Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

TRI-MARK FOODS, INC.,[i]
Petitioner,

- versus -

GINTONG PANSIT, ATBP., INC., LUCY TAN YU,[ii] **CATHERINE NG CHUNGUNCO,**[iii] **KATHLEEN GO-OCIER,**[iv] **RAYMOND**[v] **NG CHUNGUNCO and MARY JENNIFER YAP ANG,**[vi]
Respondents.

G.R. No. 215644

Present:

GESMUNDO, *C.J., Chairperson,*
CAGUIOA,
LAZARO-JAVIER,
M. LOPEZ, and
J. LOPEZ, *JJ.*

Promulgated:

SEP 14 2021

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DECISION

CAGUIOA, *J.*:

Before the Court is the Petition for Review[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner, assailing the Decision[2] dated November 21, 2013 and the Resolution[3] dated December 11, 2014 of the Court of Appeals[4] in CA-G.R. SP No. 124944. The CA Decision denied the petition for review under the Special Rules of Court on Alternative Dispute Resolution[5] (Special ADR Rules) filed by petitioner, seeking to annul and set aside the Joint Order[6] dated December 8, 2011 (RTC Joint Order) and the

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i Also "Trimark Foods, Inc." in some parts of the rollo.
ii Also "Lucy Tan" in some parts of the *rollo*.
iii Also "Chungungco" and "Chunungco" in some parts of the *rollo*.
iv Also "Kathleen Go-Osier" in some parts of the *rollo*.
v Also "Raymund" in some parts of the *rollo*.
vi Also "Jennifer Ang" in some parts of the *rollo*.
1 *Rollo*, Vol. I, pp. 11-32, excluding Annexes.
2 Id. at 35-53. Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Magdangal M. De Leon and Stephen C. Cruz concurring.
3 Id. at 56-57.
4 Eleventh Division and Former Eleventh Division, respectively.
5 A.M. No. 07-11-08-SC, September 1, 2009, accessed at <https://philja.judiciary.gov.ph/files/bulletin/Bul44supplement.pdf>.
6 *Rollo*, Vol. I, pp. 379-390. Penned by Presiding Judge Ofelia L. Calo. In SP Proc. Case No. MC10-5048 entitled "*In the Matter of PDRCI Case No. 46-2010 between Tri-Mark Foods, Inc. and Gintong Pansit, Atbp., Inc., Lucy Tan, Catherine Chungunco, Kathleen Go-Ocier, Raymond Chungunco [and] Jennifer Ang*," and Civil Case No. Q-10-68115 entitled "*Tri-Mark Foods, Inc. v. Gintong Pansit,*

Order[7] dated May 9, 2012 of the Regional Trial Court of Mandaluyong City, Branch 211 (RTC). The RTC Joint Order vacated the Final Award[8] dated September 8, 2010 in PDRCI Case No. 46-2010, which is favorable to petitioner. The CA Resolution denied the motion for reconsideration filed by petitioner.

The Facts and Antecedent Proceedings

The CA Decision narrates the antecedents as follows:

> On November 2, 2006, petitioner Tri-Mark [Foods, Inc. (Tri-Mark), which owns and operates the Ling Nam chain of restaurants,] and respondent Gintong Pansit[, Atbp., Inc. (Gintong Pansit)] entered into an agreement granting the latter a franchise to own and operate a Ling Nam Noodle House branch at Liberty Center, Shaw Boulevard, Mandaluyong City for a period of five (5) years or until November 2011. Pursuant to the franchise agreement, Gintong Pansit regularly ordered and purchased its stocks and supplies for [its] restaurant from Tri-Mark. In turn, x x x Tri-Mark sent regular notices and reminders for payment to Gintong Pansit. Sometime in 2008, Gintong Pansit received notices and reminders for payment from Tri-Mark and noted the high prices of the food items and supplies, hence, it called the attention of Tri-Mark on the matter. On August 2, 2008, Gintong Pansit through respondents Lucy Tan Yu and Catherine Ng Chungunco, together with Atty. Soledad Mawis, met with Tri-Mark's senior operations supervisor Mona Lissa Mendietta and human resources assistant Dorothy Afante.
>
> On August 15, 2008, Tri-Mark sent a letter to Gintong Pansit demanding immediate payment of the latter's unsettled account for royalty fees and food purchases in the total amount of P2,008,780.62. In response, Gintong Pansit wrote to Tri-Mark on September 1, 2008 disputing the latter's computations and requesting a meeting with Tri-Mark's president Peter Fung. On September 5, 2008, Gintong Pansit sent another letter reiterating its request [for] a meeting with Peter Fung to discuss the issues. On December 31, 2008, Gintong Pansit wrote to Tri-Mark formally requesting a written explanation on the issue of overpricing.
>
> On November 9, 2009, Tri-Mark sent a demand letter to Gintong Pansit and its officers for settlement of its unpaid account of P7,005,750.32. Thereafter, Tri-Mark sent letters dated December 16, 200[9][9] to Gintong Pansit and each of its officers demanding payment for the amount of P7,135,843.98 and further giving notice of Tri-Mark's intention to bring the matter for arbitration pursuant to the franchise agreement's arbitration clause in case of failure to pay within five (5) days from notice of demand. On December 21, 200[9],[10] Tri-Mark sent a final demand letter for payment.

Atbp., Inc., Lucy Tan Yu, Catherine Ng Chungunco, Kathleen Go-Ocier, Raymond Ng Chungunco, and Mary Jennifer Yap Ang."

7 Id. at 398-403. In SP Proc. Case No. MC10-5048 entitled "*In the Matter of PDRCI Case No. 46-2010 between Tri-Mark Foods, Inc. and Gintong Pansit, Atbp., Inc., Lucy Tan, Catherine Chungungco, Kathleen Go-Ocier, Raymond Chungungco and Jennifer Ang; Gintong Pansi Atbp., et al., petitioners/respondents versus Trimark Foods, Inc., respondent/petitioner.*"

8 Id. at 129-153. Penned by Sole Arbitrator Reynaldo L. Saludares.

9 Id. at 135.

10 Id. at 136.

On February 15, 2010, Tri-Mark filed a request for arbitration with the Philippine Dispute Resolution Center, Inc. (PDRCI). Gintong Pansit, et al[.] agreed to submit to arbitration and on May 17, 2010, it filed an answer with counterclaim. Both parties agreed to appoint Assistant Solicitor General Reynaldo Saludares as sole arbitrator for the case.

