SECOND DIVISION

G.R. No. 267310 – FLEET MARINE CABLE SOLUTIONS INC., Petitioner, **v. MJAS ZENITH GEOMAPPING & SURVEYING SERVICES, MR. SAMSON LATO and TRAVELLERS INSURANCE AND SURETY CORPORATION,** Respondents.

Promulgated:

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DISSENTING OPINION

LEONEN, *J.*:

This case involves the determination of whether the Construction Industry Arbitration Commission has jurisdiction over the dispute between the parties.

Eastern Telecommunications Philippines, Inc., Globe Telecom, Inc. and InfiniVAN, Inc. sought to construct a new, high-capacity domestic fiber-optic submarine cable network that will connect islands in Luzon, Visayas, and Mindanao. In relation to this, it entered into a Services Agreement with petitioner Fleet Marine Cable Solutions Inc. (FMCS) for the conduct of several tasks, which include: (i) survey, landing site determination, and routing design; (ii) archival research for desk top study, submarine cable route design, (iii) project planning; (iv) final desk top study report; and (v) vessel arrangement and mobilization.[1]

To comply with its responsibilities under the Service Agreement, FMCS subcontracted some of its tasks to respondent MJAS Zenith Geomapping & Surveying Services (MJAS). In Phase One of the project, these tasks included the preparation of the report/output on its:

1) Site Survey, Landing site determination, and routing design;
2) Archival Research for Desk Top Study, Submarine cable route design,
3) Project planning; and
4) Final Desk Top Study Report[.][2]

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1 *Ponencia*, p. 2.
2 *Id.* at 3.

Under Phase Two, MJAS shall take on the marine cable route survey and burial assessment.[3]

Later, arguing that MJAS failed to abide by its responsibilities under their contract, FMCS filed a complaint to terminate their subcontracting agreement in the Construction Industry Arbitration Commission.[4]

The Construction Industry Arbitration Commission dismissed the case for lack of jurisdiction, finding that the contract between FMCS and MJAS does not involve construction in the Philippines.[5]

The present Petition for Review on *Certiorari* filed by FMCS thus argues that the Construction Industry Arbitration Commission has jurisdiction over the dispute. It insists that their dispute is covered by an arbitration agreement and is connected with a construction project in the Philippines.[6]

The *ponencia* dismissed FMCS's petition finding that even if the parties stipulated on referring their disputes to arbitration, the Construction Industry Arbitration Commission's jurisdiction over any matter still presupposes the existence of a construction contract.[7] The *ponencia* held that there is no overarching construction contract, or a dispute related to it in this case.[8] It ruled that neither FMCS or MJAS was contracted to perform any construction activity. The suit between them is for collection of money and damages from a breach of contract involving marine surveying activities and supply of vessel personnel and equipment.[9]

While I appreciate and see the merits of the ruling in the *ponencia*, I am inclined to find that the Construction Industry Arbitration Commission has jurisdiction over the dispute between FMCS and MJAS.

The Construction Industry Arbitration Commission was established under Executive Order No. 1008 with the intention of encouraging the expeditious resolution of disputes in the construction industry.[10] It recognized that a speedy settlement of construction claims and controversies is crucial to the country's national development goals.[11]

Republic Act No. 9285, or the Alternative Dispute Resolution Act, lays down the construction disputes included within the jurisdiction of the

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3 *Id.* at 3.
4 *Id.* at 4.
5 *Id.* at 5.
6 *Id.* at 5–6.
7 *Id.* at 9, 10.
8 *Id.* at 11.
9 *Id.* at 12.
10 Executive Order No. 1008 (1995), sec. 2.
11 Executive Order No. 1008 (1995), third whereas clause. *See also Camp John Hay Development Corp. v. Charter Chemical and Coating Corp.*, 858 Phil. 970, 988 (2019) [Per J. Leonen, Third Division].

