard of for an executive order to amend or repeal a presidential decree or a letter of instructions to amend an executive order, or lay down a rule of law.

Associate Justice Cortes specifically cited as an example Exec. Order No. 543 (1979), which abolished the Philippine Center for Advanced Studies, a creation of Pres. Decree No. 342 (1973). In disproving that Exec. Order No. 543 was issued merely as an implementing rule, she explained that its object — a state university — could not have fallen under the scope of the President's reorganization powers, for which an executive order issued merely as an implementing rule was sufficient.

The Construction Industry Arbitration Law's own nomenclature reveals the intent that it be a statute. Its whereas clauses and declaration of policy reveal the urgency that impelled immediate action for the President to exercise his concurrent legislative powers.

Any doubt on the statutory efficacy of the Construction Industry Arbitration Law is addressed by Congress' own, voluntary and repeated reference to and affirmation of it as such a law. (See Rep. Act No. 9184 and Rep. Act No. 9285). Rep. Act No. 9285 did not only validate the

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Construction Industry Arbitration Law, it also incorporated it into the general statutory framework of alternative dispute resolution.

Jurisprudence, too, has repeatedly and consistently referred to it as such a "law."[11]

CE Construction further discussed:

The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields.[12]

It drew attention to how the CIAC is a "quasi-judicial, administrative agency equipped with technical proficiency that enables it to efficiently and promptly resolve conflicts."[13] *CE Construction* explained:

The CIAC does not only serve the interest of speedy dispute resolution, it also facilitates *authoritative* dispute resolution. Its authority proceeds not only from juridical legitimacy but equally from technical expertise. The creation of a special adjudicatory body for construction disputes presupposes distinctive and nuanced competence on matters that are conceded to be outside the innate expertise of regular courts and adjudicatory bodies concerned with other specialized fields. The CIAC has the state's confidence concerning the entire technical expanse of construction, defined in jurisprudence as "referring to all on-site works on buildings or altering structures, from land clearance through completion including excavation, erection and assembly and installation of components and equipment."

Jurisprudence has characterized the CIAC as a quasi-judicial, administrative agency equipped with technical proficiency that enables it to efficiently and promptly resolve conflicts:

> [The CIAC] is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of

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[11] Id. at 250-251. *See* fn. 105.

[12] Id. at 253.

[13] Id.

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> powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.

The most recent jurisprudence maintains that the CIAC is a quasi-judicial body. This Court's November 23, 2016 Decision in *Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific* distinguished construction arbitration, as well as voluntary arbitration pursuant to Article 219(14) of the Labor Code, from commercial arbitration. It ruled that commercial arbitral tribunals are *not* quasi-judicial agencies, as they are purely ad hoc bodies operating through contractual consent and as they intend to serve private, proprietary interests. In contrast, voluntary arbitration under the Labor Code and construction arbitration operate through the statutorily vested jurisdiction of government instrumentalities that exist independently of the will of contracting parties and to which these parties submit. They proceed from the public interest imbuing their respective spheres:

> Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law.
>
> Unlike purely commercial relationships, the relationship between capital and labor are heavily impressed with public interest. Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority.
>
> On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same compelling state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers.
>
> Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators.

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> *Notably, the other arbitration body listed in Rule 43 — the Construction Industry Arbitration Commission (CIAC) — is also a government agency attached to the Department of Trade and Industry. Its jurisdiction is likewise conferred by statute. By contrast, the subject-matter jurisdiction of commercial arbitrators is stipulated by the parties*.[14] (Emphasis in the original, citations omitted)

Attesting to the primacy of technical expertise in enabling the CIAC's competence, *CE Construction* noted that technical proficiency is the foremost consideration in being an arbitrator in the CIAC:

> Consistent with the primacy of technical mastery, Section 14 of the Construction Industry Arbitration Law on the qualification of arbitrators provides:
>
> > Section 14. Arbitrators. — A sole arbitrator or three arbitrators may settle a dispute.
> >
> > . . . .
> >
> > Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. They shall not be permanently employed with the CIAC. Instead, they shall render services only when called to arbitrate. For each dispute they settle, they shall be given fees.
>
> Section 8.1 of the Revised Rules of Procedure Governing Construction Arbitration establishes that the foremost qualification of arbitrators shall be technical proficiency. It explicitly enables not only lawyers but also "engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry" to serve as arbitrators:
>
> > Section 8.1. General Qualification of Arbitrators. — The Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. *They shall be technically qualified to resolve any construction dispute expeditiously and equitably*. The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes. (Emphasis supplied)

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[14] Id. at 253-256.

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Of the 87 CIAC-accredited arbitrators as of January 2017, only 33 are lawyers. The majority are experts from construction-related professions or engaged in related fields.

Apart from arbitrators, technical experts aid the CIAC in dispute resolution. Section 15 of the Construction Industry Arbitration Law provides:

> Section 15. Appointment of Experts. — The services of technical or legal experts may be utilized in the settlement of disputes if requested by any of the parties or by the Arbitral Tribunal. If the request for an expert is done by either or by both of the parties, it is necessary that the appointment of the expert be confirmed by the Arbitral Tribunal.
>
> Whenever the parties request for the services of an expert, they shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required.[15] (Citations omitted)

II

In view of the CIAC's unique technical expertise, primacy and immense deference is accorded to CIAC arbitral tribunal decisions. This means that there can only be "a very narrow room for assailing [their] rulings."[16] Accordingly, Section 19 of the Construction Industry Arbitration Law provides that CIAC arbitral awards cannot be assailed, except on pure questions of law and only before this Court:

> 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.

Since the Construction Industry Arbitration Law's adoption in 1985, procedural law and related jurisprudence have made it appear that appeals may also be taken to the Court of Appeals. There, the factual findings of CIAC arbitral tribunals may supposedly be assailed. This has been an unfortunate mistake. The

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[15] Id. at 256-257.

[16] Id. at 257.

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Court of Appeals' supposed appellate jurisdiction to freely review factual issues finds no basis in substantive law.

On February 27, 1991, this Court adopted Circular No. 1-91, "Prescribing the Rules Governing Appeals to the Court of Appeals from a Final Order or Decision of the Court of Tax Appeals and Quasi-Judicial Agencies."

Section 3 of Circular No. 1-91 enabled appeals from decisions of quasi-judicial agencies to be taken to the Court of Appeals on questions of fact, questions of law, or both questions of fact and law. Section 1 made this recourse available in all cases where appeals were "allowed by statute to the Court of Appeals or the Supreme Court." Further, Section 1 also listed some quasi-judicial agencies whose decisions may be appealed to the Court of Appeals. This enumeration did not include the CIAC. Sections 1, 2, and 3 of Circular No. 1-91 read:

1. Scope. — These rules shall apply to appeals from final orders or decision of the Court of Tax Appeals. They shall also apply from final orders or decisions on any quasi-judicial agency from which an appeal is now allowed by statute to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Secretary of Agrarian Reforms and Special Agrarian Courts under RA 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission and Philippine Atomic Energy Commission.

2. Case not covered. — These rules shall not apply to decisions and interlocutory orders of the National Labor Relations Commission or the Secretary of Labor and Employment under the Labor Code of the Philippines, the Central Board of Assessment Appeals, and other quasi-judicial agencies from which no appeal to the courts is prescribed or allowed by statute.

3. Who may appeal and where to appeal. — The appeal of a party affected by a final order, decision, or judgment of the Court of Tax Appeals or of a quasi-judicial agency shall be taken to the Court of Appeals within the period in the manner herein provided, whether the appeal involved

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questions of fact or of law or mixed questions of fact and law. From final judgments or decisions of the Court of Appeals, the aggrieved party may appeal by certiorari to the Supreme Court as provided in Rule 45 of the Rules of Court.

