

# Moving Forward: Developments in Arbitration Jurisprudence

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## I. INTRODUCTION

It has been almost five years since the passage of the Alternative Dispute Resolution Act of 2004<sup>1</sup> (ADR Act of 2004) on 2 April 2004. This law was a progressive law that enhanced and ratified the ability of private parties to enter into alternative modes of settling disputes they may have. It was there declared that it is the policy of the state to “actively promote party autonomy in the resolution of disputes,”<sup>2</sup> and that to achieve this goal, “the

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Cite as 53 ATENEO L.J. 784 (2008).

1. 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, [ADR Act of 2004], Republic Act No. 9285 (2004).
2. *Id.* § 2.

State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets.”<sup>3</sup> This was a far cry from the early 20th century when settling disputes outside of courts — arbitration in particular — was frowned upon. The courts then were quick to annul arbitration clauses found in contracts.<sup>4</sup> Indeed, court dockets have been and continue to be clogged with cases, so much so that “the number of cases filed outpace the number of cases decided.”<sup>5</sup> Perhaps because of this growing inefficiency of courts to deal with cases, the paradigm has changed and has allowed alternative modes of settling dispute to grow.

After almost five years since the passage of the ADR Act of 2004, as well as 55 years since the passage of Republic Act 876<sup>6</sup> (R.A. No. 876), the first arbitration law in the Philippines, the growth of arbitration in the Philippines — despite its clear benefits — has been hauntingly slow. It does not help that there seems to be a lack of understanding of the judiciary, including the Supreme Court, on the matter of arbitration. Since June 2007, only a handful of decisions have been made with regard to arbitration. This note will tackle two interesting decisions of the Supreme Court handed down early in 2008 — *Korea Technologies Co. v. Hon. Alberto A. Lerma*<sup>7</sup> (*Korea Technologies*) and *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd. (ABS-CBN Broadcasting Corporation)*.<sup>8</sup>

## II. KOREA TECHNOLOGIES V. LERMA

### A. *The Facts*

Korea Technologies Co., Ltd. (KOGIES) is a Korean corporation engaged in the supply and installation of Liquefied Petroleum Gasoline (LPG)

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3. *Id.*

4. Wahl, Jr. v. Donaldson, Sims & Co, 2 Phil. 445 (1903).

5. Laurence Hector B. Arroyo, *Arbitration in the Philippines: Wave of the Future?* 52 ATENEO L.J. 1, 30 (2007).

6. 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, [THE ARBITRATION LAW], Republic Act No. 876 (1953).

7. *Korea Technologies Co., Ltd. v. Hon. Alberto A. Lerma*, 542 SCRA 1 (2008).

8. *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*, 544 SCRA 308 (2008).

Cylinder manufacturing plants.<sup>9</sup> It entered into a contract with the private respondent Pacific General Steel Manufacturing Corp. (PGSMC), a domestic corporation desiring to establish a LPG Cylinder manufacturing plant in Carmona at the province of Cavite.<sup>10</sup> The parties executed the contract on 5 March 1997 in the Philippines, and an amendment on 7 April 1997 in Korea. The contract and its amendment provided that KOGIES is to ship machineries and other facilities necessary for manufacturing LPG Cylinders in exchange for U.S.\$1,224,000. In addition, for the installation and initiation of the plant and upon the production of 11-kilogram LPG cylinder samples, PGSMC is to pay U.S.\$306,000. Thus, the total contract price stood at U.S.\$1,530,000.<sup>11</sup>

All went well initially, and the machineries, equipment, and facilities promised by KOGIES were delivered and installed in Carmona. Thus, PGSMC paid the initial U.S.\$1,224,000.<sup>12</sup> However, after the installation of the plant, the initial operation thereof could not be conducted as PGSMC encountered financial difficulties, affecting the supply of materials. This forced the parties to agree that KOGIES would be deemed to have completely complied with the terms and conditions of the 5 March 1997 contract.<sup>13</sup>

Two postdated checks were issued by PGSMC to cover the remaining U.S.\$306,000. These were dishonored, however, for the reason that payment has been stopped. While KOGIES sent a demand letter to PGSMC, PGSMC replied with a letter complaining that KOGIES delivered a different brand of hydraulic press from that agreed upon and that it had failed to deliver several equipment parts already paid for. PGSMC further informed KOGIES on 1 June 1998 that it was cancelling their contract because of the altered quantity and lowered quality of the machineries, and that it would dismantle and transfer the machineries already installed from the Carmona plant. Finally, PGSMC filed before the Office of the Prosecutor a Complaint-Affidavit for *estafa* against Mr. Dae Hyun Kang, President of KOGIES.<sup>14</sup>

On 15 June 1998, KOGIES informed PGSMC that it could not unilaterally rescind the contract. Of greater importance to the present article,

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9. *Korea Technologies*, 542 SCRA at 7.

10. *Id.*

11. *Id.*

12. *Id.* at 8.

13. *Id.*

14. *Id.* at 8-9.

