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WHEREFORE, the petition is **GRANTED**. The assailed May 29, 2014 Decision and the June 10, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 03976 are **SET ASIDE**. The February 23, 2011 Decision of the Regional Trial Court, Cebu City, Seventh Judicial Region, Branch 7 in Civil Case No. CEB-28524 is **REINSTATED** with **MODIFACATION** in that the 12% interest per annum shall only apply from January 17, 2003 until June 30, 2013 only, after which date and until fully paid, the mortgage indebtedness of Cipriano Repuela and Marcelino Repuela shall earn interest at 6% per annum.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Leonen, JJ*., concur.

SECOND DIVISION

[G.R. No. 220546. December 7, 2016]

LUZON IRON DEVELOPMENT GROUP CORPORATION AND CONSOLIDATED IRON SANDS, LTD., *petitioners, vs.* **BRIDESTONE MINING AND DEVELOPMENT CORPORATION AND ANACONDA MINING AND DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; FORUM SHOPPING; THE PROHIBITION ON FORUM SHOPPING SEEKS TO PREVENT THE POSSIBILITY THAT CONFLICTING DECISIONS WILL BE RENDERED BY TWO TRIBUNALS.— Forum shopping is committed when multiple

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suits involving the same parties and the same causes of action are filed, either simultaneously or successively, for the purpose of obtaining a favorable judgment through means other than appeal or *certiorari*. The prohibition on forum shopping seeks to prevent the possibility that conflicting decisions will be rendered by two tribunals. In *Spouses Arevalo v. Planters Development Bank*, the Court elaborated that forum shopping vexed the court and warranted the dismissal of the complaints.

2. ID.; ID.; ID.; ELEMENTS, CITED; PRESENT IN CASE AT BAR.— There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration. x x x The requirement is only substantial, and not absolute, identity of parties; and there is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case, *even if the latter was not impleaded in the other case*. x x x In *Yap v. Chua*, the Court ruled that identity of causes of action did not mean absolute identity. In the case at bench, both complaints filed before different *fora* involved similar facts and issues, the resolution of which depends on analogous evidence. Thus, the filing of two separate complaints by the petitioners with the RTC and the DENR clearly constitutes forum shopping.

3. ID.; ID.; SUMMONS; SERVICE UPON FOREIGN PRIVATE JURIDICAL ENTITY; THE RULE ON SUMMONS IS BROAD ENOUGH TO COVER CORPORATIONS WHICH HAVE TRANSACTED BUSINESS IN THE PHILIPPINES AND RECOGNIZES ADDITIONAL MODES BY WHICH SUMMONS MAY BE SERVED.— Section 12 of Rule 14 of the Revised Rules of Court provides that "[w]hen the defendant is a foreign private juridical entity which has **transacted business in the Philippines**, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines." The Rule on Summons, as it now reads, thus, makes

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the question whether Consolidated Iron was "doing business in the Philippines" irrelevant as Section 12, Rule 14 of the Rules of Court was broad enough to cover corporations which have "transacted business in the Philippines." In fact, under the present legal milieu, the rules on service of summons on foreign private juridical entities had been expanded as it recognizes additional modes by which summons may be served as provided for under A.M. No. 11-3-6-SC.

4. **CIVIL LAW; CONTRACTS; ARBITRATION CLAUSE; THE ARBITRATION CLAUSE BECOMES OPERATIVE, NOTWITHSTANDING THE LACK OF FORMAL REQUEST, WHEN THE PARTY HAS APPRAISED THE TRIAL COURT OF THE EXISTENCE OF AN ARBITRATION CLAUSE; CASE AT BAR.—** In *Bases Conversion Development Authority v. DMCI Project Developers, Inc*., the Court emphasized that the State favored arbitration, x x x Thus, consistent with the state policy of favoring arbitration, the present TPAA must be construed in such a manner that would give life to the arbitration clause rather than defeat it, if such interpretation is permissible. With this in mind, the Court views the interpretation forwarded by the petitioners as more in line with the state policy favoring arbitration. x x x The petitioners' failure to refer the case for arbitration, however, does not render the arbitration clause in the TPAA inoperative. In *Koppel, Inc. v. Makati Rotary Club Foundation, Inc. (Koppel)*, the Court explained that an arbitration clause becomes operative, notwithstanding the lack of a formal request, when a party has appraised the trial court of the existence of an arbitration clause, x x x As expounded in *Koppel*, however, a formal request is not the sole means of invoking an arbitration clause in a pending suit. Similar to the said case, the petitioners here made the RTC aware of the existence of the arbitration clause in the TPAA as they repeatedly raised this as an issue in all their motions to dismiss. As such, it was enough to activate the arbitration clause and, thus, should have alerted the RTC in proceeding with the case. Moreover, judicial restraint should be exercised pursuant to the competence-competence principle embodied in Rule 2.4 of the Special Rules of Court on Alternative Dispute Resolution. x x x Generally, the action of the court is stayed if the matter raised before it is subject to arbitration.

