



RESOLUTION NO. 07- 2022

AMENDING RULE 18 (EXECUTION OF FINAL AWARD) OF THE CIAC REVISED RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION

WHEREAS, under Section 18.2 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules), a petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court;

WHEREAS, under the aforesaid provision, issues of fact or law or both can be raised by the appellant in the petition for review filed before the Court of Appeals (CA);

WHEREAS, the Supreme Court of the Philippines rendered its consolidated Decision in G.R. No. 230112 (Global Medical Center of Laguna, Inc. vs. Ross Systems International, Inc.) and G.R. No. 230119 (Ross Systems International, Inc. vs. Global Medical Center of Laguna, Inc. Ross Systems International, Inc.), respectively;

WHEREAS, pursuant to the Decision of the Supreme Court promulgated on May 11, 2021 in the aforesaid case, the losing party in CIAC arbitral awards now has two (2) options in assailing the CIAC awards, to wit: [1] to either file an appeal on pure questions of law directly to the Supreme Court within 15 days pursuant to Rule 45; or [2] to appeal factual issues to the Court of Appeals pursuant to Rule 65 within 60 days, based only on the limited grounds that pertain to either a challenge on the integrity of the CIAC arbitral tribunal or an allegation that the arbitral tribunal violated the Constitution or positive law in the conduct of the arbitral process, by a petition for certiorari in accordance with the provisions of Rule 65 of the Rules of Court, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction;

WHEREAS, in view of the aforesaid recent Decision of the Supreme Court, there is a necessity to revise/update Rule 18 of the CIAC Rules;

NOW THEREFORE, THE COMMISSION, by virtue of the powers vested in it by law, and after due deliberation in its 255th Regular Meeting held on November 22, 2022, **RESOLVES** as it is hereby **RESOLVED**, to amend Rule 18 of the CIAC Rules to read as follows:

RULE 18 – EXECUTION OF FINAL AWARD

SECTION 18.1. Execution of Award. - A final arbitral award shall become executory upon the lapse of fifteen (15) days from receipt thereof by the parties, except as provided under Sec. 18.3¹

SECTION 18.2. Recourse against final award.² - Recourse against a final award may only be taken through either of the following modes:

1. Where a party seeks to raise pure questions of law, by appeal to the Supreme Court through a petition for review under Rule 45 of the Rules of Court; or
2. Where a party seeks to appeal factual issues but only on the limited grounds that pertain to either a challenge on the integrity of the CIAC arbitral tribunal (*i.e.*, allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the Tribunal) or an allegation that the arbitral tribunal violated the Constitution or positive law in the conduct of the arbitral process, by a petition for certiorari in accordance with the provisions of Rule 65 of the Rules of Court, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction.³
3. An appeal to the Supreme Court shall be filed within fifteen (15) days, and a petition for certiorari to the Court of Appeals within sixty (60) days, from notice of the final award.⁴

SECTION 18.3. Entry of judgment. - If recourse is taken against a final award and a temporary restraining order (TRO) or a writ of preliminary injunction is issued either by the Supreme Court or by the Court of Appeals, such award shall become executory only upon the issuance of the entry of judgment, or upon the lapse/lifting of the TRO or the dissolution of the preliminary injunction.⁵

SECTION 18.4. Effect of appeal or petition for certiorari. – The appeal or petition for certiorari shall not stay the execution of the final award sought to be reviewed unless the Supreme Court or the Court of Appeals directs otherwise upon such terms as it deems just.⁶

SECTION 18.5. Execution/enforcement of awards. - As soon as a decision, order or final award has become executory:

1. The prevailing party may file a motion for execution of the final award, unless it has sought recourse against the award or any portion thereof;

¹While the losing party now has two options against an unfavorable CIAC award (see footnote no. 2), and under the second option has 60 days within which to file a petition for certiorari, the old rule that the award becomes executory after 15 days has been retained, subject to the losing party's right to either secure a TRO/preliminary injunction from the Supreme Court or the Court of Appeals under Sec. 18.3, or to post a supersedeas bond to stay enforcement of the award.

