

## ARBITRATION UPDATE

In *J Plus Asia Development Corporation v. Utility Assurance Corporation* (G.R. No. 199650, June 26, 2013), the Philippine Supreme Court clarified that Republic Act No. 9285 (R.A. No. 9285) or the Alternative Dispute Resolution Act of 2004 did not divest the Court of Appeals of jurisdiction to review the decisions or awards of the Construction Industry Arbitration Commission (CIAC).

J Plus Asia Development Corporation (J Plus Asia) contracted the services of Martin E. Mabunay to construct a 72-room condominium/hotel at the Fairways and Bluewaters Golf & Resort in Boracay Island, Malay, Aklan. The project, costing P42,000,000, had a proposed completion date of December 2008.

Mabunay received a 20% down payment of P8,400,000 and furnished J Plus Asia a Performance Bond issued by Utility Assurance Corporation (UTASSCO) covering said amount.

By September 16, 2008, J Plus Asia has paid Mabunay P15,979,472.03,

## COURT OF APPEALS HAS POWER TO REVIEW CIAC ARBITRAL AWARDS

inclusive of the 20% downpayment yet by November 14, 2008, only 31.39% of the project has been completed. Consequently, J Plus Asia terminated the Construction Agreement and sent demand letters to Mabunay and UTASSCO.

When its demands went unheeded, J Plus Asia filed a Request for Arbitration before the CIAC. The CIAC ordered Mabunay and UTASSCO to pay J Plus Asia, jointly and severally, liquidated damages and unrecouped downpayment, provided that UTASSCO's liability shall not exceed P8,400,000. It ordered Mabunay to indemnify UTASSCO for what it might pay J Plus Asia plus attorney's fees.

Dissatisfied, UTASSCO elevated the case to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.

The appellate court granted the appeal as it

found the termination of the Construction Agreement (Agreement) premature.

J Plus Asia went to the Supreme Court and assailed the denial of its claim under the Performance Bond and questioned the jurisdiction of the Court of Appeals on the argument that arbitral awards of the CIAC are appealable to the regional trial courts.

The Supreme Court reversed the Court of Appeals and ruled that Mabunay's failure to substantially perform the work on account of tremendous delays in executing the scheduled work of activities constitutes default under Article 13 of the Agreement that entitles J Plus Asia to collect against the Performance Bond.

The High Court, however, pointed out that by the explicit provision of R.A. No. 9285, a CIAC arbitral award need not

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*Princess Ann T. de Jesus*

[ptdejesus@fnslaw.com.ph](mailto:ptdejesus@fnslaw.com.ph)

Dispute Resolution  
Practice Group  
Key Lawyers:

Philip Sigrid A. Fortun  
Gregorio Y. Narvasa II  
Karl Arian A. Castillo  
Rebecca D. De Guzman  
Walter Robin C. Go  
Albert Lee G. Angeles

be confirmed by the regional trial court to be executory as provided under Executive Order No. 1008. Since R.A. No. 9285 explicitly excluded CIAC awards from domestic arbitration awards that need to be confirmed to be executory, said awards are therefore not covered by Rule 11 of the Special ADR Rules.

The Supreme Court held further that with the

amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the CA in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law or of fact and law. *LF* © August 7, 2013

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