In its Statement of Claims, Tri-Mark alleged that Gintong Pansit regularly ordered stocks from Tri-Mark and enjoyed all privileges accorded to a franchisee under the Franchise Agreement; that Tri-Mark remained true to its commitment to support its franchisee by complying with all its obligations under the Agreement, i.e., supplying Gintong Pansit with stocks, supplies and support by means of System Wide Marketing Services (SWMS) and advertising; that from June 2008 to November 2009, Gintong Pansit failed to pay for purchases of food and supplies, manpower services, royalty fees and SWMS and advertising fees amounting to x x x P7,005,750.32 x x x; that despite such failure to pay for its outstanding account, Gintong Pansit neither stopped operations nor signified an intention to discontinue deliveries for food supplies and support services from Tri-Mark; that during the said period, regular notices and reminders for payment were sent to Gintong Pansit via [several] letters x x x; that under Art. XXXII of the Franchise Agreement, the term "franchisee" refers to both the juridical entity as well as its shareholders, officers and directors who executed the agreement; that by affixing their signatures to the agreement, Gintong Pansit officers/shareholders Lucy Tan Yu, Catherine Ng Chungunco, Kathleen Go O[c]ier, Raymund Ng Chungunco and Jennifer Yap Ang bound themselves to guarantee all obligations incurred by franchisee Gintong Pansit; and that several demand letters were sent to each of the respondents for payment of P7,135,843.98 with notice to submit for arbitration.

Tri-Mark claimed the following reliefs against respondents:

1) x x x P7,135,843.98 x x x representing respondents' total obligation broken down as follows:

   a) x x x P4,782,197.74 x x x for purchased food and supplies;

   b) x x x P940,798.79 x x x for manpower services; and,

   c) x x x P1,412,847.44 x x x as royalty fees, SWMS and advertising fees.

2) Costs of arbitration including attorney's fees in the amount of at least x x x P100,000.00 x x x and sundry costs;

3) Other just and equitable reliefs.

In their defense, respondents alleged that Tri-Mark and its president Peter Fung were the first to commit acts in breach of the franchise agreement when they charged higher prices for food and other supplies in March 2008, contrary to their commitment to charge uniform prices for all franchisees; that after Gintong Pansit received a letter regarding unpaid purchases and fees, it immediately called Tri-Mark's attention to the issue of higher or padded prices as compared to those offered to other branches/franchisees, and requested an explanation on the

matter; that Lucy Tan Yu, Catherine Ng Chungunco and Atty. Mawis met with Tri-Mark's representatives to discuss the issues and reiterated their request for a meeting with Tri-Mark's president Peter Fung; that Gintong Pansit sent a letter dated September 1, 2008 disputing Tri-Mark's computations and again reiterating the request for a meeting with Peter Fung; that on September 5, 2008, November 11, 2008 and December 31, 2008, Gintong Pansit sent letters to Tri-Mark requesting explanations; that Tri-Mark and Fung breached the Agreement when they refused to deliver noodles to Gintong Pansit, claiming that the item was not available; that upon verification with other Ling Nam branches, they were told that noodles were available and delivered to other branches; that Tri-Mark's refusal to deliver food supplies clearly showed discrimination and bad faith, and violated provisions of the franchise agreement; that on November 24, 2009, Tri-Mark completely stopped its delivery of food and other supplies to Gintong Pansit, forcing the latter to prematurely shut down its operations; that individual officers/stockholders of Gintong Pansit cannot be held liable personally for obligations of the corporation because of its separate and distinct personality, unless it can be clearly shown that such officers/stockholders exceeded their authority, or committed illegal acts to perpetuate fraud, or purposely used the corporation to evade other existing obligations; and that Gintong Pansit and respondents are not liable for the amounts [of] P940,798.79 as manpower services and P1,412,847.44 as royalty fees, SWMS and advertising expenses because Tri-Mark failed to lay the factual basis for these monetary claims.

Respondents Gintong Pansit, et al., prayed for the following reliefs:

1) Nominal damages in the amount of x x x P500,000.00 x x x;

2) Compensatory damages in the amount of x x x P8,500,000.00 x x x;

3) Attorney's fees in the amount of P100,000.00;

4) Litigation expenses of P100,000.00; and

5) Costs of arbitration.

On September 8, 2010, the sole arbitrator issued a final award the dispositive portion of which reads:

> "WHEREFORE, in light of the foregoing discussions, the Sole [Arbitrator] finds the established claims of TRI-MARK as follows: a) Four million seven hundred eighty-two thousand one hundred ninety-seven pesos and 74/100 (Php4,782,197.74) covering food and supplies purchases; b) Nine hundred forty thousand seven hundred ninety-eight pesos and 79/100 (Php940,798.79) for manpower services; c) Five hundred eighty-nine thousand five hundred forty pesos and 24/100 (Php589,540.24) for royalty fees; and d) Twenty-three thousand four hundred sixteen pesos and 66/100 (Php23,416.66) for SWMS and local adds or a total of Six Million Three Hundred Thirty-five Thousand Nine Hundred Fifty-Three pesos and 40/100 (Php6,335,953.40).

> However, as discussed earlier, the amounts of Six Hundred Eight Thousand Eight Hundred Fifty-Three Pesos and 22/100 (Php608,853.22) and Two Hundred Thousand Pesos (Php200,000.00) representing the amounts paid by respondent during the takeover of TRI-MARK and the share of claimant in the value of the remaining life of the franchise agreement, respectively shall be deducted from the claims of TRI-MARK. Hence, GINTONG PANSIT and the other Respondents are directed to pay TRI-MARK the amount of Five Million Five Hundred Twenty-Seven Thousand One Hundred Pesos and 20/100 (Php5,527,100.20).
>
> In view of the solidary liability of the individual respondents, claimant TRI-MARK may implement the award accordingly."

On October 13, 2010, respondents Gintong Pansit, et al., filed a petition to vacate final award with the Regional Trial Court (RTC) of Mandaluyong City within the 30-day period provided under the Special Rules of Court on ADR. Respondents contended that: 1) the arbitral tribunal was guilty of evident partiality in completely disregarding the evidence of overpricing and Tri-Mark's refusal to deliver the foods and other supplies, which acts constitute breach of the franchise agreement; 2) the arbitral tribunal exceeded its powers in issuing the final award in manifest disregard of laws and public policies, despite respondent Tri-Mark's breach of the franchise agreement; and 3) the final award was procured through fraud and other undue means. Respondent[s] Gintong Pansit, et al., maintained that the arbitral tribunal violated their right to due process when it ignored their evidence, i.e., Cost Analysis or comparative table of prices showing marked differences in pricing of foods and supplies for different Ling Nam branches; statement of accounts and sales invoices; testimonies of witnesses, particularly Tri-Mark's president Peter Fung who admitted the overpricing for the Ling Nam branch operated by Gintong Pansit, et al. Respondents argued that by overpricing its products, Tri-Mark did not allow them the opportunity to recover their business investments, which was a blatant violation of the franchise agreement, thus, respondents prayed that the final award dated September 8, 2010 be nullified and vacated, and that Tri-Mark be held liable for costs of arbitration in the sum of P464,268.83, attorney's fees of P100,000.00 and other miscellaneous expenses related to arbitration proceedings.

