Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CAGAYAN DE ORO CITY WATER DISTRICT, represented by its General Manager ENGR. RACHEL M. BEJA, *Petitioner,*	**G.R. No. 202305**
-versus-	Members: GESMUNDO, *C.J., Chairperson,* CAGUIOA, LAZARO-JAVIER, LOPEZ, M., and LOPEZ, J., *JJ.*
HON. EMMANUEL P. PASAL, Regional Trial Court, Branch 38, Cagayan de Oro City and RIO VERDE WATER CONSORTIUM, INC., *Respondents.*	Promulgated: NOV 11 2021

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D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Petitioner Cagayan De Oro City Water District (COWD) assails the twin Orders dated March 23, 2012[1] and May 3, 2012[2] of the Regional Trial Court (RTC) - Branch 38, Cagayan De Oro City in Special Proceedings Case

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1 Penned by RTC Judge Emmanuel P. Pasal, *rollo*, pp. 562-566.
2 *Rollo*, p. 581.

No. 2011-190 directing COWD and private respondent Rio Verde Water Consortium, Inc. (Rio Verde) to submit to arbitration pursuant to the arbitration clause in their Bulk Water Supply Agreement (BWSA)[3] dated December 23, 2004, as amended by their Supplemental Agreement[4] dated January 21, 2005.

Antecedents

Pursuant to Presidential Decree 198 (PD 198),[5] otherwise known as The Provincial Water Utilities Act of 1973, the City Council of Cagayan de Oro issued Resolution No. 35 dated July 11, 1973 creating COWD.[6]

In accordance with the same law, COWD conducted public bidding of the contract for the design, construction, operation, maintenance, and management of its Bulk Water Supply Project (BWSP) for Cagayan de Oro City and its environs, with a Model Contract as part of the bidding documents.[7]

By Resolution No. 222, Series of 2004[8] dated December 9, 2004, the COWD Board of Directors awarded the BWSP contract to Rio Verde. Consequently, COWD and Rio Verde signed the BWSA dated December 23, 2004[9] wherein Rio Verde undertook, *inter alia*, to supply bulk water to COWD[10] at the starting rate of **₱10.45**[11] per cubic meter on a required production capacity of 50,000-150,000 cubic meters per day for twenty-five (25) years.[12]

Subsequently, under Resolution No. 238, Series of 2004[13] dated December 20, 2004, COWD was authorized to negotiate with Rio Verde on a common formula for Water Price Adjustment. After two (2) meetings, the Board of Directors passed Resolution No. 010, Series of 2005,[14] approving a revised parametric formula which was later on embodied in the Supplemental Agreement dated January 21, 2005 between COWD and Rio Verde.[15]

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3 *Id.* at 36-74.
4 *Id.* at 75-78.
5 DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES. (Presidential Decree No. 198, Issued on May 25, 1973).
6 *Rollo*, p. 36.
7 *Id.* at 36-37.
8 *Id.*
9 *Id.* at 36-74.
10 *Id.* at 41.
11 *Id.* at 59 and 69.
12 *Id.* at 42.
13 *Id.* at 75.
14 *Id.* at 76.
15 *Id.* at 75-78.

In January 2007, Rio Verde started the delivery of bulk water to COWD at the rate of 40,000 cubic meters daily. Its billing statements to COWD, however, reflected the price of **₱11.52** per cubic meter, citing Article 9 of the BWSA[16] as amended by the Supplemental Agreement. Since it did not expect this new rate, COWD had to review both contracts.

On June 27, 2007, COWD Acting General Manager Engineer Bienvenido V. Batar, Jr. submitted a summary of his observations,[17] noting substantial differences between the **BWSA**, on the one hand, and the **Model Contract**, on the other. Because of these findings, the COWD Board of Directors sought the legal opinion of the Office of the Government Corporate Counsel (OGCC).

By Opinion No. 003, Series of 2008,[18] the OGCC advised COWD to immediately pursue the reformation of the BWSA, as amended to revert it to the Model Contract subject of public bidding. The OGCC advanced the view that COWD and the Local Water Utilities Administration (LWUA) were made to believe that the BWSA was in accordance with the Model Contract. In fact, the Supplemental Agreement did not bear the conformity of the LWUA.

