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**REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 93, QUEZON CITY**

**MAYNILAD WATER SERVICES, INC.,
Petitioner,**

-versus-

**Civil Case No. R-QZN-
15-06702-CV**

**METROPOLITAN WATERWORKS
AND SEWERAGE SYSTEM,**

Respondent.

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DECISION

Submitted for the Court's resolution is the Petition for Confirmation and Execution of Arbitral Award filed by the petitioner.

The petition alleges that the petitioner and the respondent were involved in a rate rebasing dispute which they submitted to arbitration before an Appeals Panel pursuant to ARTICLE 12 (DISPUTE RESOLUTION) of their Concession Agreement dated February 21, 1997, as amended. Three arbitrators¹ were appointed pursuant to Section 12.3 of that Concession Agreement. The Arbitration Case No. UNC 141/CYK, entitled *Maynilad Water Services, Inc. vs. Metropolitan Waterworks and Sewerage System and Regulatory Office*, decided the appropriate Rebasing Adjustment and the resulting adjusted average basic water charge per cubic meter that the petitioner can collect for every Charging Year of the parties' Fourth Rate Rebasing Period commencing on January 1, 2013, as well as the allocation of costs between the petitioner and the respondent.

The said arbitration case resulted in the issuance of a Final Award dated December 29, 2014 which the petitioner received on January 5, 2015 and which ruled in favor of the petitioner (Claimant therein) as follows:

471. For the foregoing reasons, the Appeals Panel renders the following decision:

¹Arbitrators appointed pursuant to Section 12.3 of the Concession Agreement- Professor Bernard Hanotiau, Retired Regional Trial Court Judge Rogelio Mariano Pizarro, Sr. and Professor Federico M. Macaranas

- (1) By majority, finds that Claimant is entitled to include its Corporate Income Tax in its Future Cash Flows for each year of operations;
- (2) By majority, upholds Claimant's alternative Rebasing Adjustment for the Fourth Rate Rebasing Period of 13.41%, which means an average basic water charge of Php30.28/cu.m., resulting in an adjusted rate of Php34.34/cu.m. for every Charging Year of the Fourth Rate Rebasing Period;
- (3) Unanimously decides that each Party shall bear its own legal costs and that the costs of the arbitration shall be borne by the parties equally;
- (4) Unanimously Orders Respondents to reimburse Claimant the sums of USD15,012.5[0], Php540,502.81 and HKD179.73, representing Respondents' share of the costs of the arbitration that were advanced by Claimant.
- (5) Dismisses all other claims.²

Pursuant to Section 12.5 of the Concession Agreement, the said Final Award is "final and binding upon the parties"³ who "waive any right to appeal or seek the review of any Appeals Panel award by any court, regulatory body or tribunal."⁴ Moreover, Section 7.1 of the Concession Agreement requires the Respondent to "cooperate with actions taken by the Concessionaire (Petitioner herein) to implement changes to the Standard Rates for water and sewerage services as instructed by the Appeals Panel. Similarly, Article 32, Section 2 of the 1976 Arbitration Rules of the United Nations Commission on International Trade Law (the "1976 UNCITRAL Rules") which the parties agreed would apply to and govern their arbitration,⁵ also provides that the arbitration award "shall be final and binding on the parties" and enjoins them "to carry out the award without delay". Finally, Rule 19.7 of the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules), Supreme Court Administrative Matter No. 07-11-08-SC, September 1, 2009 confirms that "an agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding." Consequently, a party to an

²Exhibit "H"

³Exhibit "B"

⁴Exhibit "B"

⁵Section 12.2, Concession Agreement

arbitration is “precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award”.⁶

The respondent did not seek to vacate nor attempt to challenge that Final Award within thirty (30) days of its receipt before any court, regulatory body or tribunal.

Despite the finality of the Final Award and the petitioner’s repeated oral and written demands, the respondent refused to implement the Final Award because the Final Award is supposedly not consistent with another award that it obtained in another arbitration case involving another rate rebasing dispute that it had with another party.