Likewise within the period prescribed under the Special Rules of Court on ADR, Tri-Mark filed a petition to confirm the final award dated September 8, 2010. In its petition, Tri-Mark contended that confirmation of the arbitral award was justified since both parties agreed to submit to arbitration and were expected to abide by the arbitrator's judgment in good faith; that there was lack of cause of action to vacate the arbitral award because Gintong Pansit, et al., admitted their obligation to pay their outstanding account; and that there was no evidence of fraud or partiality on the part of the sole arbitrator.

The trial court consolidated both petitions and conducted hearings thereon.[11] On December 8, 2011, the trial court issued a joint order, the dispositive portion of which reads:

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11 Regional Trial Court of Mandaluyong City, Branch 211 presided by Judge Ofelia L. Calo.

> "ACCORDINGLY, the Final Award dated September 8, 2010 issued by the Arbitral Tribunal thru the Sole Arbitrator, Honorable Reynaldo L. Saludares, in the arbitration proceedings in PDRCI Case No. 46-2010 entitled, "*Tri-Mark Foods, Inc., Claimant versus Gintong Pansit, Atbp., Inc., Lucy Tan Yu, Catherine Ng Chunungco, Kathleen Go-Ocier, Raymund Ng Chunungco and Mary Jennifer Yap Ang, Respondents*" is hereby VACATED.
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> Whereas, the Petition seeking Confirmation of the Arbitral Award filed in the Regional Trial Court, Branch 96 of Quezon City under Civil Case No. Q-10-68115 entitled "Tri-Mark Foods, Inc., Petitioner versus Gintong Pansit, Atbp., Inc., Lucy Tan Yu, Catherine Ng Chunungco, Kathleen Go-Ocier, Raymund Ng Chunungco and Mary Jennifer Yap Ang, Respondents" is hereby DENIED.
>
> The court hereby directs a new hearing before new arbitrators to be chosen in the manner provided in the submission or contract for the selection of the original arbitrator and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.
>
> SO ORDERED."

On January 3, 2012, Tri-Mark filed a motion for reconsideration of the trial court's order dated December 8, 2011, however, the trial court denied the motion in the order dated May 9, 2012, reasoning that it was not precluded from vacating an arbitral award if the factual determinations find no support in the records; that an examination of evidentiary matters is justified in order to resolve the petition; and that in the exercise of its judicial authority, the trial court did not encroach on the arbitral tribunal's independence.

Aggrieved, Tri-Mark filed the x x x petition for review [with the CA].[12]

Ruling of the CA

The CA, in its Decision[13] dated November 21, 2013, denied the petition for review. The CA noted that the petition to vacate the arbitral award was premised on respondents' allegation that the sole arbitrator exhibited evident partiality and that the RTC found factual support in respondents' charge of partiality when Sole Arbitrator Reynaldo Saludares (Arbitrator Saludares) disregarded documentary and testimonial evidence presented to support respondents' claim of overpricing, acts of discrimination and bad faith, as well as violations of the franchise agreement committed by petitioner.[14] The CA agreed with the RTC that the issues and arguments raised in the petition to vacate the arbitral award showed that it

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12 Id. at 36-46. Citations omitted.
13 Supra note 2.
14 Id. at 49-51.

was actually a merits appeal which is proscribed under the Special ADR Rules, and the RTC's directive that hearings be conducted anew before new arbitrators is sanctioned by paragraph 5, Rule 11.9 of the Special ADR Rules which provides that "in referring the case back to the arbitral tribunal or to a new arbitral tribunal pursuant to Rule 24 of Republic Act No. 876, the court may not direct it to revise its award in a particular way, or to revise its findings of fact or conclusions of law or otherwise encroach upon the independence of an arbitral tribunal in the making of a final award."[15]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, the petition for review is **DENIED**.
>
> **SO ORDERED**.[16]

Petitioner filed a motion for reconsideration, which the CA denied in its Resolution[17] dated December 11, 2014.

Hence the present Petition. Respondents filed a Comment[18] dated June 24, 2015. Petitioner filed a Reply[19] dated September 10, 2015.

The Issue

The Petition states the following issue to be resolved:

> WHETHER OR NOT THE COURTS MAY VACATE AN ARBITRAL AWARD ON THE GROUND OF EVIDENT PARTIALITY BASED ON THEIR DISAGREEMENT WITH THE MANNER BY WHICH EVIDENCE PRESENTED BEFORE THE ARBITRAL TRIBUNAL WAS WEIGHED AND APPRECIATED.[20] (Emphasis omitted)

The Court's Ruling

The Petition is impressed with merit.

Petitioner posits that it is apparent from the RTC Joint Order vacating the subject arbitral award of the Philippine Dispute Resolution Center, Inc. (PDRCI) through Arbitrator Saludares, and the Order denying petitioner's motion for reconsideration, that there was no specific ground cited therein in vacating the arbitral award and there was no discussion as to how the RTC arrived at a conclusion that a ground existed to justify vacating the award.[21] Petitioner also states that a review of the proceedings before the RTC would

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15 Id. at 51-52.
16 Id. at 52.
17 Supra note 3.
18 *Rollo*, Vol. II, pp. 923-963.
19 Id. at 969-975.
20 *Rollo*, Vol. I, p. 19.
21 Id. at 22.

show that respondents presented and submitted anew the evidence they relied upon in support of the counterclaims, which they raised in the arbitration proceedings and to which petitioner objected because the evidence pertained to the merits of the case.[22] Petitioner further observes that it was the CA which made the categorical pronouncement that the ground upon which the arbitral award was vacated is the evident partiality of Arbitrator Saludares despite the CA's own recognition that the RTC correctly observed that the issues and arguments raised in the petition to vacate the arbitral award showed that it was a merits appeal which is proscribed by the Special ADR Rules.[23]

Invoking the 1994 case of *Adamson v. Court of Appeals*,[24] where the Court pronounced that the arbitrators' interpretation of the contract in a way which was not favorable to the petitioners therein and that the latter were disadvantaged by the decision of the arbitration committee do not prove evident partiality, petitioner argues that in determining the existence of partiality, one must not inquire into the manner by which the evidence was weighed but solely on the conduct of the arbitral tribunal.[25] In addition, petitioner cites *Banco de Oro Unibank, Inc. v. Court of Appeals and RCBC Capital Corp.*[26] in support of its position that it is the arbiter's conduct and not his or her analysis and appreciation of the evidence that must be scrutinized given that the standard in determining the existence of evident partiality is the *reasonable impression of partiality*, which requires a showing that a reasonable person would have to conclude that an arbitrator was biased to one party to the arbitration.[27]

Given that respondents never alleged improper conduct or impropriety with respect to the conduct of Arbitrator Saludares, petitioner submits that on this point alone, the Petition should be granted.[28] Nonetheless, petitioner likewise addressed the arguments of respondents that involve the merits of the case to show that Arbitrator Saludares did not ignore respondents' evidence and what he found was that their evidence was wanting.[29] Petitioner states that regarding respondents' counterclaim of overpricing, the sole arbitrator found that there was no proof submitted to him which required uniform pricing in all foods and supplies from the commissary, and regarding their claim of delivery of spoiled noodles, he found that petitioner's witness was more credible.[30] Further, petitioner pointed out that