Construction Industry Arbitration Commission. Section 35, Chapter 6 states that it includes those construction disputes between parties who are bound by an arbitration agreement:

> CHAPTER 6
> Arbitration of Construction Disputes
>
> SECTION 35. Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those *between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference* whether such parties are project owner, contractor, *subcontractor*, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.
>
> The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act. (Emphasis supplied)

Republic Act No. 9285 or, the Alternative Dispute Resolution Act, provides that arbitration of construction disputes are covered by Executive Order No. 1008, or the Construction Industry Arbitration Law.[12]

Section 4 of the Construction Industry Arbitration Law states:

> 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.*
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
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> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Emphasis supplied)

Thus, the Construction Industry Arbitration Commission has jurisdiction over disputes connected with contracts between parties involved

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[12] Republic Act No. 9285 (2004), sec. 34 provides: Arbitration of Construction Disputes: Governing Law. — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

in construction in the Philippines, so long as the parties have agreed to submit their disputes to arbitration.

This Court in several cases has ruled that the parties need only to submit their dispute to voluntary arbitration for the Construction Industry Arbitration Commission to acquire jurisdiction:

> Under the present Rules of Procedure, for a particular construction contract to fall within the jurisdiction of CIAC, it is merely required that the parties agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the *Tesco* case, the law as it now stands does not provide that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over the same. Rather, it is plain and clear that as long *as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, i.e., E.O. No. 1008.*[13] (Emphasis supplied, citation omitted)

In *Camp John Hay Development Corp. v. Charter Chemical and Coating Corp.*,[14]

> For the Construction Industry Arbitration Commission to acquire jurisdiction, the law merely requires that the parties agree to submit to voluntary arbitration any dispute arising from construction contracts.
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> In *HUTAMA-RSEA Joint Operations, Inc. v. Citra Metro Manila Tollways Corporation*:
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> > Under Section 1, Article III of the CIAC Rules, an arbitration clause in a construction contract shall be deemed as an agreement to submit an existing or future controversy to CIAC jurisdiction, "notwithstanding the reference to a different arbitration institution or arbitral body in such contract[.]"
> >
> > [T]he arbitration clause in the construction contract *ipso facto* vested the CIAC with jurisdiction. This rule applies, regardless of whether the parties specifically choose another forum or make reference to another arbitral body. Since the jurisdiction of CIAC 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. The parties will not be precluded from electing to submit their dispute to CIAC, because this right has been vested in each party by law.

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[13] *National Irrigation Administration v. Court of Appeals*, 376 Phil 362, 375 (1997) [Per. C.J. Davide, Jr., First Division].

[14] 858 Phil. 970 (2019) [Per J. Leonen, Third Division].

. . . .

> It bears to emphasize that 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 and rules to automatically vest CIAC with jurisdiction over a dispute should the construction contract contain an arbitration clause[.]
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> . . . .
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> Here, petitioner and respondent agreed to submit to arbitration any dispute arising from the construction contract, as clearly stipulated in their Contractor's Agreement. The arbitration clause should, thus, be given primacy in accordance with the State's policy to favor arbitration. It follows that if there is any doubt as to what provision should be given effect, this Court will rule in favor of the arbitration clause.[15] (Citations omitted)

The parties in this case undeniably agreed to submit any dispute between them to voluntary arbitration. The subcontracting agreement between FMCS and MJAS provides:

> **Article 11 Applicable Law and Arbitration**
>
> 11.1 This Agreement shall be construed and governed by the laws of the Republic of the Philippines without reference to any conflicts of law.
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> 11.2 The Parties hereto shall use their best endeavors to settle all disputes arising out of or in connection with this Agreement or its supplement amicably.
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> 11.3 *If any dispute, controversy, or claim arising out of or relating to this Agreement cannot be settled by the Parties amicably, whether contractual or tortious, shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.* The language of the arbitration shall be English, and the place of arbitration shall be in Republic of the Philippines. The arbitration award shall be final and binding upon both Parties. All costs and expenses related to the arbitration shall be borne by the non-prevailing Party.
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> 11.4 In the course of arbitration, both Parties shall continue to perform their respective contractual obligations except those matters referred to arbitration.
>
> 11.4.1 Should it be necessary that an action be brought in court to enforce the terms of this Agreement of the duties and rights of the parties

[15] *Id.* at 989–991.

