Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BASES CONVERSION DEVELOPMENT AUTHORITY,
Petitioner,

-versus-

DMCI PROJECT DEVELOPERS, INC.
Respondent.

x----------x

NORTH LUZON RAILWAYS CORPORATION,
Petitioner,

-versus-

DMCI PROJECT DEVELOPERS, INC.
Respondent.

x----------x

G.R. No. 173137

x----------x

G.R. No. 173170

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:
07 DEC 2015

x----------x

DECISION

LEONEN, *J.*:

An arbitration clause in a document of contract may extend to subsequent documents of contract executed for the same purpose. Nominees of a party to and beneficiaries of a contract containing an arbitration clause may become parties to a proceeding initiated based on that arbitration clause.

On June 10, 1995, Bases Conversion Development Authority (BCDA) entered into a Joint Venture Agreement[1] with Philippine National Railways (PNR) and other foreign corporations.[2]

Under the **Joint Venture Agreement**, the parties agreed to construct a railroad system from Manila to Clark with possible extensions to Subic Bay and La Union and later, possibly to Ilocos Norte and Nueva Ecija.[3] BCDA shall establish North Luzon Railways Corporation (Northrail) for purposes of constructing, operating, and managing the railroad system.[4] The Joint Venture Agreement contained the following provision:

> **ARTICLE XVI**
>
> **ARBITRATION**
>
> 16. If any dispute arise hereunder which cannot be settled by mutual accord between the parties to such dispute, then that dispute shall be referred to arbitration. The arbitration shall be held in whichever place the parties to the dispute decide and failing mutual agreement as to a location within twenty-one (21) days after the occurrence of the dispute, shall be held in Metro Manila and shall be conducted in accordance with the Philippine Arbitration Law (Republic Act No. 876) supplemented by the Rules of Conciliation and Arbitration of the International Chamber of Commerce. All award of such arbitration shall be final and binding upon the parties to the dispute.[5]

BCDA organized and incorporated Northrail.[6] Northrail was registered with the Securities and Exchange Commission on August 22, 1995.[7]

---

1 *Rollo* (G.R. No. 173137), pp. 104–120.
2 Id. at 46.
3 Id. at 106.
4 Id. at 108.
5 Id. at 116–117.
6 Id. at 62.
7 *Rollo* (G.R. No. 173170), p. 74.

BCDA invited investors to participate in the railroad project's financing and implementation. Among those invited were D.M. Consunji, Inc. and Metro Pacific Corporation.[8]

On February 8, 1996, the **Joint Venture Agreement was amended to include D.M. Consunji, Inc. and/or its nominee as party**.[9] Under the amended Joint Venture Agreement, D.M. Consunji, Inc. shall be an additional investor of Northrail.[10] It shall subscribe to 20% of the increase in Northrail's authorized capital stock.[11]

On February 8, 1996, BCDA and the other parties to the Joint Venture Agreement, including D.M. Consunji, Inc. and/or its nominee, entered into a **Memorandum of Agreement**.[12] Under this agreement, the parties agreed that the initial seed capital of ₱600 million shall be infused to Northrail.[13] Of that amount, ₱200 million shall be D.M. Consunji, Inc.'s share, which shall be converted to equity upon Northrail's privatization.[14] Later, D.M. Consunji, Inc.'s share was increased to ₱300 million.[15]

Upon BCDA and Northrail's request,[16] DMCI Project Developers, Inc. (DMCI-PDI) deposited ₱300 million into Northrail's account with Land Bank of the Philippines.[17] The deposit was made on August 7, 1996[18] for its "future subscription of the Northrail shares of stocks."[19] In Northrail's 1998 financial statements submitted to the Securities and Exchange Commission, this amount was reflected as "Deposits For Future Subscription."[20] At that time, Northrail's application to increase its authorized capital stock was still pending with the Securities and Exchange Commission.[21]

In letters[22] dated April 4, 1997, D.M. Consunji, Inc. informed PNR and the other parties that DMCI-PDI shall be its designated nominee for all the agreements it entered and would enter with them in connection with the railroad project. Pertinent portions of the letters provide:

---

8 *Rollo* (G.R. No. 173137), p. 47.
9 Id. at 122–123.
10 Id. at 47 and 123.
11 Id.
12 Id. at 48 and 126–132.
13 Id. at 48.
14 Id. at 48 and 129.
15 Id. at 48.
16 Id. at 134.
17 Id. at 48 and 135.
18 Id. at 48, 64, and 135–136.
19 Id. at 48, 65, and 136.
20 *Rollo* (G.R. No. 173170), p. 37.
21 *Rollo* (G.R. No. 173137), p. 48.
22 Id. at 137–140.