KOGIES also insisted that their dispute be settled by arbitration as provided by Article 15 of their contract — the arbitration clause.<sup>15</sup> Thus, on 1 July 1998, KOGIES instituted an Application for Arbitration before the Korean Commercial Arbitration Board in Seoul, Korea.<sup>16</sup> At almost the same time, it filed a complaint for Specific Performance on 3 July 1998 against PGSMC before the Muntinlupa Regional Trial Court (RTC), with a prayer for a Temporary Restraining Order (TRO). It averred, among others, that PGSMC violated Article 15 of their contract by unilaterally rescinding it without resorting to arbitration. PGSMC opposed the TRO, arguing that “the arbitration clause, was null and void for being against public policy as it ousts the local courts of jurisdiction over the instant controversy.”<sup>17</sup>

The RTC held that Article 15 of the contract was “invalid as it tended to oust the trial court or any other court jurisdiction over any dispute that may arise between the parties”<sup>18</sup> — a ruling long abandoned by the Supreme Court in various decisions.<sup>19</sup> KOGIES filed a Motion for Reconsideration of the order of the court. In the meantime, however, PGSMC filed a Motion for the Inspection of Things to determine whether there was indeed alteration of the quantity and lowering of the quality of the machineries and equipment. KOGIES opposed the motion, stating that the matters in the Motion for Inspection should fall under the coverage of the arbitration clause. The RTC, nevertheless, granted the Motion for Inspection of Things.<sup>20</sup>

KOGIES filed an urgent Motion for Reconsideration, and without waiting for the resolution of the said Motion, filed a Petition for Certiorari with the Court of Appeals, claiming that the Sheriff was ill-trained to determine matters as to whether there was indeed an alteration or lowering of quantity or quality, and that such issues would better be determined by an arbitration panel knowledgeable with the machineries and equipment at hand.<sup>21</sup> This Petition for Certiorari, however, was denied by the Court of

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15. *Korea Technologies Co., Ltd. v. Hon. Alberto A. Lerma*, 542 SCRA 1, 9 (2008).

16. *Id.*

17. *Id.* at 10.

18. *Id.* at 11.

19. *LM Power Engineering Corporation v. Capitol Industrial Construction Corporation Groups, Inc.*, 399 SCRA 562 (2003); *BF Corporation v. Court of Appeals*, 288 SCRA 267 (1998); *Eastboard Navigation Ltd. v. Juan Ysmael and Co., Inc.*, 102 Phil. 1 (1957).

20. *Korea Technologies*, 542 SCRA at 12.

21. *Id.* at 13.

Appeals.<sup>22</sup> The said appellate court agreed with the RTC that “an arbitration clause providing for a final determination of the legal rights of the parties to the contract by arbitration was against public policy.”<sup>23</sup> It was then that KOGIES filed a Petition for Review on Certiorari to the Supreme Court via Rule 45.

B. *The Court’s Ruling*<sup>24</sup>

The relevant ruling of the Supreme Court was on the issue of the declaration as null and void of Article 15 — the arbitration clause — of the contract between the parties for being contrary to public policy since they oust the courts of jurisdiction. The High Court sided with KOGIES on this issue and reversed the rulings both of the RTC and the Court of Appeals.

Citing the cases of *Gonzales v. Climax Mining Ltd.*<sup>25</sup> and *Del Monte Corporation-USA v. Court of Appeals*,<sup>26</sup> the High Court reiterated that an agreement to arbitrate any dispute is itself a contract, and at the same time part of a contract — the “container contract.” Absent any showing that the contract was not mutually and voluntarily agreed upon, the Court said that it should be respected and complied with by the parties.<sup>27</sup>

More importantly, the High Court here categorically stated that an arbitration clause — even though it provides that an arbitral award made pursuant thereto is final and binding — is not contrary to public policy. “This Court has sanctioned the validity of arbitration clauses in a *catena* of cases.”<sup>28</sup> The Court then cited cases since 1957, including *Eastboard Navigation Ltd. v. Juan Ysmael and Co., Inc.*,<sup>29</sup> *BF Corporation v. Court of*

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22. Penned by Associate Justice Elvi John S. Asuncion and concurred by Associate Justices Ma. Alicia Austria-Martinez and Portia Aliño-Hormachuelos.

23. *Korea Technologies*, 542 SCRA at 14.

24. Penned by Associate Justice Presbitero J. Velasco Jr. and concurred by Associate Justices Leonardo A. Quisumbing, Antonio T. Carpio, Conchita Carpio Morales, and Dante O. Tinga.

25. *Gonzales v. Climax Mining Ltd.*, 512 SCRA 148 (2007).

26. *Del Monte Corporation-USA v. Court of Appeals*, 351 SCRA 373 (2001).

27. *Korea Technologies*, 542 SCRA at 21-22.

28. *Id.* at 22.

29. *Eastboard Navigation Ltd. v. Juan Ysmael and Co., Inc.*, 102 Phil. 1 (1957).

*Appeals*,<sup>30</sup> and *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*<sup>31</sup>

Being an inexpensive, speedy, and amicable method of settling disputes, arbitration — along with mediation, conciliation and negotiation — is encouraged by the Supreme Court. Aside from unclogging judicial dockets, arbitration also hastens the resolution of disputes, especially of the commercial kind.<sup>32</sup>

The succeeding part of the decision of the Supreme Court is the more interesting, and perhaps more controversial one. Having found that the arbitration clause is not contrary to public policy, the High Court raised the question of what governs an arbitration clause. It held:

In case a foreign arbitral body is chosen by the parties, the arbitration rules of our domestic arbitration bodies would not be applied. *As signatory to the Arbitration Rules of the UNCITRAL Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) in the New York Convention on June 21, 1985, the Philippines committed itself to be bound by the Model Law.*<sup>33</sup>

This will be further discussed in the analysis section later.

The decision then highlights “pertinent features of R.A. [No.] 9285 applying and incorporating the UNCITRAL Model Law,”<sup>34</sup> including Sections 24,<sup>35</sup> 42,<sup>36</sup> 43,<sup>37</sup> 44,<sup>38</sup> 47, and 48. In the same breath, however, the

30. *BF Corporation v. Court of Appeals*, 288 SCRA 267 (1998).

31. *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, 399 SCRA 562 (2003).

32. *Korea Technologies*, 542 SCRA at 23 (citing *LM Power Engineering Corp.*, 399 SCRA at 569-70).

33. *Id.* at 23-24 (emphasis supplied).

34. *Id.* at 25.

