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WHEREFORE, the petition is **DENIED**. The Decision dated July 19, 2011 of the Court of Appeals in CA-G.R. CV No. 93250 is **AFFIRMED with MODIFICATION** that petitioner Abacus Capital and Investment Corporation is ordered to pay respondent Dr. Ernesto G. Tabujara the principal amount of his investment of ₱3,000,000.00 with interest at the rate of 9.1500% *per annum* from date of demand, January 29, 2002 until finality of this Decision, and interest on interest at the rate of twelve percent (12%) per annum from May 8, 2002 until June 30, 2013 and thereafter, at the rate of six percent (6%) *per annum* until finality of this Decision. The total amount due shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full payment.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *del Castillo, Jardeleza*, and *Gesmundo*,[**] *JJ.*, concur.

SPECIAL THIRD DIVISION

[G.R. Nos. 198916-17. July 23, 2018]

MALAYAN INSURANCE COMPANY, INC., *petitioner, vs.* **ST. FRANCIS SQUARE REALTY CORPORATION,** *respondent.*

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[*] Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018.

[**] Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.

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[G.R. Nos. 198920-21. July 23, 2018]

ST. FRANCIS SQUARE REALTY CORPORATION, *petitioner, vs.* **MALAYAN INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; 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.**—It is well 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 if they are supported by substantial evidence, especially when affirmed by the CA. This is because when technical matters or intricate question of facts are involved, they require for their resolution the expertise, specialized skills and knowledge of a quasi-judicial body. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by the Court on appeal.

2. **ID.; ID.; ID.; INSTANCES WHEN THE FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS MAY BE REVIEWED; CASE AT BAR.**—[F]actual findings of construction arbitrators may be reviewed by the 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; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of

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a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (7) when the findings of the CA are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.After a careful review of the records, the Court finds that St. Francis was able to show that the CIAC imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC. Instead of resolving the said issue, the CIAC failed to explain why input VAT is a direct construction cost.

3. **ID.; ID.; QUESTION OF LAW; MUST NOT INVOLVE AN EXAMINATION OF THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED BY ANY OF THE LITIGANTS, AND THE RESOLUTION OF THE ISSUE MUST SOLELY DEPEND ON WHAT THE LAW PROVIDES ON THE GIVEN SET OF CIRCUMSTANCES; INTERPRETATION OF THE TRUE AGREEMENT OF THE PARTIES IS A QUESTION OF LAW.—**It is not amiss to state that whether input VAT is a direct construction cost and should be included as component of the ARCC is a question of law, and not a question of fact. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants, and the resolution of the issue must solely depend on what the law provides on the given set of circumstances. Where an interpretation of the true agreement between the parties is involved in the appeal, the appeal is in effect an inquiry of the "law" between the parties and their successors in interest, its interpretation necessarily involves a question of law, properly raised in the certiorari proceedings.Perforce, the principle that findings of construction arbitrators on matters belonging to their field of expertise, especially when affirmed by the appellate court, are generally entitled to great respect if not finality, pertain only to factual issues, and not to questions of law, of which the Court is the final arbiter.

4. **TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; INPUT VAT CANNOT BE CONSIDERED WITHIN THE SCOPE AND MEANING OF THE ACTUAL REMAINING CONSTRUCTION COSTS (ARCC), THE BURDEN OF PAYING VAT ULTIMATELY**

TO BE SHOULDERED BY FINAL CONSUMERS; CASE AT BAR.—As a VAT-registered purchaser which has sold condominium units and parking lots in the course of its business, and admitted to have offset input tax from the project against its output tax liabilities, Malayan can no longer claim that input VAT is an additional cost built into the cost of goods and services it purchased and procured from its contractors and suppliers. To allow Malayan to pass the burden of such indirect tax to buyers of the said units and slots, and to further claim that input VAT must still form part of the ARCC, would constitute unjust enrichment at the expense of St. Francis, as the latter's proportionate share in the remaining units would be unduly reduced, while Malayan's share would be increased. Granted that check vouchers, official receipts and other supporting documents indicate that payments made to the contractors and suppliers of the construction project are VAT-inclusive, the Court cannot close its eyes that the burden of paying VAT was ultimately shouldered by final consumers, and that input VAT was indeed used to offset Malayan's output VAT liabilities. In view thereof, the Court rules that input VAT cannot be considered within the scope and meaning of the ARCC, which should be understood in the traditional "construction" sense rather than the "investment," as the actual expenditures necessary to complete the project.

5. **ID.; ID.; ID.; A JOINT VENTURE FOR THE PURPOSE OF UNDERTAKING CONSTRUCTION PROJECTS IS NOT A TAXABLE CORPORATION; THE ASSIGNMENT BY THE OWNER TO DEVELOPER OF THE LATTER'S SHARE IN THE DEVELOPED LOTS UNDER A MEMORANDUM OF SHARING IS NOT SUBJECT TO VAT SINCE THE OWNER, BY CONTRIBUTING HIS PROPERTY NEITHER SELLS, BARTERS OR EXCHANGES GOODS OR PROPERTIES NOR RENDERS ANY SERVICE SUBJECT TO VAT; CASE AT BAR.—**Since St. Francis is entitled to a proportionate share in the reserved units (as will be discussed shortly), the allocation or transfer thereof from Malayan to St. Francis is not subject to VAT, as it does not entail a sale, barter, exchange or lease of goods, properties or services in the course of trade of business. In this regard, the Court takes note of the ruling of the Bureau of Internal Revenue that the allocation of condominium units to partners

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of a joint venture or consortium formed for the purpose of undertaking construction projects as a return on their contribution is not subject to VAT because such allocation is not a sale, barter or exchange of real property done in the ordinary course of business.A joint venture for the purpose of undertaking construction projects, according to the BIR, is not a taxable corporation under Section 22(B) of the Tax Code, and the assignment by the owner to developer of the latter's share in the developed lots under a memorandum of sharing is not VAT since the owner, by contributing his property neither sells, barters or exchanges goods or properties nor renders any service subject to VAT. However, the subsequent disposition by the co-venturers of the areas allocated to them shall be subject to VAT, among other taxes.

6. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; AMBIGUITIES IN A CONTRACT ARE INTERPRETED AGAINST THE PARTY THAT CAUSED THE AMBIGUITY; CASE AT BAR.—**[S]ettled is the rule that ambiguities in a contract are interpreted against the party that caused the ambiguity. "Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it."As the party who drafted the MOA which nebulously defines the term "actual remaining construction cost to complete the project," Malayan has no one to blame but itself why input VAT should not be allowed as part of the ARCC.

7. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; ITS VERY PURPOSE IS TO POINT OUT THE FINDINGS AND CONCLUSIONS OF THE DECISION WHICH IN THE MOVANT'S VIEW ARE NOT SUPPORTED BY LAW OR THE EVIDENCE.—** Contrary to the Dissenting Opinion, what Section 1, Rule 37 provides is that the "aggrieved party may also move for reconsideration upon the grounds that the damages are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law." Section 2, of Rule 37. To be sure, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence. "The movant, therefore, is very often confined to the amplification on further discussion of the same issues already passed upon

by the court. Otherwise, his remedy would not be a reconsideration of the decision but a new trial or some other remedy."

VELASCO, JR., *J.*, *dissenting opinion*:

1. **CIVIL LAW; PRINCIPLE OF UNJUST ENRICHMENT; THE TRANSFER OF VALUE WITHOUT JUST CAUSE OR CONSIDERATION; NOT APPLICABLE IN CASE AT BAR.—**The principle of unjust enrichment is provided under Article 22 of the Civil Code which states: Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter **without just or legal ground**, shall return the same to him.Consistent therewith, this Court held that the fundamental doctrine of unjust enrichment is the transfer of value **without just cause or consideration**. As wisely stated in this Court's January 11, 2016 Decision in this case, "unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead **it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully**."Thus, the first condition for the application of the doctrine is that that **a person is benefited *without a valid basis or justification***.Surely, this condition is absent in this case as Malayan has a just cause or valid basis to credit the Input VAT against the Output VAT under Section 110 of the National Internal Revenue. As this Court first held, "in offsetting its input VAT against output VAT, **Malayan is merely availing of the benefits of the tax credit provisions of the law**, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, **Malayan is justified in including in the ARCC the input VAT** it had paid as part of the contract price of the goods, properties and services it had procured to complete the project."

2. **REMEDIAL LAW; APPEALS; 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; EXCEPTIONS; ABSENT IN CASE AT BAR.—** It is oft-repeated that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is

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confined to specific matters, are generally **accorded not only respect, but also finality, especially when affirmed by the CA and this very Court**. The CIAC possesses that required expertise in the field of construction arbitration and the **factual findings of its construction arbitrators are final and conclusive, not reviewable by this Court on appeal**. The only exceptions are when: (1) [T]he 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.None of these exceptions finds application in this case. Least of all, given the aforequoted rationalizations provided by the CIAC in ruling on the inclusion of the Input VAT in the ARCC, this Court cannot plausibly conclude that it has so "imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC."St. Francis has not even attempted to show, as it cannot, that the CIAC arbitral tribunal conducted its affairs in a "haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled."Instead, St. Francis offered no new argument or any strong and compelling reason to warrant the reversal of the **uniform finding made by the CIAC, the CA, and this Court in its Decision as to the inclusion of the Input VAT**. Thus, there need not be a reconsideration of the issue as to the Input VAT.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ELEMENTS; ESTABLISHED IN CASE AT BAR.—St. Francis is estopped from claiming that Input VAT is, thus, excluded from the ARCC spent by Malayan on the project. Article 1431 of the New Civil Code (NCC) provides that "through estoppel, an admission or representation is rendered **conclusive** upon the person making it and cannot be denied or disproved

as against the person relying thereon." x x x For the principle of estoppel to apply, the following elements must be established: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the actual facts.All the foregoing elements are extant in the present case. By St. Francis' own inclusion of VAT in calculating its own expenses and costs, which it had communicated to Malayan, it cannot be allowed to renege on its own representation and deny Malayan the same privilege of using VAT as a component of the ARCC. That would simply be inequitable.

APPEARANCES OF COUNSEL

Teodoro C. Baroque for St. Francis Square Realty Corporation.
Poblador, Bautista & Reyes for Malayan Insurance Co., Inc.

R E S O L U T I O N

PERALTA, *J.*:

This resolves Malayan Insurance Company, Inc.'s Motion for Partial Reconsideration and St. Francis Square Realty Corporation's Motion for Reconsideration of the Court's Decision dated January 11, 2016, the dispositive portion of which states:

WHEREFORE, premises considered, the Court of Appeals Decision dated January 27, 2011 in CA-G.R. SP Nos. 109286 and 109298, is **AFFIRMED** with the following **MODIFICATIONS**:

1) The total amount of ₱57,474,561.39 should be deducted and excluded from the gross Actual Remaining Construction Cost (ARCC) of ₱562,866,135.02 to arrive at the net ARCC of ₱505,391,573.63;

2) Malayan is entitled to 30% ownership over the reserved units (₱52,966,724.63/₱175,856,325.05), together with

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the corresponding interest in the income realized thereon in the same proportion; while St. Francis is entitled to 70% (₱122,889,598.42/₱175,856,325.05) ownership of the said units, as well as to its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;

3) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion above stated, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, and to render full accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis;

4) Arbitration costs are maintained pursuant to the *pro rata* sharing that the parties had initially shared in accordance with the amounts claimed and counterclaimed by them, namely, St. Francis: ₱936,775.29; and Malayan: ₱127,742.09;

5) Malayan and all others claiming rights under it, are enjoined from exercising acts of ownership over the reserved units relative to the proportionate share awarded to St. Francis;

6) The Register of Deeds of Pasig City is directed to immediately reinstate the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) as the registered owner in the corresponding Condominium Certificates of Title covering the reserved units awarded to St. Francis; and

7) All other awards granted by CIAC in its Award dated 27 May 2009 which are not affected by the above modifications are affirmed. No costs.

SO ORDERED.

Malayan raises the following grounds in support of its motion:

A.

Assuming *arguendo* that interest expense and other cost items were properly excluded from the Actual Remaining Construction Cost ("ARCC"), the *Decision* nonetheless has mathematical and clerical

errors which, if corrected, will entitle *Malayan* to at least 59.9% of the Reserved Units, and not just 30% thereof as was computed in the *Decision*.

A.1. Malayan's interest expense of Php39,348,659.88 was excluded TWICE from the ARCC.

A.2. The sum of the items under "Total Exclusions" is Php15,158,864.73 not Php16,768,864/73, resulting in an over-deduction of Php610,000.00.

A.3. At least 3 items under "Total Exclusions" are fully supported by official receipts, checks and check vouchers and/or other documents. These 3 items were not "unsubstantiated" and should therefore not have been put under "Total Exclusions."

B.

There was no issue in the proceedings *a quo* as to whether Malayan had incurred its ARCC amounting to Php647,319,513.96. This was admitted by the parties and accepted by the arbitral tribunal. At any rate, this amount was proven by substantial evidence.

C.

The entire monetary award of Php21,948,852.39 which *Malayan* paid to TVI (in TVI vs. Malayan docketed as CIAC Case No. 27-2007) should be included in the ARCC, because the components of this award are purely "traditional" or "direct" construction costs.

D.

The "peculiar signification which the parties gave to the tem "Actual Remaining Construction Cost" in the 30 April 2002 Memorandum of Agreement (the "MOA"), prevails over the "primary and general acceptation" of the term "construction cost" in the construction industry.