> [I]n order to formalize the inclusion of [DMCI Project Developers, Inc.] as a party to the JVA and MOA, DMCI would like to notify all the parties *that it is designating PDI as its nominee in both agreements and such other agreements that may be signed by the parties in furtherance of or in connection with the PROJECT.* By this nomination, all the rights, obligations, warranties and commitments of DMCI under the JVA and MOA shall henceforth be assumed performed and delivered by PDI.[23] (Emphasis supplied)

Later, Northrail withdrew from the Securities and Exchange Commission its application for increased authorized capital stock.[24] Moreover, according to DMCI-PDI, BCDA applied for Official Development Assistance from Obuchi Fund of Japan.[25] This required Northrail to be a 100% government-owned and controlled corporation.[26]

On September 27, 2000, DMCI-PDI started demanding from BCDA and Northrail the return of its ₱300 million deposit.[27] DMCI-PDI cited Northrail's failure to increase its authorized capital stock as reason for the demand.[28] BCDA and Northrail refused to return the deposit[29] for the following reasons:

> a) At the outset, DMCI PDI/FBDC's participation in Northrail was as a joint venture partner and co-investor in the Manila Clark Rapid Railway Project, and as such, was granted corresponding representation in the Northrail Board.
>
> b) DMCI PDI/FBDC was privy to all the deliberations of the Northrail Board and participated in the decisions made and policies adopted to pursue the project.
>
> c) DMCI PDI/FBDC had full access to the financial statements of Northrail and was regularly informed of the corporation's financial condition.[30]

Upon BCDA's request, the Office of the Government Corporate Counsel (OGCC) issued Opinion No. 116, Series of 2001[31] on June 27, 2001. The OGCC stated that "since no increase in capital stock was implemented, it is but proper to return the investments of both FBDC and DMCI[.]"[32]

---

23 Id. at 137 and 139.
24 Id. at 48 and 65.
25 Id. at 66.
26 Id.
27 Id. at 48 and 146–147.
28 Id. at 146–147.
29 Id. at 48.
30 Id. at 151–152 and 467.
31 Id. at 150–154.
32 Id. at 153.

In a January 19, 2005 letter,[33] DMCI-PDI reiterated the request for the refund of its ₱300 million deposit for future Northrail subscription. On March 18, 2005, BCDA denied[34] DMCI-PDI's request:

> We regret to say that we are of the position that the P300 [million] contribution should not be returned to DMCI for the following reasons:
>
> a. the P300 million was in the nature of a contribution, not deposits for future subscription; and
>
> b. DMCI, as a joint venture partner, must share in profits and losses.[35]

On August 17, 2005,[36] DMCI-PDI served a demand for arbitration to BCDA and Northrail, citing the arbitration clause in the June 10, 1995 Joint Venture Agreement.[37] BCDA and Northrail failed to respond.[38]

DMCI-PDI filed before the Regional Trial Court of Makati[39] a Petition to Compel Arbitration[40] against BCDA and Northrail, pursuant to the alleged arbitration clause in the Joint Venture Agreement.[41] DMCI-PDI prayed for "an order directing the parties to proceed to arbitration in accordance with the terms and conditions of the agreement."[42]

BCDA filed a Motion to Dismiss[43] on the ground that there was no arbitration clause that DMCI-PDI could enforce since DMCI-PDI was not a party to the Joint Venture Agreement containing the arbitration clause.[44] Northrail filed a separate Motion to Dismiss[45] on the ground that the court did not have jurisdiction over it and that DMCI-PDI had no cause for arbitration against it.[46]

In the Decision[47] dated February 9, 2006, the trial court denied BCDA's and Northrail's Motions to Dismiss and granted DMCI-PDI's

---

33 Id. at 175–176.
34 Id. at 177–180.
35 Id. at 177.
36 Id. at 49.
37 Id. at 49, 59, and 76.
38 Id. at 49 and 70.
39 Id. at 46. The petition was raffled to Branch 150, Judge Elmo M. Alameda.
40 Id. at 58–74.
41 Id. at 15.
42 Id. at 49.
43 Id. at 218–223.
44 Id. at 221.
45 *Rollo* (G.R. No. 173170), pp. 66–73.
46 Id. at 17 and 67–68.
47 *Rollo* (G.R. No. 173137), pp. 46–54.

Petition to Compel Arbitration. The dispositive portion of the decision reads:

> WHEREFORE, the petition is granted. The parties are ordered to present their dispute to arbitration in accordance with Article XVI of the Joint Agreement.
>
> SO ORDERED.[48]

The trial court ruled that the arbitration clause in the Joint Venture Agreement should cover all subsequent documents including the amended Joint Venture Agreement and the Memorandum of Agreement. The three (3) documents constituted one contract for the formation and funding of Northrail.[49]

The trial court also ruled that even though DMCI-PDI was not a signatory to the Joint Venture Agreement and the Memorandum of Agreement, it was an assignee of D.M. Consunji, Inc.'s rights. Therefore, it could invoke the arbitration clause in the Joint Venture Agreement.[50]

In an Order[51] dated June 9, 2006, the trial court denied BCDA and Northrail's Motion for Reconsideration of the February 9, 2006 trial court Decision.