35. ADR Act of 2004, § 24. It provides:

SEC. 24. Referral to Arbitration. — A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

36. ADR Act of 2004, § 42. It provides:

SEC. 42. Application of the New York Convention. — The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.

decision also cited Section 35 of the UNCITRAL Model Law, the Section dealing with the recognition and enforcement of an arbitral award. It finally stated that “the final foreign arbitral awards are ... situated in that they need first to be confirmed by the RTC.”<sup>39</sup> The Highest Court of the land seemed to have been confused on the application of these various provisions. This will be explained further in the next Section.

Next, the Supreme Court proclaimed that the RTC has jurisdiction to review foreign arbitral awards “with specific authority and jurisdiction to set aside, reject, or vacate a foreign arbitral award,”<sup>40</sup> citing Section 42 in relation to Section 45 of the ADR Act of 2004. Subsequently, the High

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The recognition and enforcement of such arbitral awards shall be filed with the Regional Trial Court in accordance with the rules of procedure to be promulgated by the Supreme Court. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.

The applicant shall establish that the country in which foreign arbitration award was made is a party to the New York Convention.

37. ADR Act of 2004, § 43. It provides:

SEC. 43. Recognition and Enforcement of Foreign Arbitral Awards Not Covered by the New York Convention. — The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The Court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a convention award.

38. ADR Act of 2004, § 44. It provides:

SEC. 44. Foreign Arbitral Award Not Foreign Judgment. — A foreign arbitral award when confirmed by a court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not a judgment of a foreign court.

A foreign arbitral award, when confirmed by the regional trial court, shall be enforced as a foreign arbitral award and not as a judgment of a foreign court.

A foreign arbitral award, when confirmed by the regional trial court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.

39. *Korea Technologies*, 542 SCRA at 28.

40. *Id.*

Court grouped international and foreign arbitral awards into one, and provided that “the grounds for setting aside, rejecting, or vacating the award by the RTC are provided under Article 34 (2) of the UNCITRAL Model Law. As for domestic arbitral awards, the applicable law would be R.A. [No.] 876, the Arbitration Law.”<sup>41</sup>

In fine, the Supreme Court stated that:

PGSMC must submit to the foreign arbitration as it bound itself through the subject contract. While it may have misgivings on the foreign arbitration done in KOREA by the KCAB, it has available remedies under R.A. [No.] 9285. Its interests are duly protected by the law which requires that the arbitral award that may be rendered by KCAB must be confirmed here by the RTC before it can be enforced.

With our disquisition above, petitioner is correct in its contention that an arbitration clause, stipulating that the arbitral award is final and binding, does not oust our courts of jurisdiction as the international arbitral award, the award of which is not absolute and without exceptions, is still judicially reviewable under certain conditions provided for by the UNCITRAL Model Law on ICA as applied and incorporated in R.A. [No.] 9285.<sup>42</sup>

As to the unilateral rescission of the contract, the Supreme Court held that, there being a valid and binding arbitration clause, PGSMC cannot unilaterally rescind a contract, but must, therefore, resort and enter into arbitration.<sup>43</sup> The Court further declared that the lower court committed grave abuse of discretion in allowing the Motion for Inspection of Things. Consequently, the findings and conclusions made by the Sheriff based on the inspection were considered to be of “no worth.”<sup>44</sup>

### C. Analysis

Several matters in this decision were controversial, and even disturbing. The first disturbing matter was the pronouncement of the Supreme Court, thus:

In case a foreign arbitral body is chosen by the parties, the arbitration rules of our domestic arbitration bodies would not be applied. *As signatory to the Arbitration Rules of the UNCITRAL Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law*

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41. *Id.* at 29.

42. *Id.* at 30-31.

43. *Id.* at 31.

44. *Korea Technologies Co., Ltd. v. Hon. Alberto A. Lerma*, 542 SCRA 1, 32 (2008).



*(UNCITRAL) in the New York Convention on June 21, 1985, the Philippines committed itself to be bound by the Model Law.*<sup>45</sup>

The High Court seemed to have combined three very different documents, namely, (1) The 1958 New York Convention, (2) The UNCITRAL Model Law on International Commercial Arbitration, and (3) the UNCITRAL Arbitration Rules.

“The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is, as the name itself implies, a multi-lateral treaty signed in New York City on June 10, 1958,”<sup>46</sup> writes Dean Custodio O. Parlade (Parlade),<sup>47</sup> an eminent authority on commercial arbitration. “The Philippines had adhered to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and deposited its ratification on July 6, 1967 after it was ratified by the Senate in 1965.”<sup>48</sup>

The UNCITRAL Model Law on International Commercial Arbitration, on the other hand, “is the product of the work of a Working Group of experts who met in Vienna from 1982 to 1985 which was submitted to and approved by a meeting of the UNCITRAL by delegates representing 32 states before it was submitted to the General Assembly of the United

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45. *Id.* at 23-24.

46. Custodio O. Parlade, Philippine Arbitration Updates: The case of Korea Technologies Co., Ltd. v. Hon. Alberta A. Lerma and Pacific General Steel Manufacturing Corporation, available at <http://www.pdrci.org/web1/update1.html> (last accessed Dec. 10, 2008) [hereinafter Parlade, Philippine Arbitration Updates].

47. The Philippine Dispute Resolution Center, Inc. states that he is a recognized authority in commercial and construction arbitration. He is also the President Emeritus of the PDRCI, and the Vice-Chairman of the International Chamber of Commerce Philippines, Inc. and Chairman of its International Arbitration Committee. He is likewise an accredited arbitrator of the Construction Industry Arbitration Commission and a Trustee of the Philippine Institute of Construction Arbitrators, Inc. He is also an accredited mediator for cases pending before the Court of Appeals. He has written several books on commercial and construction arbitration and frequently lectures on dispute resolution both in the Philippines and abroad.