Thereafter, COWD informed Rio Verde through a series of communications that it cannot grant payment at the rate of ₱11.52 per cubic meter as this was not what they agreed upon in the Model Contract. Even then, Rio Verde eventually got paid in the amount of ₱132,414,165.40 for bulk water it supplied COWD at **₱11.52** per cubic meter.[19]

On September 23, 2008, COWD received from the Commission on Audit (COA)-Office of the Regional Cluster Director[20] a Notice of Disallowance (ND) No. COWD-2008-51, Calendar Year 2007[21] against the disbursement of the ₱132,414,165.40. The COA found that per Bids and Award Committee, Resolution No. 003, Series of 2004[22] dated December 1, 2004, Rio Verde was actually disqualified as a non-responsive bidder for the BWSP, hence, the payment it gave for the project was devoid of basis.

But under Resolution No. 063, Series of 2009[23] dated July 1, 2009, COWD declared it would continue to pay Rio Verde for bulk water supply, citing paramount public need for 24/7 water supply in Cagayan de Oro City and its environs.

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16 *Id.* at 36-74
17 *Id.* at 79-98.
18 *Id.* at 99-106.
19 *Id.* at 111.
20 COA Office of the Regional Cluster Director, Cluster III – Public Utilities, Corporate Government Sector, Regional Office No. X, Cagayan de Oro City, *rollo*, p. 104.
21 *Rollo*, p. 107.
22 *Id.* at 173-174.
23 *Id.* at 240.

On July 14, 2009, COWD filed an Appeal Memorandum before the COA Office of Regional Director No. 10-CDO,[24] arguing that ND No. COWD-2008-51 should be lifted since payment was made pursuant to the agreements between the COWD and Rio Verde. Too, the finding that Rio Verde was a non-responsive bidder was without basis.

Pursuant to the request of the Office of the Ombudsman for Mindanao, COA created a Special Audit Team to do an audit investigation on the alleged graft and corrupt practices of the COWD Board of Directors, its contractor Rio Verde, and then LWUA Administrator Lorenzo H. Jamora.

Under its Fraud Audit and Investigation Office (FAIO) Audit Observation Memorandum (AOM) 2009-0019[25] dated November 9, 2009, the COA Special Audit Team[26] headed by Atty. Alexander B. Juliano reported that the public bidding for the BWSP failed to comply with Republic Act No. 9184 (RA 9184), otherwise known as The Government Procurement Act. It brought to fore the following observations, *viz.*:

a. Bidding for the BWSP was awarded to Rio Verde, a non-responsive bidder, in violation of RA 9184. Rio Verde was a newly organized consortium without the requisite of three (3)-year audited financial statements and BIR registration;[27]

b. The BWSA was crafted and awarded apparently for the benefit and undue advantage of Rio Verde as it substantially deviated from the Model Contract which was part of the bid documents;[28]

c. The Supplemental Agreement revised and increased the water rate formula to accommodate the proposal of the contractor to the disadvantage of the public consumer equivalent to **₱1.46** per cubic meter;[29] and

d. Fraud was committed in the execution of the contracts as correctly opined by the OGCC.[30]

COA Director IV Leonor D. Boado affirmed under Letter[31] dated October 22, 2010. During her exit conference with COWD, however, COWD moved for her inhibition.[32]

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24 *Id.* at 108-125.
25 *Id.* at 126-172.
26 COA Legal Service Sector, Fraud Audit, and Investigation Office, *rollo*, pp. 127-172.
27 *Rollo*, p. 128.
28 *Id.* at 134.
29 *Id.* at 141.
30 *Id.* at 144.
31 *Id.* at 175.
32 *Id.* at 414-416.

Meantime, COWD and Rio Verde agreed to be bound by the provisions of the Model Contract. Thus, Rio Verde charged ₱10.45 per cubic meter for its continued supply of bulk water.

By Letter[33] dated March 15, 2011, however, Rio Verde requested for a water price adjustment of **₱2.6961** per cubic meter or a total of **₱13.1461** per cubic meter effective April 2011.

COWD denied the request,[34] citing the aforementioned FAIO-AOM 2009-0019.

Rio Verde, nonetheless, asked that they thresh out their differences through arbitration. To this, COWD did not respond.