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APPEARANCES OF COUNSEL

Quisumbing Torres for petitioners.
Lazaro Law Firm for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (*TRO*) seeks to reverse and set aside the September 8, 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 133296, which affirmed the March 18, 2013[2] and September 18, 2013[3] Orders of the Regional Trial Court, Branch 59, Makati City (*RTC*), in the consolidated case for rescission of contract and damages.

The Antecedents.

On October 25, 2012, respondents Bridestone Mining and Development Corporation (*Bridestone*) and Anaconda Mining and Development Corporation (*Anaconda*) filed separate complaints before the RTC for rescission of contract and damages against petitioners Luzon Iron Development Group Corporation (*Luzon Iron*) and Consolidated Iron Sands, Ltd. (*Consolidated Iron*), docketed as Civil Case No. 12-1053 and Civil Case No. 12-1054, respectively. Both complaints sought the rescission of the Tenement Partnership and Acquisition Agreement (*TPAA*)[4] entered into by Luzon Iron and Consolidated Iron, on one hand, and Bridestone and Anaconda, on the other, for the assignment

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[1] Penned by Associate Justice Socorro B. Inting with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Priscilla J. Baltazar-Padilla, concurring; *rollo*, pp. 6-14.

[2] Penned by Presiding Judge Winlove M. Dumayas; *id.* at 843-847.

[3] *Id.* at 922.

[4] *Id.* at 121-134.

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of the Exploration Permit Application of the former in favor of the latter. The complaints also sought the return of the Exploration Permits to Bridestone and Anaconda.[5]

Thereafter, Luzon Iron and Consolidated Iron filed their Special Appearance with Motion to Dismiss[6] separately against Bridestone's complaint and Anaconda's complaint. Both motions to dismiss presented similar grounds for dismissal. They contended that the RTC could not acquire jurisdiction over Consolidated Iron because it was a foreign corporation that had never transacted business in the Philippines. Likewise, they argued that the RTC had no jurisdiction over the subject matter because of an arbitration clause in the TPAA.

On December 19, 2012, the RTC ordered the consolidation of the two cases.[7] Subsequently, Luzon Iron and Consolidated Iron filed their Special Appearance and Supplement to Motions to Dismiss,[8] dated January 31, 2013, seeking the dismissal of the consolidated cases. The petitioners alleged that Bridestone and Anaconda were guilty of forum shopping because they filed similar complaints before the Department of Environment and Natural Resources (*DENR*), Mines and Geosciences Bureau, Regional Panel of Arbitrators against Luzon Iron.

The RTC Orders

In its March 18, 2013 Order, the RTC denied the motions to dismiss, as well as the supplemental motion to dismiss, finding that Consolidated Iron was doing business in the Philippines, with Luzon Iron as its resident agent. The RTC ruled that it had jurisdiction over the subject matter because under clause 14.8 of the TPAA, the parties could go directly to courts when a direct and/or blatant violation of the provisions of the TPAA

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[5] *Id.* at 22-25.

[6] *Id.* at 195-215, 311-331.

[7] *Id.* at 26.

[8] *Id.* at 375-379.

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had been committed. The RTC also opined that the complaint filed before the DENR did not constitute forum shopping because there was neither identity of parties nor identity of reliefs sought.

Luzon Iron and Consolidated Iron moved for reconsideration, but the RTC denied their motion in its September 18, 2013 Order.

Undaunted, they filed their petition for review with prayer for the issuance of a writ of preliminary injunction and/or TRO before the CA.

The CA Ruling

In its September 8, 2015 Decision, the CA *affirmed* the March 18, 2013 and September 18, 2013 RTC Orders in denying the motions to dismiss and the supplemental motions to dismiss. It agreed that the court acquired jurisdiction over the person of Consolidated Iron because the summons may be validly served through its agent Luzon Iron, considering that the latter was merely the business conduit of the former. The CA also sustained the jurisdiction of the RTC over the subject matter opining that the arbitration clause in the TPAA provided for an exception where parties could directly go to court.