BCDA filed a Rule 45 Petition before this court, assailing the February 9, 2006 trial court Order granting DMCI-PDI's Petition to Compel Arbitration and the June 9, 2006 Order denying BCDA and Northrail's Motion for Reconsideration.[52]

The issue in this case is whether DMCI-PDI may compel BCDA and Northrail to submit to arbitration.

BCDA argued that only the parties to an arbitration agreement can be bound by that agreement.[53] The arbitration clause that DMCI-PDI sought to enforce was in the Joint Venture Agreement, to which DMCI-PDI was not a party.[54] There was also no evidence that the right to compel arbitration under the Joint Venture Agreement was assigned to DMCI-PDI.[55] Assuming that there was such an assignment, BCDA did not consent to or

---

48 Id. at 54.
49 Id. at 52.
50 Id.
51 Id. at 55–56.
52 Id. at 12–13.
53 Id. at 24.
54 Id. at 25.
55 Id. at 25–26.

recognize it.[56] Therefore, the trial court's conclusion that DMCI-PDI was D.M. Consunji, Inc.'s assignee had no basis.[57] In BCDA's view, DMCI-PDI had no right to compel BCDA to submit to arbitration.[58]

BCDA also argued that the trial court decided the Motion to Dismiss in violation of the parties' right to due process. The trial court should have conducted a hearing so that the parties could have presented their respective positions on the issue of assignment. The trial court merely accepted DMCI-PDI's allegations, without basis.[59]

In a separate Petition for Review,[60] Northrail argued that it cannot be compelled to submit itself to arbitration because it was not a party to the arbitration agreement.[61]

Northrail also argued that DMCI-PDI cannot initiate an action to compel BCDA and Northrail to arbitration because DMCI-PDI itself was not a party to the arbitration agreement. DMCI-PDI was not D.M. Consunji, Inc.'s assignee because BCDA did not consent to that assignment.[62]

In its Comment[63] on BCDA's Petition, DMCI-PDI argued that Rule 45 was a wrong mode of appeal.[64] The issues raised by BCDA did not involve questions of law.[65]

DMCI-PDI pointed out that BCDA breached their agreement when it failed to apply the ₱300 million deposit to Northrail subscriptions. It turned out that such application was rendered impossible by the alleged loan requirement that Northrail be wholly owned by the government and by Northrail's withdrawal from the Securities and Exchange Commission of its application for an increase in authorized capital stock.[66]

DMCI-PDI also argued that it is an assignee and nominee of D.M. Consunji, Inc., which is a party to the contracts. Therefore, it is also a party to the arbitration clause.[67]

---

56 Id. at 31.
57 Id. at 27.
58 Id. at 25.
59 Id. at 34–35.
60 *Rollo* (G.R. No. 173170), pp. 13–30.
61 Id. at 24.
62 Id. at 25–26.
63 *Rollo* (G.R. No. 173137), pp. 291–375.
64 Id. at 293–294.
65 Id.
66 Id. at 317–318.
67 Id. at 336–337.

DMCI-PDI contended that the arbitration agreement extended to all documents relating to the project.[68] Even though the agreement was expressed only in the Joint Venture Agreement, its effect extends to the amendment to the Joint Venture Agreement and Memorandum of Agreement.[69]

DMCI-PDI emphasized that BCDA had always recognized it as D.M. Consunji's assignee in its correspondences with the OGCC and with the President of DMCI, Mr. Isidro Consunji.[70] In those letters, BCDA described DMCI-PDI's participation as being the "joint venture partner . . . and co-investor in the Manila Clark Rapid Railway Project[.]"[71] Hence, it is now estopped from denying its personality in this case.[72]

We rule for DMCI-PDI.

I
The state has a policy in favor of arbitration

At the outset, we must state that BCDA and Northrail invoked the correct remedy. Rule 45 is applicable when the issues raised before this court involved purely questions of law. In *Villamor v. Balmores*:[73]

> [t]here is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented.[74]

BCDA and Northrail primarily ask us to construe the arbitration clause in the Joint Venture Agreement. They assert that the clause does not bind DMCI-PDI and Northrail. This issue is a question of law. It does not require us to examine the probative value of the evidence presented. The prayer is essentially for this court to determine the scope of an arbitration clause.

---

68 Id. at 339.
69 Id. at 339 and 364–365.
70 Id. at 345.
71 Id. at 346.
72 Id. at 349.
73 G.R. No. 172843, September 24, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/172843.pdf> [Per J. Leonen, Second Division].
74 Id. at 8, *citing Central Bank of the Philippines v. Castro*, 514 Phil. 425, 434 (2005) [Per J. Puno, Second Division].