Proceedings before the RTC-Branch 38, Cagayan De Oro City

In S.P. 2011-190 entitled *In Re: Petition to Compel Arbitration, Rio Verde Water Consortium, Inc. v. Cagayan de Oro Water District,* Rio Verde invoked Section 19 of the BWSA, as amended, thus:

ARTICLE 19

DISPUTE RESOLUTION

19.01 Regular Meetings

> Throughout the term of this Agreement, the Steering Committee and such other representatives of the Parties shall meet regularly, at least twice a year, to discuss the progress of the Project and the operation, maintenance and management of the Water Plant in order to ensure that the arrangement between the Parties proceeds in an orderly fashion on a mutually satisfactory basis.

19.02 Amicable Settlement

> (a) In the event that there is any disagreement, dispute, controversy, claim or difference of any kind whatsoever arising out of or relating to this Agreement or any arrangement relating thereto or contemplated herein, or breach or termination or invalidity hereof, or dispute in the interpretation of any provision hereof (the Dispute), the Parties shall endeavor to resolve such Dispute in the first instance by mutual discussion between them. Failing such resolution, the Chief Executives of COWD and RIO VERDE shall meet to resolve such Dispute and the joint decision of such Chief Executives shall be binding between the Parties.
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> (b) In the event that a settlement of any such Dispute is not reached pursuant to Section 19.02(a), then the provisions of Section: 19.03 shall apply.

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33 *Id.* at 179.
34 *Id.* at 180.

19.03 Arbitration

(a) Any Dispute that is not resolved as provided in Section 19.02 shall be finally settled by arbitration in accordance with the provisions of the Arbitration Law of the Republic of the Philippines.

(b) The arbitration shall take place in any place mutually agreed upon. The language of the arbitration shall be in English.

19.04 Enforcement of Award

(a) Subject to the foregoing provisions, any action to enforce any arbitral award under Article 19.03 may be instituted by COWD or RIO VERDE, as the case may be, in any competent court in Manila, Philippines, to the non-exclusive jurisdiction of which RIO VERDE and COWD hereby expressly submit.

(b) Each of RIO VERDE and COWD hereby irrevocably waives any objection, which it may now or hereafter have, to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in the aforesaid court, and hereby further irrevocably waives any claim that any such suit, action or proceeding has been brought in an inconvenient forum.[35]

x x x x

It further invoked Section 6 of Republic Act No. 876 (RA 876), the Philippine Arbitration Law[36] to compel COWD to arbitrate.

In its Opposition,[37] COWD riposted that the ongoing COA investigation on the validity of the BWSA and Supplemental Agreement is a prejudicial question to the applicability of the arbitration clause itself. Besides, the validity of the BWSA is not a proper subject for arbitration.

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35 *Id.* at 65-66.

36 Section 6. *Hearing by court.* - A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five [5] days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. The court shall decide all motions, petitions, or applications filed under the provisions of this Act, within ten [10] days after such motions, petitions, or applications have been heard by it. (Republic Act No. 876, Approved on June 19, 1953).

37 *Rollo,* pp. 192-213.

Rulings of the Trial Court

By Order[38] dated March 23, 2012, the RTC-Cagayan de Oro City, Branch 38, granted the petition, ordering COWD to submit to arbitration pursuant to the arbitration clause in the BWSA.

According to the trial court, the doctrine of separability holds that an Arbitration Agreement is independent of the main contract and treated as a separate agreement. It does not automatically terminate when the main contract ends. Thus, whether the BWSA as amended is declared null and void does not affect the arbitration clause. Irrespective of the validity of the main contract, the arbitration clause remains valid and enforceable.

Too, courts are bound to exercise judicial restraint in invalidating arbitration clauses as the arbitral tribunal is deemed competent and preferred to rule first on the validity of the arbitration clause under the **principle of competence-competence**.[39]

COWD's subsequent Motion for Reconsideration[40] was merely noted under Order[41] dated May 3, 2012.

The Present Petition

COWD now seeks to nullify the aforesaid orders of the trial court. It pleads for utmost liberality in the application of the law – presumably for elevating the case directly to the Court. On this score, it asserts that the case involves novel questions of law and is a matter of transcendental importance, of overreaching significance and paramount public interest, considering that a government entity is being compelled to arbitrate despite the pendency of a COA investigation on the factual and legal bases of the award and execution of the BWSA itself, including the arbitration clause itself.