Further, the CA also disregarded the averment of forum shopping, explaining that in the complaint before the RTC, both Consolidated Iron and Luzon Iron were impleaded but in the complaint before the DENR only the latter was impleaded. It stated that there was no identity of relief and no identity of cause of action.

Hence, this appeal raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF CONSOLIDATED IRON;

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II

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CONSOLIDATED CASES; AND

III

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT BRIDESTONE/ANACONDA WERE NOT GUILTY OF FORUM SHOPPING.[9]

Petitioners Luzon Iron and Consolidated Iron insist that the RTC has no jurisdiction over the latter because it is a foreign corporation which is neither doing business nor has transacted business in the Philippines. They argue that there could be no means by which the trial court could acquire jurisdiction over the person of Consolidated Iron under any mode of service of summons. The petitioners claim that the service of summons to Consolidated Iron was defective because the mere fact that Luzon Iron was a wholly-owned subsidiary of Consolidated Iron did not establish that Luzon Iron was the agent of Consolidated Iron. They emphasize that Consolidated Iron and Luzon Iron are two distinct and separate entities.

The petitioners further assert that the trial court had no jurisdiction over the consolidated cases because of the arbitration clause set forth in the TPAA. They reiterate that Luzon Iron and Consolidated Iron were guilty of forum shopping because their DENR complaint contained similar causes of action and reliefs sought. They stress that the very evil sought to be prevented by the prohibition on forum shopping had occurred when the DENR and the RTC issued conflicting orders in dismissing or upholding the complaints filed before them.

Position of Respondents

In their Comment/Opposition,[10] dated January 7, 2016, respondents Bridestone and Anaconda countered that the RTC

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[9] *Id.* at 34.

[10] *Id.* at 1272-1310.

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validly acquired jurisdiction over the person of Consolidated Iron. They posited that Consolidated Iron was doing business in the Philippines as Luzon Iron was merely its conduit. Thus, they insisted that summons could be served to Luzon Iron as Consolidated Iron's agent. Likewise, they denied that they were guilty of forum shopping as the issues and the reliefs prayed for in the complaints before the RTC and the DENR differed.

Further, the respondents asserted that the trial court had jurisdiction over the complaints because the TPAA itself allowed a direct resort before the courts in exceptional circumstances. They cited paragraph 14.8 thereof as basis explaining that when a direct and/or blatant violation of the TPAA had been committed, a party could go directly to the courts. They faulted the petitioners in not moving for the referral of the case for arbitration instead of merely filing a motion to dismiss. They added that actions that are subject to arbitration agreement were merely suspended, and not dismissed.

Reply of Petitioners

In their Reply,[11] dated April 29, 2016, the petitioners stated that Consolidated Iron was not necessarily doing business in the Philippines by merely establishing a wholly-owned subsidiary in the form of Luzon Iron. Also, they asserted that Consolidated Iron had not been validly served the summons because Luzon Iron is neither its resident agent nor its representative in the Philippines. The petitioners explained that Luzon Iron, as a wholly-owned subsidiary, had a separate and distinct personality from Consolidated Iron.

The petitioners explained that Paragraph 14.8 of the TPAA should not be construed as an authority to directly resort to court action in case of a direct and/or blatant violation of the TPAA because such interpretation would render the arbitration clause nugatory. They contended that, even for the sake of argument, the judicial action under the said provisions was limited to issues or matters which were inexistent in the present case.

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[11] *Id.* at 1319-1347.

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They added that a party was not required to file a formal request for arbitration before an arbitration clause became operational. Lastly, they insisted that the respondents were guilty of forum shopping in simultaneously filing complaints before the trial court and the DENR.

The Court's Ruling

The petition is impressed with merit.

Filing of complaints before the RTC and the DENR is forum shopping

Forum shopping is committed when multiple suits involving the same parties and the same causes of action are filed, either simultaneously or successively, for the purpose of obtaining a favorable judgment through means other than appeal or certiorari.[12] The prohibition on forum shopping seeks to prevent the possibility that conflicting decisions will be rendered by two tribunals.[13]

In *Spouses Arevalo v. Planters Development Bank*,[14] the Court elaborated that forum shopping vexed the court and warranted the dismissal of the complaints. Thus:

> Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. **The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court**

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[12] *Vda. de Karaan v. Atty. Aguinaldo*, G.R. No. 182151, September 21, 2015.