E.

The terms of the MOA and the contemporaneous acts of the parties indicate that costs incurred to finance the completion of the Project, such as interest expense, must be included in the ARCC.

F.

Malayan implemented the "change orders not due to reconfiguration" with an aggregated value of Php971,796.29 in order to address security,

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safety and marketability concerns. Therefore, these costs should have be included in the ARCC.

G.

Considering that the increase in the costs for "interior design works" is presumed fair and regular, and St. Francis failed to prove otherwise, the *entire* increase should have been included in the ARCC.

H.

The "Contingency Costs" of Php631,154.39 should have been included in the ARCC, because these were necessary to ensure the continued construction of the Project.

I.

There are several costs incurred or paid after June 2006 which were still necessary for the completion of the Project. They should therefore have been included in the ARCC.

J.

Considering that there is no legal basis to exclude any of the costs in *Malayan*'s ARCC in the amount of Php647,319,513.96, St. Francis is *not* entitled to share in the Reserved Units.

K.

St. Francis is *not* entitled to any share in the income from the Reserved Units. Under the MOA, its right to the Reserved Units, if any, and, therefore, to the income therefrom, arises only *after* the determination of the ARCC.

L.

St. Francis's Complaint was without basis. It should therefore be held liable for attorney's fees and arbitration costs.[1]

On the other hand, St. Francis' motion for partial reconsideration takes exception only to the Court's ruling that the input value added tax (VAT) in the amount of ₱45,419,770.44 should be considered as part of the ARCC. St. Francis states that the issue of input VAT is not limited to or purely about

[1] *Rollo*, pp. 1804-1807.

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technical classifications of taxes or accounting rules, and that input VAT can neither be considered an expense under tax laws nor be deemed part of the ARCC under the plain and ordinary meaning of cost. Citing VAT Ruling No. 053-94,[2] St. Francis posits that the VAT paid by a VAT-registered person on his purchases is an asset account in the Balance Sheet and cannot be treated as an expense unless he is exempt from VAT, in which case the VAT paid would form part of the cost to acquire what was purchased. According to St. Francis, this is the reason why under Malayan's own documentary evidence consisting of cash vouchers, input VAT was treated separately from the actual construction cost, and was treated in its audited financial statements under the heading "Other Assets" as opposed to expense.

St. Francis further contends that since Malayan admitted that the input VAT were used to offset its output VAT and thus lessen its tax liability, input VAT can no longer be charged as part of the ARCC. St. Francis asserts that Malayan has not made any actual expenditure as regards the input VAT because Malayan was able recover what it paid for the input VAT when it offset the same against its output VAT. St. Francis theorizes that there will be unjust enrichment if Malayan would be allowed to benefit twice by still including the input VAT in the ARCC, which will result in a corresponding decrease of its share in the reserved units. Finally, St. Francis posits that under the MOA, the reserved units are considered its property and will only be diminished should the ARCC exceed the RCC (Remaining Construction Cost). As such, there is no actual transfer or sale of said units from Malayan to St. Francis, and there would be no occasion for St. Francis to incur input VAT which it can use to offset against its output VAT.

Malayan counters that St. Francis is barred by estoppel from claiming that input VAT should not be included in the ARCC because it included such tax in computing its investment in the project which, in turn was the basis for determining its

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[2] February 9, 1994.

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share in some of the units in the project. In support of its claim of a contemporaneous act revealing the intention of the parties to include input VAT as a component of the ARCC, Malayan calls attention the telefax dated August 1, 2000 where St. Francis included "Com.&VAT" in the amount of ₱47,739,805.00 as part of the "computation for reimbursement" for certain units in the project. Malayan insists that input VAT is considered a cost under the law and the principles of accounting, and is part of the ARCC as contemplated in the MOA.

There is partial merit in both the Motions for Partial Reconsideration filed by St. Francis and Malayan.

It is well 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 if they are supported by substantial evidence, especially when affirmed by the CA.[3] This is because when technical matters or intricate question of facts are involved, they require for their resolution the expertise, specialized skills and knowledge of a quasi-judicial body.[4] In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by the Court on appeal.[5]

To recall, factual findings of construction arbitrators may be reviewed by the 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

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[3] *Philippine Race Horse Trainer's Association v. Piedras Negras Construction and Development Corporation*, 774 Phil. 17, 25 (2015).

[4] *Werr Corporation International v. Highlands Prime, Inc.*, G.R. No. 187543 and *Highlands Prime, Inc. v. Werr Corporation International*, G.R. No. 187580, both dated February 8, 2017.

[5] *Shinryo (Philippines) Company, Inc. v. RRN, Incorporated*, G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *IBEX International, Inc. v. Government Service Insurance System*, 618 Phil. 304, 313 (2009).

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; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (7) when the findings of the CA are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.[6]

After a careful review of the records, the Court finds that St. Francis was able to show that the CIAC imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC. Instead of resolving the said issue, the CIAC failed to explain why input VAT is a direct construction cost, and digressed in this wise:

> Unlike the issue of interest, here, there is no question that input VAT is a direct construction cost and therefore, should be included in the ARCC. The only question that remains is What is the arrangement between Respondent [Malayan] on the one hand and its contractors/ suppliers on the other?
>
> Claimant's [St. Francis] draft decision admits that VAT "*appear to have been deducted from the billings of the concerned supplier or subcontractor totaling ₱45,419,770.44 as reflected in the pertinent cash vouchers in Exhibit R-48-series*." Claimant questions whether said amounts deducted for VAT was actually remitted by Respondent. Thus, Claimant inferentially admits that Respondent is entitled to add the input VAT as part of the ARCC.

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[6] *IBEX International, Inc. v. Government Service Insurance System, supra*, citing *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, 540 Phil. 350 (2009) and *David v. Construction Industry and Arbitration Commission*, 479 Phil. 578 (2004).

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While "*submission of the quarterly and annual VAT return*" would have provided incontrovertible proof of Respondent's remittance to the BIR, as Claimant asserts, there is no prohibition against considering the pertinent cash vouchers. Examination of the documentary evidence submitted by Respondent (**Exhibit R-44** and **Exhibit R-48**), series) as well as those submitted by Claimant itself (**Exhibits C-7 up to C-40**) has persuaded the Tribunal of their sufficiency to show such remittance. As earlier pointed out, the two Reports (Surequest and DSL) supports this conclusion. Moreover, the contract entered into by the Claimant which were assumed by Respondent under the MOA, included VAT as part of costs.

It is accordingly the **holding** of this Arbitral Tribunal to **ALLOW** the input Value Added Taxes ("VAT") paid to the government for goods and services utilized for the Project to remain in the ARCC.[7]

Stressing that the factual findings of the CIAC are generally conclusive and binding upon it, the CA found that a meticulous examination of the voluminous records and check vouchers would clearly show that in the payment of contracts and construction materials, Malayan had deducted input VAT of 1/11% and 2% withholding tax from the contract price or construction costs. The CA held that payment of input VAT was automatically deducted from the total obligations paid to contractors and suppliers, and that the documentary evidence submitted by Malayan and St. Francis had led the CIAC to that they were sufficient to show proof of remittance to the government of the input VAT. Without resolving the question of law as to whether input VAT is a direct construction cost, the CA concluded that the summary and cash vouchers presented by Malayan totaling ₱47,593,994.29 are sufficient proof of the filing and payment of input VAT.

When St. Francis raised in its petition for review the issue of whether input VAT should be included in the computation of the ARCC, the Court initially ruled as follows:

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[7] *Rollo* (G.R. Nos. 198920-21), Vol. II, p. 574. (Emphasis in the original; underscoring added)

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The Court finds no compelling reason to disturb the consistent findings of the CA and the CIAC that Input VAT should be allowed to remain in the ARCC. As aptly pointed out by the CA and the CIAC, ARCC refers to the actual expenditures made by Malayan to complete the project. The Court thus agrees with Malayan that in determining whether input VAT should be included as ARCC, the issue is not the technical classification of taxes under accounting rules, but whether such tax was incurred and paid as part of the construction cost. Given that input VAT is, strictly speaking, a financial cost and not a direct construction cost, it cannot be denied that Malayan had to pay input VAT as part of the contract price of goods and properties purchased, and services procured in order to complete the project. Moreover, that the burden of such tax was shifted to Malayan by its suppliers and contractors is evident from the photocopies of cash vouchers and official receipts on record, which separately indicated the VAT component in accordance with Section 113(B) of the Tax Code.

Anent the claim that it would be unjust and inequitable if Malayan would be allowed to include its input VAT in the ARCC, as well as to offset such tax against it output tax, the Court finds that such coincidence does not result in unjust enrichment at the expense of St. Francis. Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully. In offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, Malayan is justified in including in the ARCC the input VAT it had paid as part of the contract price of the goods, properties and services it had procured to complete the project.

At any rate, St. Francis would also be entitled to avail of the same tax credit provisions upon the eventual sale of its proportionate share of the reserved units allocated and transferred to it by Malayan. It bears emphasis that the allocation of and transfer of such units to St. Francis is subject to output VAT which Malayan could offset against its input VAT. In turn, St. Francis would incur input VAT which it may later offset against its output VAT upon the sale of the said units. This is in accordance with the tax credit method of computing the VAT of a taxpayer whereby the input tax shifted by the seller to

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the buyer is credited against the buyer's output taxes when it in turn sells the taxable goods, properties or services.[8]

It is not amiss to state that whether input VAT is a direct construction cost and should be included as component of the ARCC is a question of law, and not a question of fact. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants, and the resolution of the issue must solely depend on what the law provides on the given set of circumstances.[9] Where an interpretation of the true agreement between the parties is involved in the appeal, the appeal is in effect an inquiry of the "law" between the parties and their successors in interest, its interpretation necessarily involves a question of law, properly raised in the certiorari proceedings.[10] Perforce, the principle that findings of construction arbitrators on matters belonging to their field of expertise, especially when affirmed by the appellate court, are generally entitled to great respect if not finality, pertain only to factual issues, and not to questions of law, of which the Court is the final arbiter.

The Court previously ruled that input VAT is a financial cost, not a direct construction cost, but went on to state that such VAT should be included in the ARCC because the cash vouchers and receipts showed that Malayan's payment to the contractors and suppliers included the same tax. In deciding such question of law, however, the Court overlooked the nature of VAT as an indirect and consumption tax which the end users of consumer goods, properties or services ultimately shoulder, as the liability therefor is passed on to them by the providers of goods and services who, in turn, may credit their own VAT liability from the VAT payments they receive from the final

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[8] Citations omitted.

[9] *Heirs of Villanueva v. Heirs of Mendoza*, G.R. No. 209132, June 5, 2017.

[10] *Phil. National Construction Corporation v. Court of Appeals*, 541 Phil. 658, 669-670 (2007).

consumer.[11] For the VAT-registered purchaser, the tax burden passed on does not constitute cost, but input tax which is creditable against his output tax liabilities; conversely, it is only in the case of a non-VAT purchaser that VAT forms part of cost of the purchase price.[12] The input tax passed on to the final consumers, like the buyers of Malayan's condominium units and parking slots, thus becomes part of their acquisition cost of the asset or operating expense.[13]

As a VAT-registered purchaser which has sold condominium units and parking lots in the course of its business, and admitted to have offset input tax from the project against its output tax liabilities,[14] Malayan can no longer claim that input VAT is an

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[11] *The National Internal Revenue Code Annotated*, Vol. II, Hector S. De Leon and Hector M. De Leon, Jr. (2016), p. 5.

[12] *Id*.

[13] *Value Added Tax in the Philippines*, Victorino C. Mamalateo, 2013, p. 13.

[14] *Rollo* (G.R. Nos. 198916-17), Vol. IV, pp. 5238-5239; TSN, March 19, 2009, pp. 276-278. Pertinent portions of the record, read:

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

And you had input VAT for your insurance business and you also (had) input VAT for your sales[?]

MS. G. O. CHENG (RESPONDENT) [Chief Financial Officer and Treasurer of Malayan]

Yes.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT): Did you claim input VAT for your sales.

MS. G. O. CHENG (RESPONDENT):

Yes.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT): Did you claim your input VAT against your output VAT with the Bureau of Internal Revenue?

MS. G. O. CHENG (RESPONDENT):

I am not an accountant. I cannot answer that.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

So who can answer from your side whether the respondent actually claim their total input against their total output?

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additional cost built into the cost of goods and services it purchased and procured from its contractors and suppliers. To allow Malayan to pass the burden of such indirect tax to buyers

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ATTY. A. F. TADIAR (ARBITRATOR):

You are talking about a whole year.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

Yes, for example in 2003 and 2004 for the duration of this project until it was completed.

ATTY. A. F. TADIAR(ARBITRATOR):

It is not a per transaction basis.

MS. G. O. CHENG (RESPONDENT):

Yeah, it's not a per transaction basis.

ATTY. A. F. TADIAR (ARBITRATOR):

It's a whole year.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

Yes, but my question is did you at least [file] for the year . . .

MS. G. O. CHENG (RESPONDENT):

The company filed the necessary tax . . .

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

So there were input VAT offset against output VAT[?]

MS. G. O. CHENG (RESPONDENT):

In concept, yes.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

No, in actual.

MS. G. O. CHENG (RESPONDENT):

Well, because I was not actually involved in the filing, I cannot answer you.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

So who can answer me from your side? Because you are claiming that you had input VAT as evidence[d] by voucher and receipt. This is part of your answer. So I'm just verifying whether you know. So you don't know[?]