Arbitration is a mode of settling disputes between parties.[75] Like many alternative dispute resolution processes, it is a product of the meeting of minds of parties submitting a pre-defined set of disputes. They agree among themselves to a process of dispute resolution that avoids extended litigation.

The state adopts a policy in favor of arbitration. Republic Act No. 9285[76] expresses this policy:

> SEC. 2. *Declaration of Policy*. - It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. *Towards this end, the 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.* As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time. (Emphasis supplied)

Our policy in favor of party autonomy in resolving disputes has been reflected in our laws as early as 1949 when our Civil Code was approved.[77] Republic Act No. 876[78] later explicitly recognized the validity and enforceability of parties' decision to submit disputes and related issues to arbitration.[79]

Arbitration agreements are liberally construed in favor of proceeding to arbitration.[80] We adopt the interpretation that would render effective an arbitration clause if the terms of the agreement allow for such

---

75 *Lanuza v. BF Corporation,* G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> p. 9 [Per J. Leonen, Second Division].

76 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 (2004).

77 CIVIL CODE, arts. 2028–2046.

78 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 (1953).

79 *Lanuza v. BF Corporation,* G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> p. 9 [Per J. Leonen, Second Division].

80 Id. at 10. *See also LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.,* 447 Phil. 705, 714 (2003) [Per J. Panganiban, Third Division].

interpretation.[81] In *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*,[82] this court said:

> Consistent with the above-mentioned policy of encouraging alternative dispute resolution methods, courts should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration.[83]

This manner of interpreting arbitration clauses is made explicit in Section 25 of Republic Act No. 9285:

> SEC. 25. *Interpretation of the Act.*–In interpreting the Act, the court shall have due regard to the policy of the law in favor of arbitration. Where action is commenced by or against multiple parties, one or more of whom are parties to an arbitration agreement, the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

Hence, we resolve the issue of whether DMCI-PDI may compel BCDA and Northrail to submit to arbitration proceedings in light of the policy in favor of arbitration.

BCDA and Northrail assail DMCI-PDI's right to compel them to submit to arbitration based on the assumption that DMCI-PDI was not a party to the agreement containing the arbitration clause.

Three documents — (a) Joint Venture Agreement, (b) amended Joint Venture Agreement, and (c) Memorandum of Agreement — represent the agreement between BCDA, Northrail, and D.M. Consunji, Inc. Among the three documents, only the Joint Venture Agreement contains the arbitration clause. DMCI-PDI was allegedly not a party to the Joint Venture Agreement.

To determine the coverage of the arbitration clause, the relation among the three documents and DMCI-PDI's involvement in the execution of these documents must first be understood.

---

81 Id. at 11. *See also LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, 447 Phil. 705, 714 (2003) [Per J. Panganiban, Third Division].

82 447 Phil. 705 (2003) [Per J. Panganiban, Third Division].

83 Id. at 714.

The Joint Venture Agreement was executed by BCDA, PNR, and some foreign corporations.[84] The purpose of the Joint Venture Agreement was for the construction of a railroad system from Manila to Clark with a possible extension to Subic Bay and later to San Fernando, La Union, Laoag, Ilocos Norte, and San Jose, Nueva Ejica.[85] Under the Joint Venture Agreement, BCDA agreed to incorporate Northrail, which shall have an authorized capital stock of ₱5.5 billion.[86] The parties agreed that BCDA/PNR shall have a 30% equity with Northrail.[87] Other Filipino partners shall have a total of 50% equity, while foreign partners shall have at most 20% equity.[88] Pertinent provisions of the Joint Venture Agreement are as follows:

> **JOINT VENTURE AGREEMENT**
>
> **KNOW ALL MEN BY THESE PRESENTS:**
>
> This **Joint Venture Agreement (JVA)** made and executed at Makati, Metro Manila, this __ day of June 1995 by and between:
>
> The **BASES CONVERSION DEVELOPMENT AUTHORITY** . . . hereinafter referred to as **BASECON**;
>
> The **PHILIPPINE NATIONAL RAILWAYS** . . .;
>
> The following corporations collectively referred to as the **Foreign Group:**
>
> a) **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES,** S.A. . . .;
>
> b) **ENTRECANALES Y TAVORA, SA** . . .;
>
> c) **CUBIERTAS MZOV, S.A.** . . .;
>
> d) **COBRA, S.A.** . . .; and
>
> e) Others who may later participate in the JVA.
>
> - and -
>
> **EUROMA DEVELOPMENT CORPORATION** . . .
>
> **WITNESSETH:**
>
> . . . .

---

84 *Rollo* (G.R. No. 173137), p. 105. The foreign corporations are Construcciones Y Auxiliar De Ferrocarriles, S.A., Entrecanales Y Tavora, S.A., Cubiertas Y Mzov, S.A., and Cobra Instalaciones Y Servicios, S.A.

