



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DATEM INCORPORATED,

G.R. Nos. 242904-05

Petitioner,

Present:

- versus -

PERALTA, *CJ.*, Chairperson
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

ALPHALAND MAKATI PLACE,
INC. and/or ALPHALAND
SOUTHGATE TOWER, INC.,

Promulgated:

Respondents.

FEB 10 2021

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DECISION

ZALAMEDA, *J.*:

Since the Construction Industry Arbitration Commission's (CIAC) jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract.¹

¹ *Tourism Infrastructure and Enterprise Zone Authority v. Global-V Builders Co.*, G.R. No. 219708, 03 October 2018 [Per J. Peralta]; see also *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corp.*, G.R. No. 180640, 24 April 2009, 604 Phil. 631 (2009) [Per J. Chico-Nazario].

The Case

Before the Court is a Petition for Review on *certiorari*² filed by petitioner DATEM Incorporated (DATEM) assailing the Decision³ dated 25 October 2018 of the Court of Appeals (CA) in CA-G.R. SP. Nos. 152827 and 155448, which annulled and set aside for lack of jurisdiction the Final Award⁴ dated 05 April 2018 issued by an arbitral tribunal of the CIAC.

Antecedents

The present controversy arose from the construction of Towers 1, 2, and 3 of Alphaland Makati Place, a condominium project located at Ayala Avenue Extension corner Malugay Street, Barangay Bel-Air, Makati City. Said project was a residential and commercial reinforced concrete structure consisting of: (i) a six (6)-level podium with a five (5)-level basement and (ii) three (3)-tower buildings. All three (3) towers were to be constructed on top of the podium while the external ground floor of the latter was to be extensively landscaped with swimming pools, water features, and hard and soft landscaping.⁵

In May 2014, respondents Alphaland Makati Place Incorporated and Alphaland Development Incorporated⁶ (Alphaland, collectively) entered into a construction agreement with DATEM for the performance of civil, structural, and architectural works on Towers 1, 2, and 3 of Alphaland Makati Place. The total contract price of the construction works amounted to Php1,260,000,000.00.⁷

During the course of the construction works, DATEM submitted separate progress billings to Alphaland for Main Contract Works and Change Orders. Out of these billings, Alphaland has approved and paid the total gross amount of Php1,167,442,794.02 for the Main Works and Php230,201,525.49 for Change Orders. An amount equivalent to

² *Rollo*, pp. 9-75.

³ *Id.* at 77-102; penned by Presiding Justice Romeo F. Barza and concurred in by Associate Justices Elihu A. Ybañez and Germano Francisco D. Legaspi of the Special First Division, Court of Appeals, Manila.

⁴ *Id.* at 365-410; issued by an Arbitral Tribunal composed of Engr. Rodolfo R. Penalosa, Atty.-Engr. Jesusito G. Morillos, and Atty. Teodoro C. Baroque, Jr.

⁵ *Id.* at 78-79.

⁶ *Id.* at 365. Now Alphaland Southgate Tower Incorporated.

⁷ *Id.* at 79.

Php34,076,747.09, however, remained unpaid to DATEM consisting of the following:⁸

Billing Description	<u>Amount</u>
<i>Original Contract</i>	<i>Php12,496,964.65</i>
Progress Billing No. 119	Php3,877,820.30
Progress Billing No. 120/Final Billing	Php8,619,144.35
<i>Change Orders</i>	<i>Php19,811,338.02</i>
Billed Change Orders with CO Form	Php9,048,787.42
Billed Change Orders w/out CO Form	Php7,470,750.86
Billed Unreconciled Change Orders	Php3,291,799.74
<i>Labor escalation 2nd Tranche</i>	<i>Php887,710.87</i>
Progress Billing No. 18	Php887,710.87
<i>Labor escalation WAO18</i>	<i>Php625,897.83</i>
Progress Billing No. 19	Php625,897.83
<i>Exterior wall and Vertical Fins</i>	<i>Php254,835.80</i>
Progress Billing No. 15	Php254,835.80
<i>TOTAL AMOUNT FOR UNCOLLECTED BILLINGS</i>	<i>Php34,076,747.09⁹</i>

The completion of construction works was delayed several times due to causes allegedly not attributable to DATEM, hence, the latter was constrained to submit to Alphaland nine (9) claims for time extensions. Through its construction manager, Jose Ailing Construction Management, Inc. (JACMI), Alphaland granted the first six (6) time extensions to DATEM until 30 September 2015. Pending evaluation of the last three (3) time extensions, JACMI's services were terminated and no substitute independent construction manager was appointed by Alphaland as replacement.¹⁰

On 06 September 2015, DATEM completed the construction works at Tower 1 and Tower 2, which Alphaland accepted and certified. Thereafter on 23 November 2015, Alphaland obtained a Certificate of Occupancy for the

⁸ *Id.*

⁹ *Id.* at. 79-80.