MS. C. A. AFUANG (RESPONDENT): [Accountant, Malayan]

Based on my knowledge of the transactions of the company, the input VAT was offset against output VAT.

x x x x x x x x x

of the said units and slots, and to further claim that input VAT must still form part of the ARCC, would constitute unjust enrichment at the expense of St. Francis, as the latter's proportionate share in the remaining units would be unduly reduced, while Malayan's share would be increased. Granted that check vouchers, official receipts and other supporting documents indicate that payments made to the contractors and suppliers of the construction project are VAT-inclusive, the Court cannot close its eyes that the burden of paying VAT was ultimately shouldered by final consumers, and that input VAT was indeed used to offset Malayan's output VAT liabilities. In view thereof, the Court rules that input VAT cannot be considered within the scope and meaning of the ARCC, which should be understood in the traditional "construction" sense rather than the "investment," as the actual expenditures necessary to complete the project.

While it disagrees with St. Francis' claim that the reserved units are considered already under the MOA as its property and will only be diminished should the ARCC exceed the RCC, the Court must agree that there is no actual transfer or sale of said units from Malayan to St. Francis that would cause the latter to incur input VAT.

St. Francis can hardly claim that it is the owner of the reserved units because Section 4(b) of the MOA states that it (formerly ASB Realty Corp.) shall only be entitled to the reserved units in the event that the actual remaining construction costs (*ARCC*) exceed the Remaining Construction Cost (*RCC*), and that Malayan pays for such excess. It is only after the final determination of the ARCC, which is the core issue of this case, that the reserved units in the project may be allotted and transferred to St. Francis. It is even possible that St. Francis would not get any unit if the ARCC spent by Malayan exceeds both the RCC (the ₱452,424,849.00 cost to complete the project as represented by St. Francis to Malayan) and the aggregate value of the disputed reserved units, *i.e.*, ₱175,856,323.05

Since St. Francis is entitled to a proportionate share in the reserved units (as will be discussed shortly), the allocation or

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transfer thereof from Malayan to St. Francis is not subject to VAT, as it does not entail a sale, barter, exchange or lease of goods, properties or services in the course of trade of business. In this regard, the Court takes note of the ruling of the Bureau of Internal Revenue that the allocation of condominium units to partners of a joint venture or consortium formed for the purpose of undertaking construction projects as a return on their contribution is not subject to VAT because such allocation is not a sale, barter or exchange of real property done in the ordinary course of business.[15] A joint venture for the purpose of undertaking construction projects, according to the BIR, is not a taxable corporation under Section 22(B) of the Tax Code, and the assignment by the owner to developer of the latter's share in the developed lots under a memorandum of sharing is not VAT since the owner, by contributing his property neither sells, barters or exchanges goods or properties nor renders any service subject to VAT. However, the subsequent disposition by the co-venturers of the areas allocated to them shall be subject to VAT, among other taxes.[16]

Guided by the foregoing VAT ruling of the BIR, the Court holds that the allocation of the remaining units in the building to St. Francis in accordance with the MOA is not subject to VAT. To recall, the parties initially entered into a Joint Project Development Agreement dated 9 November 1995 whereby (1) Malayan would contribute the property; (2) ASB Realty, Corp. (now St. Francis) would defray the cost of constructing the building; and (3) the parties would allocate the net saleable area of the building between them as return of their capital investment in the project. Unfortunately, ASB underwent rehabilitation and the Securities and Exchange Commission (*SEC*) suspended the performance of ASB's obligations under the said agreement. In order to protect the interest of those who bought units during pre-selling, to preserve its interest in

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[15] *The National Internal Revenue Code Annotated*, Vol. II, Hector S. De Leon and Hector M. De Leon, Jr. (2016), p. 3.

[16] *Id*. at 16-17, citing BIR Ruling No. DA-326-08, October 22, 2008.

the project, as well as its goodwill and reputation, Malayan proposed to complete the project, the terms and conditions of which were accepted by ASB (now St. Francis), and are now embodied in the MOA dated 30 April 2002. It is significant to note that Section 4 of the MOA states that as a return of their capital investment in the project, each party shall be entitled to such portion of all the net saleable area of the building that their respective contributions to the project bear to the actual construction costs. The core issue is the *pro rata* sharing in the remaining net saleable area of the building, consisting of 39 condominium units and 38 parking slots worth ₱175,856,325.05, which can be resolved by determining how much the exact amount of the ARCC exceeded the Remaining Construction Cost (₱452,424,849.00). Having determined the ARCC and finding that St. Francis is entitled to a proportionate share of the remaining units, the Court rules that the allocation of such units clearly involves a return of the parties' capital investments under the MOA, hence, not subject to VAT.

The Dissenting Opinion asserts that the Court can do no worse than disregard St. Francis' own use of input VAT as part of its own computation of the cost needed for the project, because per the telefax dated August 1, 2000 that St. Francis sent to Malayan, St. Francis included VAT in its "computation for reimbursement" for certain units in the Project. The Dissenting Opinion shares the view of Malayan that St. Francis is also estopped from claiming that input VAT is excluded from the ARCC because by St. Francis' own inclusion of VAT in calculating its own expenses and costs which it had communicated to Malayan, it cannot be allowed to renege on its own representation and deny Malayan the same privilege of using VAT as component of the ARCC, for that would simply be inequitable.

Malayan cannot decry that it would go against the precepts of justice and equity if St. Francis would be allowed to claim that input VAT should be excluded from the ARCC, despite having sent Malayan a telefax dated August 1, 2000. The Court stresses that such telefax — whereby St. Francis claimed VAT as part and parcel of its investment, and for which it was allotted

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units in the project—is no longer relevant because Section 20 of the 30 April 2002 MOA clearly provides that such agreement wholly amends and supersedes all previous agreements or contract of the parties in relation to the project, and solely governs the rights and obligations of the parties. In line with the foregoing provision of the MOA, St. Francis' telefax can neither be considered as a contemporaneous act, much less a subsequent one, that reveals the intention of the parties to include input VAT in the computation of the ARCC.

Contrary to the stand of Malayan and of the Dissenting Opinion, the principle of estoppel will not apply because of the absence of its first element, *i.e.*, conduct which amounts to a false representation or concealment of material facts, or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert. The Court holds that it is not enough that St. Francis' telefax is tantamount to "conduct and representation" that input VAT is part and parcel of St. Francis investment in the project, and that Malayan relied on such conduct and representation and, on that basis, allotted units in the project for St. Francis. As the party asserting the presence of estoppel, Malayan bears the burden of proving its allegation that St. Francis committed a "*false representation or concealment of material facts*," or a conduct "*calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert.*" Apart from its bare allegation, Malayan failed to prove that when St. Francis sent the telefax dated August 1, 2000, it was aware that input VAT cannot be considered as a construction cost if credited against output VAT. In fact, the issue of whether input VAT is a construction cost arose only when St. Francis filed a complaint before the CIAC on November 7, 2008 because of the ambiguity of the meaning and scope of the term "ARCC" as used in the MOA dated April 30, 2002.

At any rate, settled is the rule that ambiguities in a contract are interpreted against the party that caused the ambiguity.[17]

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[17] *Fortune Medicare, Inc. v. Amorin*, 729 Phil. 484 (2014).

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"Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it."[18] As the party who drafted the MOA which nebulously defines the term "actual remaining construction cost to complete the project," Malayan has no one to blame but itself why input VAT should not be allowed as part of the ARCC.

The Dissenting Opinion further submits that it cannot be claimed that the inclusion of VAT in the costs has been trounced by the MOA because nothing in the MOA explicitly excludes input VAT from the ARCC. Besides, the core issue of this case is the determination of what expenditures are included in the ARCC in the context of Section 9 of the MOA, which treats "Remaining Construction Cost" (RCC) in general terms.[19] The Dissenting Opinion then stresses that the estimated RCC of ₱452,424,849 in Section 9 of the MOA included the unpaid balance on SEAPAC's contract amounting to ₱35,606,000.00, which was VAT-inclusive as explained by Malayan's witness; thus, input VAT should be allowed as part of the ARCC.

The Court disagrees. While nothing in the MOA explicitly excludes input VAT from the ARCC, neither does the MOA expressly include input VAT from the ARCC. In fact, one of the specific issues raised, but was not resolved by the CIAC and the CA, is whether input VAT paid to the government for goods and services utilized for the project is a cost which should be considered part of the actual remaining cost incurred by Malayan.[20]

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[18] *Id*.

[19] Section 9. Remaining Construction Cost. – (a) [St. Francis] represents and warrants to Malayan that Malayan can complete the Project at a cost not exceeding Four Hundred Fifty-Two Million Four Hundred Twenty-Four Thousand Eight Hundred Forty-Nine Pesos (₱452,424,849) as set forth in [St. Francis'] Construction Budget Report attached hereto and made an integral part hereof as Schedule 9 x x x.

[20] CIAC Award dated May 27, 2009, pp. 7-8: "2.2 Specifically, were the following costs and expenses part of the actual remaining construction cost incurred by Respondent [Malayan] and questioned by Claimant [St. Francis] to wit:

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The Court does not dispute that Malayan's payment of the unpaid balance of SEAPAC's Contract and the Construction Cost Budget in Exhibit I of the SGV Report are VAT-inclusive. Bearing in mind that taxation is the rule while exemption is the exception, it is safe to state that SEAPAC's contract for the curtain wall and aluminum doors and windows of the condominium project, as well as items in the said construction cost budget (like Polystone Builders, Inc.'s sewerage treatment plant works) are subject to VAT — a tax on the taxable sale, barter or exchange of goods, properties or services. Hence, the official receipts of the services of the said construction contractors separately show the VAT component, as required by law. The Court stresses, however, that when Malayan paid the VAT for such services, it also incurred input VAT, which means the value added tax due from or paid by a VAT-registered person in the course of trade or business on importation of goods or local purchase of goods, properties or services, including lease of property, from another VAT-registered person.[21] This is because the buyer becomes entitled to the input tax upon consummation of the sale and issuance of a VAT invoice, in the case of sale of goods or properties, and upon payment of service fee or compensation, in the case of sale of services.[22]

Considering that Malayan admitted that it had offset its input VAT against its output VAT, Malayan is deemed to have decided to pass the burden of the tax to the buyers of the condominium units and parking lots, and it virtually incurred no actual expenditure which could be included in the computation of the ARCC. The Court, therefore, rules that since Malayan had already benefitted from the crediting of the input VAT against its output VAT liabilities, to allow Malayan to claim input VAT as part of the ARCC would result in unjust enrichment:

2.2.4 Input Value Added Tax ("VAT") paid to the government for goods and services utilized for the Project";

[21] Section 110 (A) of the National Internal Revenue Code.

[22] *Value Added Tax in the Philippines*, Victorino C. Mamalateo, 2013, p. 4.

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Malayan's proportionate share in the reserved units would increase whereas that of St. Francis will decrease.

Meanwhile, in arguing that input VAT should be allowed to remain as a component of the ARCC, Malayan cannot successfully rely on BIR Ruling No. 229-15 dated 30 June 2015 to the effect that once shifted to the buyer/customer as an addition to the costs of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods and services. Suffice it to state that Malayan is not the final buyer/customer contemplated in the BIR ruling, because it is a VAT- registered purchaser which, in the ordinary course of its business, has shifted the burden of such indirect tax to the buyers of its condominium units and parking lots, and has also used input VAT to offset its out-put VAT liabilities.

In fine, the Court reverses its ruling and holds that input VAT in the amount of ₱45,419,770.44[23] which is based on the official receipts, check vouchers and other supporting documents marked as Exhibit "*R-48-series*",[24] should be disallowed in the computation of the ARCC.

The Dissenting Opinion, citing Section 1, Rule 37 of the Rules of Court, states that "*Motions for reconsideration should be granted only upon a showing that the "evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.*" It adds, citing *Lazatin v. Desierto*,[25] that "*Decisions of this Court should only be set aside, abandoned, and reversed only on strong and compelling reason, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurable affected and the public's confidence in the stability of the solemn pronouncements diminished.*"

Contrary to the Dissenting Opinion, what Section 1, Rule 37 provides is that the "aggrieved party may also move for

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[23] *Rollo* (G.R. Nos. 198916-17), Vol. IV, p. 5512; Exhibit "*C-50*".

[24] *Rollo* (G.R. Nos. 198916-17), Vols. II & IV, pp. 1370-3600.

[25] 606 Phil. 271 (2000).

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reconsideration upon the grounds that the damages are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law." Section 2, of Rule 37. To be sure, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence. "The movant, therefore, is very often confined to the amplification on further discussion of the same issues already passed upon by the court. Otherwise, his remedy would not be a reconsideration of the decision but a new trial or some other remedy."[26]

After a careful review of the relevant law and jurisprudence, the Court finds that its earlier pronouncement regarding Input VAT is contrary to the nature thereof as an indirect consumption tax which is ultimately shouldered by final consumers, and that there would be unjust enrichment if the same is considered as part of the ARCC, despite the fact that Malayan had used its input VAT from the project to offset its output VAT liabilities.

The Dissenting Opinion's reliance on the afore-quoted phrase in *Lazatin v. Desierto* is also misplaced, because that applies to the doctrine of *stare decisis*, not to a motion for reconsideration, thus:

> The doctrine has assumed such value in our judicial system that the Court has ruled that [a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished. Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.[27]

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[26] *Continental Cement Corporation v. Court of Appeals*, 263 Phil. 686 (1990).