The respondent filed its Opposition to the instant Petition for Confirmation and Execution of Arbitral Award with Counter-Petition. The respondent alleges that implementing the December 29, 2014 Arbitral Award will make water rates in the West Service Area more costly, thus less affordable, and hence, discriminatory, when compared to the water rates in the East Service Area, without valid or substantial distinction, in violation of the law, the Constitution and international covenants to which the Philippines is a party.

While MWSS is bound by the terms of the Concession Agreement for the West Service Area, its charter (R.A. 6234) mandates it to approve and implement water rates in the East and West Service Areas that are just, equitable and non-discriminatory.

Implementing the Final Award in UNC 141/CYK, in the light of the contradictory ruling in UNC 136/CYK on the same legal issue of recovery of the CIT of MWSS’ Concessionaires, will violate the Constitution’s Equal Protection Clause.

Implementing the Final Award in UNC 141/CYK subject of this petition, given the contradictory ruling in UNC 136/CYK on the same legal issue of CIT recovery of MWSS’ concessionaires, will violate international covenants to adopt effective measures to realize, without discrimination, the right to water, to which the Philippines is a State party.

MWSS is legally excused not to implement or enforce the Final Award subject of this petition under the General Principle of supervening event and Articles 1266 and 1267 of the Civil Code.

⁶ Special ADR Rule, Rule 19.7

The 26 February 2015 MWCI Award in UNC 136/CYK constitutes a supervening event that renders the execution of the Final Award, subject of this Petition, unjust, inequitable and illegal.

MWSS is released from its obligation to implement or enforce the Final Award subject of this Petition under Articles 1266 and 1267 of the Civil Code.

The core issue for the Court's resolution is whether or not the petitioner is entitled to the confirmation and execution of the Final Award.

The Court finds the instant petition for confirmation and execution of the Final Award dated December 29, 2014 meritorious.

The pronouncement of the Supreme Court in the case of *Department of Environment and Natural Resources (DENR) vs. United Planners Consultants, Inc. (UPCI)*, G.R. No.212081, February 23, 2015 is instructive, to wit:

Republic Act No. (RA) 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004," institutionalized the use of an Alternative Dispute Resolution System (ADR System) in the Philippines. The Act, however, was without prejudice to the adoption by the Supreme Court of any ADR system as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines.

Accordingly, A.M. No. 07-11-08-SC was created setting forth the Special Rules of Court on Alternative Dispute Resolution (referred herein as Special ADR Rules) that shall govern the procedure to be followed by the courts whenever judicial intervention is sought in ADR proceedings in the specific cases where it is allowed.

The instant petition for the confirmation of the final arbitral award is one of the instances enumerated under Rule 1.1 where the Special ADR Rules would be applicable.

A perusal of the records of this case revealed that no petition to vacate the Final Award was filed. Under Rules 11.2 (C) and 11.2 (D) of the Special ADR Rules, the respondent only has thirty (30) days from its receipt of the Final Award on January 7, 2015 or until February 6, 2015 within which to file a petition to vacate the Final Award, whether on its own or in opposition to a petition to confirm the award. The Special ADR

rules provide that the said reglementary period is mandatory and a petition to vacate an arbitral award filed beyond the said period should be dismissed [*Special ADR Rules, Rule 11.2 (D)*]. The Special ADR Rules likewise provide that “the filing of the petition to confirm an arbitral award shall not authorize the filing of a belated petition to vacate or set aside such award in opposition thereto” [*Special ADR Rules, Rule 11.2 (F)*].

Records disclosed that the respondent did not avail of the available procedural remedies to assail the arbitral award. Having failed to avail of the remedies attendant thereto, the arbitral award has become final and executory.

The Arbitration Law requires the losing party to seek vacation of the award within a period of thirty (30) days from service of the Final Award. For as a matter of consequence, failure to do so will amount to an unqualified acquiescence to the findings of the arbitrators, and if he does not, then the award must be confirmed (*Romago Inc. vs Siemens Building Technologies, Inc., G. R. No. 181969, October 2, 2009*).