85 Id. at 106.

86 Id. at 108.

87 Id. at 110.

88 Id.

WHEREAS, a project identified pursuant to the aforesaid policy is the establishment of a Premier International Airport Complex located at the former Clark Air Base as expressed in Executive Order 174 s. 1994 in order to accommodate the expected heavy flow of passenger and cargo traffic to and from the Philippines, to start the development of the Northern Luzon Grid and to accelerate the development of Central Luzon and finally to decongest Metro Manila of its vehicular traffic;

. . . .

WHEREAS, in order to implement and provide such a mass transit and access system, the parties hereto agreed to construct a double-trac[k] railway system from Manila to Clark with a possible extension to Subic Bay and later to San Fernando, La Union, as the second phase, and finally to Laoag, Ilocos Norte and to San Jose, Nueva Ecija, as the third phase of the project, hereinafter referred to as the **PROJECT;**

. . . .

ARTICLE I

DEFINITION OF TERMS

. . . .

1.5 **"PROJECT"** means the construction, operation and management of a double-track railway system from Manila to Clark with an extension to Subic Bay, and a possible extension to San Fernando, La Union, as the second phase, and finally to Laoag, Ilocos Norte and to San Jose, Nueva Ecija, as the third phase of the PROJECT.

1.6 **"North Luzon Railways Corporation (NORTHRAIL)["]** means the joint venture corporation to be established in accordance with Article II hereof.

. . . .

ARTICLE II

THE NORTH LUZON RAILROAD CORPORATION

2.1 BASECON shall establish and incorporate in accordance with the laws of the Republic of the Philippines a corporation to be known as **NORTH LUZON RAILWAYS CORPORATION (NORTHRAIL)** with an initial capitalization of one hundred million pesos (P100,000,000.00).

2.2 NORTHRAIL shall eventually have an authorized capital stock of FIVE BILLION FIVE HUNDRED MILLION PESOS (P 5.5 Billion) divided into 55,000,000 shares with par value of P 100 per share.

. . . .

ARTICLE III

PURPOSE OF NORTHRAIL

A. PRIMARY PURPOSE

3.1 To construct, operate and manage a railroad system to serve Northern and Central Luzon; and to develop, construct, manage, own, lease, sublease and operate establishments and facilities of all kinds related to the railroad system;

. . . .

ARTICLE IV

PARTICIPATION/TRANSFER/ENCUMBRANCE OF SHARES

4.1 NORTHRAIL shall increase its authorized capital stock upon the subscription thereon by the parties to this JVA in accordance with the following equity proportion/participation:

Foreign Group	up to	20%
Euroma/Filipino partners		50%
BASECON/PNR		30%

. . . .

4.4 The shares owned by Filipino stockholders including BASECON, PNR, EUROMA Development Corporation and hereinafter to be owned by Filipino corporations shall not be less than sixty percent (60%) at any given time.

. . . .

ARTICLE XVI

ARBITRATION

16. If any dispute arise hereunder which cannot be settled by mutual accord between the parties to such dispute, then that dispute shall be referred to arbitration. The arbitration shall be held in whichever place the parties to the dispute decide and failing mutual agreement as to a location within twenty-one (21) days after the occurrence of the dispute, shall be held in Metro Manila and shall be conducted in accordance with the Philippine Arbitration Law (Republic Act No. 876) as supplemented by the Rules of Conciliation and Arbitration of the International Chamber of Commerce. All award of such arbitration shall be final and binding upon the parties to the dispute.

ARTICLE XVII

ASSIGNMENT

> **17.1** No party to this Agreement may assign, transfer or convey this Agreement, create or incur any encumbrance of its rights or any part of its rights and obligations hereunder or any shares of stocks of NORTHRAIL to any person, firm or corporation without the prior written consent of the other parties or except as provided in the Articles of Incorporation and By-Laws of NORTHRAIL and this Agreement.
>
> **17.2** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assignees and designees or nominees whenever possible.[89]

The Joint Venture Agreement was amended on February 8, 1996[90] to include D.M. Consunji, Inc. and/or its nominee as party.[91] The participations of the parties in Northrail were also modified.[92] Pertinent provisions of the amended Joint Venture Agreement are reproduced as follows:

> This Amendment to the Joint Venture Agreement dated 10th of June 1995 (the *Agreement*) made and executed at _____, Metro Manila, on this 8th day of February 1996 by and among:
>
> **BASES CONVERSION DEVELOPMENT AUTHORITY** . . . hereinafter referred to as **BASECON;**
>
> with
>
> **PHILIPPINE NATIONAL RAILWAYS** . . .
>
> and
>
> The following corporations collectively referred to as the **FOREIGN GROUP:**
>
> **CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES, S.A.** . . .;
>
> **ENTRECANALES Y TAVORA, S.A.** . . .;
>
> **CUBIERTAS Y MZOV, S.A.** . . .;
>
> **COBRA INSTALACIONES Y SERVICIOS, S.A.** . . .; and
>
> Other investors who may later participate in the Joint Venture;
>
> and

---

89 Id. at 105–117.
90 Id. at 122.
91 Id. at 122–125.
92 Id. at 122–123.

Other local investors to be represented by **EUROMA DEVELOPMENT CORPORATION** . . .

and

D.M. CONSUNJI, INC. and/or its nominee . . .