[27] 606 Phil. 271 (2000). (Underscoring supplied)

Suffice it to state that the *stare decisis* is inapplicable to this case because there is no final decision yet, precisely because of the pending motions for reconsideration filed by both Malayan and St. Francis that are being resolved in this Resolution.

Having resolved the sole issue raised by St. Francis in its motion for partial reconsideration, the Court will now discuss in *seriatim* the issues raised by Malayan. It bears emphasis that the Court was constrained to review only those issues where there are conflicting findings of the CA and the CIAC as to the propriety of some arbitral awards, the accuracy of the mathematical computations and the entitlement to claim certain costs as part of the amount necessary to complete the project or ARCC. With respect to the other issues where the CA and the CIAC rendered consistent findings, the Court has also passed upon them, but found no compelling reason as to warrant a modification thereof.

A. Mathematical and clerical errors in the Court's decision which, if corrected will entitled Malayan to at least 59.9% of the reserved units and not just 30% thereof.

After a careful review of the records and a re-computation of the ARCC as will be discussed below, the Court finds that Malayan is entitled to **34%** of the reserved units, while St. Francis is entitled to **66%** of the said units.

A.1. Malayan's interest expense of ₱39,348,659.88 was excluded twice from the ARCC.

After thoroughly going over Exhibit "*R-48-series*", consisting of about 2,230 pages of construction costs computation, receipts, voucher, checks and other documents, the Court finds nothing in those documentary evidence to indicate that the interest expense of ₱39,348,659.88 paid by Malayan to Rizal Commercial Banking Corporation (RCBC) was included in the computation of the ARCC. While the Court agreed with CIAC that interest expense of ₱39,348,659.88 should be disallowed because it is not a direct construction cost, the same amount should no longer

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be deducted from the ARCC based on Exhibit "*R-48-series*"[28] in the amount of ₱554,583,160.20. This is because the said interest expense was not included in the first place in the computation of the ARCC under Exhibit "*R-48-series*", in stark contrast to Exhibit "*C-3*"[29] or the cost to complete the project as of August 10, 2006, and Exhibit "*R-24*"[30] or the cost to complete as of October 2008, which both included interest expense as part of the ARCC.

A.2. The sum of items under "Total Exclusions" is ₱15,158,864.73 not ₱15,768,864.73.

A.3. At least 3 items under "Total Exclusions" are fully supported by official receipts, checks, check vouchers and/other documents.

In jointly resolving these twin issues, the Court takes a second look into Exhibit "*R-48-series*" in order to determine whether the following costs are substantiated by official receipts, checks, cash/check vouchers or other documents, and should be included in the computation of the ARCC: (1) ₱9,297,947.22 under Item 1.0 which refers to contract award to Total Venture, Inc. (TVI) for "General Construction and Fit-Out Works"; (2) ₱725,877.62 under Items 5.3 and 5.4 which pertain to Total Net Payment including 11% Attendant Fee" paid to TVI, and (3) ₱2,397,047.89 under Item 6.12.3.

Malayan claims that the total amount of expenses under Item 1.0 that are fully supported by official receipts is not only ₱85,818,322.72 or P95,116,269 but ₱104,841,576.73 [₱85,818,322.72 + (₱19,023,254.01 representing the two down payments to TVI in the amounts of ₱9,338,688.33 each)]. As a result of change orders and contract adjustments, Malayan submits that it included in the ARCC only the total adjusted contract amount of ₱98,415,523.98 based on Exhibit "*R-24*",

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[28] *Rollo* (G.R. Nos. 198916-17), Vols. II & IV, pp. 1370-3600.

[29] *Rollo* (G.R. Nos. 198920-21), Vol. I, p. 344. Total amount of interest expense is ₱37,705,346.62.

[30] *Id*. at 368. Total amount of interest expense is ₱39,348,659.88.

and that it is inaccurate to state that the amount of ₱9,297,947.22 is an unsubstantiated cost. The Dissenting Opinion agrees with Malayan.

However, the Court notes that the error in Malayan's claim lies in the fact that it merely banks on Exhibit "*R-24*" which is a mere tabulation of cost to complete the project as of October 2008 without supporting proofs of payment. After reviewing its computation based on Exhibit "*R-48-series*,"[31] consisting of construction costs computation, official receipts, vouchers, checks and recommendations for payment, the Court sees no cogent reason to reverse its ruling that the amount of ₱9,297,947.22 (Contract balance included in final payment) under Item 1.0 is an unsubstantiated cost which should be excluded in the computation of the ARCC.

Contrary to Malayan's claim and the Dissenting Opinion, the Court finds that Exhibit "*R-48-A-series*"[32] shows that only the total net payment of ₱80,309,108.43 is supported by official receipts and vouchers.[33] The said amount consists of a total net payment of ₱61,631,731.77 and the two (2) net down payments of ₱9,338,688.33 worth ₱18,677,376.66. The total amount of ₱85,818,322.72 cannot be considered as part of the ARCC because it includes the total deductions in the amount of ₱24,186,590.95. It should also be pointed out that while the 2 down payments of ₱9,511,627.00 with a total value of ₱19,023,254.01 are supported by official receipts, the said amount likewise includes total deductions of ₱345,877.35 [₱172,938.67 x 2] representing 2% withholding tax, which should be excluded in the ARCC. To stress, ARCC refers only to the actual expenditures made to complete the project; hence, the total amount of deductions ₱24,532,468.30 [₱24,186,590.95 + ₱345,877.35] should be not be allowed as part of the ARCC.

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[31] *Rollo* (G.R. Nos. 198916-17), Vol. II, pp. 1370-1419.

[32] *Id*. at 1371.

[33] *Id*. at 1372-1419.

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Malayan also contends that costs under Items 5.3 and 5.4 involving the amount of ₱725,877.62 should be included in the ARCC because this expense is substantiated by official receipt No. 1912 in the amount of ₱1,051,922.82 which TVI issued to Malayan on 10 December 2004. Unfortunately for Malayan, the Court has perused the said official receipt and cash voucher,[34] but failed to see how a payment ₱1,051,922.82 substantiates the claim for Total Net Payment (including 11% Attendance Fee) of the exact amount of ₱725,877.62. Contrary to the view of the Dissenting Opinion that it is of no moment that the receipt bears an amount larger than what has been declared as the difference will even be for the benefit of St. Francis, the Court maintains that the unexplained difference is crucial because the computation of the ARCC is based consistently on official receipts, cash vouchers and other evidence of payment.

Anent Item 6.12.3 involving the amount of ₱2,397,047.89, the Court finds merit in Malayan's contention that there are two distinct costs items labeled as "Item 6.12.3" and supported by official receipts, namely: (1) Cesar Abaya Plumbing, Inc. – Change Order No. 3 – Plumbing and Sanitary & Fire Protection Works in the amount of ₱2,702,952.11;[35] and (2) ACG Builders Center – Supply and delivery of Plumbing Fixtures and Access in the amount of ₱5,100,000.00.[36] Hence, the Court holds that costs under Item. 6.12.3 in the amount of ₱2,397,047.89 should not be excluded from the ARCC.

As corrected, the Court's computation of the net ARCC of **₱511,851,901.12** is arrived at as follows:

Construction Cost as per receipts (Exhibit "*R-48-series*"[37])
(with 1/11% Input VAT and 2% withholding tax) – **₱554,583,160.20**

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[34] *Id*. at 1662.

[35] *Id*. at 2520-2521; "Exhibit *R-48-F-47 series*".

[36] *Id*. at 2550-2565; Exhibit "*R-48-F-55 series*".

[37] *Rollo* (G.R. Nos. 198916-17), Vols. II & IV, pp. 1370-3600.

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Total Inclusion: ~~₱8,282,974 .82~~	**₱17,807,364.98**[38]	
Award to Total Ventures, Inc. (~~Prolongation costs and extended Overhead~~)	–	+ ~~8,282,974.82~~ **₱17,807,364.98**
Total ARCC: ~~₱554,583,160.20+8,282,974.82~~ = ₱554,583,160.20+₱17,807,364.98 = (Construction Costs as per receipts + Inclusion)		~~₱562,866,135.02~~ **₱572,390,525.18**
Total Deductions: P41,705,696.66	~~₱~~ **₱47,776,807.22**	
~~Interest expense paid by Malayan to RCBC~~	–	~~₱39,348,659.88~~
Change orders not due to Reconfiguration	–	971,796.29
Contingencies	–	631,154.39
Interior Design Works	–	754,086.10
Input VAT		**+45,419,770.44**
		~~P41,705,696.66~~ **₱47,776,807.22**
Total Exclusions: ~~₱15,768,864.73~~ (Unsubstantiated Costs)	**₱12,761,816.84**	
Item 1.0[39]	–	~~₱~~ 9,297,947.22
Items 5.3 and 5.4[40]	–	530,563.65
Items 5.3 and 5.4	–	725,877.62
Item 5.7.1[41]	–	50,710.61
Item 6.2.25[42]	–	194,171.00
Item 6.11[43]	–	3,499.64
Item 6.11	–	1,360.00
~~Item 6.12.3~~[44]	–	~~2,397,047.89~~[45]

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[38] See discussion below under issue letter "C" on the award in *TVI v. MICO*, CIAC Case No. 27-2007.

[39] *Rollo* (G.R. Nos. 198916-17), Vol. II, p. 1371; Exhibit "*R-48-A-series*".

[40] *Id*. at 1661; Exhibit "*R-48-E-4-series*".

[41] *Id*. at 1787; Exhibit "*R-48-E-20-series*".

[42] *Id*. at 2349; Exhibit "*R-48-F-27-series*".

[43] *Id*. at 2477; Exhibit "*R-48-F-43-series*".

[44] *Id*. at 2520; Exhibit "*R-48-F-47-series*".

[45] ~~₱~~5,100,000.00 [Item 6.12.3 per CA] - ~~₱~~2,702,952.11 [Item 6.12.3 per Exhibit "*R-48-F-47-series*."] = ~~₱~~2,397,047.89

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Item F3[46]	–	368,397.52
Item F3	–	448,534.59
Item F3	–	634,232.26
Professional Fees C& D[47]	–	427,500.00
Professional Fees N[48]	–	+79,022.73
		~~₱15,768,864.73~~
		P12,761,816.84
(Total Deductions)		~~₱~~47,776,807.22
(Total Exclusions)		+12,761,816.84
		~~₱~~ 60,538,624.06

Total ARCC - Total Deductions & Exclusions = **Net ARCC:**

~~₱562,866,135.02 - ₱15,768,864.73~~ = ~~₱505,391,573.63~~

~~₱~~572,390,525.18 - ~~₱~~60,538,624.06 = **~~₱~~511,851,901.12**

B. There was no issue a quo as to whether Malayan had incurred its ARCC amounting to ~~₱~~647,319,513.96, as this was admitted by the parties and accepted by the arbitral tribunal.

Having fully discussed this issue and finding no convincing argument in Malayan's motion to reconsider the ruling thereon, the Court restates the pertinent portion of its decision:

Contrary to the claim that St. Francis admitted that Malayan had incurred the ARCC of ~~₱~~647,319,513.96, the allegations in St. Francis complaint and the Amended Terms of Reference would show that the substantiation of the cost items included in the ARCC and the exact amount thereof are the core issues of the construction arbitration before the CIAC.

For one, the contention that St. Francis' complaint contained no allegation that Malayan had not actually incurred the costs in its ARCC, nor was there any claim that specific costs items in the ARCC lacked evidentiary basis, is belied by the following allegations in same complaint:

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[46] *Rollo* (G.R. Nos. 198916-17), Vol. IV, p. 3523; Exhibit "*R-48-U-series*".

[47] *Id*. at 3169; Exhibit "*R-48-H-series*".

[48] *Id*. at 3265; Exhibit "*R-48-H-6-series*".

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> 2.9 Sometime in August of 2006, [Malayan] presented a cost to complete construction of the Project in the amount of SIX HUNDRED FOURTEEN MILLION FIVE HUNDRED NINETY THREE THOUSAND FIVE HUNDRED SIXTY FIVE PESOS and 96/100 (₱614,593,565.96). **Said cost to complete however was a mere tabulation with a listing of items and appurtenant costs. There was no independent proof or basis as well as evidence that claimant incurred these costs, much less, if these costs conform with the actual construction cost as the same is understood under the MOA.** x x x

For another, one of the admitted facts in the Amended Terms of Reference states that "[d]espite the completion of the Project and the turnover of the units to [St. Francis], [Malayan], and other buyers of units, the issue of actual cost of construction has not been resolved to the mutual satisfaction of the parties." Not to mention, one of the issues raised before the CIAC is "[w]hat is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?" Clearly, there is no merit in the claim that St. Francis admitted that Malayan had incurred the ARCC of ₱647,319,513.96 as of October 2008. It can be gathered from the complaint that, as early as August 2006 when the ARCC was just ₱614,593,565.96, St. Francis already disputed such amount for lack of independent proof or evidence that Malayan incurred these costs.

Anent Malayan's claim that St. Francis argued belatedly in its Draft Decision and its petition before the CA that new cost items should also be deducted from the ARCC because they were allegedly unsubstantiated or not fully supported by official receipts, suffice it to state that whether such cost items should be excluded from the ARCC is impliedly included in the issue of "[w]hat is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?"