Philippine Dispute Resolution Center, Inc. (PDRCI), Custodio O. Parlade, available at <http://www.pdrci.org/web1/cop.html> (last accessed Dec. 10, 2008).

48. CUSTODIO O. PARLADE, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (REPUBLIC ACT NO. 9285) ANNOTATED 227 [hereinafter PARLADE, ADR ACT OF 2004 ANNOTATED] (citing National Union Fire Insurance Company of Pittsburgh PA v. Stolt-nielsen Philippines, Inc. 184 SCRA 682, 688-89 (1990)).

Nations.”<sup>49</sup> It “was approved by the United Nations Commission on International Law on June 21, 1985 at the close of the Commission’s 18th annual session.”<sup>50</sup> “In Resolution No. 40/72 approved on December 11, 1985, the General Assembly *requested* member States ‘to give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international arbitration practice.’”<sup>51</sup> No treaty or convention was produced by the General Assembly to be signed. It merely *requested*, in its resolution, for member States to *give due consideration*. The Model Law is not a law on its own. “Until the Philippine Congress adopted it as part of the ADR Act of 2004, the Model Law on International Commercial Arbitration was not part of our law.”<sup>52</sup>

Finally, the UNCITRAL Arbitration Rules was also a product of UNCITRAL adopted during its ninth session.<sup>53</sup> “The United Nations General Assembly approved Resolution No. 31/98 on December 15, 1976 recommending the use of Arbitration Rules in the settlement of disputes arising in the context of international commercial relations, particularly by reference to the Arbitration Rules in commercial contracts.”<sup>54</sup>

Thus, ‘disturbing’ is the word used to describe the Supreme Court’s pronouncement — “[a]s signatory to the Arbitration Rules of the UNCITRAL Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) in the New York Convention on June 21, 1985, the Philippines committed itself to be bound by the Model Law.”<sup>55</sup> In one sentence, the High Court committed several errors. First, it referred to the New York Convention, the UNCITRAL Model Law, and the UNCITRAL Arbitration Rules as the same document. As discussed above, these are very different documents produced on different dates. Second, it stated that the Philippines is a signatory to the “Arbitration Rules of the UNCITRAL Model Law,” when in fact, neither the Model Law nor the Arbitration Rules were open for signature, unlike the 1958 New York Convention, as neither of the two

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49. *Id.* at 51.

50. Parlade, Philippine Arbitration Updates, *supra* note 46.

51. *Id.* (emphasis supplied).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Korea Technologies*, 542 SCRA at 23-24.

documents were treaties.<sup>56</sup> Finally, the Court pronounced that the Philippines was bound to the UNCITRAL Model Law since 21 June 1985, when such was not the case until the adoption of the ADR Act of 2004 on 2 April 2004.

This disturbing pronouncement of the Highest Court of the land perhaps highlights the lack of understanding of the laws and treaties on the matter by the judiciary. This seeming lack of understanding however, does not end with the above disquisition. The decision was riddled with more confusing statements.

Before proceeding to the second controversial matter of *Korea Technologies*, a prefatory discussion on the subject shall be made for better understanding. The common confusion lies between *International* and *Foreign Commercial Arbitration*. At the outset, it must be pointed out that these two terms are different. An arbitration may be both *international* and *domestic* at the same time.

Thus, as shown in the table below,<sup>57</sup> arbitration is divided into two, based on the place of arbitration — either foreign or domestic. Foreign arbitration, on the one hand, is arbitration conducted outside of the Philippines, that is, where the agreed or fixed place of arbitration is in a foreign country.<sup>58</sup> Domestic arbitration, on the other hand, is arbitration where the agreed place of arbitration is in the Philippines.

Since foreign arbitration is conducted outside of the Philippines, our laws necessarily do *not* apply to such arbitration proceedings. Chapter 4 of the ADR Act of 2004 on International Commercial Arbitration<sup>59</sup> in particular has no application — as some may confuse because of the word “International”— since our laws are territorial and have no reach over arbitration boards or panels constituted in other sovereign states. All that our country and its judiciary can do is either to recognize and enforce the resulting foreign arbitral award, or to refuse recognition. Philippine courts may not correct or set-aside such arbitral awards.

The law or treaty applicable to the recognition of foreign arbitral awards may further be divided into two, as provided by Sections 42 and 43 of the ADR Act of 2004. Section 42 applies the New York Convention for awards

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56. Parlade, Philippine Arbitration Updates, *supra* note 46.

57. The Table is at the end of the article.

58. PARLADE, ADR ACT OF 2004 ANNOTATED, *supra* note 48, at 48.

59. ADR Act of 2004, §§ 19-31.

made by Convention States,<sup>60</sup> while Section 43<sup>61</sup> applies for awards made by states not party to the New York Convention.<sup>62</sup>

Domestic arbitration — where the agreed place of arbitration is in the Philippines — may either be international or non-international. A domestic international arbitration is one in which, although conducted in the Philippines, involves a certain international element as provided by Article 1 (3) of the Model Law, such as one of the parties having a place of business outside of the Philippines, or when a substantial part of the obligation is to be performed outside of the Philippines.<sup>63</sup> Otherwise, it would be a domestic non-international arbitration or a true domestic arbitration, in which case, R.A. No. 876 would be the applicable law. The ADR Act of 2004 provides in Section 19 that International Commercial Arbitration shall be governed by the UNCITRAL Model Law,

SEC. 19. Adoption of the Model Law on International Commercial Arbitration. - International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the 'Model Law') adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix 'A'.<sup>64</sup>

This begs the question of what is an *International Commercial Arbitration*. To answer this, one must refer to Section 32 of the ADR Act of 2004 which defines *domestic arbitration*, which provision in turn refers to Article 1 (3) of the Model Law. Section 32 provides:

SEC. 32. Law Governing Domestic Arbitration. - Domestic arbitration shall continue to be governed by Republic Act No. 876, otherwise known

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60. *Id.* § 3 (j) (“‘Convention State’ means a state that is a member of the New York Convention.”).