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22 Id.
23 Id.
24 302 Phil. 638 (1994). Rendered by the Third Division; penned by Associate Justice Flerida Ruth P. Romero and concurred in by Associate Justices Florentino P. Feliciano, Abdulwahid A. Bidin, Jose A.R. Melo and Jose C. Vitug.
25 *Rollo*, Vol. I, pp. 23-24.
26 G.R. No. 199238, consolidated with *RCBC Capital Corporation v. Banco de Oro Unibank, Inc.*, G.R. No. 196171, 700 Phil. 687 (2012). Rendered by the First Division; penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Chief Justice Maria Lourdes P. A. Sereno and Associate Justices Teresita J. Leonardo-De Castro, Lucas P. Bersamin and Bienvenido L. Reyes.
27 *Rollo*, Vol. I, p. 24.
28 Id.
29 Id. at 24-26.
30 Id. at 26.

the sole arbitrator did not award a blanket grant of all its claims and he cited petitioner at fault in two of the three reasons as to why the business of respondent corporation failed and directed that there be corresponding subtraction of the parties' claims.[31]

For their part, respondents seek the outright dismissal of the Petition because it seeks the review of facts, which is not allowed in a Rule 45 *certiorari* petition, and none of the recognized exceptions where factual review is permitted is invoked therein.[32] Respondents counter that the CA correctly affirmed the RTC Joint Order to vacate the arbitral award considering that Arbitrator Saludares acted with evident partiality in the conduct of the arbitration, showing manifest bias, when he disregarded documentary and testimonial evidence presented to support respondents' claims of overpricing, acts of discrimination and bad faith, as well as violations of the franchise agreement committed by petitioner.[33]

As correctly noted by the CA, the Special ADR Rules, which was adopted by the Court on September 1, 2009 and took effect on October 30, 2009, provide the specific grounds to vacate domestic arbitral awards[34] and that these grounds are exclusive. Specifically, Rule 11.4 of the Special ADR Rules states:

> **RULE 11.4. *Grounds.*** –
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> (A) *To vacate an arbitral award.* – The arbitral award may be vacated on the following grounds:
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> a. The arbitral award was procured through corruption, fraud or other undue means;
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> b. There was evident partiality or corruption in the arbitral tribunal or any of its members;
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> c. The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy;
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> d. One or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification; or

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31 Id.

32 *Rollo*, Vol. II, pp. 947-950.

33 Id. at 951-952.

34 **RULE 1.1. *Subject matter and governing rules.*** – The Special Rules of Court on Alternative Dispute Resolution (the "Special ADR Rules") shall apply to and govern the following cases:

xxxx

h. Confirmation, Correction or Vacation of Award in Domestic Arbitration;

xxxx

e. The arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made.

The award may also be vacated on any or all of the following grounds:

a. The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or

b. A party to arbitration is a minor or a person judicially declared to be incompetent.

The petition to vacate an arbitral award on the ground that the party to arbitration is a minor or a person judicially declared to be incompetent shall be filed only on behalf of the minor or incompetent and shall allege that (a) the other party to arbitration had knowingly entered into a submission or agreement with such minor or incompetent, or (b) the submission to arbitration was made by a guardian or guardian *ad litem* who was not authorized to do so by a competent court.

In deciding the petition to vacate the arbitral award, the court shall disregard any other ground than those enumerated above.

(B) *To correct/modify an arbitral award.* – The Court may correct/modify or order the arbitral tribunal to correct/modify the arbitral award in the following cases:

a. Where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

b. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;

c. Where the arbitrators have omitted to resolve an issue submitted to them for resolution; or

d. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the Court.

Rule 19.10 of the Special ADR Rules states the rule on judicial review of an arbitral award:

RULE 19.10. ***Rule on judicial review on arbitration in the Philippines.*** – As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24

> of Republic Act No. 876[35] or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.
>
> If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.
>
> The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal.

In *Fruehauf Electronics Philippines Corp. v. Technology Electronics Assembly and Management Pacific Corp.*[36] (*Fruehauf Electronics*), the Court made these pronouncements regarding the grounds to vacate an arbitral award:

> Nonetheless, an arbitral award is not absolute. Rule 19.10 of the Special ADR Rules — by referring to Section 24 of the Arbitration Law and Article 34 of the 1985 United Nations Commission on International Trade Law (*UNCITRAL*) Model Law — recognizes the very limited exceptions to the autonomy of arbitral awards:
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> > **Rule 19.10. *Rule on judicial review on arbitration in the Philippines.*** – As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing' that the award suffers from any of the infirmities or grounds for vacating an arbitral award **under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration**, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.
> >
> > If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration **on any ground other than those provided in the Special ADR Rules**, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award **only if the same amounts to a violation of public policy**.
> >
> > The court **shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact**

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35 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 otherwise known as "THE ARBITRATION LAW," approved on June 19, 1953.

36 800 Phil. 721 (2016). Rendered by the Second Division; penned by Associate Justice Arturo D. Brion and concurred in by Associate Justices Antonio T. Carpio, Jose C. Mendoza and Marvic M.V.F. Leonen; Associate Justice Mariano C. Del Castillo with Dissenting Opinion.

and law, as the court cannot substitute its judgment for that of the arbitral tribunal.

The grounds for **vacating** a domestic arbitral award under Section 24 of the Arbitration Law contemplate the following scenarios:

> (a) when the award is procured by corruption, fraud, or other undue means; or
>
> (b) there was evident partiality or corruption in the arbitrators or any of them; or
>
> (c) the arbitrators were guilty of misconduct that materially prejudiced the rights of any party; or
>
> (d) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

The award may also be vacated if an arbitrator who was disqualified to act willfully refrained from disclosing his disqualification to the parties. Notably, none of these grounds pertain to the correctness of the award but relate to the *misconduct of arbitrators*.

The RTC may also set aside the arbitral award based on Article 34 of the UNCITRAL Model Law. These grounds are reproduced in Chapter 4 of the *Implementing Rules and Regulations (IRR) of the 2004 ADR Act*[37]:

> (i) the party making the application furnishes proof that:
>
> (aa) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Philippines; or
>
> (bb) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
>
> (cc) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on

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37 Republic Act (R.A.) No. 9285, "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" otherwise known as the "ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004" (ADR Act), approved on April 2, 2004. R.A. No. 9285, Sec. 41 provides:

> SEC. 41. *Vacation Award.* – A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 2[4] of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.

> matters submitted to arbitration can be separated from those not so submitted, only the part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
>
> (dd) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of ADR Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with ADR Act; or
>
> (ii) The Court finds that:
>
> (aa) the subject-matter of the dispute is **not capable of settlement by arbitration under the law of the Philippines;** or
>
> (bb) the award is ***in conflict with the public policy*** of the Philippines.