WITNESSETH THAT

WHEREAS, a Joint Venture Agreement (JVA) was executed on the 10th of June 1995 between BASECON, PNR, FOREIGN GROUP, and EUROMA;

. . . .

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual covenant contained therein, **THE PARTIES HEREBY AGREE** that the JVA should be amended as follows:

1. **In Article 1.3,** D.M. CONSUNJI, INC. shall be included as strategic partner, being one of the Philippine registered companies selected by BASECON, PNR and the Lead Group on the basis of its qualifications for the implementation of the Project.

2. **Article 4.1** should read as follows:

   "NORTHRAIL shall increase its authorized capital stock upon the subscription thereon by the Parties to this JVA in accordance with the following equity proportion/participation:

   SRG……..……..up to 10%
   DMCI…….....……..……..20%
   BASECON/PNR…….....…….up to 30%
   Others…….…….…....……40%

3. **In Article 4.4,** the Filipino corporations whose total shares in NORTHRAIL's capital stock, which should not be less than sixty percent (60%) at any given time, shall include D.M. CONSUNJI, INC.[93] (Underscoring supplied)

On February 8, 1996, the same date of the execution of the amended Joint Venture Agreement, the same parties executed a Memorandum of Agreement[94] "to set up the mechanics for raising the seed capitalization

---

93 Id.
94 Id. at 126–132.

needed by NORTHRAIL[.]"[95] Pertinent provisions of the Memorandum of Agreement are reproduced as follows:

WITNESSETH THAT

WHEREAS, the Manila – Clark Rapid Railway System Project, hereinafter referred to as the *Project,* was identified as one of the major infrastructure projects to accelerate the development of Central Luzon, particularly the former U.S. bases at Clark and Subic;

. . . .

WHEREAS, the North Luzon Railways Corporation (NORTHRAIL) was organized and incorporated to implement the development, construction, operation and maintenance of the railway system in Northern Luzon;

WHEREAS, NORTHRAIL is wholly owned and controlled by BASECON;

WHEREAS, the privatization of NORTHRAIL is necessary in order to accelerate the implementation of the Project by tapping the financial resources and expertise of the private sector;

. . . .

WHEREAS, the Parties of the Joint Venture Agreement (JVA) of 10 June 1995, namely BASECON, PNR, SPANISH RAILWAY GROUP and EUROMA, agreed to invite other private investors to help in the financing and implementation of the Project, and to raise the required equity in order to accelerate the privatization of NORTHRAIL;

WHEREAS, DMCI and other private investors. . . have manifested their desire to be strategic partners in implementing the Project;

WHEREAS, DMCI and other private investors have the financial capability to implement the Project;

WHEREAS, Phase I of the Project covers the Manila – Clark section of the North Luzon railway network as defined by the JVA of 10 June 1995 . . .[;]

. . . .

ARTICLE I

PURPOSE

1.1 Purpose. This Agreement is entered into by the Parties in order to set up the mechanics for raising the seed

---

[95] Id. at 128.

capitalization needed by NORTHRAIL to accelerate the implementation of the Project.

. . . .

ARTICLE II

TERMS OF AGREEMENT

2.1 The Parties agree to put up the necessary seed capitalization needed by NORTHRAIL to fast-track the implementation of the Rapid Rail Transit System Project according to the following schedule:

BCDA/PNR ……....…..PHP 300 Million
DMCI……...……..PHP 200 Million
SRG…….....……PHP 100 Million

TOTAL……...……PHP 600 Million

. . . .

2.3 The amounts contributed by BCDA/PNR, DMCI, SRG, and others are committed to be converted to equity when NORTHRAIL is privatized.[96]

There is no rule that a contract should be contained in a single document.[97] A whole contract may be contained in several documents that are consistent with one other.[98]

Moreover, at any time during the lifetime of an agreement, circumstances may arise that may cause the parties to change or add to the terms they previously agreed upon. Thus, amendments or supplements to the agreement may be executed by contracting parties to address the circumstances or issues that arise while a contract subsists.

When an agreement is amended, some provisions are changed. Certain parts or provisions may be added, removed, or corrected. These changes may cause effects that are inconsistent with the wordings of the contract before the changes were applied. In that case, the old provisions shall be deemed to have lost their force and effect, while the changes shall be deemed to have taken effect. Provisions that are not affected by the changes usually remain effective.

