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Commission in NLRC NCR CN. 30-08-03230-00 CA 029785-01. The Court **ORDERS** MERALCO to pay petitioner Daniel O. Paduata separation pay equivalent to one-half month pay for every year of service from the date of his employment on April 24, 1986.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 185582. February 29, 2012]

TUNA PROCESSING, INC., *petitioner, vs.* **PHILIPPINE KINGFORD, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTES; APPLICABILITY OF SPECIAL LAW (REPUBLIC ACT NO. 9285, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004); OVER GENERAL LAW (THE CORPORATION CODE), SUSTAINED; CASE AT BAR.— In several cases, this Court had the occasion to discuss the nature and applicability of the *Corporation Code of the Philippines,* a general law, *viz-a-viz* other special laws. Thus, in *Koruga vs. Arcenas, Jr.*, this Court rejected the application of the Corporation Code and applied the New Central Bank Act. x x x Following the same principle, the *Alternative Dispute Resolution Act of 2004* shall apply in this case as the *Act,* as its title – *An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes* – would suggest, is a law especially enacted "to actively promote party autonomy in the resolution

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of disputes or the freedom of the party to make their own arrangements to resolve their disputes." It specifically provides exclusive grounds available to the party opposing an application for recognition and enforcement of the arbitral award.

2. COMMERCIAL LAW; REPUBLIC ACT NO. 9285 (ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004); ANY PARTY TO A FOREIGN ARBITRATION MAY PETITION THE COURT TO RECOGNIZE AND ENFORCE A FOREIGN ARBITRAL AWARD; GROUNDS FOR OPPOSITION DO NOT INCLUDE CAPACITY TO SUE; ELUCIDATED IN CASE AT BAR.— A foreign corporation not licensed to do business in the Philippines have legal capacity to sue under the provisions of the *Alternative Dispute Resolution Act of 2004.* x x x Sec. 45 of the *Alternative Dispute Resolution Act of 2004* provides that the opposing party in an application for recognition and enforcement of the arbitral award may raise only those grounds that were enumerated under Article V of the New York Convention. x x x Clearly, not one of these exclusive grounds touched on the capacity to sue of the party seeking the recognition and enforcement of the award. Pertinent provisions of the *Special Rules of Court on Alternative Dispute Resolution,* which was promulgated by the Supreme Court, likewise support this position. Rule 13.1 of the Special Rules provides that "[a]ny party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award." The contents of such petition are enumerated in Rule 13.5. Capacity to sue is not included. Oppositely, in the Rule on local arbitral awards or arbitrations in instances where "the place of arbitration is in the Philippines," it is specifically required that a petition "to determine any question concerning the existence, validity and enforceability of such arbitration agreement" available to the parties before the commencement of arbitration and/or a petition for "judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction" after arbitration has already commenced should state "[t]he facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued." Indeed, it is in the best interest of justice that in the enforcement of a foreign arbitral award, we deny availment by the losing party of the rule that bars foreign corporations not licensed to do business in the

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Philippines from maintaining a suit in our courts. When a party enters into a contract containing a foreign arbitration clause and, as in this case, in fact submits itself to arbitration, it becomes bound by the contract, by the arbitration and by the result of arbitration, conceding thereby the capacity of the other party to enter into the contract, participate in the arbitration and cause the implementation of the result. x x x Clearly, on the matter of capacity to sue, a foreign arbitral award should be respected not because it is favored over domestic laws and procedures, but because Republic Act No. 9285 has certainly erased any conflict of law question.