In essence, COWD charges the trial court with grave abuse of discretion amounting to excess or lack of jurisdiction when it purportedly ignored the following circumstances which legally precluded COWD from submitting to arbitration with Rio Verde:

First, COA's examination of the factual and legal bases of the award and execution of the BWSA in favor of Rio Verde is a prejudicial question which must first be resolved before the validity of the arbitration clause itself may even be determined. Prior to the final resolution of such prejudicial questions, any order to arbitrate is at best premature.

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38 The Order dated March 23, 2012 was received by COWD on April 16, 2012, *rollo*, pp. 562-566.

39 The Special ADR Rules recognize the principle of separability of the arbitration clause, which means that said clause shall be treated as an agreement independent of the other terms of the contract of which it forms part. A decision that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. (Last Paragraph of Rule 2.2, A.M. No. 07-11-08-SC dated September 1, 2009, Special Rules of Court on Alternative Dispute Resolution).

40 *Rollo* pp. 569-580.

41 *Id.* at 581.

Second, the doctrine of separability is inapplicable here because the entire BWSA, as amended, including the arbitration clause itself is still under COA audit examination; based on the partial audit finding of the COA, the BWSA is void since fraud attended its execution.

Finally, public interest requires government contracts to be above board. This principle would be undermined should COWD be forced to arbitrate in accordance with the questionable BWSA.

In its Comment,[42] Rio Verde defends the dispositions of the trial court. There is clearly an arbitration clause in the BWSA commanding the parties to submit their issues to arbitration. At any rate, COWD's reliance on the doctrine of prejudicial question is misplaced as the issue does not involve a criminal case.

COWD ripostes though that the term "prejudicial question" is used simply to emphasize that it is premature to insist on arbitration when COA is still examining the contract as there is an intimate correlation between the two proceedings.[43]

COWD further informs the Court that the COA-FAIO has already issued its Report No. 2013-002[44] recommending that the members of the COWD Board of directors and Rio Verde be charged with violation of Section 3(e), Republic Act No. 3019 (RA 3019),[45] and a civil case for nullity of BWSA, be filed as well, thus:

> Recommendations:
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> A. Bulk Water Supply Project (BWSP) of Rio Verde Water Consortium, Inc. (RVWCI).
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> 1. File appropriate charges against the COWD-BOD and Rio Verde Water Consortium, Inc. for violation of Section 3(e) of Republic Act (RA) [No.] 3019 on the Anti-Graft and Corrupt Practices Act.

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42 *Id.* at 585-603.

43 *Id.* at 657-668.

44 Fraud Audit & Investigation Office, Legal Sector Report No. 2013-002, Report on the Results of the Audit on the Alleged Graft and Corrupt Practices of the Board of Directors together with the Contractor, Rio Verde Water Consortium, Inc. of the Cagayan de Oro Water District, Cagayan de Oro City, and the then Local Water Utilities Administration Administrator.

45 Section 3. *Corrupt practices of public officers.*
In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
x x x x
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
(Republic Act No. 3019, Anti-Graft and Corrupt Practices Act, Approved on August 17, 1960).

2. Initiate annulment of the contract which made a mockery of the bidding process through violation of the law and public policy.

3. Disallow the amount of ₱47,963,217.05 representing unnecessary and irregular expenditures due to the transfer of the original take-off point to Carmen Reservoir and Canitoan Area despite negative comments and observations of the COWD Engineering Department.[46]

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In its Counter-Manifestation[47] dated August 12, 2013, Rio Verde submits that the COA-FAIO Report No. 2012-002 is irrelevant to the present case.

Issues

1) May the trial court's directive to arbitrate be properly challenged *via* the present petition for *certiorari*?

2) Did the trial court gravely abuse its discretion when it directed the COWD and Rio Verde to arbitrate despite the then ongoing investigation being conducted by COA on the award and execution of the questioned contract to Rio Verde?

3) Does the recommendation of COA to charge the members of the board of directors of COWD and Rio Verde with violation of Section 3(e) of RA 3019, and to file a civil case for nullity of the BWSA, legally preclude the parties from proceeding to arbitrate?

Our Ruling

The petition must fail.

The present petition is not sanctioned by the Special Rules on Alternative Dispute Resolution

It is undisputed that Rio Verde filed before the trial court a petition to compel COWD to arbitrate pursuant to Section 6, RA 876,[48] *viz.*:

> Section 6. Hearing by court. - **A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement.** Five [5] days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied

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46 *Rollo*, pp. 660.
47 *Id.* at 640-645.
48 An Act to Authorize the Making of Arbitration and Submission Agreements to Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes. (Republic Act No. 876, Approved on June 19, 1953).