Moreover, in an action arising out of cost overruns on a construction project, the builder who has exclusive control of the project and is in a better position to know what other factors, if any, caused the increases, has the burden of segregating the overruns attributable to its own conduct from overruns due to other causes. As the co-owner and developer who assumed the general supervision, management and control over the project, and the one in possession of all the checks, vouchers, official receipts and other relevant documents,

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Malayan bears the burden of proving that it incurred ARCC in excess of the RCC and the total aggregate value of the reserved units, in which case St. Francis would no longer be entitled to a proportionate share in the reserved units pursuant to the MOA.

In view of the foregoing discussion, the Court finds no merit in Malayan's contentions (1) that it did not have the burden of proving that it incurred the costs in its ARCC because this was never in issue; and (2) that there can be no dispute that it had incurred the ARCC of ₱647,319,513.96 based on the unrebutted testimony of its witnesses and the voluminous documents it introduced at trial.[49]

C. The entire monetary award of ₱21,948,852.39 which Malayan paid to TVI (in TVI vs. Malayan docketed as CIAC Case No. 27-2007) should be included in the ARCC, as they are purely direct construction costs.

The Court finds partial merit in Malayan's claim that the monetary award which Malayan paid to Total Ventures, Inc. pursuant to *TVI v. MICO* docketed as CIAC Case No. 27-2007 should be included in the ARCC because the components thereof are direct construction costs.

It must be emphasized that one of the issues raised in the Amended Terms of Reference is whether cost and expenses incurred by Malayan and questioned by St. Francis relative to the "Judgment Award in CIAC Case No. 27-2007 (*TVI v. MICO*)" should be allowed to form part of the ARCC. The CIAC made reference to CIAC Case No. 27-2007 with respect only to the allowance of ₱10,200,000.00 as attendance fees, and the disallowance of ₱6,000,000.00 as prolongation costs and extended overhead, whereas the CA held that it is proper to include in the ARCC the entire award of ₱21,948,852.39, which Malayan paid to TVI in accordance with CIAC Case No. 27-2007. In light of the conflicting findings of the CIAC and the CA, the Court reviewed the records and ruled that the prolongation costs and extended overhead for the period of January 2005 to August 2005 (₱6,313,846.43) and September 1,

[49] Citations omitted; emphasis in the original.

2005 to August 31, 2005 (₱1,429,432.46) in the total amount ₱7,743,278.89,[50] as well as the accrued interest in the amount of ₱539,695.93,[51] or a total amount of ₱8,282,974.82, should be included as part of the ARCC. After a careful study of CIAC Case No. 27-2007 and of Malayan's motion for partial reconsideration, the Court resolves that a modification of its ruling is in order.

The Court maintains its ruling that the cause of delay in the completion of TVI's construction works was the reconfiguration of the room layout of the building along the side facing Discovery Suites hotel, was St. Francis' deviation from the original April 12, 1996 floor plans for the 9th to 31st floors of the project. Be that as it may, the Court cannot gloss over the CIAC's finding that the delay in the implementation of the project was also attributable to the "delay in the award by [Malayan Insurance Company, Inc.] MICO of the subcontract packages for other trade disciplines plus, the delayed delivery of materials which had a domino effect on the work of the succeeding packages, and eventually to the overall project completion date which had to be extended to August 31, 2005."[52] Considering that delays in the completion of the project was not only attributable to St. Francis but to Malayan as well, the Court finds it reasonable that only half of the prolongation costs and extended overhead

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[50] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 919, CIAC Decision in Case 27-2007, p. 66 of 68. Accordingly, the amount of **Php 20,518,725.34** adjudged in TVI's favor shall earn interest based on the 30-day regular loan rate of the Land Bank of the Philippines prevailing on the **due date** until the filing of this case with the CIAC.

As of October 30, 2006, the prevailing Prime Lending Rate as certified by Land Bank of the Philippines was 8.00% p.a. Time lapsed from October 31, 2006 (date of certification) to September 14, 2007 (filing of case with CIAC) is 318 days. TVI is therefore entitled to accrued interest computed as follows: **Php 20,518,725.34** (principal amount) x **.08** (interest rate) x **318/365** (days elapsed) or **Php 1,430,127.05**. (Emphasis in the original)

[51] (₱7,743,278.89 X. 08 X 318/365).

[52] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 917; CIAC Decision in Case 27-2007, pp. 64-68.

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in the amount of ₱7,743,278.89,[53] or ₱3,871,639.45 should be included in the ARCC.

A cursory review of CIAC Case No. 27-2007 for which Malayan paid TVI in the full award of ₱21,948,852.39[54] and Exhibit "*R-48-series*" further impels the Court to rule that the following direct construction costs awarded by the CIAC, including the reduced prolongation costs and extended overhead, ought to be included in the ARCC:

Work accomplishment under the main contract -	₱ 1,378,521.12
Complete and accepted works on approved COs -	6,283,250.90
Extended overhead expenses for the period	
- January 2005 to August 2005 -	**3,156,923.22**[55]
- September 1, 2005 to August 31, 2005 -	**714,716.23**[56]
	[*3,871,639.45*][57]
Labor Escalation under the Main Contract -	1,542,380.59
And under the Change Orders -	403,843.12
Refund of advances for power consumption -	1,605,137.04
Refund of advances for water consumption -	282,139.36
OSM and STC Attendance Fee -	3,279,314.17
Unpaid billings on subcontractor's scope of work -	849,358.57
Work accomplishment for CPII.2 for Metal works -	240,537.07
Unbilled ONSC Attendance Fee -	3,255,677.12
Total Awarded Amount -	**₱ 22,991,798.51**[58]

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[53] Extended overhead expenses for the period of January 2005 to August 2005 ₱6,313,846.43 + ₱1,429,432.46 for the period of September 1, 2005 to August 31, 2005.

[54] *Rollo* (G.R. Nos. 198916-17), Vol. III, pp. 3781-3782; Exhibit "*R-65-A*".

[55] ₱6,313,846.43 / 2 = ₱3,156,923.22.

[56] ₱1,429,432.46 / 2 = ₱714,716.23.

[57] ₱3,156,923.22 + ₱714,716.23 = ₱3,871,639.45.

[58] In lieu of the amount the CIAC awarded to TVI in amount of ₱26,863,437.95.

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The recomputed total award of ₱ 22,991,798.51 should be further reduced by the total amount of counterclaim awarded to MICO [Malayan] in the original sum of ₱6,344,712.61,[59] in order to arrive at the amount of award in *TVI v. MICO* (CIAC Case No. 27-2007) that the Court deems as the proper amount that should be allowed in the ARCC, *i.e.*, **₱16,647,085.90**.[60] Based on the dispositive portion of *TVI v. MICO*, accrued interest of **₱1,160,279.08**[61] should likewise be included in the ARCC. It should be stressed that the foregoing re-computation does not seek to alter the final award rendered by the CIAC between TVI and MICO (Malayan), but is only for the purpose of determining the proper amount that should be included in the ARCC. In sum, the Court resolves to allow the amount of **₱17,807,364.98** to be included in the ARCC, in lieu of ₱8,282,974.82 prolongation costs and extended overhead.

D. The peculiar signification which the parties gave to the term "Actual Remaining Construction Cost" in the 30 April 2002 Memorandum of Agreement prevails over the primary and general acceptation of the term "construction cost" in the construction industry.

Malayan's arguments on this issue fail to persuade, and they have already been discussed in the Court's decision in this wise:

After a careful review of the MOA as to the scope and meaning of the term "ARCC," the Court sustains the CIAC that such term should be understood as the actual expenditures necessary to complete the project, which is the traditional "construction" sense rather than the "investment" sense. The Court thus reverses the CA's ruling that the parties' intention was to also include in the computation of the ARCC whatever expenditures relative to the actual completion of

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[59] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 920; CIAC Decision in Case No. 27-2007, p. 67.

[60] ₱22,991,798.51 - ₱6,344,712.61 = ₱16,647,085.90.

[61] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 921. Computed as follows: ₱16,647,085.90 (principal amount) x .08 (interest rate) x 318/365 (days elapsed).

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the project, as such expenses are considered as their investment subject to the proportionate sharing after determining the actual construction cost.

It bears stressing that the intent of the parties in entering into the MOA is to provide for the terms and conditions of the completion of the Project and the allocation of the ownership of condominium units in the Project among themselves. To recall, Malayan and St. Francis (then ASB) entered into the Joint Project Development Agreement (JPDA) dated November 9, 1995 to construct a thirty-six (36) storey condominium [but originally a fifty (50) storey building] whereby the parties agreed (a) that Malayan would contribute a parcel of land, and ASB would defray the construction cost of the project, and (b) that they would allocate the net saleable area of the project, as return of their capital investment. In a Contract to Sell dated November 20, 1996, Malayan also agreed to sell the said land to ASB (now, St. Francis) for a consideration of ₱640,847,928.48, but the latter was only able to pay ₱427,231,952.32. However, ASB was unable to completely perform its obligations under the JPDA and the Contract to Sell because it underwent corporate rehabilitation, and the Securities and Exchange Commission suspended, among other things, the performance of such obligations. Since ASB had pre-sold a number of condominium units, and in order to protect the interests of the buyers, to preserve its interest in the project, its goodwill and business reputation, Malayan proposed to complete subject to the terms and conditions of the MOA.

Under Section 5(a) of the MOA, Malayan undertook to construct, develop and complete the Project based on the general specifications already agreed upon by the parties and set forth in Schedule 6 of the MOA, within two (2) years from (i) the date of effectivity of Malayan's obligations as provided in Section 21 or (ii) the date of approval of all financing/loan facilities from any financial or banking institution to fully finance the obligations of Malayan under the MOA, whichever of said dates shall come later; or within such extended period as may be agreed upon by the parties. Section 21 of the MOA provides that Malayan shall be bound by and perform its obligations, including the completion of the Project, only upon (i) fulfilment by St. Francis of all its obligations under Section 6, items (a), (b), (c) and (d), and (ii) approval by the Insurance Commission of the MOA.

Section 5(a) of the MOA also states that that the project shall be deemed complete, and the obligation of Malayan fulfilled, if the

construction and development of the Project is finished as certified by the architect of the project. Upon completion of the project, the general provision which governs the distribution and disposition of units is the first sentence of Section 4(a) of the MOA, *to wit*: "[a]s a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost." The second sentence of Section 4(a) provides the specific details on the *pro rata* sharing of units to which the parties are entitled based on the RCC in relation to total costs incurred as of the date of the execution of the MOA dated April 30, 2002. It also states, however, that entitlement to certain units are subject to adjustments in the event that the ARCC exceeds the RCC, and Malayan pays for such excess.

Clearly, the parties foresaw that Malayan may incur additional cost and expenses in excess of the Remaining Construction Cost (RCC) of ₱452,424,849.00 which amount St. Francis represented and warranted that Malayan would have to spend to complete the project. Section 9(b) of the MOA thus adds that in such event, Malayan shall be entitled to such net saleable area as indicated in Schedule 4 that corresponds to the increase in remaining construction costs, while St. Francis shall be entitled to such net saleable area, if any, remaining in the said Schedule 4. As admitted by the parties in the Amended Terms of Reference, the net saleable area included in Schedule 4 ("Reserved Units") originally covered fifty three (53) units [which was reduced to thirty nine (39) units after reconfiguration] with thirty eight (38) parking spaces, and the aggregate monetary value of said units is ₱175,856,323.05.

In determining the entitlement of the parties to the reserved units in Schedule 4, Malayan insists that the ARCC should include all its capital contributions to complete the project, including financial costs which are not directly related to the construction of the building. It argues that the MOA is replete with provisions recognizing the parties' intent to include in the ARCC their respective capital contributions or investment.

Malayan's argument fails to persuade.

The term ARCC should only be construed in light of its plain meaning which is the actual expenditures necessary to complete the project, and it is not equivalent to the term "investment" under the MOA.

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As stated in the MOA, the investment of Malayan is composed of (1) the amount necessary to complete the project, and (2) the following amounts: (a) ₱65,804,381, representing Malayan's payment on behalf of ASB (now, St. Francis) of the principal amount of the loan obtained by ASB from the RCBC to finance the project; and (b) ₱38,176,725, representing Malayan's payment on behalf of ASB of the outstanding obligations to project contractors as of the signing of the MOA. On the other hand, the investment of St. Francis is broadly defined as the ASB's invested amount equivalent to its entitlement to the net saleable area of the building under Section 4 of the MOA, including ASB's interest as buyer under the Contract to Sell. Hence, the Court holds that the ARCC, which pertains only to the amount necessary to complete the project, can be considered as part of the capital investment, but they are not synonymous.

Likewise negating Malayan's argument that all its contribution to complete the project should be included in the ARCC is the restrictive construction industry definition of "construction cost", *to wit*: the cost of all construction portions of the project, generally based upon the sum of the construction contract(s) and other direct construction costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.[62]

E. The terms of the MOA and the contemporaneous acts of the parties indicate that costs incurred to finance the completion of the Project, such as interest expense, must be included in the ARCC.

Having exhaustively discussed and resolved this issue in its decision, the Court finds no justifiable reason to overturn its ruling, thus:

The Court upholds the CIAC ruling to disallow the interest expense from loans secured by Malayan to finance the completion of the project, and thus reverses the CA ruling that such expense in the amount of ₱39,348,659.88 should be included in the computation of the ARCC. As correctly held by the CIAC, only costs directly related to construction costs should be included in the ARCC. Interest expense should not

[62] Citations omitted.

be included in the computation of the ARCC because it is not an actual expenditure necessary to complete the project, but a mere financial cost. As will be discussed later, the term ARCC should be construed in its traditional "construction" sense, rather than in the "investment" sense.