3. REMEDIAL LAW; CIVIL PROCEDURE; STRICT APPLICATION OF THE RULES MAY BE EXCUSED WHEN THE REASON BEHIND THE RULE IS NOT PRESENT IN THE CASE; APPLICATION IN CASE AT BAR.— While we agree that petitioner failed to observe the principle of hierarchy of courts, which, under ordinary circumstances, warrants the outright dismissal of the case, we opt to relax the rules following the pronouncement in *Chua v. Ang,* to wit: [I]t must be remembered that [the principle of hierarchy of courts] generally applies to cases involving conflicting factual allegations. Cases which depend on disputed facts for decision cannot be brought immediately before us as we are not triers of facts. A *strict application* of this rule may be excused when the reason behind the rule is not present in a case, as in the present case, where the issues are not factual but purely legal. In these types of questions, this Court has the ultimate say so that we merely abbreviate the review process if we, because of the unique circumstances of a case, choose to hear and decide the legal issues outright. Moreover, the novelty and the paramount importance of the issue herein raised should be seriously considered. Surely, there is a need to take cognizance of the case not only to guide the bench and the bar, but if only to strengthen arbitration as a means of dispute resolution, and uphold the policy of the State embodied in the *Alternative Dispute Resolution Act of 2004.*

APPEARANCES OF COUNSEL

Bengson Negre Untalan for petitioner.
Law Firm of Villanueva Nuñez & Associates for respondent.

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D E C I S I O N

PEREZ, ***J.*:**

Can a foreign corporation not licensed to do business in the Philippines, but which collects royalties from entities in the Philippines, sue here to enforce a foreign arbitral award?

In this *Petition for Review on Certiorari under Rule 45*,[1] petitioner Tuna Processing, Inc. (TPI), a foreign corporation not licensed to do business in the Philippines, prays that the Resolution[2] dated 21 November 2008 of the Regional Trial Court (RTC) of Makati City be declared void and the case be remanded to the RTC for further proceedings. In the assailed Resolution, the RTC dismissed petitioner's *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award*[3] against respondent Philippine Kingford, Inc. (Kingford), a corporation duly organized and existing under the laws of the Philippines,[4] on the ground that petitioner lacked legal capacity to sue.[5]

The Antecedents

On 14 January 2003, Kanemitsu Yamaoka (hereinafter referred to as the "licensor"), co-patentee of U.S. Patent No. 5,484,619, Philippine Letters Patent No. 31138, and Indonesian Patent No. ID0003911 (collectively referred to as the "Yamaoka Patent"),[6] and five (5) Philippine tuna processors, namely, Angel

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[1] *Rollo,* pp. 36-59.

[2] *Id.* at 65-75. Penned by Judge Cedrick O. Ruiz, Regional Trial Court, Branch 61, Makati City.

[3] *Id.* at 105-113.

[4] *Id.* at 41. *Petition for Review on Certiorari under Rule 45*.

[5] *Id.* at 72-75. Resolution dated 21 November 2008 of the RTC.

[6] The Yamaoka Patent pertains to "the extra-low temperature smoking process using filtered smoke on fresh tuna which prevents the discoloration of the tuna and ensures its freshness during the frozen state." *Id.* at 41. *Petition for Review on Certiorari under Rule 45*.

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Seafood Corporation, East Asia Fish Co., Inc., Mommy Gina Tuna Resources, Santa Cruz Seafoods, Inc., and respondent Kingford (collectively referred to as the "sponsors"/"licensees")[7] entered into a Memorandum of Agreement (MOA),[8] pertinent provisions of which read:

1. **Background and objectives.** The Licensor, co-owner of U.S.Patent No. 5,484,619, Philippine Patent No. 31138, and Indonesian Patent No. ID0003911 xxx wishes to form an alliance with Sponsors for purposes of enforcing his three aforementioned patents, granting licenses under those patents, and collecting royalties.

   The Sponsors wish to be licensed under the aforementioned patents in order to practice the processes claimed in those patents in the United States, the Philippines, and Indonesia, enforce those patents and collect royalties in conjunction with Licensor.

x x x x x x x x x

4. **Establishment of Tuna Processors, Inc.** The parties hereto agree to the establishment of Tuna Processors, Inc. ("TPI"), a corporation established in the State of California, in order to implement the objectives of this Agreement.

5. **Bank account.** TPI shall open and maintain bank accounts in the United States, which will be used exclusively to deposit funds that it will collect and to disburse cash it will be obligated to spend in connection with the implementation of this Agreement.