> that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. **If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue.** If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. **If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.** (Emphases added)
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> x x x x

Verily, the provision explicitly confines the authority of the trial court to determine whether there is an agreement in writing to arbitrate. In the affirmative, the statute ordains that the court shall issue an order "summarily directing the parties to proceed with the arbitration in accordance with the terms thereof." Otherwise, "the proceeding shall be dismissed."[49]

Pursuant to this mandate, the trial court issued an Order dated March 23, 2012, directing COWD and Rio Verde to submit to arbitration in accordance with Article 19 of the BWSA, as amended. The trial court, too, noted COWD's motion for reconsideration, without action under Order dated March 23, 2012.

COWD nevertheless assailed the twin orders in view of the alleged nullity of the BWSA itself. But, whether the BWSA is void is not for us to determine here and now. As a matter of fact, the twin orders are not proper subject of our review.

To be sure, A.M. No. 07-11-08-SC, the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules) prohibits any of the parties from assailing in court an order to submit to arbitration until the arbitral tribunal shall have resolved the issue of jurisdiction itself or shall have, otherwise, rendered an arbitral award, thus:

> RULE 3: JUDICIAL RELIEF INVOLVING THE ISSUE OF EXISTENCE, VALIDITY, AND ENFORCEABILITY OF THE ARBITRATION AGREEMENT
>
> **A. Judicial Relief before Commencement of Arbitration**
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> x x x x
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> **Rule 3.11.** *Relief against court action.* – Where there is a *prima facie* determination upholding the arbitration agreement. - **A *prima facie* determination by the court upholding the existence, validity or enforceability of an arbitration agreement shall not be subject to a motion for reconsideration, appeal, validity and or *certiorari*.**

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[49] See *La Naval v. Court of Appeals*, 306 Phil. 84, 88 (1994).

Such *prima facie* determination will not, however, prejudice the right of any party to raise the issue of the existence, validity and enforceability of the arbitration agreement before the arbitral tribunal or the court **in an action to vacate or set aside the arbitral award**. In the latter case, the court's review of the arbitral tribunal's ruling upholding the existence, validity or enforceability of the arbitration agreement shall no longer be limited to a mere *prima facie* determination of such issue or issues as prescribed in this Rule, but shall be a full review of such issue or issues with due regard, however, to the standard for review for arbitral awards prescribed in these Special ADR Rules.

B. Judicial Relief after Arbitration Commences

Rule 3.12. *Who may file petition.* - Any party to arbitration may petition the appropriate court for **judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction**. Should the ruling of the arbitral tribunal declining its jurisdiction be reversed by the court, the parties shall be free to replace the arbitrators or any one of them in accordance with the rules that were applicable for the appointment of arbitrator sought to be replaced.

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Rule 3.20. *Where no petition is allowed.* - Where the arbitral tribunal defers its ruling on preliminary question regarding its jurisdiction until its final award, **the aggrieved party cannot seek judicial relief to question the deferral and must await the final arbitral award before seeking appropriate judicial recourse.**

A ruling by the arbitral tribunal deferring resolution on the issue of its jurisdiction until final award, shall not be subject to a motion for reconsideration, appeal or a petition for *certiorari.*

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RULE 4: REFERRAL TO ADR

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Rule 4.5. *Court action.* - After hearing, the court shall stay the action and, considering the statement of policy embodied in Rule 2.4, above, refer the parties to arbitration if it finds *prima facie*, based on the pleadings and supporting documents submitted by the parties, that there is an arbitration agreement and that the subject-matter of the dispute is capable of settlement or resolution by arbitration in accordance with Section 6 of the ADR Act. Otherwise, the court shall continue with the judicial proceedings.