Rule 11.9 of the Special ADR Rules provides:

“Rule 11.9. *Court Action*- Unless a ground to vacate an arbitral award under Rule 11.5 above is fully established, the court shall confirm the award.

An arbitral award shall enjoy the presumption that it was made and released in due course of arbitration and is subject to confirmation by the court.

In resolving the petition or petition in opposition thereto in accordance with these Special ADR Rules, the court shall either confirm or vacate the arbitral award. **The court shall not disturb the arbitral tribunal’s determination of facts and interpretation of law** xxx xxx xxx.” (Emphasis supplied)

In the case of *Asset Privatization Trust vs. Court of Appeals et.al.*, G. R. No. 121171 December 29, 1998, the Supreme Court ruled as follows:

As a rule, the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts. Courts are 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, since any other rule would make an award the commencement, not the end, of litigation. Errors of law and fact, or an erroneous decision of matters submitted to the judgment of the arbitrators, are insufficient to invalidate an award fairly and honestly made. Judicial review of an arbitration is thus, more limited than judicial review of a trial.

The instant Petition for the Confirmation of Final Award was filed by the petitioner on July 27, 2015 pursuant to Rule 11.2(A) of the Special ADR Rules which allows it to file the instant petition "at any time after the lapse of thirty (30) days from its receipt of the Final Award" on January 5, 2015. The petitioner filed a Supplemental Petition for Confirmation and Execution of Arbitral Award on January 8, 2016 in order to update its prayer for the immediate publication of the 2016 Table of Standard Rates,⁷ consistent with the Terms of the Final Award.

Anent the allegations of the respondent in opposition to the instant petition, the said allegations are not included as grounds for vacating an arbitral award under the Special ADR Rules. The respondents allege that the Final Award involved in this petition, specifically the Final Award in UNC 141/CYK, should not be confirmed and executed because it is contradictory to the ruling in UNC 136/CYK which is another award issued in its arbitration with another Concessionaire, Manila Water Company, Inc. (the "Manila Water Award"), which disallows the reimbursement of Manila Water's corporate income tax ("CIT"). Hence, the confirmation of the Final Award involved in the instant petition will be discriminatory and will violate the constitutional guarantee for equal protection since the consumers serviced by herein petitioner in the West Zone and the consumers serviced by Manila Water in the East Zone will end up paying different rates for similar water services. However, the Court is convinced that the constitutional guarantee of equal protection does not prohibit the dissimilar treatment of persons belonging to different classes or those in different situations. Here, the West and East Zone consumers do not belong to the same class and are not in the same situation. The West Zone consumers are being serviced by herein petitioner which has a Final Award upholding its Rate Rebasing Adjustment based on the ruling that the respondent must reimburse the petitioner's CIT. On the other hand, the East Zone consumers are being serviced by a different Concessionaire, Manila Water, which is subject to the Manila Water Award disallowing its proposed

⁷ Exhibit "J"

Rate Rebasing Adjustment for the East Zone based on the ruling that MWSS does not have to reimburse Manila Water's CIT.

The respondent argues that it may not be required to implement the Final Award in accordance with its terms because doing so will somehow breach its duty under its charter (RA 6234) "to fix just and equitable rates". However, Section 3(h) of RA 6234 provides that the respondent's power "to fix just and equitable rates shall be in accordance with the standards outlined in Section 12 of RA 6234 *i.e.* that they may not exceed the 12% cap imposed by Section 12. On the contrary, the respondent admitted through its witness, Chief Regulator Joel Yu that implementing the Final Award according to its terms will not result in the 12% statutory limit being breached.⁸

As regards the respondent's claim that it cannot implement the Final Award because doing so "will violate international covenants to adopt effective measures to realize, without discrimination, the right to water, to which the Philippines is a party," the said international covenant to which the respondent relies, specifically General Comment No. 15 of the United Nations Committee on Economic, Social, Cultural Rights does not require that the Philippines should adopt a specific or uniform pricing schemes for the supply of water.