6. **Ownership of TPI.** TPI shall be owned by the Sponsors and Licensor. Licensor shall be assigned one share of TPI for the purpose of being elected as member of the board of directors. The remaining shares of TPI shall be held by the Sponsors according to their respective equity shares.[9]

x x x x x x x x x

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[7] *Id.* at 40. *Petition for Review on Certiorari under Rule 45*.

[8] *Id.* at 76-83.

[9] *Id.* at 76-77.

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The parties likewise executed a Supplemental Memorandum of Agreement[10] dated 15 January 2003 and an Agreement to Amend Memorandum of Agreement[11] dated 14 July 2003.

Due to a series of events not mentioned in the petition, the licensees, including respondent Kingford, withdrew from petitioner TPI and correspondingly reneged on their obligations.[12] Petitioner submitted the dispute for arbitration before the International Centre for Dispute Resolution in the State of California, United States and won the case against respondent.[13] Pertinent portions of the award read:

> 13.1 Within thirty (30) days from the date of transmittal of this Award to the Parties, pursuant to the terms of this award, the total sum to be paid by **RESPONDENT KINGFORD** to **CLAIMANT TPI**, is the sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND EIGHT HUNDRED FORTY SIX DOLLARS AND TEN CENTS ($1,750,846.10).**
>
> **(A)** For breach of the **MOA** by not paying past due assessments, **RESPONDENT KINGFORD** shall pay **CLAIMANT** the total sum of **TWO HUNDRED TWENTY NINE THOUSAND THREE HUNDRED AND FIFTY FIVE DOLLARS AND NINETY CENTS ($229,355.90)** which is 20% of **MOA** assessments since September 1, 2005[;]
>
> **(B)** For breach of the **MOA** in failing to cooperate with **CLAIMANT TPI** in fulfilling the objectives of the **MOA, RESPONDENT KINGFORD** shall pay **CLAIMANT** the total sum of **TWO HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED NINETY DOLLARS AND TWENTY CENTS ($271,490.20)**[;][14] **and**

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[10] *Id.* at 84-85.

[11] *Id.* at 87-89.

[12] *Id.* at 42. *Petition for Review on Certiorari under Rule 45*.

[13] *Id.* at 93-99. Award of Arbitrator dated 26 July 2007. *Id.* at 103-104. Disposition of Application for Modification of Award of Arbitrators dated 13 September 2007.

[14] *Id.* at 103. Pursuant to the Disposition of Application for Modification of Award of Arbitrators dated 13 September 2007, which modified the Award of Arbitrator dated 26 July 2007.

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(C) For violation of **THE LANHAM ACT** and infringement of the **YAMAOKA 619 PATENT, RESPONDENT KINGFORD** shall pay **CLAIMANT** the total sum of **ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS ($1,250,000.00)**.
x x x

x x x x x x x x x[15]

To enforce the award, petitioner TPI filed on 10 October 2007 a *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award* before the RTC of Makati City. The petition was raffled to Branch 150 presided by Judge Elmo M. Alameda.

At Branch 150, respondent Kingford filed a Motion to Dismiss.[16] After the court denied the motion for lack of merit,[17] respondent sought for the inhibition of Judge Alameda and moved for the reconsideration of the order denying the motion.[18] Judge Alameda inhibited himself notwithstanding "[t]he unfounded allegations and unsubstantiated assertions in the motion."[19] Judge Cedrick O. Ruiz of Branch 61, to which the case was re-raffled, in turn, granted respondent's Motion for Reconsideration and dismissed the petition on the ground that the petitioner lacked legal capacity to sue in the Philippines.[20]

Petitioner TPI now seeks to nullify, in this instant *Petition for Review on Certiorari under Rule 45*, the order of the trial court dismissing its *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award*.

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[15] *Id.* at 97-98. Award of Arbitrator dated 26 July 2007.

[16] *Id.* at 184-195.

[17] *Id.* at 294-302. Order dated 20 May 2008.