Chapter 4 of the IRR of the ADR Act applies particularly to International Commercial Arbitration. However, the abovementioned grounds taken from the UNCITRAL Model Law are specifically made applicable to domestic arbitration by the Special ADR Rules.

Notably, these grounds are not concerned with the correctness of the award; they go into the validity of the arbitration agreement or the regularity of the arbitration proceedings.

These grounds for vacating an arbitral award are exclusive. Under the ADR Law, courts are obliged to disregard any other grounds invoked to set aside an award:

> **SEC. 41.** ***Vacation Award.*** – A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. **Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.**[38] (Emphasis and underscoring in the original)

Fruehauf Electronics made it clear that the grounds to vacate an arbitral award do not pertain to or are not concerned with the correctness of the award, *viz.*:

> The award may also be vacated if an arbitrator who was disqualified to act willfully refrained from disclosing his disqualification to the parties. Notably, none of these grounds pertain to the correctness of the award but relate to the *misconduct of arbitrators*.

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[38] *Fruehauf Electronics Philippines Corp. v. Technology Electronics Assembly and Management Pacific Corp.*, supra note 36, at 751-754. Citations omitted.

x x x x

Notably, these grounds are not concerned with the correctness of the award; they go into the validity of the arbitration agreement or the regularity of the arbitration proceedings.

These grounds for vacating an arbitral award are exclusive. Under the ADR Law, courts are obliged to disregard any other grounds invoked to set aside an award[.][39]

Based on foregoing, the CA was correct when it grounded the vacation of the subject arbitral award on evident partiality in the sole arbitrator because this is a recognized ground for vacating a domestic arbitral award. But was the CA correct in its application of the evident partiality ground in this case?

In the consolidated cases of *RCBC Capital Corp. v. Banco de Oro Unibank, Inc.*[40] and *Banco de Oro Unibank, Inc. v. CA and RCBC Capital Corp.*[41] (*RCBC Capital Corp.*), the Court was confronted with evident partiality as a ground to vacate an arbitral award. The Court made these pronouncements:

Accordingly, we examine the merits of the petition before us solely on the statutory ground raised for vacating the Second Partial Award: evident partiality, pursuant to Section 24 (b) of the Arbitration Law (RA 876) and Rule 11.4 (b) of the Special ADR Rules.

Evident Partiality

Evident partiality is not defined in our arbitration laws. As one of the grounds for vacating an arbitral award under the Federal Arbitration Act (FAA) in the United States (US), the term "encompasses both an arbitrator's explicit bias toward one party and an arbitrator's inferred bias when an arbitrator fails to disclose relevant information to the parties."

From a recent decision of the Court of Appeals of Oregon, we quote a brief discussion of the common meaning of evident partiality:

> To determine the meaning of "evident partiality," we begin with the terms themselves. The common meaning of "partiality" is "the **inclination to favor one side**." *Webster's Third New Int'l Dictionary* 1646 (unabridged ed 2002); *see also id.* (defining "partial" as "inclined to favor one party in a cause or one side of a question more than the other: biased, predisposed" (formatting in original)). "Inclination," in turn, means "a particular disposition of mind or character : propensity, bent" or "a tendency to a particular aspect, state, character, or action." *Id.* at 1143 (formatting in original); *see also id.* (defining "inclined" as "having inclination, disposition, or tendency").

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39 Id. at 752-754.
40 Supra note 26.
41 Id.

> The common meaning of "evident" is "capable of being perceived esp[ecially] by sight : distinctly visible : being in evidence : discernable[;] * * * clear to the understanding : obvious, manifest, apparent." *Id.* at 789 (formatting in original); *see also id.* (stating that synonyms of "evident" include "apparent, patent, manifest, plain, clear, distinct, obvious, [and] palpable" and that, **"[s]ince evident rather naturally suggests *evidence*, it may imply the existence of signs and indications that must lead to an identification or inference"** (formatting in original). (Emphasis supplied)

Evident partiality in its common definition thus implies "the existence of *signs and indications* that must lead to an identification or inference" of partiality. Despite the increasing adoption of arbitration in many jurisdictions, there seems to be no established standard for determining the existence of evident partiality. In the US, evident partiality "continues to be the subject of somewhat conflicting and inconsistent judicial interpretation when an arbitrator's failure to disclose prior dealings is at issue."

The first case to delineate the standard of evident partiality in arbitration proceedings was *Commonwealth Coatings Corp. v. Continental Casualty Co., et al.* decided by the US Supreme Court in 1968. The Court therein addressed the issue of whether the requirement of impartiality applies to an arbitration proceeding. The plurality opinion written by Justice Black laid down the rule that the arbitrators must disclose to the parties "any dealings that might create an impression of possible bias," and that underlying such standard is "the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias." In a separate concurring opinion, Justice White joined by Justice Marshall, remarked that "[t]he Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges." He opined that arbitrators should not automatically be disqualified from an arbitration proceeding because of a business relationship where both parties are aware of the relationship in advance, or where the parties are unaware of the circumstances but the relationship is trivial. However, in the event that the arbitrator has a "substantial interest" in the transaction at hand, such information must be disclosed.

Subsequent cases decided by the US Court of Appeals Circuit Courts adopted different approaches, given the imprecise standard of evident partiality in *Commonwealth Coatings*.

In *Morelite Construction Corp. v. New York District Council Carpenters Benefit Funds*, the Second Circuit reversed the judgment of the district court and remanded with instructions to vacate the arbitrator's award, holding that the existence of a father-son relationship between the arbitrator and the president of appellee union provided strong evidence of partiality and was unfair to appellant construction contractor. After examining prior decisions in the Circuit, the court concluded that —

> x x x we cannot countenance the promulgation of a standard for partiality as insurmountable as "proof of actual bias" — as the literal words of *Section 10* might suggest. Bias is always difficult, and indeed often impossible, to

> "prove." Unless an arbitrator publicly announces his partiality, or is overheard in a moment of private admission, it is difficult to imagine how "proof" would be obtained. Such a standard, we fear, occasionally would require that we enforce awards in situations that are clearly repugnant to our sense of fairness, yet do not yield "proof" of anything.
>
> If **the standard of "appearance of bias" is too low for the invocation of *Section 10*, and "proof of actual bias" too high**, with what are we left? Profoundly aware of the competing forces that have already been discussed, we hold that **"evident partiality" within the meaning of *9 U.S.C. § 10* will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration**. x x x (Emphasis supplied)

In *Apperson v. Fleet Carrier Corporation*, the Sixth Circuit agreed with the *Morelite* court's analysis, and accordingly held that to invalidate an arbitration award on the grounds of bias, the challenging party must show that "a reasonable person would have to conclude that an arbitrator was partial" to the other party to the arbitration.