Respondent alleges that it is legally excused from implementing the Final Award because "the February 26, 2015 (Manila Water) Award in UNC 136/CYK constitutes a supervening event that renders the execution of the Final Award unjust, inequitable and illegal". The Concession Agreement between herein petitioner and respondent contains an arbitration agreement (Article 12.2 of the Concession Agreement). Clearly, the parties herein are bound by the contract and its arbitration clause as they are signatories thereto.

The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract and is itself a contract.⁹ As a rule, contracts are respected as the law between the contracting parties and produce effect as between them, their assigns and heirs.¹⁰

⁸ TSN, January 20, 2016, p. 32

⁹ Del Monte Corporation-USA, *et. al.* vs. Court of Appeals, G.R. No. 136154, February 7, 2001

¹⁰ Art. 1311, New Civil Code of the Philippines

Article 12.5 of the Concession Agreement provides that “any decision or award of the Appeals Panel shall be final and binding upon the parties” thereto. “Each party waives any right to seek interlocutory order or other relief from any judicial or regulatory body, or to appeal or seek the review (of the Final Award) by any court, regulatory body or tribunal”. The parties agree that “an Award of the Appeals Panel may be enforced against it or its assets wherever they may be found and that judgment upon such award may be entered in any court having jurisdiction thereof.”

Contrary to the respondent’s allegation, Rule 11.9 of the Special ADR Rules provides that the Court “shall either confirm or vacate” the Final Award and it “shall not disturb the arbitral tribunal’s determination of facts and/or interpretation of law.”

WHEREFORE, in view of the foregoing, the Court resolves to **CONFIRM** the Final Award dated December 29, 2014 rendered by the Appeals Panel in Arbitration Case No. UNC 141/CYK, entitled *Maynilad Water Services, Inc. vs. Metropolitan Waterworks and Sewerage System and Regulatory Office*, the dispositive portion of which is as follows:

“471. For the foregoing reasons, the Appeals Panel renders the following decision:

- (1) By majority, finds that Claimant is entitled to include its Corporate Income Tax in its Future Cash Flows for each year of operations;
- (2) By majority, upholds Claimant’s alternative Rebasing Adjustment for the Fourth Rate Rebasing Period of 13.41%, which means an average basic water charge of Php30.28/cu.m., resulting in an adjusted rate of Php34.34/cu.m. for every Charging Year of the Fourth Rate Rebasing Period;
- (3) Unanimously decides that each Party shall bear its own legal costs and that the costs of the arbitration shall be borne by the parties equally;
- (4) Unanimously Orders Respondents to reimburse Claimant the sums of USD15,012.5[0], Php540,502.81 and HKD179.73, representing Respondents’ share of the costs of the arbitration that were advanced by Claimant.
- (5) Dismisses all other claims”.¹¹

¹¹Exhibit “H”

The respondent is hereby ordered to immediately implement the said Final Award.

SO ORDERED.

Quezon City, Philippines, August 30, 2017.

ARTHUR O. MALABAGUIO
Presiding Judge



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Copy Furnished:

1. SYCIP SALAZAR HERNANDEZ & GATMAITAN
Legal Counsel for MWSI
7TH Floor, SyCipLaw Center
105 Paseo de Roxas, Legaspi Village
Makati City 1226
2. ANGARA ABELLO CONCEPCION REGALA & CRUZ
Co-counsel for MWSI
2nd Avenue corner 30th Street
Cresent Park West, Bonifacio Global City
Taguig City
3. TANTOCO VILLANUEVA DE GUZMAN & LLAMAS
Co-counsel for MWSI
4th and 6th Floors, Filipino Building
135 Dela Rosa corner Bolanos Streets
Legaspi Village, Makati City 1229
4. OFFICE OF THE GOVERNMENT CORPORATE COUNSEL
Counsel for MWSS
3/f MWSS, Administration Building
Katipunan Road, Balara, Quezon City
5. FOLLOSO MORALLOS & HERCE
Co-counsel for MWSS
25TH Floor, 88 Corporate Center
141 Valero corner Sedeno Streets
Salcedo Village, Makati City