Rule 4.6. *No reconsideration, appeal or certiorari.* - **An order referring the dispute to arbitration shall be immediately executory and shall not be subject to a motion for reconsideration, appeal or petition for *certiorari.***

x x x x

> An order denying the request to refer the dispute to arbitration shall not be subject to an appeal, but may be the subject of a motion for reconsideration and/or a petition for *certiorari*.[50] (Emphases added)
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> x x x x

The prohibition against filing for motions for reconsideration, appeals, or petitions for *certiorari* against the order to arbitrate is not without basis. In fact, it promotes the **principle of competence-competence** and policy of judicial restraint highlighted in Republic Act No. 9285 (RA 9285)[51] or the Alternative Dispute Resolution Act of 2004 and Rule 2 of the Special ADR Rules:[52]

> **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. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time.
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> x x x x
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> **SEC. 25.** ***Interpretation of the Act.*** - In interpreting the Act, **the court shall have due regard to the policy of the law in favor of arbitration.** Where action is commenced by or against multiple parties, one or more of whom are parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.[53]
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> x x x x
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> **Rule 2.1.** *General policies.* – **It is the policy of the State to actively promote the use of various modes of ADR and to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts.** To this end, the objectives of the Special ADR Rules are to encourage and promote the

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50 SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION.
(A.M. No. 07-11-08-SC, Approved on September 1, 2009).

51 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.
(Republic Act No. 9285, Approved on April 2, 2004).

52 SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION.
(A.M. No. 07-11-08-SC, Approved on September 1, 2009).

53 Supra note 49.

use of ADR, particularly arbitration and mediation, as an important means to achieve speedy and efficient resolution of disputes, impartial justice, curb a litigious culture, and to de-clog court dockets.

The court shall exercise the power of judicial review as provided by these Special ADR Rules. **Courts shall intervene only in the cases allowed by law or these Special ADR Rules.**

Rule 2.2. *Policy on arbitration.* – (A) Where the parties have agreed to submit their dispute to arbitration, **courts shall refer the parties to arbitration pursuant to Republic Act No. 9285 bearing in mind that such arbitration agreement is the law between the parties** and that they are expected to abide by it in good faith. Further, **the courts shall not refuse to refer parties to arbitration** x x x

x x x x

The Special ADR Rules recognize the principle of competence-competence, which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration.

x x x x

Rule 2.4. *Policy implementing competence-competence principle.* - The **arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement.** When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, **the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues.**

Where the court is asked to make a determination of whether the arbitration agreement is null and void, inoperative or incapable of being performed, under this policy of judicial restraint, **the court must make no more than a *prima facie* determination of that issue.**

Unless the court, pursuant to such *prima facie* determination, concludes that the arbitration agreement is null and void, inoperative or incapable of being performed, the court must suspend the action before it and refer the parties to arbitration pursuant to the arbitration agreement.[54] (Emphases and underscoring added)

x x x x

Under the principle of competence-competence, the arbitral tribunal has the first opportunity to rule on whether it has jurisdiction to decide a dispute submitted for its resolution. In other words, whether the trial court acted in grave abuse of discretion or otherwise grievously erred in directing

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[54] Supra note 50.

COWD and Rio Verde to submit to arbitration is for the arbitral tribunal itself to determine, not the Court.

Indeed, arbitration agreements are liberally construed in favor of proceeding to arbitration.[55] This emanates from the Court's policy favoring party autonomy in the resolution of disputes as reflected in our Civil Code, RA 876, RA 9285, and Executive Order 1008, otherwise known as The Construction Industry Arbitration Law,[56] which invariably recognize the validity and enforceability of the parties' decision to arbitrate.[57]

Thus, in ***LM Power Engineering Corporation v. CICGI***,[58] the Court affirmed the referral of an ongoing case to arbitration, since the arbitral clause in the Agreement is a commitment on the part of the parties to submit to arbitration the disputes covered therein. Because that clause is binding, they are expected to abide by it in good faith.[59] And because it covers the dispute between the parties in the present case, either of them may compel the other to arbitrate.[60]

To repeat, only after the arbitral tribunal shall have already ruled on the issue of jurisdiction may the aggrieved party seek judicial recourse against submitting itself to the process of arbitration. Leapfrogging the judicial process in clear defiance of the Special Rules on ADR violates the principle of competence-competence and the State policy to actively promote the use of alternative modes of dispute resolution.

Hence, COWD's beeline to the Court *via* Rule 65 of the Rules of Court[61] is explicitly prohibited under the Special ADR Rules. The fact alone that COWD is a government entity does not excuse it from abiding by these Rules.

We emphasize that the Supreme Court is the court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution. The Court cannot and should not be burdened with the task of dealing with cases, the filing of which it has expressly prohibited, as the present petition. More so because under the Special ADR Rules, an order to arbitrate is not subject to review.