² New provision pursuant to the ruling of the Supreme Court in **Global Medical Center of Laguna, Inc. vs. Ross Systems International, Inc. G.R. No. 230112, 11 May 2021**. The losing party now has two recourse options, *i.e.*, to either file an appeal or pure questions of law directly to the Supreme Court within 15 days pursuant to Rule 45, or to file a petition for certiorari to the Court of Appeals pursuant to Rule 65 within 60 days, based on grounds set out by the Supreme Court in the *Global Medical* case.

³ The grounds for recourse are copied from the *Global Medical* case.

⁴ The periods within which to file any petition for review or petition for certiorari are taken from Rule 45 and Rule 65 of the Rules of Court, respectively.

⁵ Revised for consistency with the new Sec. 18.2

⁶ *Ibid*

2. Within seven (7) days from receipt of the motion for execution, any party seeking to prevent the execution shall submit proof to the Arbitral Tribunal that either
 - (i) the award is not yet executory under Sec. 18.3;⁷
 - (ii) it has timely sought recourse before the Court of Appeals or the Supreme Court in accordance with Sec. 18.2 of these Rules and it is exempt from the posting of an appeal bond on the ground that it is an agency of the government with no distinct legal personality from the former,⁸ or
 - (iii) that it intends to post a surety bond in accordance with the requirements of Sec. 18.6 of these Rules, failing which the Arbitral Tribunal (or the surviving remaining member/s) shall issue a writ of execution requiring any sheriff or proper officer to execute said decision, order or final award. If there are no remaining/surviving appointed arbitrator/s, the Commission shall issue the writ prayed for.⁹
3. If execution is ripe or proper under the CIAC Rules, the Commission shall concur with, and release, the writ of execution issued by the arbitrator/s. Hence, once an award/decision becomes executory, the release of the writ of execution by the Commission is purely ministerial.
4. The writ of execution shall direct the sheriff or other officer to conduct the sale of property on execution in accordance with Sec. 15 of Rule 39 of the Rules of Court. In the case of sale of real property or personal property not capable of manual delivery, the auction sale shall be held at the office of the sheriff serving the writ. Upon proper application by the sheriff, with notice to the parties, CIAC may authorize the sale to be held in the place where property is located.

SECTION 18.6. Stay of execution pending review. –

1. In the event that the Tribunal considers the losing party to have satisfactorily established any of the grounds under Sec. 18.5 (2) (i) or (ii), it shall stay the execution of the award.¹⁰

⁷ Under Sec. 18.3, in case recourse is taken against the award either before the CA or the SC in appropriate cases and a TRO or a writ of preliminary injunction has been issued, the award will only be executory either upon entry of final judgment or upon the lapse or lifting of the TRO or the dissolution of the preliminary injunction.

⁸ The exemption from posting a bond to stay the execution applies only to the government or its agencies with no separate legal personality; GOCCs are not exempt from the surety bond requirement. This is in accordance with the ruling of the Supreme Court in **Banahaw Broadcasting Corp. vs. Pacana, et. al., G.R. No. 171673 dated 30 May 2011**, which held that:

“We can infer from the foregoing jurisprudence precedents that, as a general rule, the government and all the attached agencies with no legal personality distinct from the former are exempt from posting appeal bonds, whereas government-owned and controlled corporations (GOCCs) are not similarly exempted. This distinction is brought about by the very reason of the appeal bond itself: to protect the presumptive judgment creditor against the insolvency of the presumptive judgment debtor. When the State litigates, it is not required to put up an appeal bond because it is presumed to be always solvent. This exemption, however, does not, as a general rule, apply to GOCCs for the reason that the latter has a personality distinct from its shareholders. Thus, while a GOCC’s majority stockholder, the State, will always be presumed solvent, the presumption does not necessarily extend to the GOCC itself.”