61. *Id.* § 43. It provides:

SEC. 43. Recognition and Enforcement of Foreign Arbitral Awards Not Covered by the New York Convention. — The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The Court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a convention award.

62. *Id.* § 3 (y) (“‘Non-Convention State’ means a State that is not a member of the New York Convention.”).

63. Parlade, Philippine Arbitration Updates, *supra* note 46.

64. ADR Act of 2004, § 19.

as “The Arbitration Law” as amended by this Chapter. *The term “domestic arbitration” as used herein shall mean an arbitration that is not international as defined in Article 1 (3) of the Model Law.*<sup>65</sup>

While Article 1, paragraphs (3) and (4) of the Model Law provides:

- (3) An arbitration is international if:
  - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
  - (b) one of the following places is situated outside the State in which the parties have their places of business:
    - (i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;
    - (ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected;or
  - (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
- (4) For the purposes of paragraph (3) of this article:
  - (a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;
  - (b) if a party does not have a place of business, reference is to be made to his habitual residence.<sup>66</sup>

Sections 19 and 32 of the ADR Act of 2004 and Article 1 paragraphs (3) and (4) of the UNCITRAL Model Law, therefore, outline what law would govern an international arbitration conducted here in the Philippines, that is, a domestic international arbitration. Section 32 of the ADR Act of 2004 also provides that arbitration conducted in the Philippines not involving an international element — a domestic non-international arbitration — shall be governed by R.A. No. 876.

It is worth stressing that “[t]he arbitration does not become international because the place of arbitration chosen by an arbitral tribunal or an arbitration institution is situated outside the state in which the parties have their place of business, although it would be a foreign rather than domestic

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65. *Id.* § 32 (emphasis supplied).

66. UNCITRAL Model Law on International Commercial Arbitration, art. 1 (3), June 21, 1985, 24 ILM 1302 [hereinafter MODEL LAW].

arbitration.”<sup>67</sup> Further, it should also be noted that while domestic arbitral awards are confirmed, foreign arbitral awards are merely recognized and enforced.<sup>68</sup>

Place of Arbitration	Type of Award or Arbitration	Applicable Law or Treaty
Foreign Arbitration (Outside of the Philippines) <sup>69</sup>	Convention Award (Award made in a State that is a member of the New York Convention) <sup>70</sup>	New York Convention of 1958 as provided by the ADR Act of 2004, § 42
	Non-Convention Award (Award made in a State that is not a member of the New York Convention) <sup>71</sup>	ADR Act of 2004, § 43 Consistent with Article 35 of the UNCITRAL Model Law
Domestic Arbitration (Within the Philippines) <sup>72</sup>	International (One of the elements is international according to Article 1 (3) of the Model Law) <sup>73</sup>	UNCITRAL Model Law as provided by the ADR Act of 2004, § 19
	Non-International (Does not fall under Article 1 (3) of the Model Law) <sup>74</sup>	R.A. No. 876 as provided by the ADR Act of 2004, § 32

Having thus clarified the distinctions, the discussion on *Korea Technologies* now continues.

The Supreme Court in *Korea Technologies* states, “[s]ec. 42 in relation to Sec. 45 of R.A. [No.] 9285 designated and vested the RTC with specific

67. PARLADE, ADR ACT OF 2004 ANNOTATED, *supra* note 48, at 60.

68. ADR Act of 2004, §§ 40, 42, & 43.

69. PARLADE, ADR ACT OF 2004 ANNOTATED, *supra* note 48, at 48 & 60.

70. ADR Act of 2004, § 3 (i) & (j).

71. *Id.* § 3 (x) & (y).

72. Parlade, Philippine Arbitration Updates, *supra* note 46.

73. ADR Act of 2004, § 19; MODEL LAW, art. 1 (3), *supra* note 66.

74. ADR Act of 2004, § 32.

authority and jurisdiction to *set aside*, reject, or vacate a foreign arbitral award on grounds provided under Art. 34 (2) of the UNCITRAL Model Law.”<sup>75</sup> Mention of Article 34 (2) of the UNCITRAL Model Law, however, is nowhere to be found in either Sections 42 or 45. Section 45 of ADR Act of 2004 in fact refers to Article V of the New York Convention,<sup>76</sup> the proper applicable treaty in the recognition of foreign arbitral awards. Article V of the New York Convention, however, does not allow a local court to set aside an arbitral award — only that it may refuse recognition.<sup>77</sup> Parlade states:

When a Philippine court *sets aside* an award under the Model Law Article 34, the award loses its character in the Philippines as a decision that has *res adjudicata* effect upon the parties or as a final and binding settlement of their dispute that was submitted to arbitration. Upon the other hand, when a Philippine court refuses *recognition and enforcement* of a foreign arbitral award under Article V of the New York Convention and Model Law Article 36, it only means that in this jurisdiction the award is not allowed to be enforced, directly or indirectly, but it may be enforced in another jurisdiction.<sup>78</sup>

Therefore, while Philippine courts may recognize or refuse recognition of foreign arbitral awards, they may not set-aside these awards, for reasons stated above. Contrary to the High Court’s pronouncement, the RTC was not vested with authority to set-aside a foreign arbitral award. Section 45 of the ADR Act of 2004, as a matter of fact, is entitled *Rejection of a Foreign Arbitral Award*, and not *Vacation* or *Setting-Aside of a Foreign Arbitral Award*. The said provision further states that a party may oppose *recognition and enforcement* of the foreign arbitral award.

Following this argument, the succeeding statement of the Court must also fail. It stated:

The differences between a final arbitral award from an international or foreign arbitral tribunal and an award given by a local arbitral tribunal are

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75. *Korea Technologies*, 542 SCRA at 28.