[18] *Id.* at 303-326. Motion for Inhibition with Motion for Reconsideration dated 30 May 2008.

[19] *Id.* at 337-338. Order dated 11 June 2008.

[20] *Id.* at 65-75. Resolution dated 21 November 2008.

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Issue

The core issue in this case is whether or not the court *a quo* was correct in so dismissing the petition on the ground of petitioner's lack of legal capacity to sue.

Our Ruling

The petition is impressed with merit.

The *Corporation Code of the Philippines* expressly provides:

Sec. 133. ***Doing business without a license.*** – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

It is pursuant to the aforequoted provision that the court *a quo* dismissed the petition. Thus:

Herein plaintiff TPI's "Petition, *etc.*" acknowledges that it "is a foreign corporation established in the State of California" and "was given the exclusive right to license or sublicense the Yamaoka Patent" and "was assigned the exclusive right to enforce the said patent and collect corresponding royalties" in the Philippines. TPI likewise admits that it does not have a license to do business in the Philippines.

There is no doubt, therefore, in the mind of this Court that TPI has been doing business in the Philippines, but sans a license to do so issued by the concerned government agency of the Republic of the Philippines, when it collected royalties from "five (5) Philippine tuna processors[,] namely[,] Angel Seafood Corporation, East Asia Fish Co., Inc., Mommy Gina Tuna Resources, Santa Cruz Seafoods, Inc. and respondent Philippine Kingford, Inc." This being the real situation, TPI cannot be permitted to maintain or intervene in any action, suit or proceedings in any court or administrative agency of the Philippines." A priori, the "Petition, *etc.*" extant of the plaintiff TPI should be dismissed for it does not have the legal personality to sue in the Philippines.[21]

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[21] *Id.* at 72-73. Resolution dated 21 November 2008.

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The petitioner counters, however, that it is entitled to seek for the recognition and enforcement of the subject foreign arbitral award in accordance with Republic Act No. 9285 (*Alternative Dispute Resolution Act of 2004*),[22] the Convention on the Recognition and Enforcement of Foreign Arbitral Awards drafted during the United Nations Conference on International Commercial Arbitration in 1958 (*New York Convention*), and the UNCITRAL Model Law on International Commercial Arbitration (*Model Law*),[23] as none of these specifically requires that the party seeking for the enforcement should have legal capacity to sue. It anchors its argument on the following:

> In the present case, enforcement has been effectively refused on a ground not found in the [*Alternative Dispute Resolution Act of* 2004], *New York Convention,* or *Model Law*. It is for this reason that TPI has brought this matter before this most Honorable Court, as it [i]s imperative to clarify whether the Philippines' international obligations and State policy to strengthen arbitration as a means of dispute resolution may be defeated by misplaced technical considerations not found in the relevant laws.[24]

Simply put, how do we reconcile the provisions of the *Corporation Code of the Philippines* on one hand, and the *Alternative Dispute Resolution Act of 2004*, the *New York Convention* and the *Model Law* on the other?

In several cases, this Court had the occasion to discuss the nature and applicability of the *Corporation Code of the Philippines*, a general law, *viz-a-viz* other special laws. Thus, in *Koruga v. Arcenas, Jr.,*[25] this Court rejected the application of the Corporation Code and applied the New Central Bank Act. It ratiocinated:

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[22] Republic Act No. 9285 approved on 2 April 2004.

[23] As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006.

[24] *Rollo*, p. 38. *Petition for Review on Certiorari under Rule 45*.

[25] G.R. No. 169053, 19 June 2009, 590 SCRA 49.

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Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that:

> "The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail – ***generalia specialibus non derogant***." (Emphasis supplied)[26]

Further, in the recent case of *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council,*[27] this Court held:

> Without doubt, the Corporation Code is the general law providing for the formation, organization and regulation of private corporations. On the other hand, RA 6657 is the special law on agrarian reform. As between a general and special law, the latter shall prevail—*generalia specialibus non derogant*.[28]

Following the same principle, the *Alternative Dispute Resolution Act of 2004* shall apply in this case as the *Act,* as its title – *An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes* - would suggest, is a law especially enacted "to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes."[29] It specifically provides exclusive grounds

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[26] *Id.* at 68 citing *In re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue*, G.R. No. 158261, 18 December 2006, 511 SCRA 123, 141 further citing *Laureano v. Court of Appeals*, 381 Phil. 403, 411-412 (2000).