[13] *Philippine Postal Corporation v. CA*, 722 Phil. 860 (2013).

[14] 68 Phil. 236 (2012).

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processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.

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What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.

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We emphasize that the grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions. **To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.** The acts committed and described herein can possibly constitute direct contempt.[15] [Emphases supplied]

There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.[16] All the above-stated elements are present in the case at bench.

First, there is identity of parties. In both the complaints before the RTC and the DENR, Luzon Iron was impleaded as defendant while Consolidated Iron was only impleaded in the complaint before the RTC. Even if Consolidated Iron was not impleaded in the DENR complaint, the element still exists. The requirement is only substantial, and not absolute, identity of parties; and

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[15] *Id.* at 25-251.

[16] *Heirs of Marcelo Sotto v. Palicte,* 726 Phil. 651 (2014).

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there is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case, *even if the latter was not impleaded in the other case*.[17] Consolidated Iron and Luzon Iron had a common interest under the TPAA as the latter was a wholly-owned subsidiary of the former.

Second, there is identity of causes of action. A reading of the complaints filed before the RTC and the DENR reveals that they had almost identical causes of action and they prayed for similar reliefs as they ultimately sought the return of their respective Exploration Permit on the ground of the alleged violations of the TPAA committed by the petitioners.[18] In *Yap v. Chua*,[19] the Court ruled that identity of causes of action did not mean absolute identity.

> Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. **The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.** Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. xxx[20] [Emphases supplied]

In the case at bench, both complaints filed before different *fora* involved similar facts and issues, the resolution of which depends on analogous evidence. Thus, the filing of two separate

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[17] *Spouses Santos v. Heirs of Domingo Lustre*, 583 Phil. 118, 127 (2008).

[18] *Rollo*, pp. 528 and 612.

[19] 687 Phil. 392 (2012).

[20] *Id.* at 401.

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complaints by the petitioners with the RTC and the DENR clearly constitutes forum shopping.

It is worth noting that the very evil which the prohibition against forum shopping sought to prevent had happened—the RTC and the DENR had rendered conflicting decisions. The trial court ruled that it had jurisdiction notwithstanding the arbitration clause in the TPAA. On the other hand, the DENR found that it was devoid of jurisdiction because the matter was subject to arbitration.

Summons were not validly served

Section 12 of Rule 14 of the Revised Rules of Court provides that "[w]hen the defendant is a foreign private juridical entity which has **transacted business in the Philippines**, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines."

The Rule on Summons, as it now reads, thus, makes the question whether Consolidated Iron was "doing business in the Philippines" irrelevant as Section 12, Rule 14 of the Rules of Court was broad enough to cover corporations which have "transacted business in the Philippines."

In fact, under the present legal milieu, the rules on service of summons on foreign private juridical entities had been expanded as it recognizes additional modes by which summons may be served. A.M No. 11-3-6-SC[21] thus provides:

> Section 12. Rule 14 of the Rules of Court is hereby amended to read as follows:
>
> "SEC. 12. *Service upon foreign private juridical entity*. — When the defendant is a foreign private juridical entity which has

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[21] Amendment of Section 12, Rule 14 of the Rules of Court on Service Upon Foreign Private Juridical Entity.

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> transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.
>
> If the foreign private juridical entity is not registered in the Philippines or has no resident agent, service may, with leave of court, be effected out of the Philippines through any of the following means:
>
> a) By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;
>
> b) By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the defendant;
>
> c) By facsimile or any recognized electronic means that could generate proof of service; or
>
> d) By such other means as the court may in its discretion direct."

The petitioners are mistaken in arguing that it cannot be served summons because under Section 15, Rule 14 of the Rules of Court, extrajudicial service of summons may be resorted to only when the action is *in rem* or *quasi in rem* and not when the action is *in personam*. The premise of the petitioners is erroneous as the rule on extraterritorial service of summons provided in Section 15, Rule 14 of the Rules of Court is a specific provision dealing precisely with the service of summons on a defendant which does not reside and is not found in the Philippines.[22] On the other hand, Section 12, Rule 14 thereof, specifically applies to a defendant foreign private juridical entity which had **transacted business** in the Philippines. Both rules may provide for similar modes of service of summons, nevertheless, they should only be applied in particular cases,

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[22] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, 677 Phil. 351, 370 (2011).