76. ADR Act of 2004, § 45.

SEC. 45. Rejection of a Foreign Arbitral Award. — A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the procedural rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the regional trial court.

77. Parlade, Philippine Arbitration Updates, *supra* note 46.

78. PARLADE, ADR ACT OF 2004 ANNOTATED, *supra* note 48 at 230–31.

the specific grounds or conditions that vest jurisdiction over our courts to review the awards.

For foreign or international arbitral awards which must first be confirmed by the RTC, the grounds for setting aside, rejecting or vacating the award by the RTC are provided under Art. 34 (2) of the UNCITRAL Model Law.

For final domestic arbitral awards, which also need confirmation by the RTC pursuant to Sec. 23 of R.A. [No.] 876 and shall be recognized as final and executory decisions of the RTC, they may only be assailed before the RTC and vacated on the grounds provided under Sec. 25 of R.A. [No.] 876.

Again, foreign arbitral awards may not be set-aside, since our courts have no jurisdiction over arbitration panels constituted on another sovereign state. They may, however, be refused recognition. Domestic international awards, on the other hand, may be set-aside. Being domestic, our courts have jurisdiction over them. Section 19 of the ADR Act of 2004 provides that the Model Law shall govern them, thus making the above-stated Article 34 (2) the applicable grounds for setting them aside. Finally, Section 24 of R.A. No. 876 will be applicable to domestic non-international awards.<sup>79</sup>

The last issue on *Korea Technologies* is the High Court's misunderstanding of what an arbitration institution is — the Korean Commercial Arbitration Board, in this case. The Court held,

While it (PGSMC) may have misgivings on the foreign arbitration *done in Korea by the KCAB*, it has available remedies under R.A. [No.] 9285. Its interests are duly protected by the law which requires that the arbitral award that may be *rendered by KCAB* must be confirmed here by the RTC before it can be enforced.<sup>80</sup>

The institution merely administers the arbitration for logistical and other purposes. It may also appoint an arbitrator or constitute an arbitration panel, as may be agreed upon by the parties in their contract or under the arbitration rules of the institution. The institution itself, however, does not render decisions, but rather the arbitrator or arbitration panel to whom the dispute is submitted.<sup>81</sup>

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79. Parlade, Philippine Arbitration Updates, *supra* note 46.

80. *Korea Technologies*, 542 SCRA at 30 (emphasis supplied).

81. Parlade, Philippine Arbitration Updates, *supra* note 46.



## III. ABS-CBN BROADCASTING V. WINS

A. *The Facts*

*ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*<sup>82</sup> involved a television service provided by broadcasting giant ABS-CBN Broadcasting Corporation (ABS-CBN) known as *The Filipino Channel* (TFC). This channel was licensed by ABS-CBN on 27 September 1999 to be distributed in Japan by World Interactive Network Systems, or WINS, a Japanese corporation. WINS was, in fact, not only granted a license, but an *exclusive* license to distribute and sublicense the distribution of the channel.<sup>83</sup>

Trouble began when petitioner ABS-CBN accused respondent WINS of making “unauthorized insertions” into TFC of WINS Weekly — a 35-minute community news program for Filipinos in Japan.<sup>84</sup> The petitioner claimed that such insertions constituted a “material breach” of their agreement, thus prompting ABS-CBN to notify respondent on 9 May 2002 of its intention to terminate their agreement effective 10 June 2002.<sup>85</sup> It was at this point that WINS filed an arbitration suit pursuant to the arbitration clause in their agreement.

Professor Alfredo F. Tadiar was appointed by the parties to act as sole arbitrator. Respondent WINS claimed that the airing of WINS Weekly was made with ABS-CBN’s prior approval. Further, WINS claimed that ABS-CBN “only threatened to terminate their agreement because it wanted to renegotiate the terms thereof to allow it to demand higher fees.”<sup>86</sup> Furthermore, respondent prayed for damages as ABS-CBN granted the license to distribute TFC to another network — NHK (i.e. Japan Broadcasting Corporation).<sup>87</sup>

The arbitrator ruled in favor of respondent WINS. He held that indeed, as shown by a series of written exchanges, ABS-CBN gave its approval for the airing of WINS Weekly, and that it threatened to terminate the contract

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82. *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*, 544 SCRA 308 (2008).

83. *Id.* at 311.

84. *Id.*

85. *Id.* at 311-312.

86. *Id.* at 312.

87. *Id.*

only because it wanted to renegotiate their agreement.<sup>88</sup> He also stated that “even if respondent committed a breach of the agreement, the same was seasonably cured.”<sup>89</sup> Respondent was thus allowed to recover temperate damages, attorney’s fees, and one-half of the amount paid as arbitrator’s fee.<sup>90</sup>

It was at this point that ABS-CBN filed with the Court of Appeals alternative Petitions for Review under Rule 43 and for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure.<sup>91</sup> The petitioner alleged either serious errors of fact or law and/or grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the arbitrator.<sup>92</sup> Meanwhile, respondent filed a petition for confirmation of the arbitral award before the RTC of Quezon City. This proceeding was held in abeyance however in view of the proceedings with the appellate court.<sup>93</sup> Nevertheless, ABS-CBN’s petition with the appellate body failed. The Court of Appeals ruled that it had no jurisdiction on the matter, stating that it was the RTC which has jurisdiction over matters relating the jurisdiction. It further stated that the appellate body’s jurisdiction would only come to play once an appeal has been made as to the order of the RTC confirming, modifying, or vacating the arbitral award.<sup>94</sup>

After its Motion for Reconsideration was denied, ABS-CBN filed a Petition for Review on Certiorari under Rule 45 with the Supreme Court.