[27] G.R. No. 171101, 5 July 2011, 653 SCRA 154.

[28] *Id.* at 244 citing *Koruga v. Arcenas, Jr.*, *supra* note 24.

[29] Sec. 2, Republic Act No. 9285.

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available to the party opposing an application for recognition and enforcement of the arbitral award.[30]

Inasmuch as the *Alternative Dispute Resolution Act of 2004*, a municipal law, applies in the instant petition, we do not see the need to discuss compliance with international obligations under the *New York Convention* and the *Model Law.* After all, both already form part of the law.

In particular, the *Alternative Dispute Resolution Act of 2004* incorporated the *New York Convention* in the Act by specifically providing:

> SEC. 42. *Application of the New York Convention.* – The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.
>
> x x x x x x x x x
>
> SEC. 45. *Rejection of a Foreign Arbitral Award.* – A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the procedural rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the regional trial court.

It also expressly adopted the *Model Law*, to wit:

> Sec. 19. *Adoption of the Model Law on International Commercial Arbitration.* International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on June 21, 1985 xxx."

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[30] Secs. 42 and 45, Republic Act No. 9285, which adopted the New York Convention; and Sec. 19, Republic Act No. 9285, which adopted the entire provisions of the Model Law.

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Now, does a foreign corporation not licensed to do business in the Philippines have legal capacity to sue under the provisions of the *Alternative Dispute Resolution Act of 2004*? We answer in the affirmative.

Sec. 45 of the *Alternative Dispute Resolution Act of 2004* provides that the opposing party in an application for recognition and enforcement of the arbitral award may raise only those grounds that were enumerated under Article V of the *New York Convention*, to wit:

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

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(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Clearly, not one of these exclusive grounds touched on the capacity to sue of the party seeking the recognition and enforcement of the award.

Pertinent provisions of the *Special Rules of Court on Alternative Dispute Resolution*,[31] which was promulgated by the Supreme Court, likewise support this position.

Rule 13.1 of the Special Rules provides that "[a]ny party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award." The contents of such petition are enumerated in Rule 13.5.[32] Capacity to sue is not included. Oppositely, in the Rule on local arbitral awards or arbitrations in instances where "the place of arbitration is in the Philippines,"[33] it is specifically required that a petition "to determine any question concerning the existence, validity and enforceability of such

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[31] A.M. No. 07-11-08-SC dated 1 September 2009.

[32] RULE 13.5. *Contents of petition.* – The petition shall state the following:

a. The addresses of the parties to arbitration;

b. In the absence of any indication in the award, the country where the arbitral award was made and whether such country is a signatory to the New York Convention; and

c. The relief sought.

Apart from other submissions, the petition shall have attached to it the following:

a. An authentic copy of the arbitration agreement; and

b. An authentic copy of the arbitral award.

If the foreign arbitral award or agreement to arbitrate or submission is not made in English, the petitioner shall also attach to the petition a translation of these documents into English. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent. A.M. No. 07-11-08-SC dated 1 September 2009.

[33] Rule 3.1, A.M. No. 07-11-08-SC dated 1 September 2009.

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arbitration agreement"[34] available to the parties before the commencement of arbitration and/or a petition for "judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction"[35] after arbitration has already commenced should state "[t]he facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued."[36]

Indeed, it is in the best interest of justice that in the enforecement of a foreign arbitral award, we deny availment by the losing party of the rule that bars foreign corporations not licensed to do business in the Philippines from maintaining a suit in our

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[34] Rule 3.2, A.M. No. 07-11-08-SC dated 1 September 2009.