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with one applicable to defendants which do not reside and are not found in the Philippines and the other to foreign private juridical entities which had transacted business in the Philippines.

In the case at bench, it is crystal clear that Consolidated Iron transacted business in the Philippines as it was a signatory in the TPAA that was executed in Makati. Hence, as the respondents argued, it may be served with the summons in accordance with the modes provided under Section 12, Rule 14 of the Rules of Court.

In *Atiko Trans, Inc. v. Prudential Guarantee and Assurance, Inc.*,[23] the Court elucidated on the means by which summons could be served on a foreign juridical entity, to wit:

> On this score, we find for the petitioners. Before it was amended by A.M. No. 11-3-6-SC, Section 12 of Rule 14 of the Rules of Court reads:
>
> > SEC. 12. *Service upon foreign private juridical entity*. — When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.
>
> Elucidating on the above provision of the Rules of Court, this Court declared in *Pioneer International, Ltd. v. Guadiz, Jr.* that when the defendant is a foreign juridical entity, *service of summons* maybe made upon:
>
> **1. Its resident agent designated in accordance with law for that purpose**;
>
> 2. The government official designated by law to receive summons if the corporation does not have a resident agent; or,
>
> **3. Any of the corporation's officers or agents within the Philippines.**[24] [Emphasis supplied]

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[23] 671 Phil. 388 (2011).

[24] *Id.* at 399-400.

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The Court, however, finds that Consolidated Iron was not properly served with summons through any of the permissible modes under the Rules of Court. Indeed, Consolidated Iron was served with summons through Luzon Iron. Such service of summons, however, was defective.

It is undisputed that Luzon Iron was never registered before the Securities and Exchange Commission (*SEC*) as Consolidated Iron's resident agent. Thus, the service of summons to Consolidated Iron through Luzon Iron cannot be deemed a service to a resident agent[25] under the first mode of service.

Likewise, the respondents err in insisting that Luzon Iron could be served summons as an agent of Consolidated Iron, it being a wholly-owned subsidiary of the latter. The allegations in the complaint must clearly show a connection between the principal foreign corporation and its alleged agent corporation with respect to the transaction in question as a general allegation of agency will not suffice.[26] In other words, the allegations of the complaint taken as whole should be able to convey that the subsidiary is but a business conduit of the principal or that by reason of fraud, their separate and distinct personality should be disregarded.[27] A wholly-owned subsidiary is a distinct and separate entity from its mother corporation and the fact that the latter exercises control over the former does not justify disregarding their separate personality. It is true that under the TPAA, Consolidated Iron wielded great control over the actions of Luzon Iron under the said agreement. This, nonetheless, does not warrant the conclusion that Luzon Iron was a mere conduit of Consolidated Iron. In *Pacific Rehouse Corporation v. CA*,[28] the Court ruled:

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[25] Section 128 of the Corporation Code.

[26] *French Oil Mill Machinery Co., Inc. v. CA*, 356 Phil. 780, 785 (1998).

[27] *Signetics Corporation v. CA*, 296-A Phil. 782, 792 (1993).

[28] 730 Phil. 325 (2014).

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Albeit the RTC bore emphasis on the alleged control exercised by Export Bank upon its subsidiary E-Securities, "[c]ontrol, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. **Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction.** There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case.[29] [Emphasis supplied]

In the case at bench, the complaint merely contained a general statement that Luzon Iron was the resident agent of Consolidated Iron, and that it was a wholly-owned subsidiary of the latter. There was no allegation showing that Luzon Iron was merely a business conduit of Consolidated Iron, or that the latter exercised control over the former to the extent that their separate and distinct personalities should be set aside. Thus, Luzon Iron cannot be deemed as an agent of Consolidated Iron in connection with the third mode of service of summons.

To reiterate, the Court did not acquire jurisdiction over Consolidated Iron because the service of summons, coursed through Luzon Iron, was defective. Luzon Iron was neither the resident agent nor the conduit or agent of Consolidated Iron.

On the abovementioned procedural issues alone, the dismissal of the complaints before the RTC was warranted. Even granting that the complaints were not procedurally defective, there still existed enough reason for the trial court to refrain from proceeding with the case.