Republic Act No. 7902, amending Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980, was approved on February 23, 1995. It stated that the exclusive original jurisdiction of the Court of Appeals includes "all final judgments, decisions, resolutions, orders or awards of . . . quasi-judicial agencies . . . *except those falling within the appellate jurisdiction of the Supreme Court[:]*"

SECTION 1. Section 9 of Batas Pambansa Blg. 129, as amended, known as the Judiciary Reorganization Act of 1980, is hereby further amended to read as follows:

"Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:

. . . .

"(3) *Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of* Regional Trial Courts and *quasi-judicial agencies*, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, *except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution*, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

. . . . (Emphasis supplied)

On May 16, 1995, this Court adopted Circular No. 1-95, revising Circular No. 1-91. Unlike Circular No. 1-91, Circular No. 1-95 explicitly included the CIAC as among those quasi-judicial agencies whose awards and judgments may be appealed to the Court of Appeals. Section 1 of Circular No. 1-95 reads:

1. SCOPE. — These rules shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in

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the exercise of its quasi-judicial functions. *Among these agencies are the* Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Office of the President, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, and *Construction Industry Arbitration Commission*. (Emphasis supplied)

The rules stated in Circular No. 1-95 were formally included in the 1997 Rules of Civil Procedure. Rule 43, Sections 1, 2, 3, and 5 substantially reproduced[17] Sections 1, 2, 3, and 5 of Circular No.

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[17] RULES OF COURT, Rule 43, secs. 1, 2, 3, and 5 state:

Section 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

Section 2. Cases not covered. — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines. (n)

Section 3. Where to appeal. — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. (n)

. . . .

Section 5. How appeal taken. — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency a quo. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

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1-95.[18] As with Circular No. 1-95, Rule 43, Section 1 expressly includes the CIAC as among those quasi-judicial agencies whose awards and judgments may be appealed to the Court of Appeals.

This Court's 2001 Decision in *Metro Construction v. Chatham Properties*[19] offers a rationalization for why CIAC awards may supposedly be appealed to the Court of Appeals. There, this Court alluded to a "procedural mutation" from Circular No. 1-91, to Circular No. 1-95, and through to the 1997 Rules of Civil Procedure. It also cited Republic Act No. 7902 as statutory basis:

> Through Circular No. 1-91, the Supreme Court intended to establish a uniform procedure for the review of the final orders or decisions of the Court of Tax Appeals and other quasi-judicial agencies provided that an appeal therefrom is then allowed under existing statutes to either the Court of Appeals or the Supreme Court. The Circular designated the Court of Appeals as the reviewing body to resolve questions of fact or of law or mixed questions of fact and law.
>
> It is clear that Circular No. 1-91 covers the CIAC. In the first place, it is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot

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[18] In addition to sec. 1 of Circular No. 1-95 (previously quoted), secs. 2, 3, and 5 provide:

> 2. CASES NOT COVERED. — These rules shall not apply to judgments or final orders issued under the Labor Code of the Philippines.
>
> 3. WHERE TO APPEAL. — An appeal under these rules may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.
>
> . . . .
>
> 5. HOW APPEAL TAKEN. — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the court or agency a quo. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

[19] 418 Phil. 176 (2001) [Per C.J. Davide, Jr., First Division].

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possibly be handled by regular courts. The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.

In the second place, the language of Section 1 of Circular No. 1-91 emphasizes the obvious inclusion of the CIAC even if it is not named in the enumeration of quasi-judicial agencies. The introductory words "[a]mong these agencies are" preceding the enumeration of specific quasi-judicial agencies only highlight the fact that the list is not exclusive or conclusive. Further, the overture stresses and acknowledges the existence of other quasi-judicial agencies not included in the enumeration but should be deemed included. In addition, the CIAC is obviously excluded in the catalogue of cases not covered by the Circular and mentioned in Section 2 thereof for the reason that at the time the Circular took effect, E.O. No. 1008 allows appeals to the Supreme Court on questions of law.

In sum, under Circular No. 1-91, appeals from the arbitral awards of the CIAC may be brought to the Court of Appeals, and not to the Supreme Court alone. The grounds for the appeal are likewise broadened to include appeals on questions of facts and appeals involving mixed questions of fact and law.

The jurisdiction of the Court of Appeals over appeals from final orders or decisions of the CIAC is further fortified by the amendments to B.P. Blg. 129, as introduced by R.A. No. 7902. With the amendments, the Court of Appeals is vested with appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, except "those within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948."

. . . .

Any remaining doubt on the procedural mutation of the provisions on appeal in E.O. No. 1008, vis-à-vis Circular No. 1-91 and R.A. No. 7902, was completely removed with the issuance by the Supreme Court of Revised Administrative Circular No. 1-95 and the 1997 Rules of Civil Procedure. Both categorically include the CIAC in the enumeration of quasi-judicial agencies comprehended therein. Section 3 of the former and Section 3, Rule 43 of the latter, explicitly expand the issues that may be raised in an appeal from quasi-judicial agencies or instrumentalities

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to the Court of Appeals within the period and in the manner therein provided. Indisputably, the review of the CIAC award may involve either questions of fact, of law, or of fact and law.

In view of all the foregoing, we reject MCI's submission that Circular No. 1-91, B.P. Blg. 129, as amended by R.A. 7902, Revised Administrative Circular 1-95, and Rule 43 of the 1997 Rules of Civil Procedure failed to efficaciously modify the provision on appeals in E.O. No. 1008. We further discard MCI's claim that these amendments have the effect of merely changing the forum for appeal from the Supreme Court to the Court of Appeals.[20] (Citations omitted)

It is opportune to repudiate the mistaken notion that appeals on questions of fact of CIAC awards may be coursed through the Court of Appeals. No statute actually vests jurisdiction on the Court of Appeals to entertain petitions for review emanating from the CIAC.

Metro Construction's reference to a "procedural mutation" effected by Circular No. 1-91, Circular No. 1-95, and Rule 43 of the 1997 Rules of Civil Procedure does not broaden the jurisdiction of the Court of Appeals. Neither do the amendments introduced to Batas Pambansa Blg. 129 by Republic Act No. 7902 broaden the Court of Appeals' appellate jurisdiction as to extend it to a factual review of CIAC arbitral awards.

It is elementary that jurisdiction is a matter of substantive law, not of procedural law:

> [J]urisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong." Jurisdiction is a matter of substantive law. Thus, *an action may be filed only with the court or tribunal where the Constitution or a statute says it can be brought*.[21] (Emphasis supplied)

The Construction Industry Arbitration Law — through its Section 19, in relation to this Court's constitutionally-established

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[20] Id. at 202-205.

[21] *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 473, 522 (2014) [Per J. Leonen, Second Division] citing *Villagracia v. Fifth (5th) Shari'a District Court*, 734 Phil. 239 (2014) [Per J. Leonen, Third Division]; and *Nocum v. Tan*, 507 Phil. 620, 626 (2005) [Per J. Chico-Nazario, Second Division]. [Per J. Leonen, Second Division].

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appellate jurisdiction[22] — is the *only* substantive law which pronounces which court has appellate jurisdiction over CIAC arbitral awards: "It shall be final and inappealable *except on questions of law which shall be appealable to the Supreme Court*."

Its pronouncement on how appellate jurisdiction exclusively resided in this Court was not modified or otherwise affected by Republic Act No. 7902.

Batas Pambansa Blg. 129 had long been in force when the Construction Industry Arbitration Law was adopted in 1985. Prior to its amendment in 1995, Section 9(3) of Batas Pambansa Blg. 129 already vested the then Intermediate Appellate Court with exclusive appellate jurisdiction over "final judgments, decisions, resolutions, orders, or awards . . . quasi-judicial agencies . . . except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution," just as Republic Act No. 7902 did with the Court of Appeals:

> SECTION 9. Jurisdiction. — The Intermediate Appellate Court shall exercise:
>
> . . . .
>
> (3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards, or commissions, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

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[22] CONST., art. VIII, sec. 5 (2) (e) states:

> Section 5. The Supreme Court shall have the following powers:
>
> . . . .
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> . . . .
>
> (e) All cases in which only an error or question of law is involved.