[35] Rule 3.12, A.M. No. 07-11-08-SC dated 1 September 2009.

[36] In relation to a petition "to determine any question concerning the existence, validity and enforceability of such arbitration agreement" available to the parties before the commencement of arbitration, Rule 3.6 provides:

RULE 3.6. *Contents of petition.* – The verified petition shall state the following:

a. The facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued;

b. The nature and substance of the dispute between the parties;

c. The grounds and the circumstances relied upon by the petitioner to establish his position; and

d. The relief/s sought.

Apart from other submissions, the petitioner must attach to the petition an authentic copy of the arbitration agreement.

In relation to a petition for "judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction" after arbitration has already commenced, Rule 3.16 reads:

RULE 3.16. *Contents of petition.* – The petition shall state the following:

a. The facts showing that the person named as petitioner or respondent has legal capacity to sue or be sued;

b. The nature and substance of the dispute between the parties;

c. The grounds and circumstances relied upon by the petitioner; and

d. The relief/s sought.

In addition to the submissions, the petitioner shall attach to the petition a copy of the request for arbitration and the ruling of the arbitral tribunal.

The arbitrators shall be impleaded as nominal parties to the case and shall be notified of the progress of the case.

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courts. When a party enters into a contract containing a foreign arbitration clause and, as in this case, in fact submits itself to arbitration, it becomes bound by the contract, by the arbitration and by the result of arbitration, conceding thereby the capacity of the other party to enter into the contract, participate in the arbitration and cause the implementation of the result. Although not on all fours with the instant case, also worthy to consider is the wisdom of then Associate Justice Flerida Ruth P. Romero in her Dissenting Opinion in *Asset Privatization Trust v. Court of Appeals*,[37] to wit:

> xxx Arbitration, as an alternative mode of settlement, is gaining adherents in legal and judicial circles here and abroad. If its tested mechanism can simply be ignored by an aggrieved party, one who, it must be stressed, voluntarily and actively participated in the arbitration proceedings from the very beginning, it will destroy the very essence of mutuality inherent in consensual contracts.[38]

Clearly, on the matter of capacity to sue, a foreign arbitral award should be respected not because it is favored over domestic laws and procedures, but because Republic Act No. 9285 has certainly erased any conflict of law question.

Finally, even assuming, only for the sake of argument, that the court *a quo* correctly observed that the *Model Law*, not the *New York Convention*, governs the subject arbitral award,[39]

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[37] G.R. No. 121171, 29 December 1998, 300 SCRA 579.

[38] *Id.* at 631.

[39] In its Resolution dated 21 November 2008, the court *a quo* observed: "This reliance by TPI solely upon the New York Convention in conjunction with Section 42 of Republic Act No. 9285 may not be correct. It is apparent from the 'Award of Arbitrator' that the 'International Centre [f]or Dispute Resolution' is a 'Commercial Arbitration Tribunal' and hence, it is engaged in commercial arbitration. Under the third sentence of Section 40 of Republic Act No. 9285, '[t]he recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law [the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985]' and not the so-called New York Convention. *Rollo,* p. 74.

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petitioner may still seek recognition and enforcement of the award in Philippine court, since the *Model Law* prescribes substantially identical exclusive grounds for refusing recognition or enforcement.[40]

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[40] Article 36 of the Model Law provides:

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) xxx

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Premises considered, petitioner TPI, although not licensed to do business in the Philippines, may seek recognition and enforcement of the foreign arbitral award in accordance with the provisions of the *Alternative Dispute Resolution Act of 2004*.

II

The remaining arguments of respondent Kingford are likewise unmeritorious.

First. There is no need to consider respondent's contention that petitioner TPI improperly raised a question of fact when it posited that its act of entering into a MOA should not be considered "doing business" in the Philippines for the purpose of determining capacity to sue. We reiterate that the foreign corporation's capacity to sue in the Philippines is not material insofar as the recognition and enforcement of a foreign arbitral award is concerned.