¹⁰ *Id.* at 80.

aforesaid buildings from the City of Makati. However, certain design issues affecting Tower 3 have not been resolved by Alphaland. Moreover, Alphaland deducted from DATEM's contract the balance of Tower 3 construction works in the total amount of Php72,396,659.29. By virtue of the deduction of the balance of Tower 3 works, DATEM claimed it completed the Project as of 30 September 2015.¹¹

Despite completion of the Project, DATEM claimed that Alphaland refused to release its retention money for Original Works and Change Orders in the total amount of **Php121,930,996.35**, broken down as follows:¹²

Retention	<u>Amount</u>
Original Works	Php116,744,297.40
Change Orders	Php1,163,157.61
WAO 18	Php770,570.44
Labor Escalation 2 nd Tranche	Php1,056,151.58
Exterior Walls and Vertical Fins	Php2,196,837.32
Total	Php121,930,996.35¹³

On 27 January 2017, DATEM sent a letter to Alphaland informing the latter of its decision to terminate the balance of construction works to be performed on Tower 3 because Alphaland had dilly-dallied on the issues plaguing the aforesaid building for a considerable amount of time. DATEM thereafter demanded payment from Alphaland for the following unpaid claims stemming from the Project:¹⁴

Billings for work accomplishments	Php34,076,747.09
Release of balance of retention money	Php121,930,996.35
Extended preliminaries	Php153,109,616.92 ¹⁵

Alphaland refused to settle the above-quoted claims of DATEM, hence, the latter was constrained to file a complaint before the CIAC on the basis of an arbitration clause in their Construction Agreement.¹⁶

¹¹ *Id.* at 80-81.

¹² *Id.* at 81.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 82.

In response to DATEM's complaint, Alphaland filed a motion to dismiss before the CIAC wherein they challenged the latter's jurisdiction on account of DATEM's alleged non-compliance with a condition precedent before submission of a dispute under the arbitration clause.¹⁷ It was denied by the CIAC in an Omnibus Order dated 25 August 2017. Alphaland moved for reconsideration but the same was also denied by the CIAC.¹⁸

Aggrieved by the denial of its motion to dismiss, Alphaland filed a petition for *certiorari* before the CA. The aforesaid petition was docketed as CA-G.R. SP No. 152827.¹⁹

Arbitral Tribunal's Award

Pending resolution of CA-G.R. SP No. 152827, the CIAC rendered its Final Award²⁰ dated 05 April 2018 in favor of DATEM. The dispositive portion provides:

WHEREFORE, judgement is hereby rendered in favor of Claimant Datem Incorporated and against Respondents Alphaland Makati Place, Inc. and Alphaland Southgate Tower, Inc. the total amount of **Php235,901,940.49**, broken down as follows:

<i>Description</i>	<i>Claimed Amount</i>	<i>Award</i>
Release of Retention Money	Php121,930,996.35	Php121,930,996.35
Progress Billings	[Php] 34,076,747.09	[Php] 29,6958,83.45 (sic)
Return of unjustified deductions	[Php] 1,131,687.66	[Php] 1,131,687.66
Extended Preliminaries	[Php]153,109,616.92	[Php] 99,384,144.21
Extended use of Formworks	[Php] 15,480,038.67	
(Less: 'undesignated Payment)	-	[Php] 35,000,000.00)
Interest	[Php] 40,658,647.89	[Php] 12,122,802.52
Exemplary Damages	[Php] 1,000,000.00	[Php] 0.00

¹⁷ *Id.*

¹⁸ *Id.* at 82-83.

¹⁹ *Id.* at 83.

²⁰ *Id.* at 365-410.

Attorney's fees	[Php] 15,000,000	[Php] 4,225,000.00
Cost of suit	[Php] 3,000,000.00	[Php] 2,411,426.30
TOTAL	Php385,387,734.58	Php235,901,940.49

Upon this Final Award becoming final, interest at 6% per annum shall be further paid on the outstanding amount until full payment thereof shall have been made, 'this interim period being deemed to be at that time already a forbearance of credit.'