The trial court did not gravely abuse its discretion when it compelled the parties to arbitrate despite the then ongoing COA audit examination of the BWSP, including the BWSA and Supplemental Agreement

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55 See *Bases Conversion Development Authority v. DMCI,* 776 Phil. 192, 205 (2016).

56 EXECUTIVE ORDER NO. 1008 CREATING AN ARBITRATION MACHINERY FOR THE PHILIPPINE CONSTRUCTION INDUSTRY, Approved on February 4, 1985.

57 *Id.*

58 447 Phil. 705, 716 (2003).

59 See *Toyota Motor v. Court of Appeals*, 290 Phil. 662, 667 (1992).

60 Section 6, Republic Act No. 876, Approved June 19, 1953

61 Petition for *Certiorari,* The 1997 Rules of Civil Procedure, Rules of Court. (As Amended).

There is no merit to COWD's claim that the then ongoing COA examination of the BWSA and Supplemental Agreement was a "prejudicial question"[62] which required prior resolution before the parties may be compelled to arbitrate.

For as aptly noted by the trial court, the **doctrine of separability** holds that the arbitration agreement is independent of the main contract. In other words, the supposed invalidity of the main contract does not *ipso facto* render the arbitration clause/agreement itself invalid or unenforceable.[63] Rule 2.2 of the Special Rules on ADR decrees:

> **Rule 2.2.** *Policy on arbitration.* - (A) Where the parties have agreed to submit their dispute to arbitration, courts shall refer the parties to arbitration pursuant to Republic Act No. 9285 bearing in mind that such arbitration agreement is the law between the parties and that they are expected to abide by it in good faith. **Further, the courts shall not refuse to refer parties to arbitration** for reasons including, but not limited to, the following:
>
> a. The referral tends to oust a court of its jurisdiction;
> b. The court is in a better position to resolve the dispute subject of arbitration;
> c. The referral would result in a multiplicity of suits;
> d. The arbitration proceeding has not commenced;
> e. The place of arbitration is in a foreign country;
> f. One or more of the issues are legal and one or more of the arbitrators are not lawyers;
> g. One or more of the arbitrators are not Philippine nationals; or
> h. One or more of the arbitrators are alleged not to possess the required qualification under the arbitration agreement or law.
>
> x x x x
>
> **The Special ADR Rules recognize the principle of separability of the arbitration clause, which means that said clause shall be treated as an agreement independent of the other terms of the contract of which it forms part. A decision that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.**[64] (Emphases added)
>
> x x x x

In ***Dupasquier v. Ascend AS (Philippines) Corporation***,[65] the Court enumerated some of the cases invariably ordaining that pursuant to the

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62 A prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. (*People v. Arambulo, et al.*, G.R. No. 186597, 760 Phil. 754, 761 (2015); citing *Pimentel v. Pimentel, et al.*, 645 Phil. 1, 6 (2010), and *Go v. Sandiganbayan*, 559 Phil. 338, 341 (2007).

63 See *Gonzales v. Climax Mining Ltd.*, 541 Phil. 143, 166 (2007).

64 A.M. No. 07-11-08-SC, Special Rules of Court on Alternative Dispute Resolution, Approved on September 1, 2009

65 G.R. No. 211044, July 24, 2019.

doctrine of separability or severability, a party may invoke the arbitration clause even if the validity of the contract containing this clause is being assailed, *viz.*:

> x x x **The doctrine of separability or severability enunciates that an arbitration agreement is independent of the main contract.** It denotes that the invalidity of the main contract does not affect the validity of the arbitration agreement. x x x
>
> We have to balance the application of this doctrine with the manifest intention of the contracting parties. To our mind, this doctrine is relevant in the absence of the parties' specific stipulation as to the Arbitration Clause's term of effectivity.
>
> Indeed, We have adopted the doctrine of separability and ruled on its application as recognition that arbitration may serve as an effective alternative mode of settling disputes.
>
> In ***Gonzales v. Climax Mining Ltd.,*** respondent therein argued that the case should not be brought to arbitration since it was claiming that the contract should be rescinded. There, we held that "the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself."
>
> In ***Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc.***, we applied our ruling in Gonzales by elaborating that an "arbitration agreement which forms part of the main contract shall not be regarded as invalid or non-existent just because the main contract is invalid or did not come into existence, since the arbitration agreement shall be treated as a separate agreement independent of the main contract."
>
> Lastly, in ***Koppel, Inc. v. Makati Rotary Club Foundation, Inc.*** we acknowledged therein petitioner's right to invoke the arbitration clause of its lease contract even if it was assailing the validity of that contract.[66]
>
> x x x x