Controversy must be referred for arbitration

The petitioners insisted that the RTC had no jurisdiction over the subject matter because under Paragraph 15.1 of the TPAA, any dispute out of or in connection with the TPAA must be resolved by arbitration. The said provision provides:

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[29] *Id.* at 751.

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If, for any reasonable reason, the Parties cannot resolve a material fact, material event or any dispute arising out of or in connection with this TPAA, including any question regarding its existence, validity or termination, within 90 days from its notice, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause 15.1.[30]

The RTC, as the CA agreed, countered that Paragraph 14.8 of the TPAA allowed the parties to directly resort to courts in case of a direct and/or blatant violation of the provisions of the TPAA. Paragraph 14.8 stated:

Each Party agrees not to commence or procure the commencement of any challenge or claim, action, judicial or legislative enquiry, review or other investigation into the sufficiency, validity, legality or constitutionality of (i) the assignments of the Exploration Permit Applications(s) (sic) to LIDGC, (ii) any other assignments contemplated by this TPAA, and/or (iii) or (sic) any agreement to which the Exploration Permit Application(s) may be converted, unless a direct and/or blatant violation of the provisions of the TPAA has been committed.[31]

In *Bases Conversion Development Authority v. DMCI Project Developers, Inc.*,[32] the Court emphasized that the State favored arbitration, to wit:

The state adopts a policy in favor of arbitration. Republic Act No. 9285 expresses this policy:

SEC. 2. *Declaration of Policy.* — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. **Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial**

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[30] *Rollo*, pp. 131-132.

[31] *Id.* at 128.

[32] G.R. No. 173137, January 11, 2016.

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justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time.

Our policy in favor of party autonomy in resolving disputes has been reflected in our laws as early as 1949 when our Civil Code was approved. Republic Act No. 876 later explicitly recognized the validity and enforceability of parties' decision to submit disputes and related issues to arbitration.

Arbitration agreements are liberally construed in favor of proceeding to arbitration. We adopt the interpretation that would render effective an arbitration clause if the terms of the agreement allow for such interpretation.[33] [Emphases supplied]

Thus, consistent with the state policy of favoring arbitration, the present TPAA must be construed in such a manner that would give life to the arbitration clause rather than defeat it, if such interpretation is permissible. With this in mind, the Court views the interpretation forwarded by the petitioners as more in line with the state policy favoring arbitration.

Paragraphs 14.8 and 15.1 of the TPAA should be harmonized in such a way that the arbitration clause is given life, especially since such construction is possible in the case at bench. A synchronized reading of the abovementioned TPAA provisions will show that a claim or action raising the sufficiency, validity, legality or constitutionality of: (a) the assignments of the EP to Luzon Iron; (b) any other assignments contemplated by the TPAA; or (c) any agreement to which the EPs may be converted, may be instituted only when there is a direct and/or blatant violation of the TPAA. In turn, the said action or claim is

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[33] *Id.*

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commenced by proceeding with arbitration, as espoused in the TPAA.

The Court disagrees with the respondents that Paragraph 14.8 of the TPAA should be construed as an exception to the arbitration clause where direct court action may be resorted to in case of direct and/or blatant violation of the TPAA occurs. If such interpretation is to be espoused, the arbitration clause would be rendered inutile as practically all matters may be directly brought before the courts. Such construction is anathema to the policy favoring arbitration.

A closer perusal of the TPAA will also reveal that paragraph 14 and all its sub-paragraphs are general provisions, whereas paragraphs 15 and all its sub-clauses specifically refer to arbitration. When general and specific provisions are inconsistent, the specific provision shall be paramount and govern the general provision.[34]

The petitioners' failure to refer the case for arbitration, however, does not render the arbitration clause in the TPAA inoperative. In *Koppel, Inc. v. Makati Rotary Club Foundation, Inc. (Koppel)*,[35] the Court explained that an arbitration clause becomes operative, notwithstanding the lack of a formal request, when a party has appraised the trial court of the existence of an arbitration clause, *viz*:

xxx The operation of the arbitration clause in this case is not at all defeated by the failure of the petitioner to file a formal "*request*" or application therefor with the MeTC. We find that the filing of a *"request*" pursuant to Section 24 of R.A. No. 9285 is *not* the sole means by which an arbitration clause may be validly invoked in a pending suit.

Section 24 of R.A. No. 9285 reads:

SEC. 24. *Referral to Arbitration*. — A court before which an action is brought in a matter which is the subject matter of an arbitration

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[34] *TSPIC Corporation v. TSPIC Employees Union*, 568 Phil. 744, 785 (2008).