SO ORDERED.²¹

Alphaland filed another petition before the CA to assail the Final Award. The subsequent petition was docketed as CA-G.R. SP No. 155448, and thereafter consolidated with the previous petition in CA-G.R. SP No. 152827.²²

CA Ruling

On 25 October 2018, the CA rendered its decision²³ annulling the CIAC's Final Award for lack of jurisdiction.²⁴ According to the CA, a condition precedent was imposed by the parties before either of them can submit any dispute for arbitration. However, this precondition was not fulfilled before DATEM instituted the arbitration case.²⁵ Consequently, the CA decreed CIAC had no jurisdiction to resolve the issues raised by DATEM.²⁶

The dispositive portion CA decision provides:

ACCORDINGLY, the Petition for Certiorari in CA-G.R. SP No. 152827 is **GRANTED**. The *Omnibus Order* dated August 25, 2017 and Order dated September 18, 2017 of the Arbitral Tribunal of the Construction Industry Commission in, CIAC Case No. 21- 2017, are **SET ASIDE**. The CIAC is hereby declared to have no jurisdiction over CIAC Case No. 21-2017 and consequently, the *Final Award* rendered by its Arbitral Tribunal in the said case, dated April 5, 2018, is hereby **ANNULLED** and **SET ASIDE** for lack of jurisdiction. CIAC Case No. 21-2017 is hereby ordered **DISMISSED**.

²¹ *Id.* at 404-405.

²² *Id.* at 84-85.

²³ *Id.* at 77-102.

²⁴ *Id.* at 101.

²⁵ *Id.* at 92.

²⁶ *Id.* at 95.

SO ORDERED.²⁷

Hence, DATEM filed the instant petition for review on *certiorari*.

Issue

The primordial issue is whether or not the CA erred in finding that the CIAC lacked jurisdiction over the case. DATEM argued Executive Order No. (EO) 1008 vests CIAC with automatic jurisdiction when there is an arbitration clause, and non-compliance with a precondition cannot oust CIAC of its jurisdiction.²⁸

Ruling of the Court

We find merit in DATEM's petition.

Procedural matters

Before delving into the main issue, the Court deems it necessary to address Alphaland's assertion that DATEM attached a defective verification to the petition. According to Alphaland, the verification was dated 28 November 2018. However, the petition itself was filed on 17 December 2018. Thus, Alphaland claims the petition is fatally defective because DATEM's representative cannot "validly certify the truth of a FUTURE event."²⁹

Alphaland's contention is misplaced. It is settled that the verification of a pleading is only a formal, not a jurisdictional requirement intended to secure the assurance that the matters alleged in a pleading are true and correct.³⁰

The Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification:

²⁷ *Id.* at 101.

²⁸ *Id.* at 27-28.

²⁹ *Id.* at 553.

³⁰ *Fernandez v. Villegas*, G.R. No. 200191, 20 August 2014 [Per J. Perlas-Bernabe].



1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. x x x³¹

The variance between the dates of the verification and the petition does not necessarily contradict the categorical declaration made by petitioners that they read and understood the contents of the pleading. A variance in their dates is a matter that may satisfactorily be explained. To demand the litigants to read the very same document that is to be filed in court is too rigorous a requirement since what the Rules require is for a party to read the contents of a pleading without any specific requirement on the form or manner in which the reading is to be done. What is important is that efforts were made to satisfy the objective of the Rule, that is, to ensure good faith and veracity in the allegations of a pleading.³²

Here, the variance between the filing date of the petition and the date it was verified is not fatal to DATEM's case. In its reply,³³ DATEM satisfactorily explained the variance in dates and narrated that the petition was already prepared and verified as of 21 November 2018. However, DATEM's counsel was only able to secure the certified documents from the CA and CIAC thereafter. Moreover, the collation, scanning, and reproduction of all documentary requirements were later completed on 17 December 2018.³⁴ Clearly, even if the dates were different, DATEM substantially complied with the objective of the verification requirement.

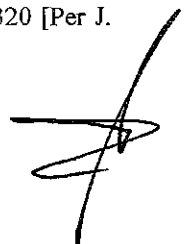
Since the CIAC's jurisdiction is conferred by law, it cannot be

³¹ *People v. Lee, Jr.*, G.R. No. 234618, 16 September 2019 [Per J: Peralta].

³² *Peak Ventures Corp. v. Heirs of Villareal*, G.R. No. 184618, 19 November 2014, 747 Phil. 320 [Per J. Del Castillo].

³³ *Rollo*, pp. 584-601.

³⁴ *Id.* at 584-585.



subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties

The Court now proceeds with the gist of the controversy.