This "myriad of judicial interpretations and approaches to evident partiality" resulted in a lack of a uniform standard, leaving the courts "to examine evident partiality on a case-by-case basis." The case at bar does not present a non-disclosure issue but conduct allegedly showing an arbitrator's partiality to one of the parties.

x x x x

We affirm the foregoing findings and conclusion of the appellate court save for its reference to the *obiter* in *Commonwealth Coatings* that arbitrators are held to the same standard of conduct imposed on judges. Instead, the Court adopts the *reasonable impression of partiality* standard, which requires a showing that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration. Such interest or bias, moreover, "must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative." When a claim of arbitrator's evident partiality is made, "the court must ascertain from such record as is available whether the arbitrators' conduct was so biased and prejudiced as to destroy fundamental fairness."[42] (Emphasis and italics in the original; underscoring supplied)

Thus, the Court in *RCBC Capital Corp.* after pointing out three standards which United States of America courts have used to determine evident partiality, namely: (*1*) appearance of bias, which is described as "too low", (*2*) proof of actual bias, which is described as "too high" and (*3*) reasonable impression of partiality, which appears to be the middle-ground, adopted the *reasonable impression of partiality* standard. The Court finds no cogent reason to depart from the application of the reasonable impression of partiality standard in determining evident partiality in the arbitrator or arbitral tribunal as a ground for vacating an arbitral award.

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[42] Id. at 725-730. Citations omitted.

This standard, using the very words of the Court in *RCBC Capital Corp.*, requires a showing that a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration, where proof of such interest, bias or partiality is direct, definite and capable of demonstration rather than remote, uncertain, or speculative and ascertained from such record as is available demonstrating the arbitrator's conduct as being so biased and prejudiced as to destroy fundamental fairness. The Court categorically stated that arbitrators are not held to the same standard of conduct imposed on judges.

Applying this reasonable impression of partiality standard, the Court in *RCBC Capital Corp.* upheld the CA's finding of evident partiality, *viz.*:

> However, the CA found factual support in BDO's charge of partiality, thus:
>
> > On the issue on evident partiality, the rationale in the American case of *Commonwealth Coatings Corp. v. Continental Cas. Co.* appears to be very prudent. In *Commonwealth [Coatings]*, the United States Supreme Court reasoned that courts "should ... be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts, and are not subject to appellate review" in general. This taken into account, **the Court applies the standard demanded of the conduct of magistrates by analogy**. After all, the ICC Rules require that an arbitral tribunal should act fairly and impartially. Hence, **an arbitrator's conduct should be beyond reproach and suspicion. His acts should be free from the appearances of impropriety.**
> >
> > An examination of the circumstances claimed to be illustrative of Chairman Barker's partiality is indicative of bias. Although RCBC had repeatedly asked for reimbursement and the withdrawal of BDO's counterclaims prior to Chairman Barker's December 18, 2007 letter, it is baffling why **it is only in the said letter that RCBC's prayer was given a complexion of being an application for a partial award. To the Court, the said letter signaled a preconceived course of action that the relief prayed for by RCBC will be granted.**
> >
> > That there was an action to be taken beforehand is confirmed by Chairman Barker's furnishing the parties with a copy of the Secomb article. **This article ultimately favored RCBC by advancing its cause. Chairman Barker makes it appear that he intended good to be done in doing so but due process dictates the cold neutrality of impartiality.** This means that "it is not enough...[that] cases [be decided] without bias and favoritism. Nor is it sufficient that ... prepossessions [be rid of]. [A]ctuations should moreover inspire that belief." These put into the equation, the furnishing of the Secomb

> article further marred the trust reposed in Chairman Barker. The suspicion of his partiality on the subject matter deepened. Specifically, his act established that he had pre-formed opinions.
>
> Chairman Barker's providing of copies of the said text is easily interpretable that he had prejudged the matter before him. In any case, the Secomb article tackled bases upon which the Second Partial Award was founded. **The subject article reflected in advance the disposition of the ICC arbitral tribunal.** The award can definitely be viewed as an affirmation that the bases in the Secomb article were adopted earlier on. To the Court, actuations of arbitrators, like the language of judges, "must be guarded and measured lest the best of intentions be misconstrued."
>
> x x x x

We affirm the foregoing findings and conclusion of the appellate court save for its reference to the *obiter* in *Commonwealth Coatings* that arbitrators are held to the same standard of conduct imposed on judges. Instead, the Court adopts the *reasonable impression of partiality* standard, which requires a showing that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration. Such interest or bias, moreover, "must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative." When a claim of arbitrator's evident partiality is made, "the court must ascertain from such record as is available whether the arbitrators' conduct was so biased and prejudiced as to destroy fundamental fairness."

Applying the foregoing standard, we agree with the CA in finding that Chairman Barker's act of furnishing the parties with copies of Matthew Secomb's article, considering the attendant circumstances, is indicative of partiality such that a reasonable man would have to conclude that he was favoring the Claimant, RCBC. Even before the issuance of the Second Partial Award for the reimbursement of advance costs paid by RCBC, Chairman Barker exhibited strong inclination to grant such relief to RCBC, notwithstanding his categorical ruling that the Arbitration Tribunal "has no power *under the ICC Rules* to order the Respondents to pay the advance on costs sought by the ICC or to give the Claimant any relief against the Respondents' refusal to pay." That Chairman Barker was predisposed to grant relief to RCBC was shown by his act of interpreting RCBC's letter, which merely reiterated its plea to declare the Respondents in default and consider all counterclaims withdrawn — as what the ICC Rules provide — as an application to the Arbitration Tribunal to issue a partial award in respect of BDO's failure to share in the advance costs. It must be noted that RCBC in said letter did not contemplate the issuance of a partial order, despite Chairman Barker's previous letter which mentioned the possibility of granting relief upon the parties making submissions to the Arbitration Tribunal. Expectedly, in compliance with Chairman Barker's December 18, 2007 letter, RCBC formally applied for the issuance of a partial award ordering BDO to pay its share in the advance costs.

Mr. Secomb's article, *"Awards and Orders Dealing With the Advance on Costs in ICC Arbitration: Theoretical Questions and Practical Problems"* specifically dealt with the situation when one of the

parties to international commercial arbitration refuses to pay its share on the advance on costs. After a brief discussion of the provisions of ICC Rules dealing with advance on costs, which did not provide for issuance of a partial award to compel payment by the defaulting party, the author stated:

> 4. As we can see, the Rules have certain mechanisms to deal with defaulting parties. Occasionally, however, parties have sought to use other methods to tackle the problem of a party refusing to pay its part of the advance on costs. These have included seeking an order or award from the arbitral tribunal condemning the defaulting party to pay its share of the advance on costs. Such applications are the subject of this article.