It also bears emphasis that part of Malayan's investment under Section 2 of the MOA is the payment of ₱65,804,381 as the principal amount of the loan obtained by ASB from the Rizal Commercial Banking Corporation (RCBC) to finance the project. If it were the intention of the parties to include interest expense as part of their investments, or even the ARCC, then the MOA would have expressly indicated such intent in the provisions on investments of Malayan and of ASB. Nowhere in the provisions of the MOA can it be gathered that interest expense is included in the computation of the ARCC.

Apart from the ARCC's definition as actual expenditures necessary to complete the project, the closest provision in the MOA that could shed light on the scope and meaning of ARCC is Section 9 on the Remaining Construction Cost (RCC) whereby St. Francis represented and warranted that Malayan can complete the project at a cost not exceeding ₱452,424,849.00 as set forth in ASB's Construction Budget Report, which reads:

Estimated Cost to Complete

I. Balance to Complete Existing Contracts–	Php 161,098,039.86
II. Unawarded Contracts	224,045,419.16
II. Professional Fee	4,138,108.08
IV. Contingencies	63,143,281.10
	Php 452,424,849.10

The Court concurs with the CIAC that the ARCC was intended to be spent within and among the four categories above, subject to adjustments by reason of price increases and awarded contracts. In construction parlance, "contingency" is an amount of money, included in the budget for building construction, that is uncommitted for any purpose, intended to cover the cost of unforeseen factors related to the construction which are not specifically addressed in the budget. Being a cost of borrowing money, interest expense from bank loans to finance the project completion can hardly be considered as a cost due to unforeseen factors.

That interest expense cannot be considered as part of any of the said categories is further substantiated by the reports of the Davis

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Langdon Seah Philippines, Inc. (DLS) and Surequest Development Associates (Surequest), which contain traditional construction cost components and items, but not investment costs such as interest expense. As the one who engaged the services of both DLS and Surequest to come up with a valuation of the cost to complete the project and to evaluate what had been accomplished in the project prior the take-over, Malayan cannot deny that interest expense is not included in their computation of the construction costs.

As regards the supposed contemporaneous act of St. Francis of including the amount of ₱207,500,000.00 as interest expense in its claim for reimbursement for its contributions in the project, in the form of several units per Schedules 1 and 3 of the MOA, the Court cannot determine whether or not such expense should be considered as its contribution for purposes of computing the return of capital investment. Unlike the investment of Malayan which is specifically stated under Section 2 of the MOA, but does not include payment of interest of the bank loan to finance the project, the investment of ASB (now, St. Francis) is merely described as follows:

Section 3. *Recognition of ASB's Investment*. The parties confirm that as of the date hereof, ASB invested in the Project an amount equivalent to its entitlement to the net saleable area of the Building under Section 4 below, including ASB's interest as buyer under the Contract to Sell.

From such vague definition of ASB's investment, the Court cannot rule if St. Francis should also be disallowed from claiming interest expense as part of its investment, unlike Malayan which is disallowed from including interest expense as part of the ARCC contemplated in the MOA, because such financial cost is not an actual expenditure necessary to complete the project. Having in mind the rule that the interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity, the Court cannot give credence to the August 1, 2000 telefax of Evelyn Nolasco, St. Francis' former Chief Financial Officer (CFO), to Malayan's CFO, Gema Cheng, which shows St. Francis' computation for reimbursement, including the claim of ₱207,500,000.00 as interest expense.

Further negating Malayan's claim that interest expense should be included in the computation of the ARCC is the restrictive construction industry definition of the term "construction cost" which means the cost of all construction portions of the project, generally based upon the sum of the construction contracts(s) and other direct construction

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costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner. Aside from the fact that such expense is not a directly related construction cost, Section 2 of the MOA states that Malayan's investment includes, among other matters, the amount it had paid to RCBC, on behalf of ASB, for the principal loan to finance the project, but not the interest thereof. This casts doubt on Malayan's claim that the parties intended interest expense to become part of their capital contribution, let alone the ARCC.[63]

F. Malayan implemented the "change orders not due to reconfiguration" with an aggregate value of ₱971,796.29 in order to address security, safety, and marketability concerns, hence, these costs should have been included in the ARCC.

G. Considering that the increase in the costs for interior design works is presumed fair and regular, and St. Francis failed to prove otherwise, the entire increase should have been included in the ARCC.

H. Contigency Costs of ₱631,154.39 should have been included in the ARCC, because these were necessary to ensure the continued construction of the Project.

I. Several costs incurred or paid after June 2006 which were still necessary for the completion of the Project should have been included in the ARCC.

Malayan's arguments on these four issues are mere reiterations of those raised in its petition, which have already been decided in like manner by the CA and the CIAC. Considering that the common factual findings of the CIAC and the CA are supported by substantial evidence, and there being no significant matter raised in Malayan's motion for partial reconsideration, the Court upholds its ruling on said issues, to wit:

D.2. Change Order not due to Reconfiguration

x x x x x x x x x

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[63] Citations omitted.

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Since the findings of the CIAC and the CA on this issue are consistent, the Court perceives no cogent reason to overturn such findings which are supported by substantial evidence. Besides, the Court takes issue with Malayan's claim that the CA gravely erred in rigidly applying the specifications in Schedule 6 of the MOA, considering that they were "general" in character and "for reference" purposes only. It is noteworthy that Schedule 6 not only provides for the Schedule of Finishes and Materials of ASB Malayan Tower as of 26 October 2000, covering Exterior Works, Interior Works, Elevators, Intercom, Fire Alarm System, Standby Generator Set, Lightning Protection and Pumps, among other things, but also includes the project floor plans from Basement 2 to 6, and levels 4, 5, 7 to 12, 14 to 18, 20, 22 to 31, 33 to 35, penthouse and upper penthouse. When a building contract refers to the plans and specifications and so makes them a part of itself, the contract is to be construed as to its terms and scope together with the plans and specifications. When the plans and specifications are by express terms made part of the contract, the terms of the plans and specifications will control with the same force as if they were physically incorporated in the very contract itself. Malayan cannot, therefore, brush aside Schedule 6 as "general" and "for reference only" matters in the interpretation of the MOA.

As to the costs incurred due to the supposed reasonable deviations from specifications in the exercise of its sound discretion as the developer, Malayan would do well to bear in mind that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Under Section 5 of the MOA, Malayan undertook to construct, develop and complete the project based on the general specifications already agreed upon by the parties and set forth in Schedule 6 thereof. As duly pointed out by the CIAC, since the parties to the MOA had agreed on the specifications that will control the construction and completion of the project, anything that alters or adds to these specifications which adds to the costs, should not be part of the ARCC.

D.5. Half of Costs for Interior Design Works

x x x x x x x x x

The Court agrees with the CA and the CIAC rulings that the costs for interior design works should be included in the computation of the ARCC, and that what is being contested is whether the net increase of ₱3,049,909.73 from the original budget of ₱11,100,415.00. As

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correctly found by the CA based on the official receipts, the net increase should only be ₱1,508,172.21. The also Court sustains the CA that such increase should be equally divided between the parties (₱754,086.10 each) due to the impossibility of separating the increased cost arising from flooring change and those from causes (change of specifications) other than gym equipment and the underlay of plywood and rubber pads.

However, there being no valid reason to extend such equal sharing of costs with respect to the gym items, the Court reverses the CA and the CIAC in ruling that costs of the gym equipment (₱962,250.00) and the underlay of plywood and rubber (₱96,967.73) amounting to ₱1,059,217.73 should be equally shared by the parties. The Court thus holds that the full amount thereof should be included in the computation of the ARCC.

D.6. **Contingency Cost**

x x x x x x x x x

The Court sustains the CAin ruling that the contingency costs in the amount of ₱631,154.39 should not be included in the computation of the ARCC. As duly noted by the CIAC and the CA, legal fees cannot be considered as part of the ARCC, as they are not directly related to the completion of the project. Despite the allegation that a TRO was issued, no proof of such order was presented by Malayan. Hence, such costs should not be included as part of the ARCC, but should be charged against the party responsible for the incident, or Malayan as the one responsible for the general supervision, management, control over the project.

D.7. **Costs Incurred/Paid after June 2006**

x x x x x x x x x

The Court finds no compelling reason to disturb the CA and the CIAC rulings that are consistent with Section 5 of the MOA which expressly states that the project "shall be deemed complete, and the obligation of Malayan fulfilled, if the construction and development of Project is finished as certified by the architect of the Project." Indeed, costs and expenses incurred after completion of the project cannot be considered as part of the ARCC.[64]

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[64] Citations omitted; emphasis added.

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J. There being no legal basis to exclude any of the costs in Malayan's ARCC in the amount of ₱647,319,513.96, St. Francis is not entitled to a share in the Reserved units.

K. St. Francis is not entitled to any share in the income from the Reserved Units.

These two related issues should be resolved in the negative. In view of the modification of the computation of the total ARCC in light of the exclusion of the interest expense, and the inclusion of the cost under Item 6.12.3 and the award in *TVI v. MICO* in CIAC Case No. 27-2007, the Court modifies its ruling and holds that **34%** of the reserved units should be allocated to Malayan, while **66%** should be allocated to St. Francis. Below is the corrected computation of the parties' proportionate share in the said units:

₱511,851,901.12 [Net ARCC] - ₱452,424,849.00 [RCC] = **₱59,427,052.12** [Excess ARCC]

₱59,427,052.12 [Excess ARCC] / ₱175,856,325.05 [Total Aggregate Value of Reserved Units] = 0.3379 or **34%** - share of Malayan

₱116,429,272.93/₱175,856,325.05 = 0.6621 or **66%** - share of St. Francis.

In the same vein, St. Francis is also entitled to **66%** share in the income of said units, as discussed in the Court's decision, which upheld the parallel findings of the CIAC and the CA:

The Court finds that Malayan's obligation to give the reserved units is unilateral because it was subject to 2 suspensive conditions, *i.e.*, the completion of the project and the determination of the ARCC, the happening of which are entirely dependent upon Malayan, without any equivalent prestation on the part of St. Francis. Even if the obligation is unilateral, Malayan cannot appropriate all the civil fruits received because it could be inferred from the nature and circumstances of the obligation that the intention of the person constituting the same was different. Section 9(b) of the MOA states that in the event that Malayan shall pay additional cost and expenses in excess of the RCC, it shall be entitled to such net saleable areas indicated in Schedule

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4 that corresponds to the increase in the remaining construction costs, while St. Francis shall be entitled to such remaining areas, if any.

As aptly noted by the CIAC, the determination of the ARCC should have been made upon the date of completion of the project on June 7, 2006, but it was only about 3 years later during the arbitration proceedings that such determination was done. Not until now has the issue of the correct computation of the ARCC been finally resolved. Such long delay in the determination of the ARCC and the proportionate distribution of units in the project could not have been the intention of the parties. The Court therefore sustains the CA and the CIAC rulings that the income realized from the reserved units from the completion date until present, should be considered as having received by Malayan in trust for such party that shall be determined to be the owner thereof. In light of the determination of the excess of the ARCC over the RCC, the income should be proportionately shared as follows: 30% for Malayan and 70% for St. Francis. Subject to proper accounting, upkeep expenses for the reserved units should also be shared by the parties in the same proportion.

Legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid is imposed upon the obligation of Malayan to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, pursuant to Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.[65]

L. St. Francis' complaint is without basis, and it should be held liable for attorney's fees and arbitration costs.

Suffice it to state that no substantial argument was raised in Malayan's motion for partial reconsideration, as to warrant the reversal of the Court's ruling on this issue to the effect that the claim for attorney's fees must be denied, and that the arbitration expenses in the total amount of ₱1,064,517.38 should be shared in the following proportion:

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[65] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 282-283 (2013).

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1. St. Francis: ₱202,161,179.09/₱228,814,375.17 = 0.88 x ₱1,064,517.38 = ₱ 936,775.29
2. Malayan: ₱26,653,196.08/₱228,814,375.17 = 0.12 x ₱1,064,517.38 = ₱ 127,742.09

Total Arbitration Expenses = ₱ 1,064,517.38

WHEREFORE, the Court's Decision dated January 11, 2016, which affirmed with modification the Court of Appeals Decision dated January 27, 2011 in CA-G.R. SP Nos. 109286 and 109298, is **AFFIRMED** with the following **MODIFICATIONS**:

1) The total amount of **₱60,538,624.06** should be deducted and excluded from the gross Actual Remaining Construction Cost (ARCC) of **₱572,390,525.18** to arrive at the net ARCC of **₱511,851,901.12**;

Malayan is entitled to **34%** ownership over the reserved units **₱59,427,052.12**/₱175,856,325.05), together with the corresponding interest in the income realized thereon in the same proportion; while St. Francis is entitled to **66%** **₱116,429,272.93**/₱175,856,325.05) ownership of the said units, as well as to its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;

2) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion above stated, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, and to render full accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis; and

3) Legal interest at the rate of Six percent (6%) *per annum* from finality of this Decision until fully paid, is imposed upon the obligation of Malayan to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision.

All other matters stated in the dispositive portion of the Court's January 11, 2016 Decision, which are not affected by the above modifications **STAND.**

SO ORDERED.

Jardeleza, Caguioa, and *Reyes, Jr., JJ.*, concur.

Velasco, Jr. (Chairperson), J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

I am constrained to register my dissent from so much of the Resolution that deducts the Input Value Added Tax (VAT) and excludes Items 1.0 and Items 5.3 and 5.4 in the computation of the Actual Remaining Construction Cost (ARCC).