> thereto, it is agreed that the venue for litigation should be the courts of the City of Makati to the exclusion of any other courts.[16] (Emphasis supplied)

While the parties named the Rules of Arbitration of the International Chamber of Commerce as the governing rule, they agreed to have their disputes be referred to and resolved by arbitration.

I likewise find that the dispute between FMCS and MJAS is one in relation to a construction contract within the Philippines. While the tasks subcontracted by FMCS to MJAS may not be construction activities per se, these tasks are done in relation to the existing contract between FMCS with Eastern Telecommunications Philippines, Inc., Globe Telecom, Inc. and InfiniVAN, Inc.

The *ponencia* itself states that Eastern Telecommunications Philippines, Inc., Globe Telecom, Inc. and InfiniVAN, Inc. entered into its agreement with FMCS to carry out its plan to *construct* a new, high-capacity domestic fiber-optic submarine *cable network* that will connect islands in Luzon, Visayas, and Mindanao.[17] This was also stated in the subcontracting agreement between FMCS and MJAS:

> **WHEREAS,** in the Service[s] Agreement by and between Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc., and Fleet Marine Cable Solutions Inc. dated 7 December 2020, it is agreed that Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc. contracted FMCS to carry out the Services required by Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc. Further, FMCS is allowed to subcontract the scope of work in whole or in part to any third party or subcontractor.
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> **WHEREAS,** in the Service[s] Agreement by and between Eastern Telecommunications Philippines, Globe Telecom, Inc.[,] InfiniVAN, Inc., and Fleet Marine Cable Solutions Inc. dated 7 December 2020, parties therein will build and construct a new high capacity domestic fiber-optic submarine network that will connect various islands in Luzon, Visayas and Mindanao at the highest quality possible but at the most cost-efficient means on an ownership basis.[18]

Assuming the subcontracted works pertain only to surveys or reports, and not the physical act of constructing the cable network, it still involves work that is crucial to the latter's accomplishment and completion. It is thus related to and connected with a construction project within the Philippines. I thus hesitate to find that there is no overarching construction contract governing in this case.

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[16] *Ponencia*, pp. 8–9.
[17] *Id.* at 2.
[18] *Id.* at 2–3.

Finally, I fully subscribe to the tenet that doubts should be resolved in favor of arbitration.

> Arbitration, "[b]eing an inexpensive, speedy [,] and amicable method of settling disputes . . . is encouraged by the Supreme Court." If any doubt will arise, it "should be resolved in favor of arbitration."
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> In *LM Power Engineering Corp. v. Capitol Industrial Construction Groups, Inc.*, this Court explained the rationale behind this policy:
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> Aside from unclogging judicial dockets, arbitration also hastens the resolution of disputes, especially of the commercial kind. It is thus regarded as the "wave of the future" in international civil and commercial disputes. Brushing aside a contractual agreement calling for arbitration between the parties would be a step backward.
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> Consistent with the above-mentioned policy of encouraging alternative dispute resolution methods, courts should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration.[19] (Citations omitted)

Given these circumstances, I find that the dispute between FMCS and MJAS fall within the jurisdiction of the Construction Industry Arbitration Commission.

FOR THESE REASONS, I vote to **GRANT** the Petition for Review on Certiorari and **SET ASIDE** the Arbitral Award of the Construction Industry Arbitration Commission dated May 24, 2023 in CIAC Case No. 47-2022.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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[19] *Camp John Hay Development Corp. v. Charter Chemical and Coating Corp.*, 858 Phil. 970, 990–991 (2019) [Per J. Leonen, Third Division].