By furnishing the parties with a copy of this article, Chairman Barker practically armed RCBC with supporting legal arguments under the "contractual approach" discussed by Secomb. True enough, RCBC in its Application for Reimbursement of Advance Costs Paid utilized said approach as it singularly focused on Article 30(3) of the ICC Rules and fiercely argued that BDO was contractually bound to share in the advance costs fixed by the ICC. But whether under the "contractual approach" or "provisional approach" (an application must be treated as an interim measure of protection under Article 23 [1] rather than enforcement of a contractual obligation), both treated in the Secomb article, RCBC succeeded in availing of a remedy which was not expressly allowed by the Rules but in practice has been resorted to by parties in international commercial arbitration proceedings. It may also be mentioned that the author, Matthew Secomb, is a member of the ICC Secretariat and the "Counsel in charge of the file", as in fact he signed some early communications on behalf of the ICC Secretariat pertaining to the advance costs fixed by the ICC. This bolstered the impression that Chairman Barker was predisposed to grant relief to RCBC by issuing a partial award.

Indeed, fairness dictates that Chairman Barker refrain from suggesting to or directing RCBC towards a course of action to advance the latter's cause, by providing it with legal arguments contained in an article written by a lawyer who serves at the ICC Secretariat and was involved or had participation — insofar as the actions or recommendations of the ICC — in the case. Though done purportedly to assist both parties, Chairman Barker's act clearly violated Article 15 of the ICC Rules declaring that "[i]n all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case." Having pre-judged the matter in dispute, Chairman Barker had lost his objectivity in the issuance of the Second Partial Award.

In fine, we hold that the CA did not err in concluding that the article ultimately favored RCBC as it reflected in advance the disposition of the Arbitral Tribunal, as well as "signalled a preconceived course of action that the relief prayed for by RCBC will be granted." This conclusion is further confirmed by the Arbitral Tribunal's pronouncements in its Second Partial Award which not only adopted the "contractual approach" but even cited Secomb's article along with other references, thus:

> 6.1 It appears to the Tribunal that the issue posed by this application is essentially a contractual one. x x x

xxxx

6.5 Matthew Secomb, considered these points in the article in 14 ICC Bulletin No. 1 (2003) which was sent to the parties. At Para. 19, the learned author quoted from an ICC Tribunal (Case No. 11330) as follows:

"The Arbitral Tribunal concludes that the parties in arbitrations conducted under the ICC Rules have a mutually binding obligation to pay the advance on costs as determined by the ICC Court, based on Article 30-3 ICC Rules which — by reference — forms part of the parties' agreement to arbitration under such Rules."

The Court, however, must clarify that the merits of the parties' arguments as to the propriety of the issuance of the Second Partial Award are not in issue here. Courts are generally without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators. They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators. A contrary rule would make an arbitration award the commencement, not the end, of litigation. It is the finding of evident partiality which constitutes legal ground for vacating the Second Partial Award and not the Arbitration Tribunal's application of the ICC Rules adopting the "contractual approach" tackled in Secomb's article.[43] (Emphasis and italics in the original)

The Court clarified in *RCBC Capital Corp.* that the merits of the parties' arguments as to the propriety of the issuance of the questioned award were not in issue inasmuch as the courts would not review the findings of law and fact contained in the award, and would not undertake to substitute their judgment for that of the arbitrators. Thus, the finding of evident partiality was not founded on the arbitration tribunal's application of the International Chamber of Commerce (ICC) Rules of Arbitration (ICC Rules) adopting the "contractual approach" tackled in Matthew Secomb's (Secomb) article, "*Awards and Orders Dealing With the Advance on Costs in ICC Arbitration: Theoretical Questions and Practical Problems*." Rather, the finding of evident partiality was based on Chairman Ian Barker's (Chairman Barker) act of furnishing the parties with copies of Secomb's article, considering the attendant circumstances, which is indicative of partiality such that a reasonable man would have to conclude that he was favoring the claimant, RCBC Capital Corporation (RCBC). By furnishing the parties with a copy of that article, Chairman Barker practically armed RCBC with supporting legal arguments under the "contractual approach" discussed by Secomb, which approach was utilized by RCBC in its Application for Reimbursement of Advance Costs Paid when it singularly focused on Article 30(3) of the ICC Rules and fiercely argued that Banco De Oro Unibank, Inc. was contractually bound to share in the advance costs fixed by the ICC, resulting to RCBC's success in availing of a remedy

[43] Id. at 729-734. Citations omitted.

which was not expressly allowed by the Rules but in practice had been resorted to by parties in international commercial arbitration proceedings.

The Court did not review the correctness of the application of the ICC Rules by the arbitration tribunal, which would necessarily be tantamount to a merits review or appeal — a ground for vacating award, which is not sanctioned by the Special ADR Rules, the Arbitration Law, the ADR Act, and the Model Law on arbitration or the 1985 United Nations Commission on International Trade Law (UNCITRAL) Model Law.

Aside from rendering the questioned arbitral award, what exactly did Arbitrator Saludares do, which impelled the CA to find evident partiality in him?

The CA Decision states:

> x x x Respondents contended that there was manifest bias on the part of the sole arbitrator in disregarding documentary and testimonial evidence presented to support their claims of overpricing, acts of discrimination and bad faith, as well as violations of the franchise agreement committed by petitioner, namely:
>
> > 1) "Cost Analysis on a comparative table of prices imposed on Gintong Pansit's Liberty branch vis-à-vis Suoloco Corporation's Greenbelt branch from March 2008 to June 2008, as well as photocopies of statements of account and sales invoices from respondent Tri-Mark for the months of March 2008 to June 2008 of Liberty branch (Exhibits "R-12" to "R-53") and photocopies of statements of account and sales invoices from Tri-Mark for the months of March 2008 to June 2008 for the Greenbelt branch (Exhibits "R-54" to "R-91");"
> >
> > 2) Second Cost Analysis "listing down the prices imposed on Gintong Pansit's Liberty branch for the months of July 2008 until December 2008 as well as statements of account and sales invoices of the said branch (Exhibits "R-92" to "R-154-e["]);"
> >
> > 3) Sworn statements of petitioners Lucy N. Tan and Catherine Ng Chunungco including that of Christopher A. Sayas, a former noodle cook at Liberty [b]ranch. According to Chunungco, the "prices imposed by respondent Tri-Mark on Liberty branch were higher than those imposed on the Greenbelt branch." Petitioner Chunungco maintains that "there was non-delivery of several items ordered by petitioner Gintong Pansit. This was corroborated by the sworn statement of Christopher Sayas as well as copies of order forms and delivery receipts (Exhibits "R-155" to "R-164");"
> >
> > 4) Transcripts of Stenographic Notes (TSN) of the arbitration hearings held on July 20, 21 and 22, 2010 (Exhibits "FF" to "HH") "showing the admission of