When a contract is supplemented, new provisions that are not inconsistent with the old provisions are added. The nature, scope, and terms

---

96 Id. at 127–129.

97 *See also BF Corporation v. Court of Appeals*, 351 Phil. 507, 523 (1998) [Per J. Romero, Third Division].

98 Id.

and conditions are expanded. In that case, the old and the new provisions form part of the contract.

A reading of all the documents of agreement shows that they were executed by the same parties. Initially, the Joint Venture Agreement was executed only by BCDA, PNR, and the foreign corporations. When the Joint Venture Agreement was amended to include D.M. Consunji, Inc. **and/or its nominee**, D.M. Consunji, Inc. and/or its nominee were deemed to have been also a party to the original Joint Venture Agreement executed by BCDA, PNR, and the foreign corporations. D.M. Consunji, Inc. and/or its nominee became bound to the terms of both the Joint Venture Agreement and its amendment.

Moreover, each document was executed to achieve the single purpose of implementing the railroad project, such that documents of agreement succeeding the original Joint Venture Agreement merely amended or supplemented the provisions of the original Joint Venture Agreement.

The first agreement — the Joint Venture Agreement — defined the project, its purposes, the parties, the parties' equity participation, and their responsibilities. The second agreement — the amended Joint Venture Agreement — only changed the equity participation of the parties and included D.M. Consunji, Inc. and/or its nominee as party to the railroad project. The third agreement — the Memorandum of Agreement — raised the seed capitalization of Northrail from ₱100 million as indicated in the first agreement to ₱600 million, in order to accelerate the implementation of the same project defined in the first agreement.

The Memorandum of Agreement is an implementation of the Joint Venture Agreement and the amended Joint Venture Agreement. It could not exist without referring to the provisions of the original and amended Joint Venture Agreements. It assumes a prior knowledge of its terms. Thus, it referred to "North Luzon railway network as defined by the JVA of 10 June 1995[.]"[99]

In other words, each document of agreement represents a step toward the implementation of the project, such that the three agreements must be read together for a complete understanding of the parties' whole agreement. The Joint Venture Agreement, the amended Joint Venture Agreement, and the Memorandum of Agreement should be treated as one contract because they all form part of a whole agreement.

---

[99] *Rollo* (G.R. No. 173137), p. 128.

Hence, the arbitration clause in the Joint Venture Agreement should not be interpreted as applicable only to the Joint Venture Agreement's original parties. The succeeding agreements are deemed part of or a continuation of the Joint Venture Agreement. The arbitration clause should extend to all the agreements and its parties since it is still consistent with all the terms and conditions of the amendments and supplements.

II

BCDA and Northrail argued that they did not consent to D.M. Consunji, Inc.'s assignment of rights to DMCI-PDI. Therefore, DMCI-PDI did not validly become a party to any of the agreement. Section 17.1 of the Joint Venture Agreement provides that rights under the agreement may not be assigned, transferred, or conveyed without the consent of the other party.[100] Thus:

> **17.1** No party to this Agreement may assign, transfer or convey this Agreement, create or incur any encumbrance of its rights or any part of its rights and obligations hereunder or any shares of stocks of NORTHRAIL to any person, firm or corporation without the prior written consent of the other parties or except as provided in the Articles of Incorporation and By-Laws of NORTHRAIL and the Agreement.[101]

However, Section 17.2 of the Joint Venture Agreement provides that the agreement shall be binding on nominees:

> **17.2** This Agreement shall inure to the benefit of and be binding upon the parties . . . and their respective successors and permitted assignees *and designees or nominees* whenever applicable.[102] (Emphasis supplied)

The principal parties to the agreement after its amendment include D.M. Consunji, Inc. and/or its nominee:

> **AMENDMENT TO THE JOINT VENTURE AGREEMENT**
>
> This Amendment to the Joint Venture Agreement dated 10th of June 1995 (the *Agreement*) made and executed at _____, Metro Manila, on this 8th day of February 1996 by and among:
>
> **BASES CONVERSION DEVELOPMENT AUTHORITY** . . .

---

100 *Rollo* (G.R. No. 173170), p. 96.
101 Id.
102 Id.

with

PHILIPPINE NATIONAL RAILWAYS . . .

and

. . . .