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The Construction Industry Arbitration Law could not have been ignorant of the then Intermediate Appellate Court's appellate jurisdiction. When the Construction Industry Arbitration Law made appeals on questions of law exclusive to this Court, it was with a complete awareness that regular appeals could have otherwise also been made available through the Intermediate Appellate Court. Still, it deliberately elected to make no such appeal available.

Section 19 of the Construction Industry Arbitration Law calculatedly made Batas Pambansa Blg. 129, Section 9(3)—a counterpart statutory provision on appellate jurisdiction—ineffectual to appeals involving factual review of CIAC arbitral awards.

Republic Act No. 7902 did amend Batas Pambansa Blg. 129, Section 9(3). However, its amendments added only two statements: first, an enumeration of examples of quasi-judicial agencies whose decisions were subject to the Court of Appeals' appellate jurisdiction;[23] and second, a reference to the Labor Code in its consideration of the exceptions to the Court of Appeals' exclusive appellate jurisdiction.[24]

Thus, despite Republic Act No. 7902's amendments, Batas Pambansa Blg. 129, Section 9(3)'s operative clause remained unchanged, that is, that the renamed Court of Appeals would exercise "[e]xclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of . . . quasi-judicial agencies . . . except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution":

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[23] It inserted the phrase, "including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission[.]"

[24] It inserted the phrase, "the Labor Code of the Philippines under Presidential Decree No. 442, as amended[.]"

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Batas Pambansa Blg. 129	Republic Act No. 7902
SECTION 9. Jurisdiction. — The Intermediate Appellate Court shall exercise:	Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:
. . . .	. . . .
(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of Regional Trial Courts and *quasi-judicial agencies,* instrumentalities, boards, or commissions.	*(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of* Regional Trial Courts and *quasi-judicial agencies,* instrumentalities, boards or commissions,
	including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission,
except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution,	*except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution,*
	the Labor Code of the Philippines under Presidential Decree No. 442, as amended,
the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.	the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
. . . .	. . . .

If, in 1985, this operative clause did not sway the Construction Industry Arbitration Law to enable regular factual appeals to the Intermediate Appellate Court, then, neither should its verbatim restatement, in 1995, enable appeals on factual issues to the Court of Appeals.

With the inefficacy of Republic Act No. 7902, *Metro Construction*'s proffered "procedural mutation" is left with nothing to rely on except, as its own terminology implies, mere provisions of procedural law: first, Circular No. 1-91; second, Circular No. 1-95; and third, Rule 43, Section 1 of the 1997 Rules of Civil Procedure.

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Still, these are not constitutional or statutory substantive law provisions. Thus, they fail to vest appellate jurisdiction over CIAC awards in the Court of Appeals. Contrary to what *Metro Construction* stated, they could not have "broadened"[25] appellate jurisdiction over CIAC awards, or "expand[ed] the issues"[26] (i.e., the subject matter) that may be considered in appeals of CIAC awards.

While there seemed to have been basis for expanding appeals, there has also been an apparent basis for totally restricting appeals.

Another seeming basis for concluding that appellate jurisdiction over CIAC Awards has been altered is A.M. No. 07-11-08-SC, the Special Rules of Court on Alternative Dispute Resolution (the Special ADR Rules). Rule 19.7 of these Rules precludes parties who submit themselves to arbitration from questioning arbitral awards, whether by appeal or by certiorari:

> Rule 19.7. No appeal or certiorari on the merits of an arbitral award. — An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding.
>
> Consequently, a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award.

The disallowance of appeals under the Special ADR Rules is consistent with the ADR Law. While Section 46 of the ADR Law contemplates appeals subsequent to arbitration proceedings, it pertains only to appeals from regional trial court decisions "confirming, vacating, setting aside, modifying or correcting an arbitral award," not to appeals from an arbitral award itself:

> SECTION 46. Appeal from Court Decisions on Arbitral Awards. — A decision of the Regional Trial Court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

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[25] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 203 (2001) [Per C.J. Davide, Jr., First Division].

[26] Id. at 204.

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> The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appellate court to post a counterbond executed in favor of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.

Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation[27] confirms that appeals are not a remedy against arbitral awards:

> 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.[28] (Citations omitted)

However, the same *Fruehauf* Decision has settled that construction arbitration through the quasi-judicial mechanism of the CIAC must be distinguished from general commercial arbitration through contractually established arbitral tribunals. This, even as the ADR Law — in Chapter 6 — references construction arbitration. *Fruehauf* clearly states that "as a quasi-judicial body, the CIAC's awards are specifically made appealable to this Court by law[.]"[29]

Thus, the mechanics of appeals, as originally spelled out by the Construction Industry Arbitration Law in 1985, remain unaltered. Appeals have not been expanded to possibly be coursed through the Court of Appeals, *and* there raise factual issues, as *Metro Construction* and Rule 43 of the 1997 Rules on Civil Procedure state. Neither have they been restricted or entirely negated, as the Special ADR Rules suggest.

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[27] 800 Phil. 721 (2016) [Per J. Brion, Second Division].

[28] Id. at 742-743.

[29] Id. at 749. *See* fn. 109 and sec. 19 of the Construction Industry Arbitration Law.

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III

CE Construction explained the practical import of Rule 43 of the 1997 Rules of Civil Procedure. It emphasized that Rule 43 did not abandon the exclusiveness of appeals to questions of law:

> Rule 43 of the 1997 Rules of Civil Procedure standardizes appeals from quasi-judicial agencies. Rule 43, Section 1 explicitly lists the CIAC as among the quasi-judicial agencies covered by Rule 43. Section 3 indicates that appeals through Petitions for Review under Rule 43 are to "be taken to the Court of Appeals . . . whether the appeal involves questions of fact, of law, or mixed questions of fact and law."
>
> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions of fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC arbitral tribunals must remain limited to questions of law.

Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc. explained the wisdom underlying the limitation of appeals to pure questions of law:

> Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
>
> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation

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> which goes through the entire hierarchy of courts. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

Consistent with this restrictive approach, this Court is duty-bound to be extremely watchful and to ensure that an appeal does not become an ingenious means for undermining the integrity of arbitration or for conveniently setting aside the conclusions that arbitral processes make. Appeals are not an artifice for the parties to undermine the process they voluntarily elected to engage in. To prevent this Court from being a party to such perversion, this Court's primordial inclination must be to uphold the factual findings of arbitral tribunals:

> 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*.[30] (Emphasis supplied, citations omitted)

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[30] *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 258-260 (2017) [Per J. Leonen, Second Division].

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Section 19 of the Construction Industry Arbitration Law's limitation of appeals to questions of law echoes Section 29 of Republic Act No. 876, the Arbitration Law that had previously been in effect:

> SECTION 29. Appeals. — An appeal may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award through certiorari proceedings, *but such appeals shall be limited to questions of law*. The proceedings upon such an appeal, including the judgment thereon shall be governed by the Rules of Court in so far as they are applicable. (Emphasis supplied)

However, despite Section 29, Republic Act No. 876 also provided grounds for vacating arbitral awards. These grounds concern "instances when the integrity of the arbitral tribunal itself has been put in jeopardy":[31]

> 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 wilfully 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

[31] Id. at 229.

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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.

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.

Echoing the four highly exceptional grounds stipulated by Section 24 of Republic Act No. 876, jurisprudence has recognized extremely restrictive grounds for revisiting factual issues involved in an arbitral tribunal's decision. Citing *Spouses David v. Construction Industry and Arbitration Commission*,[32] *CE Construction* explained:

Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the narrowest on grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, *factual findings may be reviewed only in cases where CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process is imperiled.* In *Spouses David v. Construction Industry and Arbitration Commission*:

> We reiterate the rule 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

[32] 479 Phil. 578 (2004) [Per J. Puno, Second Division].