Input VAT

While the Resolution understandably corrects the miscalculation in the Decision and restored the erroneously deducted Interest Expense from the Construction Cost as Per Receipt, it has taken a complete turn-around on the matter of the Input VAT, deducting it from the Construction as Per Receipt. To this, I regret that I cannot agree. Instead, I maintain my concurrence to the previous disposition as written in the Court's original Decision, viz:

The Court finds no compelling reason to disturb the consistent findings of the CA and the CIAC that Input VAT should be allowed to remain in the ARCC. As aptly pointed out by the CA and the CIAC, **ARCC refers to the actual expenditures made by Malayan to complete the proiect**. The Court thus agrees with Malayan that in determining whether input VAT should be included as ARCC, **the issue is not the technical classification of taxes under accounting rules, but whether such tax was incurred and paid as part of the construction cost**. Given that input VAT is, strictly speaking, a financial cost and not a direct construction cost, **it cannot be denied that Malayan had to pay input VAT as part of the contract price of goods and properties purchased, and services procured in order**

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to complete the project. Moreover, that burden of such tax was shifted to Malayan by its suppliers and contractors is evident from the photocopies of cash vouchers and official receipts on record, which separately indicated the VAT component in accordance with Section 113(B) of the Tax Code.

Anent the claim that it would be unjust and inequitable if Malayan would be allowed to include its input VAT in the ARCC, as well as to offset such tax against its output tax, the Court finds that such coincidence does not result in unjust enrichment at the expense of St. Francis. **Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully. In offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law**, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, **Malayan is justified in including in the ARCC the input VAT it had paid as part of the contract price of goods, properties and services it had procured to complete the project**.

At any rate, St. Francis would also be entitled to avail of the same tax credit provisions upon the eventual sale of its proportionate share of the reserved units allocated and transferred to it by Malayan. It bears emphasis that the allocation of and share of such units to St. Francis is subject to output VAT which Malayan could offset against its input VAT. In turn, St. Francis would incur input VAT which it may later offset against its output VAT upon the sale of the said units. This is in accordance with the tax credit method of computing the VAT of a taxpayer whereby the input tax shifted by the seller to the buyer is credited against the buyer's output taxes when it in turn sells as the taxable goods, properties, or services.[1]

Given that the ARCC was construed as "the actual expenditures made by Malayan to complete the project," the Court did not take into consideration the "technical classification" of an Input VAT "under accounting rules but whether such tax was incurred and paid as part of the construction cost."

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[1] Emphasis and underscoring supplied.

The Court cannot be considered, as the Resolution makes it appear, to have "*overlooked* the nature of VAT as an indirect and consumption tax . . . [and that] it is passed on to final consumers."[2] This Court was all too aware of this aspect of input VAT; thus, the majority's Decision held that "[i]n offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law." But this aspect of the Input VAT as creditable tax finds no relevance in a case between two parties whose ultimate issue is the determination of their proportionate participation in the remaining units of the project.[3]

This case is not concerned with the tax liabilities of a party; it does not involve a "question of law" to classify and construe the technical meaning of an Input VAT — that has long been established. Neither does this case call on this Court to rule on whether the allocation or distribution of the remaining reserved units between St. Francis and Malayan is subject to tax; there is no quibbling that it does not. A thorough examination of this issue is unnecessary and is but a deviation from the real question: how much was actually expended by Malayan to complete the project?

Indeed, the present case concerns the determination of the meaning of the ARCC and it has been taken to mean, to reiterate for emphasis, as "the ***actual expenditures*** **made by Malayan** to complete the project."

In other words, the ARCC has been established as that which has been **incurred and paid out** by Malayan Insurance Company, Inc. (Malayan) to complete the construction of the project and *not* what it has actually suffered. It is not germane to the

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[2] Resolution, p. 8.

[3] As the Resolution itself puts it, "[t]he core issue is the pro rata sharing in the remaining net saleable area of the building, consisting of 39 condominium units and 38 parking slots worth ₱175,856,325.05, which can be resolved by determining how much the exact amount of the [ARCC] exceeded the Remaining Construction Cost (₱452,424,849.00)." Resolution, p. 11.

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resolution of this case whether Malayan may be able to recoup its expenses. And the fact that it is in a position to offset the Input VAT with Output VAT does not justify the application of the doctrine of unjust enrichment to favor St. Francis.

The principle of unjust enrichment is provided under Article 22 of the Civil Code which states:

> Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter **without just or legal ground**, shall return the same to him.[4]

Consistent therewith, this Court held that the fundamental doctrine of unjust enrichment is the transfer of value **without just cause or consideration**.[5] As wisely stated in this Court's January 11, 2016 Decision in this case, "unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead **it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully**."[6] Thus, the first condition for the application of the doctrine is that that **a person is benefited *without a valid basis or justification***.[7]

Surely, this condition is absent in this case as Malayan has a just cause or valid basis to credit the Input VAT against the Output VAT under Section 110 of the National Internal Revenue.[8] As this Court first held, "in offsetting its input VAT against

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[4] Emphasis supplied.

[5] *Spouses Golez v. Nemeño*, G.R. No. 178317, September 23, 2015, citing *P.C. Javier & Sons, Inc. v. Court of Appeals*, 500 Phil. 419 (2005).

[6] Emphasis supplied.

[7] *Flores v. Spouses Lindo, Jr.*, 664 Phil. 210 (2011).

[8] **SEC. 110. Tax Credits. –**

A. Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x

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output VAT, **Malayan is merely availing of the benefits of the tax credit provisions of the law**, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, **Malayan is justified in including in the ARCC the input VAT** it had paid as part of the contract price of the goods, properties and services it had procured to complete the project."[9]

Guilty of reiteration, the controversy hinges on what has been **disbursed** from the coffers of Malayan that was necessary for the construction of the project. As it is established that the "check vouchers, official receipts and other supporting documents indicate that payments made to contractors and suppliers of the construction project are VAT-inclusive,"[10] the **Input VAT incurred and paid by Malayan** should be considered part of the ARCC.

This finding has been made by the Construction Industry Arbitration Commission (CIAC) when it first had the opportunity to resolve the controversy and so allowed the inclusion of Input VAT in the computation of the ARCC. The CIAC held:

RESOLUTION OF ISSUE ON VAT

Unlike the issue of interest, here, **there is no question that input VAT is a direct construction cost and therefore, should be included in the ARCC**. The only question that remains is: What was the arrangement between Respondent on the one hand and its contractors/ suppliers on the other?

[St. Francis'] draft decision admits that VAT "*appear to have been deducted from the billings of the concerned supplier or subcontractor totalling ₱45,419,770.44 as reflected in the pertinent cash vouchers in Exhibit "R-48 series*." [St. Francis] questions whether said amounts deducted for VAT was actually remitted by [Malayan]. Thus, **[St. Francis] inferentially admits that [Malayan] is entitled to add the input VAT as part of the ARCC**.

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[9] Emphasis supplied.

[10] Resolution, p. 9.

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While "*submission of the quarterly and annual VAT return*" would have provided incontrovertible proof of [Malayan]'s remittance to the BIR, as [St. Francis] asserts, there is no prohibition against considering the pertinent cash vouchers. Examination of the documentary evidence submitted by [Malayan] (Exhibit R-44 and Exhibit R-48, series) as well as those submitted by [St. Francis] itself (Exhibits C-37 up to C-40) has persuaded the Tribunal of their sufficiency to show such remittance. As earlier pointed out, the two reports (Surequest and DSL) support this conclusion. **Moreover, the contract entered into by [St. Francis] which were assumed by [Malayan} under the MOA, included the VAT as part of the costs.**

It is accordingly **the holding of this Arbitral Tribunal to ALLOW the input Value Added Taxes ("VAT") paid to the government for goods and services utilized for the Project to remain in the ARCC**.[11]

The Resolution, however, takes exception to the CIAC's ruling on the inclusion of the Input VAT in the ARCC supposedly because "the CIAC failed to explain why input VAT is a direct construction cost." A closer scrutiny of the foregoing excerpt from the CIAC's Award Order should provide the explanation forgone in the Resolution.

The CIAC clearly provided the following reasons why Input VAT is a direct cost that should be included in the ARCC: (1) St. Francis inferentially admitted that Malayan is entitled to add the input VAT as part of the ARCC given that St. Francis only questioned whether the amounts deducted for VAT were actually remitted by Malayan; and, more importantly, (2) the contract entered into by St. Francis which was assumed by Malayan under the MOA, included the VAT as part of the costs.

After discussing the nature of Input VAT as defined by law and jurisprudence, the appellate court in turn held, as pointed out in the draft Resolution, that "payment of input VAT was automatically deducted from the total obligations paid to contractors and suppliers, and that the documentary evidence submitted by Malayan and St. Francis had led the CIAC to [conclude] that they were sufficient to show proof of remittance

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[11] CIAC Award, p. 17; emphasis supplied.

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to the government of the input VAT."[12] Ergo, the CA sustained the finding of the CIAC that the Input VAT is direct construction cost and therefore, should be included in the ARCC. The CA held, thus:

> In the instant case, a meticulous examination of the voluminous records related to it would clearly show that, in the payment of contracts and construction materials, Malayan has deducted Input VAT of 1/11% and 2% withholding tax from the contract price or construction cost and this was clearly specified in the check vouchers issued by it. Clearly, **the payment of input VAT was, in effect, shifted to Malayan** considering that 1/11% Input VAT was automatically deducted from the total obligations paid to contractors and suppliers concerned. Here, **the documentary evidence submitted by Malayan and St. Francis had led the CIAC to conclude that they are sufficient to show proof of remittance to the government of the Input VAT. Thus, We find it unnecessary to disturb the findings of the CIAC as it is generally conclusive and binding with the Court**. In sum, the summary of the Cash Vouchers presented by Malayan totalling ₱47,593,994.29 are sufficient proof of the filing and payment of input VAT by it in the absence of proof to the contrary evidencing grave abuse of discretion on the part of the CIAC.[13]

As stated at the outset, in its January 11, 2016 Decision, this Court through the Third Division, affirmed the consistent ruling of both CIAC and CA on the inclusion of the Input VAT on the ARCC.

It is oft-repeated 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 CA**[14] **and this very Court**. The CIAC possesses that required

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[12] Resolution, p. 6, citing CA Decision.

[13] CA Decision, pp. 41 to 42; emphasis supplied.

[14] *De Guzman v. Tomulva*, 675 Phil. 808 (2011), citing *Shinryo (Philippines) Company, Inc. v. RRN Incorporated*, G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *IBEX International, Inc. v. Government Service Insurance System*, G.R. No. 162095, October 12, 2009, 603 SCRA 306.

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expertise in the field of construction arbitration and the **factual findings of its construction arbitrators are final and conclusive, not reviewable by this Court on appeal**.[15] The only exceptions are when:

> (1) [T]he 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.[16]

None of these exceptions finds application in this case. Least of all, given the aforequoted rationalizations provided by the CIAC in ruling on the inclusion of the Input VAT in the ARCC, this Court cannot plausibly conclude that it has so "imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC."[17] St. Francis has not even attempted to show, as it cannot, that the CIAC arbitral tribunal conducted its affairs in a "haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled."[18] Instead, St. Francis

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[15] *National Transmission Corp. v. Alphaomega Integrated Corp.*, G.R. No. 184295, July 30, 2014; *Philippine Race Horse Trainer's Association, Inc. v. Piedras Negras Construction and Development Corp.*, G.R. No. 192659, December 2, 2015.

[16] *Metro Rail Transit Development Corp. v. Gammon Philippines, Inc.*, G.R. No. 200401, January 17, 2018 and *CE Construction Corp. v. Araneta Center, Inc.*, G.R. No. 192725, August 9, 2017, citing *Spouses David v. Construction Industry and Arbitration Commission*, 479 Phil. 578 (2004).

[17] Resolution, p. 5.

[18] *CE Construction Corp. v. Araneta Center, Inc.*, G.R. No. 192725, August 9, 2017.

offered no new argument or any strong and compelling reason to warrant the reversal of the **uniform finding made by the CIAC, the CA, and this Court in its Decision as to the inclusion of the Input VAT**. Thus, there need not be a reconsideration of the issue as to the Input VAT.

Given the same arguments proffered by both parties on the issue of the inclusion or exclusion of the Input VAT in the ARCC, **this Court need only observe consistency in its rulings and that of both the CIAC and the CA**. It can hardly flip or flop as it wishes when it has been confronted with the very same evidence, the same facts, the same legal provisions, and the same contentions as when it first promulgated the Decision. Motions for reconsideration should be granted only upon a showing that "the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."[19] Decisions of this Court should only be set aside, abandoned, and reversed "only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished."[20] This guideline, usually applied to emphasize the doctrine of *stare decisis*, finds more relevance in this case when the Court is dealing with the same parties, facts, and arguments. Again, St. Francis offered no new argument, much less any strong and compelling reason, to reverse this Court's original ruling on the issue of the Input VAT's inclusion in the ARCC. At the very least, the parties are entitled to the reasonable expectation that this Court will rule on a certain manner when confronted with the very same set of facts and propositions. It cannot adopt as a norm the possibility of changing the rules in the middle of the game. That will be contrary to the most basic principles of fair play.

This court can do no worse than disregard St. Francis' own use of Input VAT as part of its own computation of the cost

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[19] Section 1, Rule 37, Rules of Court

[20] *Lazatin v. Desierto*, 606 Phil. 271 (2009).