> respondent Tri-Mark's witness Edward Uy, that said respondent did not deliver the food items and supplies, in the quantities as ordered by petitioner Gintong Pansit, as there was an order or instruction to cut down on deliveries;"
>
> 5) Peter Fung's admission "as to the overpricing on purchases of Liberty branch and grant of lower prices to the Greenbelt branch during the May 12, 2010 hearing of the arbitration proceedings."
>
> This Court notes that the trial court found factual support in respondents' charge of partiality. In its [J]oint [O]rder dated December 8, 2011, the trial court held that the abovementioned pieces of evidence were not given due consideration by the sole arbitrator, nevertheless, it refrained from resolving the merits of the parties' arguments or making any factual determinations on the matter. The trial court was correct in observing that the issues and arguments raised in the petition to vacate arbitral award showed that it was actually a merits appeal which is proscribed under the Special Rules of Court on ADR, thus, the trial court merely directed that hearings be conducted anew before new arbitrators. Par. 5, Rule 11.9 of the Special Rules on ADR provides that, "in referring the case back to the arbitral tribunal or to a new arbitral tribunal pursuant to Rule 24 of Republic Act No. 876, the court may not direct it to revise its award in a particular way, or to revise its findings of fact or conclusions of law or otherwise encroach upon the independence of an arbitral tribunal in the making of a final award." It must be emphasized that it is the findings of evident partiality which constitute legal ground for vacating the arbitral award. x x x[44]

The Court cannot agree with the CA that the arbitrator's act of disregarding certain documentary and testimonial evidence presented by a party, by itself, can rise to the level of evident partiality in the arbitrator to justify vacating an arbitral award. To sustain it will render arbitration inutile. A losing party will merely cite several exhibits or pieces of evidence, which were not made the basis of the award or which the arbitrator did not give credence to or weight in the petition to vacate, then a finding of evident partiality is assured. Evidently, when it is the evidence upon which a party's claim is sustained or assailed that is questioned in a petition to vacate an arbitral award, the petition is a merits appeal as this would entail the review of the findings of law and fact contained in the award, and, as correctly observed by the CA, is proscribed under the Special ADR Rules and the Arbitration Law as well as the ADR Act and the Model Law on arbitration. If the CA's Decision is affirmed, there will be no end to arbitration.

In some way, the RTC's justifications in vacating the award in this case, which were affirmed by the CA, are analogous to the justifications of the trial court in *Adamson v. Court of Appeals*[45] in its decision vacating the award therein, which the Court reversed on the ground that they do not amount to evident partiality, *viz.*:

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44 *Rollo*, Vol. I, pp. 50-52.

45 Supra note 24.

> The justifications advanced by the trial court for vacating the arbitration award are the following: (a) "x x x that the arbitration committee had advanced no valid justification to warrant a departure from the well-settled rule in contract interpretation that if the terms of the contract are clear and leave no doubt upon the intention of the contracting parties the literal meaning of its interpretation shall control; (b) that the final NAV of ₱47,121,468.00 as computed by herein petitioners was well within APAC's normal investment level which was at least US$1 million and to say that the NAV was merely ₱167,118.00 would negate Clause 6 of the Agreement which provided that the purchaser would deposit in escrow ₱5,146,000.00 to be held for two (2) years and to be used to satisfy any actual or contingent liability of the vendor under the Agreement; (c) that the provision for an escrow account negated any idea of the NAV being less than ₱5,146,000.00; and (d) that herein private respondent, being the drafter of the Agreement could not avoid performance of its obligations by raising ambiguity of the contract, or its failure to express the intention of the parties, or the difficulty of performing the same.["]
>
> It is clear therefore, that the award was vacated not because of evident partiality of the arbitrators but because the latter interpreted the contract in a way which was not favorable to herein petitioners and because it considered that herein private respondents, by submitting the controversy to arbitration, was seeking to renege on its obligations under the contract.
>
> That the award was unfavorable to petitioners herein did not prove evident partiality. That the arbitrators resorted to contract interpretation neither constituted a ground for vacating the award because under the circumstances, the same was necessary to settle the controversy between the parties regarding the amount of the NAV. In any case, this Court finds that the interpretation made by the arbitrators did not create a new contract, as alleged by herein petitioners but was a faithful application of the provisions of the Agreement. Neither was the award arbitrary for it was based on the statements prepared by the SGV which was chosen by both parties to be the "auditors."[46]

From the quote above, it is clear that evident partiality in the arbitrator cannot be deduced from the latter's interpretation of facts and law which may necessarily be favorable to one party and unfavorable to the other — an act or conduct which defines the very essence of the function expected of an arbitrator. Such conduct by itself, without more, cannot create in the mind of a reasonable person that the latter is favoring one party over the other.

Given that respondents have not identified the act or conduct of Arbitrator Saludares, outside or independent of the merits of the case, that is indicative of partiality so that a reasonable person would have basis to conclude that the arbitrator was favoring petitioner, respondents' claim of evident partiality cannot be sustained. Also, as clearly noted by the Court in *Fruehauf Electronics*, the grounds to vacate do not pertain to or are not concerned with the correctness of the award. Since the grounds or justifications cited by respondents, which both the RTC and the CA adopted,

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[46] Id. at 646-647.

pertain to or are concerned with the correctness of the subject arbitral award, they are not sanctioned by the Special ADR Rules, the Arbitration Law, the ADR Act and the Model Law on arbitration. Thus, the RTC and the CA erred in vacating the subject arbitral award.

The review by this Court of the CA Decision and RTC Joint Order is in full accord with Rule 19.36 of the Special ADR Rules, which provides:

> **RULE 19.36.** ***Review discretionary.*** – A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:
>
> a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;
>
> b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;
>
> c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and
>
> d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.
>
> The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.
>
> A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition.

When the CA and the RTC incorrectly vacated the arbitral award of Arbitrator Saludares based on their mistaken application of evident partiality as a ground to vacate an arbitral award — by considering the complaint of respondents against the act of the arbitrator in disregarding certain pieces of evidence that they presented, which if duly appreciated, would have altered the arbitral award as tantamount to evident partiality rather than dismissing it

as a merits appeal — they failed to correctly apply the applicable standard or test for judicial review prescribed in the Special ADR Rules in arriving at their decision, which if not reversed would likely result in substantial prejudice to petitioner.

There being no justifiable ground to vacate, the confirmation of the Final Award[47] dated September 8, 2010 rendered by Arbitrator Saludares in PDRCI Case No. 46-2010 is in order.

In closing, it is worth reiterating that:

> The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal.
>
> In other words, simple errors of fact, of law, or of fact and law committed by the arbitral tribunal are not justiciable errors in this jurisdiction.[48] (Emphasis and underscoring omitted)

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals' Decision dated November 21, 2013 and the Resolution dated December 11, 2014 of the Court of Appeals in CA-G.R. SP No. 124944 are **REVERSED** and **SET ASIDE**. The Final Award dated September 8, 2010 of Sole Arbitrator Reynaldo L. Saludares in PDRCI Case No. 46-2010 is **REINSTATED** and accordingly **CONFIRMED**.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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47 Supra note 8.

48 *Fruehauf Electronics Philippines Corp. v. Technology Electronics Assembly and Management Pacific Corp.*, supra note 36, at 760. Citation omitted.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

AMY C. LAZARO-JAVIER
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