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> definite award upon the subject matter submitted to them was not made.[33] (Emphasis supplied, citations omitted)

More recently, in 2019, *Tondo Medical Center v. Rante*[34] again cited *Spouses David* and explained:

> Thus, questions on whether the CIAC arbitral tribunals conducted their affairs in a haphazard and immodest manner that the most basic integrity of the arbitral process was imperiled are not insulated from judicial review. Thus:
>
> > x x x We reiterate the rule 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.[35] (Citations omitted)

Thus, there may still be factual review of findings made by CIAC arbitral tribunals, but only under very narrow grounds relating to the integrity of the arbitral tribunal.

Rule 65 of the 1997 Rules of Civil Procedure enables the correction of actions in excess of jurisdiction or grave abuse of discretion by bodies or officers exercising judicial or quasi-judicial functions. Rule 65 is a means of operationalizing the constitutionally-enshrined, inalienable dimension of judicial

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[33] *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 260-262 (2017) [Per J. Leonen, Second Division].

[34] G.R. No. 230645, July 1, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65469> [Per J. Reyes, Jr., Second Division].

[35] Id.

power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[36]

Since the CIAC is a "quasi-judicial, administrative agency equipped with technical proficiency that enables it to efficiently and promptly resolve conflicts[,]"[37] a petition for certiorari should rightly be available as a means of redress from the CIAC.

However, the availability of petitions for certiorari as a remedy does not stand by its lonesome. The possibility of relief through such modality must be viewed through the lens of how arbitration under the CIAC exists within the larger, general framework of arbitration put in place, initially by Republic Act No. 876 (the ADR Law), and eventually by Republic Act No. 9285 (the Alternative Dispute Resolution Act of 2004).

To recall, *CE Construction* explained how "[a]rbitration of construction disputes through the CIAC was formally incorporated into the general statutory framework on alternative dispute resolution through [Sections 34 and 35 of] Republic Act No. 9285[.]"[38] Even prior to Republic Act No. 9285, Republic Act No. 9184 (the Government Procurement Reform Act) referenced Republic Act No. 876 in affirming and delineating the competence of the CIAC.

It is with this lens that acknowledges the delimiting statutory framework of Republic Act No. 876 and Republic Act No. 9285 that jurisprudence has maintained that "factual findings of construction arbitrators are final and conclusive and not reviewable"[39] except "in [those] instances when the integrity of the arbitral tribunal itself has been put in jeopardy."[40] *Spouses David* identifies five

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[36] CONST., art. VIII, sec. 1, par. 2.

[37] *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 253 (2017) [Per J. Leonen, Second Division].

[38] Id. at 252.

[39] *Spouses David v. Construction Industry and Arbitration Commission*, 479 Phil. 578, 590 (2004) [Per J. Puno, Second Division].

[40] *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 229 (2017) [Per J. Leonen, Second Division].

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prototypical instances when an arbitral tribunal's award have been put in jeopardy:

> (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.[41]

In view of these, I join the *ponencia* in maintaining that the CIAC's findings of fact may be reviewed by the Court of Appeals on certiorari, that is, on grave abuse of discretion. However, in the unique context of reviewing CIAC arbitral tribunal awards, a calibrated understanding of grave abuse of discretion must govern, that is, the very narrow grounds that go into the integrity of the CIAC arbitral tribunal, and, in addition, outright violations of the Constitution or laws.

To be clear, this calibrated understanding of grave abuse of discretion in the specific context of review via certiorari of CIAC arbitral tribunal awards *does not* undermine the integrity of the remedy of certiorari. The remedial vehicle of a petition for certiorari under Rule 65 was created by this Court pursuant, in particular, to its rule-making power under Article VIII, Section 5 (5) of the 1987 Constitution. This power to "[p]romulgate rules concerning . . . pleading, practice, and procedure in all courts" proceeds from judicial power in general.

Judicial power pertains to our capacity to authoritatively read and interpret laws. Rule 65, then, is an expression of this Court's interpretative authority, one that is applicable to general circumstances involving grave abuse of discretion. In appropriate situations, such an expression may be refined or adjusted, given this

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[41] *Spouses David v. Construction Industry and Arbitration Commission*, 479 Phil. 578, 590-591 (2004) [Per J. Puno, Second Division].

Court's peculiar appreciation of facts and laws. This calibration of grave abuse of discretion and the availability of certiorari vis-à-vis CIAC arbitral awards (which I join the *ponencia* in advancing) is one such situation of a proper refinement or adjustment of how a procedural rule, i.e., Rule 65, previously laid out by this Court should apply.

Beyond the narrow grounds for review on certiorari (i.e., grounds that go into the integrity of the CIAC arbitral tribunal, or outright violations of the Constitution or laws), rulings of the CIAC may be reviewed only by this Court on purely legal questions raised through petitions for review on certiorari. As the *ponencia* explains:

> A harmonization of these conflicting rules leaves the Court with the conclusion that the inclusion of CIAC under Rule 43 appeals is without footing in the legal history of CIAC, and therefore must be unequivocally reversed.
>
> More specifically, the Court holds that the direct recourse of an appeal of a CIAC award on questions of law directly to this Court is the rule, pursuant to E.O 1008 and R.A. 9285, notwithstanding Rule 43 on CA's jurisdiction over quasi-judicial agencies, and Rule 45 in its exclusive application to lower courts. Thus, an appeal from an arbitral award of CIAC may take either of two tracks, as determined by the subject matter of the challenge.
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> On the one hand, if the parties seek to challenge a finding of law of the tribunal, then the same may be appealed only to the Supreme Court under Rule 45. To determine whether or not a question is one of law which may be brought before the Court under Rule 45, it is useful to recall that a question of a question of law involves a doubt or controversy as to what the law is on a certain state of facts, as opposed to a question of fact which involves a doubt or difference that arises as to the truth or falsehood of facts, or when the query necessarily calls for a review and reevaluation of the whole evidence, including the credibility of witnesses, existence of specific surrounding circumstances, and the decided probabilities of the situation. The test here is not the party's characterization of the question before the court, but whether the court may resolve the issue brought to it by solely inquiring as to whether the law was properly applied and without going into a review of the evidence.

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On the other hand, if the parties seek to challenge CIAC's finding of fact, the same may only be allowed under either of two premises, namely assailing the very integrity of the composition of the tribunal, or alleging the arbitral tribunal's violation of the Constitution or positive law, in which cases the appeal may be filed before the CA on these limited grounds through the special civil action of a petition for certiorari under Rule 65, in accordance with Section 4 in relation to Section 1, Rule 65 of the Rules of Civil Procedure:

. . . .

The resort to Rule 65, instead of Rule 43, further finds support in the very nature of the factual circumstances which trigger said exceptional factual review — those that center not on the actual findings of fact but on the integrity of the tribunal that makes these findings, or their compliance with the Constitution or positive law, i.e., any of the following factual allegations: (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 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 or the Arbitration Law (R.A. 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.[42]

The approach outlined by the *ponencia* is consistent with the primacy accorded to arbitral awards, fundamentally, because of arbitration's nature as a dispute resolution mechanism animated by the parties' free and voluntary intent to engage an arbitrator's expertise free from the rigidities of the conventional court system. "Arbitration is a creature of contract[,]"[43] devised precisely to be free of the restraints of litigating in court. This makes it both economically efficient and equitable.

As a creature of contract, arbitration internalizes and limits the cost of dispute resolution between the parties. It is equitable in

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[42] *Ponencia*, pp. 40-43.

[43] W. Michael Reisman, *The Breakdown of the Control Mechanism in ICSID Arbitration*, 1989 DUKE L.J. 739, 745 (1989).

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that, it will free the dockets of courts (which, through taxpayers money is a subsidized means of dispute resolution) enabling them to devote more time, energy, and resources to those conflicts with a more pronounced public interest, such as those where power relations suffer from a greater deficit (e.g., rape and sexual abuse, labor disputes, cases raising questions of social justice, and skewed commercial relations such as consumer grievances), public interest cases (such as those raising constitutional issues), and matters of social order (e.g., criminal cases).