⁹ The old Rule that the Tribunal may issue a writ of execution *motu proprio* has been deleted in favor of execution solely upon the instance of the prevailing party in order to avoid confusion considering that the losing party now has two alternative modes of recourse with different deadline periods, and thus allowing the tribunal to continue issuing the writ *motu proprio* may be challenged for prematurity. If a motion for execution is filed by the prevailing party, the losing party, in order to prevent the writ from being issued, must show proof that one of the 3 grounds justifying denial of the motion is present, failing which the duty of the Tribunal to issue the writ becomes ministerial.

¹⁰ If the losing party satisfactorily demonstrate that the award is not yet executory under Sec. 18.3 (i.e., subsistence of a TRO or injunction issued by the CA or the SC enjoining the enforcement of the award), or that it had timely sought recourse against the award pursuant to Sec. 18.2 (i.e., it had filed either a petition for review under Rule 45 or a petition for certiorari under Rule 65).

2. Execution issued may be stayed under Sec. 18.5 (2) (iii) upon approval by the Arbitral Tribunal (or the surviving/remaining member/s), with the concurrence of CIAC, of a surety bond posted by the petitioner in an amount equal to the award, conditioned upon the performance of the judgment of the Supreme Court or the Court of Appeals in case the award is upheld in whole or in part.¹¹ Such surety bond shall be posted within such period of time, which shall in no case be less than fifteen (15) days, as may be granted by the Arbitral Tribunal during the hearing on the motion for execution and the opposition thereto. The surety company posting the bond must be included in the latest list of surety companies accredited by the Supreme Court and must comply with the requirements set by the CIAC for bond approval, concurrence, and/or acceptance, such as, but not limited to, the prescribed 'Surety Undertaking' form. If there are no remaining/surviving appointed arbitrators, the Commission may approve the required bond.¹²

The concurrence of the Commission to the approval by the arbitrator/s of the surety bond to stay execution is only for the purpose of ensuring compliance with the requirements set by the CIAC for bond approval.

SECTION 18.7. *Effect of reversal of award.* - Where an award is partially or totally reversed by the Supreme Court or Court of Appeals, the Arbitral Tribunal (or the surviving/remaining members, or the Commission if there are no remaining/surviving appointed arbitrators) may, on proper motion, issue such order of restitution or reparation of damages as equity and justice may warrant under the circumstances, subject to the payment to the Tribunal of additional arbitrator's fees based on such fee schedule as may be set by the Commission.¹³

SECTION 18.8. Executory Powers - The Arbitral Tribunal (or the surviving/remaining member/s, or the Commission, if there are no remaining/surviving appointed arbitrators) shall have the authority and power to decide matters and issue appropriate orders which are necessary and related to the execution of the Award, including but not limited to the determination of sufficiency of the bond, approval of the surety or bonding company, satisfaction of the award, quashal of the execution, partial execution, issuance of alias writs, assessment of properties levied, appointment of a quantity surveyor or assessor, examination of, and issuance of subpoena ad testificandum and subpoena duces tecum to banks, debtors of the judgment debtor and any person holding properties or assets of the judgment debtor.

The foregoing amendments shall take effect fifteen (15) days from receipt by the National Administrative Register, U.P. Law Center.

UNANIMOUSLY APPROVED.

Done in the City of Makati, this 22nd day of November 2022.

¹¹ Revised for consistency

¹² The stay of execution upon posting of a surety bond pursuant to Sec. 18.5 (2) (iii) is discretionary upon the Tribunal because it needs to determine whether the requirements for posting of such bond (i.e., the value should be equivalent to the amount of the award; the surety company should be accredited by the SC; etc.) have been satisfactorily met.

¹³ The last phrase "subject to the payment to the Tribunal of additional arbitrator's fees based on such fee schedule as may be set by the Commission" has been added to take into account the fact that the Tribunal, in deciding on an application for restitution, reparation or damages, would have to conduct additional proceedings, including the setting of new hearings and reviewing additional submissions from the parties.

THE COMMISSION:

Teresita V. Diaz-Baldos

JUSTICE TERESITA V. DIAZ-BALDOS (Ret.)
Chairperson

Antonio A. Abola

ANTONIO A. ABOLA
Member

Emilio Lolito J. Tumbocon

EMILIO LOLITO J. TUMBOCON
Member