*B. The Court’s Ruling<sup>95</sup>*

The question to be answered by the High Court was whether an aggrieved party may directly file with the Court of Appeals a Petition for Review under Rule 43, or a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure, rather than filing a petition to vacate the arbitral award with the RTC — particularly when the grounds raised are

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88. *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*, 544 SCRA 308, 312 (2008).

89. *Id.* at 313.

90. *Id.*

91. *Id.* at 314-315.

92. *Id.* at 314.

93. *Id.* at 313.

94. *ABS-CBN Broadcasting Corporation v. World Interactive Network Systems (WINS) Japan Co., Ltd.*, 544 SCRA 308, 314 (2008).

95. Penned by Associate Justice Renato C. Corona and concurred by Chief Justice Reynato S. Puno and Associate Justices Angelina Sandoval-Gutierrez, Adolfo S. Azcuna, and Teresita J. Leonardo-de Castro.

other than those under the R.A. No. 876. The Court continued by citing Section 24 of R.A. No. 876 as the applicable provision in a petition to vacate an award made by an arbitrator.<sup>96</sup>

The Supreme Court highlighted the fact that Section 24 enumerated specific grounds for vacating an award, and that no other grounds may be raised. Citing the legal maxim in statutory construction of *expressio unius est exclusio alterius*, the Court said that errors of fact and/or law and grave abuse of discretion are not grounds that may be raised in a petition to vacate an award in the RTC.<sup>97</sup>

However, while errors of fact and/or law may not be raised with the RTC, they may still be raised with the Court of Appeals under Rule 43 — this being the proper mode of review of the decision of the arbitrator.<sup>98</sup> Pointing to the case of *Luzon Development Bank v. Association of Luzon Development Bank Employees*,<sup>99</sup> the Supreme Court stated that voluntary arbitrators are properly classified as a “quasi-judicial instrumentality,” falling within the ambit of Section 9 (3) of the Judiciary Reorganization Act, as amended.<sup>100</sup> They have, therefore, been included under Rule 43 of the 1997 Revised Rules of Civil Procedure.

As to the remedy of Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure, the Court only cited Section 1 of Article VIII of the 1987 Constitution.<sup>101</sup> Thus, the Court ruled: “We will not hesitate to review a voluntary arbitrator’s award where there is a showing of grave abuse of authority or discretion and such is properly raised in a petition for

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96. *ABS-CBN Broadcasting Corporation*, 544 SCRA at 315.

97. *Id.* at 316.

98. *Id.*

99. *Luzon Development Bank v. Association of Luzon Development Bank Employees*, 249 SCRA 162, 168-69 (1995).

100. *ABS-CBN Broadcasting Corporation*, 544 SCRA at 317.

101. PHIL. CONST. art. VIII, § 1.

SEC. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

certiorari and there is no appeal, nor any plain, speedy remedy in the course of law.”<sup>102</sup>

The Supreme Court finally outlined the judicial remedies of an aggrieved party to an arbitral award as stated in *Insular Savings Bank v. Far East Bank and Trust Company*,<sup>103</sup> thus:

- (1) a petition in the proper RTC to issue an order to vacate the award on the grounds provided for in Section 24 of R.A. [No.] 876;
- (2) a petition for review in the CA under Rule 43 of the Rules of Court on questions of fact, of law, or mixed questions of fact and law; and
- (3) a petition for certiorari under Rule 65 of the Rules of Court should the arbitrator have acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>104</sup>

Nevertheless, despite all the discussion on the proper mode of appeal, the Supreme Court still disallowed the petition because of the fatal error of ABS-CBN of filing alternative petitions under both Rules 43 and 65. “Time and again, we have ruled that the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.”<sup>105</sup> The High Court further stated that, “[p]etitioner’s ploy was fatal to its cause. An appeal taken either to this Court or the CA by the wrong or inappropriate mode shall be dismissed. Thus, the alternative petition filed in the CA, being an inappropriate mode of appeal, should have been dismissed outright by the CA.”<sup>106</sup>

### C. Analysis

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102. *ABS-CBN Broadcasting Corpotion*, 544 SCRA at 319 (citing *Chung Fu Industries (Phils.) v. Court of Appeals*, 206 SCRA 545, 552-55 (1992); *Asset Privatization Trust v. Court of Appeals*, 300 SCRA 579, 600-01 (1998)).

103. *Insular Savings Bank v. Far East Bank and Trust Company*, 492 SCRA 145 (2006).

104. *ABS-CBN Broadcasting Corporation*, 544 SCRA at 320 (citing *Insular Savings Bank*, 492 SCRA at 156).

105. *Id.* at 320-21 (citing *Sebastian v. Morales*, 397 SCRA 549, 561 (2003); *Oriental Media, Inc. v. Court of Appeals*, 250 SCRA 647, 653 (1995); *Hipolito v. Court of Appeals*, 230 SCRA 191, 204 (1994); *Federation of Free Workers v. Inciong*, 208 SCRA 157, 164 (1992); *Manila Electric Company v. Court of Appeals*, 187 SCRA 200, 205 (1990)).

106. *Id.* at 322-23 (citing *Ybañez v. Court of Appeals*, 253 SCRA 540, 547 (1996)).

While this Case did not make as many disturbing pronouncements as *Korea Technologies* as discussed in the previous chapter, a shadow still remains cast over this decision.

*ABS-CBN Broadcasting Corporation* failed to clarify why Section 24 of R.A. No. 876 was the applicable law in vacating awards, and not the UNCITRAL Model Law. While it is clear that *ABS-CBN Broadcasting Corporation v. WINS* is a domestic arbitration case — having been conducted in the Philippines — as pointed out in the previous chapter, domestic arbitration may still be further subdivided into either international or non-international. Article 1, paragraph (3) (a) of the Model Law provides that an arbitration is international if at the time of their agreement, the parties have their places of business in different states. It was very clear from the decision that WINS was a “foreign corporation licensed under the laws of Japan.”<sup>107</sup> *ABS-CBN Broadcasting Corporation* being a Philippine corporation, and WINS being a Japanese corporation, the case was one of domestic international arbitration. Therefore, following Section 19 of the ADR Act of 2004,<sup>108</sup> the UNCITRAL Model Law on International Commercial Arbitration should have been the applicable law rather than R.A. No. 876.