The understanding of arbitration as a creature of contract facilitating the parties' realization of their private ends has particularly ripened in international commercial arbitration:

> In international law, the basic theory of arbitration is simple and rather elegant. Arbitral jurisdiction is entirely consensual. As in Roman law and the systems influenced by it, arbitration is a creature of contract. The arbitrator's powers are derived from the parties' contract. Hence, in the classic sense, an arbitrator is not entitled to do anything unauthorized by the parties: *arbiter nihil extra compromissum facere potest*. An arbitral award rendered within the framework of the common agreement of the parties is itself part of the contract and hence binding on them. Conversely, a purported award which is accomplished in ways inconsistent with the shared contractual expectations of the parties is something to which they had not agreed. The arbitrator has exceeded his power or, to use the technical term, committed an *exces de pouvoir*. If the allegation of such an excess can be sustained, the putative award is null, and may be ignored by the "losing" party.
>
> Arbitration is advantageous to parties because it gives them an additional contractual option for resolving disputes without engaging community structures. It is also advantageous to the community: it allows economical resolution of private disputes that are often diversions from productive activity, without more general disruption and without direct cost to the community. The doctrine of *exces de pouvoir* functions as an indispensable control mechanism in this scheme. Without it, arbitration would lose its character of restrictive delegation and the arbitrator would become a decisionmaker with virtually absolute discretion; whatever limits may have been prescribed by the parties would become

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meaningless because the arbitrator would be answerable effectively to no one. *Exces de pouvoir* thus is the conceptual foundation of control for arbitration.[44] (Citations omitted)

Another author keenly discussed the particular utility of arbitration in commercial relationships. His discussion also explored how the "contractarian model" animated the United States' Federal Arbitration Act's pioneering delineation of the distinctly restrictive grounds for vacating arbitral awards. Quite notably, our own pioneering Arbitral Law, Republic Act No. 876, would adopt in its Section 24 precisely the same restrictive grounds spelled out by the Federal Arbitration Act:

> The contractarian model made sense when applied to commercial relationships because the merchants who employed it typically subscribed to a common set of business practices. When they had disputes, they wanted neutrals grounded in those practices to make decisions based on custom and mutual interest. They did not want anyone, whether a genuine judge or a minor league one, to mechanically apply fixed legal rules.
>
> With [Julius Henry] Cohen as its champion, the American Bar Association's Committee on Commerce, Trade, and Commercial Law succeeded in pushing the [Federal Arbitration Act] through Congress. The Federal Arbitration Act] . . . seems clearly to assume a role for the arbitrator consistent with the contractarian model. That perspective comes through in the provisions for judicial review of awards. Section 10 of the [Federal Arbitration Act] contains a list of four grounds for vacating arbitral awards:
>
> (1) [W]here the award was procured by corruption, fraud, or undue means;
>
> (2) [W]here there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) [W]here 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; or of any other misbehavior by which the rights of any party have been prejudiced; or

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[44] Id. at 745-746.

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> (4) [W]here the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.[45] (Citations omitted)

It would be regressive, both for contracting parties in arbitration and to society in general, for this Court to insist on expansive judicial review of arbitral awards. Unduly expansive judicial review undermines an otherwise effective, self-contained mechanism for dispute resolution. Any form of conflict resolution will see the losing party dissatisfied. Yet it must, at some point, have a definite ending. *Interest rei publicae ut sit finis litium*.[46] The further continuation of otherwise settled conflicts, particularly for those which are distinctly private in character, must be pursued only when there are compelling, ineluctable grounds.

When a private conflict may otherwise be put to rest by the mechanism specifically devised by the parties for it, it is a disservice to the larger community to compel a court to have that conflict be an exclusionary object of its attention. This is what it means to not disturb arbitral awards, lest the integrity of the arbitral tribunal itself be compromised. As, when an arbitral tribunal is wanting in integrity, what are committed are not mere mistakes by erstwhile experts, but a definite offense against fairness and truth; there is then a miscarriage of justice.

Ultimately, the *ponencia* is correct in concluding that the "[Court of Appeals] misapplied its appellate function when it delved into settling the factual matters, and modified the mathematical computation of the CIAC with respect to the presence or absence of an outstanding balance payable to [Ross Systems International, Inc.]."[47] It being error for the Court of Appeals to abandon the

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[45] Paul F. Kirgis, *Judicial Review and the Limits of Arbitral Authority: Lessons from the Law of Contract*, 81 ST. JOHN'S L. REV. 99, 100-101 (2007). Note that Kirgis pursued a critical analysis of the narrowing of grounds for judicial review of arbitral awards, and ultimately maintained the need for "[s]ome modest level of judicial review[.]" (Id. at 121.)

[46] W. Michael Reisman, *The Breakdown of the Control Mechanism in ICSID Arbitration*, 1989 DUKE L.J. 739, 744 (1989).

[47] *Ponencia*, p. 57.

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CIAC arbitral tribunal's award, the assailed Court of Appeals Decision must be reversed, and the arbitral tribunal's award reinstated.

ACCORDINGLY, I vote that the Petition subject of G.R. No. 230112 be **PARTIALLY GRANTED** and the assailed October 28, 2016 Decision of the Court of Appeals in CA-G.R. SP No. 145753 be reversed with respect to Ross Systems International, Inc.'s entitlement to ₱1,088,214.83. The May 10, 2016 Final Award of the arbitral tribunal of the Construction Industry Arbitration Commission must be reinstated subject to the need for petitioner Global Medical Center of Laguna, Inc. to furnish respondent Ross Systems International, Inc. the pertinent BIR Form 2307.

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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> x x x x
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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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> x x x x
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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

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amended to conform to the rule on direct resort to this Court on pure questions of law.[1] (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

x x x x

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**.

x x x x

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

[1] *Ponencia*, pp. 49-50 and 53-55.

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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.[2] (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*.[3] (*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[4] (**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

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[2] *Ponencia*, pp. 44, 45, and 47.

[3] 816 Phil. 221 (2017).

[4] 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.

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(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;[5] 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),[6] 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.[7] To be sure, this latter recognition was actually a modification of the original *ponencia*, which was borne from my submissions during the deliberations in this case, which I have presented in this wise:

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[5] See *ponencia*, p. 21.

[6] See id. at 44-49.

[7] See id. at 20-21.

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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**."[8] (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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> x x x x
>
> 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

[8] See letter to the Court *En Banc* dated April 20, 2021.

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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 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.[9] (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**.[10] This traditional notion of grave

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[9] *Ponencia*, pp. 20-21.

[10] "Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing

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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 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[.]"[11] 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

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jurisprudence." (*Ifurung v. Carpio Morales*, G.R. No. 232131, April 24, 2018, 862 SCRA 684, 701, citing *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 [2013]).

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

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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[12] but to no avail) if only to draw attention to the

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[12] 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 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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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

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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.

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.[13] 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**.[14]

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

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[13] See Section 22 of RA 876.

[14] See Section 4 of EO 1008.

[15] Entitled "CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES" (February 4, 1985).

[16] 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.

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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*[17] (*J Plus*), already recognized that **CIAC arbitral awards "are x x x <u>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</u>**,"[18] *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 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.

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[17] 712 Phil. 587 (2013).

[18] Id. at 601; emphasis and underscoring supplied.

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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.[19] (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:

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;

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[19] Id. at 600-601.

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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**[20] **(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 suppletorily applicable to CIAC arbitration. In fact, with respect to Section 24 of RA 876, its amendatory law, *i.e.*, RA 9285, had already removed the grounds

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[20] **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)

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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.*[21] 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.[22] 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.[23]

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

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[21] 447 Phil. 705 (2003).

[22] See id. at 715-716.

[23] See *J Plus,* supra note 17, at 601.