Second. Respondent cannot fault petitioner for not filing a motion for reconsideration of the assailed Resolution dated 21 November 2008 dismissing the case. We have, time and again, ruled that the prior filing of a motion for reconsideration is not required in *certiorari* under Rule 45.[41]

Third. While we agree that petitioner failed to observe the principle of hierarchy of courts, which, under ordinary circumstances, warrants the outright dismissal of the case,[42] we opt to relax the rules following the pronouncement in *Chua v. Ang,*[43] to wit:

> [I]t must be remembered that [the principle of hierarchy of courts] generally applies to cases involving conflicting factual allegations. Cases which depend on disputed facts for decision cannot be brought

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[41] *San Miguel Corporation v. Layoc, Jr.,* G.R. No. 149640, 19 October 2007, 537 SCRA 77, 91; *Bases Conversion and Development Authority v. Uy,* G.R. No. 144062, 2 November 2006, 506 SCRA 524, 534; and *Paa v. CA,* G.R. No. 126560, 4 December 1997, 282 SCRA 448.

[42] *Catly v. Navarro*, G.R. No. 167239, 5 May 2010, 620 SCRA 151, 193.

[43] G.R. No. 156164, 4 September 2009, 598 SCRA 229.

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immediately before us as we are not triers of facts.[44] A *strict application* of this rule may be excused when the reason behind the rule is not present in a case, as in the present case, where the issues are not factual but purely legal. In these types of questions, this Court has the ultimate say so that we merely abbreviate the review process if we, because of the unique circumstances of a case, choose to hear and decide the legal issues outright.[45]

Moreover, the novelty and the paramount importance of the issue herein raised should be seriously considered.[46] Surely, there is a need to take cognizance of the case not only to guide the bench and the bar, but if only to strengthen arbitration as a means of dispute resolution, and uphold the policy of the State embodied in the *Alternative Dispute Resolution Act of 2004*, to wit:

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

Fourth. As regards the issue on the validity and enforceability of the foreign arbitral award, we leave its determination to the court *a quo* where its recognition and enforcement is being sought.

Fifth. Respondent claims that petitioner failed to furnish the court of origin a copy of the motion for time to file petition for

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[44] *Id.* at 238 citing *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, 25 October 2005, 474 SCRA 153,161; *Agan, Jr. v. Philippine International Air Terminals Co., Inc.,* G.R. Nos. 155001, 155547 and 155661, 21 January 2004, 420 SCRA 575, 584.

[45] *Id.*

[46] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, 27 January 2004, 421 SCRA 148, 183.

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review on *certiorari* before the petition was filed with this Court.[47] We, however, find petitioner's reply in order. Thus:

> 26. Admittedly, reference to "Branch 67" in petitioner TPI's "Motion for Time to File a Petition for Review on *Certiorari* under Rule 45" is a typographical error. As correctly pointed out by respondent Kingford, the order sought to be assailed originated from Regional Trial Court, Makati City, Branch 61.
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> 27. xxx Upon confirmation with the Regional Trial Court, Makati City, Branch 61, a copy of petitioner TPI's motion was received by the Metropolitan Trial Court, Makati City, Branch 67. On 8 January 2009, the motion was forwarded to the Regional Trial Court, Makati City, Branch 61.[48]

All considered, petitioner TPI, although a foreign corporation not licensed to do business in the Philippines, is not, for that reason alone, precluded from filing the *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award* before a Philippine court.

WHEREFORE, the Resolution dated 21 November 2008 of the Regional Trial Court, Branch 61, Makati City in Special Proceedings No. M-6533 is hereby **REVERSED** and **SET ASIDE**. The case is **REMANDED** to Branch 61 for further proceedings.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.,* concur.

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[47] *Rollo*, pp. 427-428. Comment/Opposition on the petition dated 1 April 2009.

[48] *Id.* at 459. Reply to "COMMENT/OPPOSITION (Re: Petitoner Tuna Processing, Inc.'s Petition for Review on *Certiorari* Under Rule 45 dated January 23, 2009)" dated 1 April 2009.