Under Section 4 of EO 1008,³⁵ otherwise known as the Construction Industry Arbitration Law, the CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. The provision further states that the CIAC acquires jurisdiction when the parties to a dispute agree to submit the same to voluntary arbitration. The bare fact that the parties incorporated an arbitration clause in their contract is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. The CIAC is already vested with jurisdiction the moment both parties agreed to incorporate an arbitration clause in their agreement.³⁶

To reiterate and emphasize, since the CIAC's jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is an arbitration clause in the construction contract.³⁷

The mere existence of an arbitration clause in the construction contract is considered by law as an agreement by the parties to submit existing or future controversies between them to CIAC jurisdiction, **without any qualification or condition precedent**. To affirm a condition precedent in the construction contract, which would effectively suspend the jurisdiction of the CIAC until compliance therewith, would be in conflict with the recognized intention of the law to automatically vest CIAC with

³⁵ SECTION 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration. x x x

³⁶ *Philippine Textile Research Institute v. Court of Appeals*, G.R. Nos. 223319 & 247736, 09 October 2019 [Per J. Caguioa].

³⁷ *Supra* at note 1.



jurisdiction over a dispute should the construction contract contain an arbitration clause.³⁸

In the instant case, the existence of an arbitration clause is undisputed. Even the CA explicitly upheld the presence of an arbitration clause in the parties' construction agreement.³⁹ This arbitration clause reads:

Article 13

DISPUTE SETTLEMENT/ARBITRATION

13.1 Should disputes, controversies or differences between the parties arise in connection with this Agreement, the Parties shall, as far as practicable, settle the same amicably. Within five (5) days from written notice ('initial written notice') from one party that a dispute or controversy needs to be settled, the Parties shall arrange for the respective representation to meet not more than ten (10) calendar days from initial written notice. During the said meeting, or meetings, which the Parties may call, the Parties shall, in good faith, endeavor to reach a settlement mutually acceptable to them both. Should the parties fail to amicably settle their dispute within thirty (30) calendar days or such period as may be agreed by them from date of receipt of initial written notice, the Parties shall submit their dispute to arbitration in accordance with the following section.

13.2 Such unresolved disputes shall be submitted by either Party to a Board of Arbitration in accordance with the arbitration rules of the Construction Industry Authority of the Philippines. Expenses and other fees for arbitration shall be shouldered by the party held liable for the dispute by the Board of Arbitrators or, in the absence of such determination, equally between the PARTIES. Any pending issue submitted for arbitration (save any of the grounds provided under Section 11.1 and 11.2 herein by virtue of which CONTRACTOR shall be entitled to suspend work on the PROJECT and an extension of the Contract Period) shall not be considered as basis for the CONTRACTOR to suspend work nor shall it be made as basis for extension of time to complete the WORKS, except as authorized by the OWNER in writing.⁴⁰

Despite the clear existence of an arbitration clause, the CA still declared the CIAC had no jurisdiction over the construction dispute. The CA based its ruling on the non-compliance with the precondition, *i.e.*, a meeting

³⁸ *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corp.*, G.R. No. 180640, 24 April 2009, 604 Phil. 631 (2009) [Per J. Chico-Nazario].

³⁹ *Rollo*, p. 91.

⁴⁰ *Id.* at 91-92.

must first be held to amicably settle the dispute before submitting to arbitration.⁴¹

Indubitably, the CA erred in declaring that the CIAC lacked jurisdiction. Non-compliance with a stipulated condition under the arbitration clause does not divest the CIAC of its automatic jurisdiction under EO 1008. The CA disregarded the basic principle that mere existence of an arbitration clause is, considered by law, sufficient for the CIAC to acquire jurisdiction over a construction dispute.

At any rate, the CIAC Rules of Procedure expressly provides how the arbitral tribunal should treat instances where there is non-compliance with a stipulated precondition:

SECTION 3.2. Preconditions. — The claimant against the government, in a government construction contract, shall state in the complaint/request for arbitration that 1) all administrative remedies have been exhausted, or 2) there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made, or 3) due to the application for interim relief, exhaustion of administrative remedies is not practicable.

3.2.1 The Claimant in a private construction contract has the same obligation as the above to show similar good faith compliance with all preconditions imposed therein or exemptions therefrom.

3.2.2 In case of non-compliance with the precondition contractually imposed, absent a showing of justifiable reasons, exemption, or a waiver thereof, **the tribunal shall suspend arbitration proceedings pending compliance therewith within a reasonable period directed by the Tribunal.**⁴² [Emphasis supplied.]

As shown in the records, the CIAC observed the foregoing procedure when Alphaland filed its motion to dismiss claiming non-compliance with a precondition. During proceedings before the CIAC, the parties were given a reasonable period to hold meetings for the purpose of reaching an amicable settlement.⁴³ In fact, counsel for Alphaland manifested on record that the parties were in the process of negotiation:

(Atty. Alba, Counsel for Respondents): “Well, your Honor, x x x we understand that the Tribunal mentioned that any possible settlement shall be done by the Parties' own time. In fact, the Parties are in the process of negotiation. x x x So, if possible, we would like to request a longer period,

⁴¹ *Id.* at 92.