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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*.[24] (*Hi-Precision*) and *Spouses David v. CIAC*[25] (*Sps. David*), which were cited and adopted in *CE Construction* and *Tondo Medical Center v. Rante*[26] (*Tondo Medical*).

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.'"[27] 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**

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[24] 298-A Phil. 361 (1993).

[25] 479 Phil. 578 (2004).

[26] See G.R. No. 230645, July 1, 2019.

[27] *Hi-Precision,* supra, at 373; emphasis supplied.

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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.[28] (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.[29]

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."[30]

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

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[28] Id. at 373-374.

[29] See *Sps. David,* supra, at 591-592.

[30] *CE Construction,* supra note 3, at 261.

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executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made."[31] 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"[32] 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*.[33] (*DPWH*), citing *Shinryo (Phils.) Company, Inc. v. RRN, Inc*.[34] (*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.
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> 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:

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[31] *Tondo Medical,* supra note 26.

[32] 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.

[33] See G.R. No. 235853, July 13, 2020.

[34] 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.[35] (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.

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

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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 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.[36] (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

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[36] *DPWH,* supra note 33.

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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.

CONCURRING AND DISSENTING OPINION

LAZARO-JAVIER, *J.*:

Essentially, the *Majority* would like to give true force and effect to the legislature's express intent on how and under what grounds the review of domestic arbitral awards should be operationalized. The *Majority* pushes for Rule 45, instead of Rule 43, as the prescribed mode of review for construction arbitration cases. In so doing, the *Ponencia* rejects the following:

> ***First***, the present iteration of Rule 43 stating that a petition for review "shall apply to appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies (is) the . . . Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law."[1]
>
> ***Second***, the consistent and long-standing recognition by the Construction Industry Arbitration Commission, the litigants, and even by this Court that it is the Court of Appeals, no other, which has appellate jurisdiction over CIAC's dispositions (through its panel of arbitrators) in

[1] Decision, p. 38.

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construction arbitration cases ever since Republic Act No. (RA) 7902[2] took effect in 1995.[3]

Third, all our decisions[4] under Rule 45 where we took cognizance of and resolved petitions emanating from the Rule 43 appellate dispositions of the Court of Appeals in CIAC cases brought before it. We ourselves have never before impugned such vesture of jurisdiction in the Court of Appeals. Far from it, we have, for the longest time, explicitly and consistently recognized this jurisdiction *via* our present iteration of Rule 43.

Fourth, the CIAC Revised Rules of Procedure Governing Construction Arbitration[5] which took effect on December 15, 2005. Section 18[6] of the rules similarly echoes the vesture of appellate jurisdiction in the Court of Appeals over construction arbitration cases *via* Rule 43. CIAC is the agency tasked by law to implement the CIAC Law, hence, its interpretation of the law, as borne in the rules, deserves the Court's highest respect.

With due respect, however, the *Majority* appears to have **conflated** the ***vacatur*** and the ***modification or correction*** mechanisms in RA 876[7] and RA 9285[8] and the *Revised CIAC Rules* with

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[2] Amendment to B.P. Blg. 129 Re: Expansion of CA Jurisdiction, Republic Act No. 7902, February 23, 1995.

[3] Decision, p. 30.

[4] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176-208 (2001); *Megaworld Globus Asia, Inc. v. DSM Construction and Development Corp.*, 468 Phil. 305-329 (2004); *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corp.*, 563 Phil. 184-218 (2007); *Empire East Land Holdings, Inc. v. Capitol Industrial Construction Groups, Inc.*, 588 Phil. 156-176 (2008); *Stronghold Insurance Company, Inc. v. Tokyu Construction Company, Ltd.*, 606 Phil. 400-415 (2009).

[5] REVISED RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION, https://ciap.dti.gov.ph/sites/default/files/A.10%20CIAC%20Revised%20Rules%20of%20Procedure%20%28NEW%29.pdf ACCESSED: June 26, 2021.

[6] SECTION 18.2. Petition for Review. — A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

[7] The Arbitration Law, Republic Act No. 876, June 19, 1953.

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the ***appeal*** process also provided for and delineated in the same laws. If the Court should abide by legislative intent, there is *nothing clearer and more explicit* than the **distinctions** between the ***vacatur*** and the ***modification or correction*** mechanisms and the ***appeal*** process in the relevant statutes and implementing rules themselves.

The ***vacatur*** and **correction mechanisms** referred by the *Majority*, **including** the allegedly **exclusive grounds to be invoked** for the **same**, all refer to the **proceedings** at the **Regional Trial Court** and **not the appeal/review proceedings** at the **Court of Appeals**. It is therefore a **leap in logic to restrict** the appeal/review proceedings in the Court of Appeals **solely** to the grounds for vacating or correcting an arbitral award by a Regional Trial Court.

The **"integrity-centered" grounds**[9] referred to by the *Majority* **does not pertain to the appeal/review of the Court of Appeals** but to the **vacatur** and **modification** proceedings before the Regional Trial Court. **On one hand**, RA 876[10] allows the Court of Appeals to entertain **questions of law** in the appeal/review; on the other, RA 9285[11] is **open-ended** as regards the questions that may be raised in the appeal/review process.

To be sure, under both RA 876 and RA 9285, an appeal to the Court of Appeals is **from an order or decision** rendered by the **Regional Trial Court** in **confirming**, vacating, or correcting an arbitral award or otherwise. The appeal/review of the Court of Appeals is **not** from the arbitral award itself. This should **thus**

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[8] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

[9] As is apparent in the two grounds that trigger the exceptional factual review of CIAC arbitral awards, *i.e.*, those that pertain to either the lack of integrity or the imputed unconstitutionality or illegality of the arbitrators or the arbitral process, the contracted grounds are tight enough, but nevertheless embrace and preserve the courts' power to re-examine factual findings of a CIAC arbitral tribunal, precisely when the latter's lack of integrity, or its unconstitutional or illegal actions taint the same. Decision, p. 48.

[10] The Arbitration Law, Republic Act No. 876, June 19, 1953.

[11] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

explain Rule 19.7[12] of the ***Special ADR Rules*** that "[c]onsequently, a party to an arbitration is **precluded** from **filing** an **appeal** or a **petition for *certiorari* questioning** the merits of an **arbitral award**."

However, Section 40 of RA 9285[13] provides that "[a] **CIAC arbitral award need not be confirmed by the Regional Trial Court** to be executory as provided under E.O. No. 1008." Hence, there **will be no order or decision** from the **Regional Trial Court** that may be **appealed to** or **reviewed by the Court of Appeals**, *unless* one of the parties *moved to vacate or correct* a **CIAC** arbitral award before the Regional Trial Court.

Notably, a **CIAC** arbitral award itself is **NOT immune from appeal/review** by the Court of Appeals. A party to an arbitration **DOES NOT** also have to **first** seek to vacate or correct the arbitral award **before** it may be appealed to and reviewed by the Court of Appeals.

The *Majority* nonetheless posits that RA 9285 has re-enacted the appeal procedure under the **original version** of Section 19

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[12] **RULE 19.7.** *No Appeal or Certiorari on the Merits of an Arbitral Award.* — An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding.

Consequently, a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award. (Special Rules of Court on Alternative Dispute Resolution, A.M. No. 07-11-08-SC, September 1, 2009).

[13] **SECTION 40.** *Confirmation of Award*. — The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 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 recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.

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. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004).

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of Executive Order No. (EO) 1008[14] so that the appeal is **now back** to this Court from the Court of Appeals on questions of law and the appeal procedure will already be under Rule 45, Rules of Court, by *certiorari*.[15]

Section 19[16] of EO 1008 (circa 1985), however, cannot be deemed to have been reenacted into RA 9285 (circa 2004). Section 19 states that the arbitral award shall be final and inappealable except on questions of law which shall be brought to the Supreme Court.