In fine, the trial court did not commit grave abuse of discretion when it compelled the parties to arbitrate in accordance with the arbitration clause of their BWSA, as amended. This does not mean though that COWD is already precluded from questioning or invoking the alleged invalidity of the aforesaid BWSA, as amended. It may actually do so before the arbitral tribunal itself which in accordance with the principle of competence-competence has primary jurisdiction to resolve any objection pertaining to the existence or validity of the arbitration agreement.[67]

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66 *Id*, citing *Gonzales v. Climax Mining Ltd,* 541 Phil. 143, 166 (2007); *Cargill Philippines, Inc. v. San Fernando Regala Trading, Inc,* 656 Phil. 29, 45 (2011); and *Koppel, Inc. v. Makati Rotary Club Foundation, Inc,* G.R. No. 198075 (2013).

67 Rule 2.2(B), A.M. No. 07-11-08-SC, Special Rules of Court on Alternative Dispute Resolution, September 1, 2009.

COA's recommendation to file criminal charges and initiate a civil case for nullity of the BWSA and Supplemental Agreement affirms its limited jurisdiction and does not preclude the parties from submitting to arbitration

As guardians of public funds, COA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property.[68] In recognition of its expertise in audit matters, the findings of the COA are generally accorded not only respect but at times finality if such findings are supported by substantial evidence.[69]

But while the COA exercises broad powers in audit matters, it could not pass upon the issue of validity of contracts. As the Court ruled in ***Asaphil Construction and Development Corp. v. Tuason Jr., et al.***, and ***Felix Gochan & Sons Realty Corp. v. COA***,[70] the validity of contracts remains a judicial question requiring the exercise of the judicial function.

At any rate, we note that COA did not categorically rule on the validity of the BWSA and Supplemental Agreement but merely recommended, *inter alia*, that a case be initiated to declare them void. In view of this recommendation though, COWD, as stated, insists that arbitration be deferred until such case for nullity of contracts is resolved.

We do not agree.

COA's recommendation does not preclude the parties from submitting to arbitration. On the contrary, COWD should, even more, submit to arbitration in order to pursue the nullification of the contract itself.

To repeat, the arbitral tribunal has the first opportunity to rule on whether it has jurisdiction to decide a dispute submitted for its resolution, including the validity of the contract itself. This is clear from Article 19 of the BWSA which clearly states that among the arbitrable issues is the nullity of the BWSA itself, thus:

> **19.02 Amicable Settlement**
>
> x x x x
>
> (c) In the event that there is **any disagreement, dispute, controversy, claim or difference of any kind whatsoever arising out of or relating to this Agreement** or any arrangement relating thereto or contemplated herein, or breach or termination **or invalidity hereof**, or dispute in the interpretation of any provision hereof (the Dispute), the Parties

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68 *Felix Gochan & Sons Realty Corp. v. Commission on Audit*, G.R. No. 223228, April 10, 2019, citing *Yap v. COA*, 633 Phil. 174, 189 (2010).

69 *Id.*

70 *Id.*

> shall endeavor to resolve such Dispute in the first instance by mutual discussion between them. x x x
>
> x x x x
>
> **19.03 Arbitration**
>
> x x x x
>
> (c) **Any Dispute that is not resolved as provided in Section 19.02 shall be finally settled by arbitration** in accordance with the provisions of the Arbitration Law of the Republic of the Philippines. (Emphases added)
>
> x x x x

Thus, if COWD is truly minded to follow COA's recommendation to initiate the nullification of the BWSA and Supplemental Agreement, the proper forum, therefore, is the arbitral tribunal it ought to constitute together with Rio Verde.

So must it be.

ACCORDINGLY, the petition is **DISMISSED**. The **Orders** dated March 23, 2012 and May 3, 2012 of the Regional Trial Court - Cagayan De Oro, Branch 38 in Special Proceedings Case No. 2011-190 are **AFFIRMED**.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to 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.

ALEXANDER G. GESMUNDO
Chief Justice