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needed for the project. Per the telefax dated August 1, 2000 that St. Francis sent to Malayan, St. Francis included VAT in its "computation for reimbursement" for certain units in the Project:

I. COMPUTATION FOR REIMBURSEMENT

Sales	₱638,132,759
Disbursement:	
Pay to Malayan	427,231,953
Cost incurred	451,419,858
Advances to Contractor	35,298,336
Com. & VAT	**47,739,805**
Interest Expense	207,500,000
	1,169,189,952
	(65,804,831)
	1,103,385,571
Amount spent by ASB	465,252,812

St. Francis is estopped from claiming that Input VAT is, thus, excluded from the ARCC spent by Malayan on the project. Article 1431 of the New Civil Code (NCC) provides that "through estoppel, an admission or representation is rendered **conclusive** upon the person making it and cannot be denied or disproved as against the person relying thereon." This substantive law is echoed in Section 2(a) of Rule 131, which states that "[w]henever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it." The fundamental considerations of equity and fair play underlying the principle of estoppel were explained by case law, thus:

> Estoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. **The principle of estoppel would step in to prevent one party from going back on his or her own acts and**

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representations to the prejudice of the other party who relied upon them. It is a principle of equity and natural justice, expressly adopted in Article 1431 of the New Civil Code and articulated as one of the conclusive presumptions in Rule 131, Section 2 (a) of our Rules of Court.[21]

For the principle of estoppel to apply, the following elements must be established: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the actual facts.[22]

All the foregoing elements are extant in the present case. By St. Francis' own inclusion of VAT in calculating its own expenses and costs, which it had communicated to Malayan, it cannot be allowed to renege on its own representation and deny Malayan the same privilege of using VAT as a component of the ARCC. That would simply be inequitable.

It is not necessary for Malayan "to prove that when St. Francis sent the telefax dated August 1, 2000, it was aware that input VAT cannot be considered as a construction cost if credited against output VAT." St. Francis' present action that is inconsistent with its prior posture on the Input VAT speaks for itself.

It cannot likewise be claimed that this inclusion of the VAT in the costs has been trounced by the parties' MOA, as it is made to appear in the Resolution. **Nothing in the MOA explicitly excludes Input VAT from the ARCC.** On the contrary, as correctly observed by the CIAC, "**the contract**

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[21] *Guison v. Heirs of Terry*, G.R. No. 191914, August 9, 2017, citing *GE Money Bank, Inc. v. Spouses Dizon*, G.R. No. 184301, March 23, 2015. Emphasis supplied.

[22] *Dizon v. Philippine Veterans Bank*, 620 Phil. 456 (2009).

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entered by [St. Francis) which were assumed by [Malayan] under the MOA, *included* VAT as part of costs."[23] It would then follow, as a matter of logic, that input VAT remains included in the computation of the expenses necessary to the complete the project or the ARCC.

As repeatedly pointed out, the core issue of this case is the determination of what expenditures are included in the ARCC in the context of Section 9 of the MOA,[24] which treats "Remaining Construction Cost" (RCC) in the following general terms:

> Section 9. Remaining Construction Cost. – (a) [St. Francis] represents and warrants to Malayan that Malayan can complete the Project at a cost not exceeding Four Hundred Fifty-Two Million Four Hundred Twenty-Four Thousand Eight Hundred Forty-Nine Pesos (₱452,424,849) as set forth in [St. Francis'] Construction Budget Report attached hereto and made an integral part hereof as Schedule 9 x x x

On this note, the estimated RCC of ₱452,424,849 in Section 9 of the MOA included the unpaid balance on SEAPAC's contract amounting to ₱35,606,000.00, which was VAT-inclusive. Malayan's witness, Gema Cheng, explained, thus:

> Q.2.2.4.1 **How did you know that the unpaid balance of the SEAPAC Contract was VAT inclusive?**
>
> GOC: By virtue of a Deed of Assignment, [St. Francis] assigned to MALAYAN the SEAPAC Contract for the curtain wall and aluminum doors and windows. Upon completion of the SEAPAC's works, **MALAYAN paid SEAPAC. These payments to SEAPAC were all Input VAT inclusive**.
>
> Q.2.2.4.2. Apart from the SEAPAC Contract, do you have any other proof to show that the Php942,529,824 Construction Cost Budget in Exhibit I of the SGV Report is VAT inclusive?

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[23] *Infra*.

[24] January 11, 2016 Decision, p. 16. "As duly noted by the CA, the controversy between St. Francis and Malayan lies in the interpretation of the term 'Actual Remaining Construction Cost' (ARCC) in relation to the Estimated Remaining Construction Cost . . ."

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GOC: Note that the amounts of the items composing the Construction Cost Budget are the prices of the works contracted with Claimant's contractors. These prices are already VAT inclusive. Thus, the sum of these amounts, which are VAT inclusive, would necessarily result to a total amount which is likewise VAT inclusive.

For instance, in [St. Francis'] contract for sewerage treatment plant works with Polystone Builders, Inc., the price was set at Php2,800,000.00. This price is VAT inclusive and as such, was included in the computation of the Construction Cost Budget in Exhibit I of the SGV Report.[25]

If the benchmark is Section 9 of the MOA, which contains the amount initially warranted by St. Francis to Malayan as the amount necessary to complete the project, then the ARCC should include the Input VAT as the warranted RCC in Section 9 included the Input VAT.

It would be most illogical for this Court to conclude that the Input VAT should be excluded from the amount spent by Malayan in excess of St. Francis' original estimate when such estimate included the Input VAT at the outset. Trite as it may be, the age old adage should find application in this case: what is sauce for the goose is sauce for the gander. **Malayan cannot be refused to include Input VAT in its computation of the construction costs when St. Francis had been including Input VAT in its computation of construction costs.**

Further, it bears reiterating that this Court adopted the CIAC's interpretation of ARCC as referring to the "actual expenditures necessary to complete the project"[26] based on the "restrictive construction industry definition of 'construction cost,' to wit: the cost of all construction portions of the project, **generally**

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[25] Joint Affidavit of Respondent's Witnesses by way of: (1) Evidence for New Issue No. 3 Defined under the Amended Terms of Reference; (2) Sur-Rejoinder to Joint Rejoinder Affidavit of Claimant's Witnesses; and (3) Redirect Examination, Annex "I" of Malayan's Petition for Partial Review, pp. 23-25, cited in Malayan's Opposition, pp. 10 and 11. Emphasis and underscoring supplied.

[26] Decision, pp. 12 and 18.

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based upon the sum of the construction contract(s) and other direct construction costs."[27] And St. Francis' very own witness, Adrian Josue, admits that "the sum of the construction contract[s]" in the construction industry is usually VAT-inclusive, viz:

ATTY. D. TAMAYO (COUNSEL RESPONDENT):

> x x x Can you just read on and I ask Mr. Josue if you can see any indication on (sic) the SGV report that the information you gave and [St. Francis] gave to SGV would indicate that the contracts were not VAT-inclusive? Tingnan ninyo nalang po. **Contracts in the construction industry are usually VAT-inclusive?**

MR. A.L JOSUE (CLAIMANT WITNESS):

> **Yes.**

ATTY. D. TAMAYO (COUNSEL RESPONDENT):

> Okay.

MR. A.L. JOSUE (CLAIMANT WITNESS):

> **And actually, based on your contracts we discussed with TVI, it is VAT inclusive.**

ATTY. D. TAMAYO (COUNSEL RESPONDENT):

> **Okay. Now, the 452 Million remaining construction costs that you worked . . . okay, all of the contracts there are also VAT inclusive? That would be your position?**

MR. A.L. JOSUE (CLAIMANT WITNESS):

> **Yes.**[28]

There is, therefore, no reason to reverse our initial Decision, refusing to exclude from the ARCC the Input VAT paid by Malayan in order to complete the Project.

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[27] *Id*., p. 21.

[28] Transcript of Stenographic Notes of the March 19, 2000 Hearing before the CIAC, pp. 147-148, cited in Malayan's Opposition, pp. 9-10.

Items 1.0, 5.3 and 5.4

Independent of St. Francis' silence on the issue of the "Total Exclusions," a reexamination of the "Total Exclusions" in our Decision is urged by Malayan. The Resolution concedes removing Item 6.12.3 but maintains as exclusions Items 1, 5.3 and 5.4 on the ground that they are unsubstantiated costs. I regret that I cannot concur.

Item 1.0 in the column for "Total Exclusions" was for ₱9,297,947.22 and referred to the supposedly unsubstantiated portion of the contract award to Total Ventures, Inc. (TVI). In our Decision, this was taken from R-48-a-series where ₱95,116,269.94 is recorded as the "contract award" and ₱85,818,322.72 is the amount supported by receipts; ₱9,297,947.22 is the difference between these two figures. However, as Malayan correctly points out, R-48-a-series also indicate that Malayan had actually made two downpayments of ₱9,338,688.33 each, plus the withholding tax of ₱172,938.67 each, or a total of ₱19,023,254.01 to TVI. The last two Official Receipts (ORs) included in R-48-a-series, which were also reproduced by Malayan as annexes to its Motion for Partial Reconsideration—OR No. 1629 dated July 28, 2003 and OR No. 1653 dated October 24, 2003—show as much. Thus, the amount supported by receipts totals ₱104,841,576.73 and exceeds the "contract award" of ₱95,166,269.94. The entirety of Item 1.0 should, therefore, be eliminated from "Total Exclusions."

Similarly, Items 5.3 and 5.4 which referred to Exhibits R-48-E-4-series for "Total Net Payment including 11% Attendance Fee" have been explained to be substantiated by OR No. 1912 dated December 10, 2004. That the receipt bears an amount larger than what has been declared by Malayan is of no moment as the difference will even be for the benefit of St. Francis. What is crucial is that the expense has been supported by a receipt that has been submitted as evidence of the cost incurred by the Malayan to complete the project.

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Proportionate Share in the Remaining Units

With the foregoing discussion on the Input VAT as an item that should be included in the ARCC and the deletion of Items 1, 5.3 and 5.4 from the Total Exclusions, I propose the following computation to determine the ARCC:

Construction Cost as per receipts (Exhibit "R-48-series") with 1/11% Input VAT and 2% Withholding Tax		**₱554,583,160.20**
Total Inclusion: (Award to TVI)		~~₱8,282,974.82~~
	+	₱17,807,364.98
TOTAL ARCC (Construction Costs as per Receipt + Inclusion)		**₱572,390,525.18**
Total Deductions:		**₱2,357,036.78**
~~Interest Expense paid by Malayan to RCBC~~		~~₱39,348,659.88~~
Change Orders not due to Reconfiguration		971,796.29
Contingencies		631,154.39
Interior Design Works	+	754,086.10
~~Input VAT~~		~~45,419,770.44~~
		₱2,357,036.78
Total Exclusions:		
~~Item 1.0~~		~~₱9,297,947.22~~
Item 5.3 and 5.4		530,563.65
~~Item 5.3 and 5.4~~		~~725,877.62~~
Item 5.7.1		50,710.61
Item 6.2.25		194,171.00
Item.6.11		3,499.64
Item 6.11		1,360.00
~~Item 6.12.3~~		~~2,397,047.89~~
Item F3		368,397.52
Item F3		448,534.59
Item F3		634,232.26
Professional Fees C&D		427,500.00
Professional Fees N	+	79,022.73
NET ARCC		**₱2,737,992.00**
(Total ARCC		~~₱~~572,390,525.18
Less - Total Deductions and Exclusions)		- ₱5,095,028.78
		₱567,295,496.40

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Given the Net ARCC of ₱567,295,496.40, Malayan should have 65%, while St. Francis should have 35% of the remaining units in the project, as computed below:

₱567,295,496.40 (Net ARCC)
- 452,424,849 (RCC per Sec. 9)
_____
₱114,870,647.40 (Excess ARCC)
÷ 175,856,325.05 (Total Aggregate Value of Reserved Units)
_____

0.653207369 or 65% to Malayan

₱60,985,677.65
÷ 175,856,325.05
_____

0.346792631 or 35% to St. Francis

With the foregoing, I vote to PARTIALLY GRANT Malayan's Motion for Partial Reconsideration and DENY St. Francis' Motion for Partial Reconsideration. Accordingly, I vote to AFFIRM the Court of Appeals' Decision in CA-G.R. SP Nos. 109286 and 109298 with the following MODIFICATIONS:

1) The total amount of ₱5,095,028.78 should be deducted and excluded from the gross Actual Remaining Construction Cost (ARCC) of ₱572,390,525.18 to arrive at the net ARCC of ₱567,295,496.40.

2) **Malayan is entitled to 65% ownership over the reserved units** (₱114,870,647.40/₱175,856,325.05), together with the corresponding interest in the income realized thereon in the same proportion; while **St. Francis is entitled to 35% (₱60,985,677.65/ ₱175,856,325.05) ownership of the said units**, as well as its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;

3) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion stated above, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date

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of the completion of the project on June 7, 2006 up to the finality of this decision, and to renderfull accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis;

4) Arbitration costs are maintained pursuant to the *pro rata* sharing that the parties had initially shared in accordance with the amounts claimed and counterclaimed by them.

5) Malayan and all others claiming rights under it, are enjoined from exercising acts of ownership over the reserved units relative to the proportionate share awarded to St. Francis;

6) The Register of Deeds of Pasig City is directed to immediately reinstate the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) as the registered owner in the corresponding Certificates of Title covering the reserved units awarded to St. Francis; and

7) All other awards granted by CIAC in its Award dated May 27, 2009 which are not affected by the above modifications are affirmed. No costs.