While it is true that Section 34 of RA 9285 states that the arbitration of construction disputes shall be governed by EO 1008, this refers only to the **arbitration proceedings proper before the CIAC, not thereafter**. This is clear from the entirety of CHAPTER 6 entitled ARBITRATION OF CONSTRUCTION DISPUTES of RA 9285 which includes Sections 34 to 39, *viz.*:

CHAPTER 6

Arbitration of Construction Disputes

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.

SECTION 35. *Coverage of the Law*. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

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[14] Construction Industry Arbitration Law, Executive Order No. 1008, February 4, 1985.

[15] Decision, p. 13.

[16] **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. (Construction Industry Arbitration Law, Executive Order No. 1008, February 4, 1985)

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The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

SECTION 36. *Authority to Act as Mediator or Arbitrator*. — By written agreement of the parties to a dispute, an arbitrator may act as mediator and a mediator may act as arbitrator. The parties may also agree in writing that, following a successful mediation, the mediator shall issue the settlement agreement in the form of an arbitral award.

SECTION 37. *Appointment of Foreign Arbitrator*. — The Construction Industry Arbitration Commission (CIAC) shall promulgate rules to allow for the appointment of a foreign arbitrator as co-arbitrator or chairman of a tribunal a person who has not been previously accredited by CIAC: Provided, That:

(a) the dispute is a construction dispute in which one party is an international party;

(b) the person to be appointed agreed to abide by the arbitration rules and policies of CIAC;

(c) he/she is either co-arbitrator upon the nomination of the international party; or he/she is the common choice of the two CIAC-accredited arbitrators first appointed, one of whom was nominated by the international party; and

(d) the foreign arbitrator shall be of different nationality from the international party.

SECTION 38. *Applicability to Construction Arbitration*. — The provisions of Section 17(d) of Chapter 2, and Sections 28 and 29 of this Act shall apply to arbitration of construction disputes covered by this Chapter.

SECTION 39. *Court to Dismiss Case Involving a Construction Dispute*. — A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.[17]

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[17] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

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The fact that Section 34 is grouped together with the provisions governing the construction disputes within the jurisdiction of CIAC, the manner by which the parties may choose the arbitrator or mediator who will resolve their dispute, the requisites for appointment of foreign arbitrator, the adoption of certain provisions of RA 9285, specifically Section 17,[18] Chapter 2 on the enforcement of mediated settlement agreement and Sections 28[19] and 29,[20] Chapter 3 on the grant of interim measure of

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[18] **SECTION 17.** *Enforcement of Mediated Settlement Agreements*. — The mediation shall be guided by the following operative principles:

(a) A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsel, if any, and by the mediator.

The parties and their respective counsels shall endeavor to make the terms and condition thereof complete and make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement.

(b) The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in language known to them.

(c) If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court.

(d) The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act No. 876, otherwise known as the Arbitration Law, notwithstanding the provision of Executive Order No. 1008 for mediated disputes outside of the CIAC. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004)

[19] **SECTION 28.** *Grant of Interim Measure of Protection*. — (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted

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protection pending arbitration before the CIAC, means that Section 34[21] in fact refers only to the adoption of EO 1008 governing the

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the nomination and written communication of said nomination and acceptance has been received by the party making the request.

(b) The following rules on interim or provisional relief shall be observed:

(1) Any party may request that provisional relief be granted against the adverse party.

(2) Such relief may be granted:

(i) to prevent irreparable loss or injury;

(ii) to provide security for the performance of any obligation;

(iii) to produce or preserve any evidence; or

(iv) to compel any other appropriate act or omission.

(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.

(5) The order shall be binding upon by the parties.

(6) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004)

[20] **SECTION 29**. *Further Authority for Arbitrator to Grant Interim Measure of Protection*. — Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute following the rules in Section 28, paragraph 2. Such interim measures may include but shall not be limited to preliminary injunction directed against a party, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration. Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004).

[21] **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. (Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004)

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arbitration proceedings before the CIAC and not thereafter when judicial remedies already come into play.

Indeed, after an award or judgment is rendered at the CIAC level, the arbitration process should be deemed to have ended too. Thus, when this award or judgment, *etc*. is challenged in court, the adversarial judicial process begins, not *via* Rule 45 as supposedly prescribed by Section 19 of EO 1008, but *via* Rule 43 and before the Court of Appeals as validly decreed under RA 7902 which is deemed to have long amended Section 19 of EO 1008.

Admittedly, we have the Special Rules of Court on Alternative Dispute Resolution, Rule 19.7 which reads: ". . . a party to an arbitration is precluded from filing an appeal or a petition for *certiorari* questioning the merits of an arbitral tribunal." But these rules should not be construed to repeal a statute enacted by Congress, such as RA 7902, which the Court is conclusively presumed to have known of when it promulgated these Special Rules. Notably, even after the promulgation of the Special Rules in 2009, we did not amend Rule 43. In fact, even in 2019 when we revised our Rules on Civil Procedure, we did not amend Rule 43 insofar as CIAC cases are concerned. We simply continued to recognize the jurisdiction of the Court of Appeals over the dispositions of CIAC *via* Rule 43 pursuant to RA 7902. If at all, Rule 19.7 should be construed as applying only to the process of alternative dispute resolution before arbitration tribunals other than CIAC which is already specifically governed by Rule 43.

In any event, if the *Majority* is correct, that Rule 19.7 should be understood to be absolute and literal, then even the prescribed remedy by the *Ponencia*, a Rule 45 petition to this Court, would also have been prohibited.

More important, RA 9285 took effect in 2004, hence, it is governed by the 1987 Constitution. Section 30, Art. VI[22] of the 1987 Constitution provides that "no law shall be passed increasing the appellate jurisdiction of the Supreme Court as

[22] **SECTION 30**. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

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provided in this Constitution without its advice and consent." On the basis of this provision, therefore, the alleged vesture under the so-called reenacted Section 19 of EO 1008 of "exclusive appellate jurisdiction in the Supreme Court" over CIAC awards, judgments, *etc.*, without its advice and consent, is **unconstitutional**. This must be the reason why despite the effectivity of EO 1008 and its so-called reenactment into RA 9285, the iteration of Rule 43 since 1997 remains the same to this very date, that is, the jurisdiction of the Court of Appeals over CIAC awards, *etc*. remains vested in the Court of Appeals *via* a petition for review. Clearly, in promulgating Rule 43, the Supreme Court has applied RA 7902,[23] and never Section 19 of EO 1008 whether in its original text or as purportedly reenacted.

Further, note the specific provisions in Chapter 7 of RA 9285 on ***judicial review***. If the intention of Section 34 *were* to adopt ***in toto*** EO 1008 (specifically Section 19) and not only the provisions with respect to the ***voluntary*** dispute resolution of ***arbitration***, RA 9285 *would not have* enacted Chapter 7 and *would not have* provided specific provisions on ***judicial review*** by the Regional Trial Court, *viz.*:

A. DOMESTIC AWARDS

SECTION 40. *Confirmation of Award*. — The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. No. 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 recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.

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.[24]

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[23] Amendment to B.P. Blg. 129 Re: Expansion of CA Jurisdiction, Republic Act No. 7902, February 23, 1995.

[24] Alternative Dispute Resolution Act of 2004, Republic Act No. 9285, April 2, 2004.

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Too, if Section 34 of RA 9285 *were all encompassing*, there **would have been no need for Congress** to enact the last paragraph of Section 40 of RA 9285, *viz.*:

> 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.[25]

Further, **note that** Section 40 is actually a ***mere reiteration*** of Section 20 of EO 1008, *viz.*:

> **SECTION 20.** *Execution and Enforcement of Awards*. — As soon as a decision, order or award has become final and executory, the Arbitral Tribunal or the single arbitrator with the occurrence of the CIAC shall *motu proprio*, or on motion of any interested party, issue a writ of execution requiring any sheriff or other proper officer to execute said decision, order or award.[26]

Yet, Congress ***still included*** this portion of Section 40 in RA 9285. This shows even more that the adoption of EO 1008 into RA 9285 applies only to the provisions pertaining to the arbitration proceeding proper before the CIAC and does not include the adoption of the provisions on judicial remedies.