⁴² *Id.* at 372; *CIAC Revised Rules of Procedure Governing Construction Arbitration.*

⁴³ *Id.* at 368-371.

if it's possible to give the Parties really more time to discuss and negotiate. And, in fact, during the caucus of the Tribunal, counsels actually outside, were already discussing how to move this forward, actualizing the fact that the Parties are really in the process of discussion on the possible settlement of this issue. So, if it's possible, we would like additional time to file our Answer, because once we file our Answer, that's essentially will lay down our claim and may cause further dispute between the Parties, and it may hamper any possible negotiations which are ongoing.

(Arbitrator Morallos): Very well x x x fifteen (15) days would be reasonable x x x.⁴⁴ (Emphasis in the original)

Thereafter, the parties were given several more extensions to allow negotiation and possible settlement. However, Alphaland seemed to change its mind because instead of filing an Answer, it again insisted on the dismissal of arbitration proceedings.⁴⁵ Thus, the CIAC duly acted within its Rules when it granted a reasonable period to comply with the precondition. When Alphaland rehashed its motion to dismiss, the CIAC correctly maintained it had jurisdiction over the case.

*The Court reinstates the CIAC's
Final Award dated 05 April
2018*

CIAC was created under EO 1008 to establish an arbitral machinery that will settle expeditiously problems arising from, or connected with, contracts in the construction industry. CIAC exercises quasi-judicial powers over arbitration disputes concerning construction contracts. Its findings are accorded respect because it comes with the presumption that the CIAC is technically proficient in efficiently and speedily resolving conflicts in the construction industry.⁴⁶

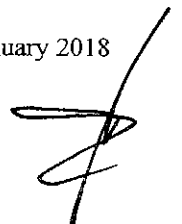
Ultimately, the CIAC was created in recognition of the contribution of the construction industry to national development goals. Realizing that delays in the resolution of construction industry disputes would also hold up the development of the country, EO 1008 expressly mandates the CIAC to **expeditiously** settle construction industry disputes.⁴⁷ The Court remains mindful of the clear legislative intent behind EO 1008. Any ruling to remand

⁴⁴ *Id.* at 370.

⁴⁵ *Id.*

⁴⁶ *Metro Rail Transit Development Corp. v. Gammon Philippines, Inc.*, G.R. No. 200401, 17 January 2018 [Per J. Leonen].

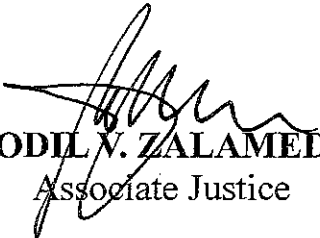
⁴⁷ *Supra* at note 38.



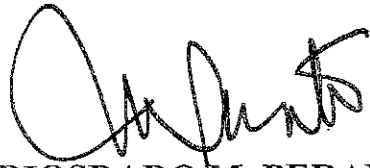
this case back to the CIAC or the CA would be circuitous and dilatory. It would entail unnecessary delays and expenses, which EO 1008 precisely seeks to prevent. Indeed, it would defeat the very purpose for which the CIAC was created.⁴⁸

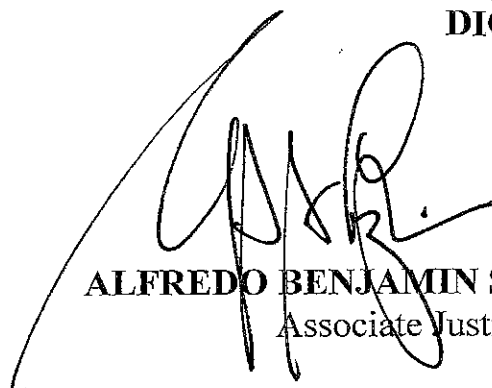
WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated 25 October 2018 rendered by the Court of Appeals in CA-G.R. SP Nos. 152827 and 155448 is hereby **REVERSED** and **SET ASIDE**. The Final Award dated 05 April 2018 rendered by the Arbitral Tribunal of the Construction Industry Arbitration Commission in CIAC Case No. 21-2017 is hereby **REINSTATED**.

SO ORDERED.



RODIL N. ZALAMEDA
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ROSMARID D. CARANDANG
Associate Justice


SAMUEL H. GAERLAN
Associate Justice



⁴⁸ *Id.*

CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