[35] 717 Phil. 337 (2013).

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agreement shall, if at least one party so requests not later that the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

The "*request*" referred to in the above provision is, in turn, implemented by Rules 4.1 to 4.3 of A.M. No. 07-11-08-SC or the *Special Rules of Court on Alternative Dispute Resolution* (Special ADR Rules):

RULE 4: REFERRAL TO ADR

Rule 4.1. *Who makes the request*. — A party to a pending action filed in violation of the arbitration agreement, whether contained in an arbitration clause or in a submission agreement, may request the court to refer the parties to arbitration in accordance with such agreement.

x x x x x x x x x

Attention must be paid, however, to the salient wordings of Rule 4.1. It reads: "*[a] party to a pending action filed in violation of the arbitration agreement xxx may request the court to refer the parties to arbitration in accordance with such agreement."*

In using the word "*may*" to qualify the act of filing a "request" under Section 24 of R.A. No. 9285, the Special ADR Rules clearly did not intend to limit the invocation of an arbitration agreement in a pending suit solely *via* such "*request.*" After all, non-compliance with an arbitration agreement is a valid defense to any offending suit and, as such, may even be raised in an answer as provided in our ordinary rules of procedure.

In this case, it is conceded that petitioner was not able to file a separate "*request*" of arbitration before the MeTC. **However, it is equally conceded that the petitioner, as early as in its *Answer with Counterclaim*, had already apprised the MeTC of the existence of the arbitration clause** in the *2005 Lease Contract* and, more significantly, of its desire to have the same enforced in this case. **This act of petitioner is enough valid invocation of his right to arbitrate. xxx**[36] [Emphases supplied; italics in the original]

It is undisputed that the petitioners Luzon Iron and Consolidated Iron never made any formal request for arbitration.

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[36] *Id.* at 359-360.

As expounded in *Koppel*, however, a formal request is not the sole means of invoking an arbitration clause in a pending suit. Similar to the said case, the petitioners here made the RTC aware of the existence of the arbitration clause in the TPAA as they repeatedly raised this as an issue in all their motions to dismiss. As such, it was enough to activate the arbitration clause and, thus, should have alerted the RTC in proceeding with the case.

Moreover, judicial restraint should be exercised pursuant to the competence-competence principle embodied in Rule 2.4 of the Special Rules of Court on Alternative Dispute Resolution.[37] The said provision reads:

> RULE 2.4. *Policy Implementing Competence-Competence Principle*. — The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. **When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues.**
>
> Where the court is asked to make a determination of whether the arbitration agreement is null and void, inoperative or incapable of being performed, under this policy of judicial restraint, the court must make no more than a *prima facie* determination of that issue.
>
> Unless the court, pursuant to such *prima facie* determination, concludes that the arbitration agreement is null and void, inoperative or incapable of being performed, the court must suspend the action before it and refer the parties to arbitration pursuant to the arbitration agreement. [Emphasis supplied]

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[37] A.M. No. 07-11-08-SC.

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Generally, the action of the court is stayed if the matter raised before it is subject to arbitration.[38] In the case at bench, however, the complaints filed before the RTC should have been dismissed considering that the petitioners were able to establish the ground for their dismissal, that is, violating the prohibition on forum shopping. The parties, nevertheless, are directed to initiate arbitration proceedings as provided under Paragraph 15.1 of the TPAA.

WHEREFORE, the petition is **GRANTED**. The September 8, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 133296, affirming the March 18, 2013 and September 18, 2013 Orders of the Regional Trial Court, Branch 59, Makati City, is hereby **SET ASIDE**. The complaints in Civil Case Nos. 12-1053 and 12-1054 are **DISMISSED**. The parties, however, are **ORDERED** to commence arbitration proceedings pursuant to Paragraph 15.1 of the Tenement Partnership and Acquisition Agreement.

SO ORDERED.

Carpio (Chairperson), del Castillo, and *Leonen, JJ.*, concur.

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 192925. December 9, 2016]

JOSE RIZAL L. REMO, REYNALDO G. PANALIGAN, TITA L. MATULIN, ISAGANI CASALME, CIPRIANO P. ROXAS, CESARIO S. GUTIERREZ, CELSO A.

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[38] Rule 4.5, A.M. No. 07-11-08-SC.