If truly the intent of Section 34 were truly what the *Majority* asserts it to be, Section 40 would have been an **unnecessary provision**. But Congress **could not have** enacted a **useless provision**. The fact that the last paragraph of Section 40 was enacted **only means** that Section 34 is **not all encompassing** as the *Ponencia* says it is.

I cannot subscribe to the position of the *Majority* that since Section 19 of EO 1008 originally took effect in 1985 under the 1973 Constitution where advice and consent of the Supreme Court was not yet required,[27] its reenactment into RA 9285, *albeit* the same took effect under the new Constitution, remains exempt from

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[25] Id.

[26] Construction Industry Arbitration Law, Executive Order No. 1008, February 4, 1985.

[27] Decision, p. 26.

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complying with the consent and advice requirement. Surely, every provision of law even that which has been simply reenacted, is, in the eyes of the Constitution, a new provision altogether. As such, it must comply with the requirements of the Constitution effective at the time it is passed and becomes effective. It is absurd to say that most of the provisions of RA 9285 are governed by the 1987 Constitution while one stand out provision remains governed by the 1973 Constitution.

At any rate, in promulgating every single provision in the Rules of Court, the Highest Court of the land is conclusively presumed to know all the relevant existing laws and it will never promulgate rules contrary thereto. To repeat, the claim that the appeal jurisdiction over CIAC arbitral awards has reverted back to the Supreme Court pursuant to Section 34 of RA 9285, specifically pertaining to Section 19 of EO 1008, has no legal basis, nay, unconstitutional. The appellate jurisdiction over CIAC arbitral awards is still with the Court of Appeals and the appellate procedure for this purpose is still under Rule 43 of the Rules of Court.

As for the grounds upon which the appeal to the Court of Appeals is made, the same cannot be restricted to the grounds impacting on the arbitral tribunal's integrity. RA 7902 provides questions of law as the ground for appeal. These are not limited to issues about the integrity of the arbitral tribunal. Questions of law include whether on the basis of the facts on record, the standard of proof has been satisfied. They assume the credibility and reliability of the factual findings of the arbitral tribunal but ask: *Did the claimant prove its case according to the standard of proof demanded by the case?*

Going now to Rule 65, the same is always available where there is grave abuse of discretion amounting to excess or lack of jurisdiction and there is no appeal or any plain, speedy, or adequate remedy available in the ordinary course of law. But even though appeal may be available, Rule 65 may still be resorted to if appeal is not a plain speedy or adequate remedy to the aggrieved party under the circumstances. There is no question that Rule 65 is the appropriate remedy where the CIAC acted with grave abuse of discretion, amounting to excess or lack of jurisdiction. I agree

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with Senior Associate Justice Estela Perlas-Bernabe that this ground cannot be altered or narrowed down by the Court into just:

> The resort to Rule 65, instead of Rule 43, further finds support in the very nature of the factual circumstances which trigger said exceptional factual review — those that center not on the actual findings of fact but on the integrity of the tribunal that makes these findings, or their compliance with the Constitution or positive law, *i.e.*, any of the following factual allegations: (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 hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section 9 of R.A. 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.[28]

This is discriminatory, hence, **violative of the equal protection clause**.

In any case, the Court cannot rule that Rule 65, and exclusively on such limited grounds, is the only remedy available at the Court of Appeals. To emphasize, this pronouncement is contrary to RA 7902 which defines the remedy as an appeal and the ground as questions of law. In the exercise of its rule-making power, the Court had, over two (2) decades ago, identified the procedure of this appeal as falling under Rule 43. This determination by the Court is of course correct. The remedy cannot be under Rule 65 because it is not an appeal procedure.

Finally, because the *Majority* pushes for the abandonment of our nearly 24-year-old Rule 43 and the countless cases we resolved upholding it, there is also the consequent abandonment of the present CIAC Rules, ***albeit* CIAC is not before us and has not been heard**. Most of all, the issue whether we should revise Rule 43 and, thus, prescribe a new mode of review is being *motu proprio* advocated, in violation of the Court's strict procedure in revising the provisions of the Rules of Court. Included in this

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[28] Decision, p. 40.

procedure are the creation of a corresponding sub-committee to undertake the study of the proposed amendment and the invitation to the stakeholders to participate and be heard in the process, among others. The amendment of Rule 43, with all its serious repercussions, cannot be done hastily here and now, nay, sharply departing from our prescribed rules on amendments. More so because the appeal or review procedure we now seek to overhaul is not even the subject of the present cases before us now. Thus, the parties are absolutely unaware of this issue and consequently have not been heard thereon.

Lastly, I respectfully **stress** the Court's efforts to **empower** our lower courts, especially the third level appellate courts, by **decentralizing** the appeal/review process and **entrusting** them with **greater** than the usual **adjudicative jurisdiction** and **responsibility for the decisions** they make. This advocacy **has also helped** the Court to **focus** its attention to some extent only to **cases of transcendental importance and impact**. I respectfully submit that the *Majority* goes **against** this tide of **adjudicative empowerment** and **proper case focus and management**. Allowing the Court of Appeals to take cognizance of the appeal/review from a CIAC Decision **under Rule 43** as there is **no other procedure**, is more in keeping with the time-honored rule that **the transfer of appeals by the Court to subordinate appellate courts is purely a procedural and not a substantive power**.[29]

When the Court resolves to transfer an appeal to a lower court, it only has in mind **practicality** and **efficiency**. Procedural amendments are always aimed to **upgrade the Court's efficiency** by **maxing up the Court of Appeals' capability** before they finally reach the Court. It is actually a **filtering mechanism** adopted by the Court so that by the time a case reaches the Court, the **relevant issues** have already been laid straight and the Court can now be true to its mandate of resolving only issues of transcendental importance and impact. Again, this is to enable the Court to devote its precious time and effort to cases with more pressing issues.

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[29] *Fabian v. Desierto*, 356 Phil. 787, 810 (1998).

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Here, there are **no strong** and **justifiable reasons** to **overhaul** jurisprudence that upholds the **jurisdiction of the Court of Appeals** over appeals/review from **CIAC arbitral awards** and to **reject Rule 43 of the *Rules of Court*** as the **governing procedure** for this purpose. Maintaining the ***status quo*** would **acknowledge** not only the **competence and expertise of arbitrators** and the **generally final nature of their orders and decisions but also the importance to us of ensuring ample protection for the rights of the parties**.

On the **merits, I humbly agree** with the *Majority* that the Court of Appeals erred in awarding RSII the amount of Php1,088,214.83. The decision of the arbitrators **denying** RSII any claim under Progress Billing No. 15 is **based on substantial evidence**. Hence, the Court of Appeals **erred** in modifying the arbitrators' decision on this aspect. GMCLI should furnish RSII with the pertinent BIR Form 2307. This is pursuant to a **straightforward application** of Section 2.57.3 of Revenue Regulation No. 2-98. As applied here, this Revenue Regulation should have already called for GMCLI to remit the 2% CWT as soon as each Progress Billing was paid and to issue the corresponding BIR Form 2307 to RSII in order for the latter to have had a tax credit claim on the same.

ACCORDINGLY, I vote to **PARTIALLY REVERSE** the Decision dated October 28, 2016 of the Court of Appeals in CA-G.R. SP No. 145753 with respect to the entitlement of RSII to the amount of ₱1,088,214.83, and to **REINSTATE with MODIFICATION,** the Arbitrators' Decision dated May 10, 2016. GMCLI should be **ORDERED** to furnish RSII with BIR Form 2307.

However, **I maintain my position that the appellate jurisdiction over CIAC arbitral awards is still with the Court of Appeals and the appellate procedure for this purpose is still under Rule 43 of the Rules of Court**.