It is thus puzzling why the Supreme Court cited Section 24 of R.A. No. 876. Neither did they provide an explanation why Section 24 of R.A. No. 876 was the applicable provision on the grounds for vacating an arbitral award. The Model Law, in fact, has its own provisions for vacating an arbitral award that would be applicable to the instant case — Article 34.<sup>109</sup>

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107. *Id.* at 311.

108. ADR Act of 2004, § 19.

SEC. 19. Adoption of the Model Law on International Commercial Arbitration. — International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the ‘Model Law’) adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix ‘A’.

109. MODEL LAW, art. 34, *supra* note 66.

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

Perhaps one may cite Section 41 of the ADR Act of 2004, which states that a domestic arbitral award may be questioned in the RTC upon the grounds enumerated in Section 24 of R.A. No. 876.<sup>110</sup> However, one must

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(i) a party to the arbitration agreement referred to in article 7 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 this State; or

(ii) 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

(iii) 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 matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) 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 this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

110. ADR Act of 2004, § 41. (Although the law cites Section 25, the correct provision in R.A. No. 876 is Section 24, since Section 25 refers to *Grounds for modifying or correcting an award* while Section 24 provides the *Grounds for vacating 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

note that Section 41 refers to domestic non-international awards. The UNCITRAL Model Law, being the applicable law, has its own provision on vacating an award, as previously mentioned. Parlade states,

R.A. [No.] 9285 recognizes that an award rendered in a domestic, non-international arbitration which is governed by R.A. [No.] 876, may be vacated by a court upon any of the grounds enumerated in Section 24 of the law. The Model Law likewise provides that an award made in a domestic, international commercial arbitration may be set-aside by a court upon any of the grounds enumerated in Article 34 thereof.<sup>111</sup>

Another reason may be found in *Korea Technologies*. One might argue that since the arbitral award dated 9 January 2004<sup>112</sup> was rendered before the ADR Act of 2004 was passed on 2 April 2004, then the old law — R.A. No. 876 — would be applicable. This argument would seemingly be inconsistent with the pronouncement in *Korea Technologies*, however, where the High Court stated that, “[w]hile R.A. [No.] 9285 was passed only in 2004, it nonetheless applies in the instant case since it is a *procedural law which has a retroactive effect*.”<sup>113</sup>

If R.A. No. 9285 has retroactive effect, why then was it not applied in *ABS-CBN Broadcasting Corporation*, a decision that came a month after *Korea Technologies*? The defining statement, however, comes in the succeeding sentence, thus: “Likewise, KOGIES filed its application for arbitration before the KCAB on July 1, 1998 and it is still pending because no arbitral award has yet been rendered. Thus, R.A. [No.] 9285 is applicable to the instant case.”<sup>114</sup> The Court further stated in *Korea Technologies*:

Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. As a general rule, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached nor arisen from them.<sup>115</sup>

The main difference, therefore, between *ABS-CBN Broadcasting Corporation* and *Korea Technologies* is that in the former, the arbitral award has already

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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.

111. Parlade, Philippine Arbitration Updates, *supra* note 46.

112. *ABS-CBN Broadcasting Corporation*, 544 SCRA at 312.

113. *Korea Technologies*, 542 SCRA at 24.

114. *Id.* at 24-25.

115. *Id.* at 25.

been rendered when the ADR Act of 2004 took effect, whereas in the latter, no such award has yet been made as the arbitration case was still pending with the Korean Commercial Arbitration Board. While ADR Act of 2004 may be given retroactive effect to *Korea Technologies*, such is not the case in *ABS-CBN Broadcasting Corporation* wherein the arbitral award was rendered a few months before the ADR Act of 2004 was passed. Despite the fact that *ABS-CBN Broadcasting Corporation* involved a case of domestic international arbitration in which the UNCITRAL Model Law on International Commercial Arbitration would have been the applicable law under ADR Act of 2004, R.A. No. 876 must still be used since the arbitral award was rendered before the passage of the said Act.

It would have been greatly beneficial to the bench, bar, and public if the Supreme Court clarified this matter.

#### IV. CONCLUSION

Indeed, arbitration has long since been in place in the Philippines. From the Civil Code of 1950, the Arbitration Law of 1953, to the ADR Act of 2004, arbitration has gone a long way in terms of legislation. The question remains, however, of how far our understanding of it has gone, and particularly that of the judiciary. Indeed, several glaring misunderstandings were committed by the Supreme Court in its decision in *Korea Technologies* — mistakes that could have easily been corrected. The decision in *ABS-CBN Broadcasting Corporation*, on the other hand, while quite sound as to the remedies available to a party aggrieved by an arbitral award, still casts a cloud over arbitration.

The development of arbitration has surely been slow in the Philippines. The two decisions discussed in this Note do not help remove some confusion surrounding arbitration, and ultimately, do not help advance arbitration as an effective and truly alternative mode of dispute resolution. As we move forward, much room for improvement is still available on this supposed “wave of the future.”<sup>116</sup>

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116. *Frabelle Fishing Corporation v. Philippine American Life Insurance Company*, 530 SCRA 543, 549 (2007); *Fiesta World Mall Corporation v. Linberg Philippines, Inc.*, 499 SCRA 332, 339-40 (2006) (citing *BF Corporation v. Court of Appeals*, 288 SCRA 267, 286 (1998)).