D.M. CONSUNJI, INC. and/or its nominee**,** a domestic corporation duly organized and created pursuant to the laws of the Republic of the Philippines . . .[103] (Emphasis supplied)

MEMORANDUM OF AGREEMENT

This Agreement made and executed at Pasig, Metro Manila, Philippines on this 8[th] day of February 1996 by and among:

BASES CONVERSION DEVELOPMENT AUTHORITY . . .

with

PHILIPPINE NATIONAL RAILWAYS . . .

and

D.M. CONSUNJI, INC. and/or its nominee, a domestic corporation duly organized and created pursuant to the laws of the Republic of the Philippines . . .[104] (Emphasis supplied)

Based on DMCI-PDI's letter to BCDA and Northrail dated April 4, 1997, D.M. Consunji, Inc. designated DMCI-PDI as its nominee for the agreements it entered into in relation to the project:

> [I]n order to formalize the inclusion of [DMCI Project Developers, Inc.] as a party to the JVA and MOA, DMCI would like to notify all the parties *that it is designating PDI as its nominee in both agreements and such other agreements that may be signed by the parties in furtherance of or in connection with the PROJECT*. By this nomination, all the rights, obligations, warranties and commitments of DMCI under the JVA and MOA shall henceforth be assumed performed and delivered by PDI.[105] (Emphasis supplied)

Thus, lack of consent to the assignment is irrelevant because there was no assignment or transfer of rights to DMCI-PDI. DMCI-PDI was D.M. Consunji, Inc.'s nominee.

---

[103] Id. at 101–102.
[104] Id. at 105.
[105] *Rollo* (G.R. No. 173137), pp. 137 and 139.

Section 17.2 of the Joint Venture Agreement clearly shows an intent to treat assignment and nomination differently.

> **17.2** This Agreement shall inure to the benefit of and be binding upon the parties . . . and their respective successors and permitted *assignees and designees or nominees* whenever applicable.[106] (Emphasis supplied)

Assignment involves the transfer of rights after the perfection of a contract. Nomination pertains to the act of naming the party with whom it has a relationship of trust or agency.

In *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*,[107] this court defined "nominee" as follows:

> In its most common signification, the term "*nominee*" refers to one who is designated to act for another usually in a limited way; a person in whose name a stock or bond certificate is registered but who is not the actual owner thereof is considered a nominee." *Corpus Juris Secundum* describes a nominee as one:
>
> > ". . . designated to act for another as his representative in a rather limited sense. It has no connotation, however, other than that of acting for another, in representation of another or as the grantee of another. In its commonly accepted meaning the term connoted the delegation of authority to the nominee in a representative or nominal capacity only, and does not connote the transfer or assignment to the nominee of any property in, or ownership of, the rights of the person nominating him."[108] (Citations omitted)

Contrary to BCDA and Northrail's position, therefore, the agreement's prohibition against transfers, conveyance, and assignment of rights without the consent of the other party does not apply to nomination.

DMCI-PDI is a party to all the agreements, including the arbitration agreement. It may, thus, invoke the arbitration clause against all the parties.

III

Northrail, although not a signatory to the contracts, is also bound by the arbitration agreement.

---

106 *Rollo* (G.R. No. 173170), p. 96.
107 G.R. Nos. 177857–58, January 24, 2012, 663 SCRA 514 [Per J. Velasco, Jr., En Banc].
108 Id. at 580–581.

In *Lanuza v. BF Corporation,*[109] we recognized that there are instances when non-signatories to a contract may be compelled to submit to arbitration.[110] Among those instances is when a non-signatory is allowed to invoke rights or obligations based on the contract.[111]

The subject of BCDA and D.M. Consunji, Inc.'s agreement was the construction and operation of a railroad system. Northrail was established pursuant to this agreement and its terms, and for the same purpose, thus:

> **ARTICLE III**
>
> **PURPOSE OF NORTHRAIL**
>
> **A. PRIMARY PURPOSE**
>
> **3.1.** To construct, operate and manage a railroad system to serve Northern and Central Luzon; and to develop, construct, manage, own, lease, sublease and operate establishments and facilities of all kinds related to the railroad system[.][112]

Northrail's capitalization and the composition of its subscribers are also subject to the provisions of the original and amended Joint Venture Agreements, and the subsequent Memorandum of Agreement. It was pursuant to the terms of these agreements that Northrail demanded from D.M. Consunji, Inc. the infusion of its share in subscription.

Therefore, Northrail cannot deny understanding that its existence, purpose, rights, and obligations are tied to the agreements. When Northrail demanded for the amount of D.M. Consunji, Inc.'s subscription based on the agreements and later accepted the latter's funds, it proved that it was bound by the agreements' terms. It is also deemed to have accepted the term that such funds shall be used for its privatization. It cannot choose to demand the enforcement of some of its provisions if it is in its favor, and then later by whim, deny being bound by its terms.

Hence, when BCDA and Northrail decided not to proceed with Northrail's privatization and the transfer of subscriptions to D.M. Consunji, Inc., any obligation to return its supposed subscription attached not only to BCDA as party to the agreement but primarily to Northrail as beneficiary that impliedly accepted the terms of the agreement and received D.M. Consunji, Inc.'s funds.

---

109 G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> [Per J. Leonen, Second Division].

110 Id. at 16.

111 *See also Lanuza v. BF Corporation*, G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> [Per J. Leonen, Second Division].

112 *Rollo* (G.R. No. 173170), p. 87.

There is, therefore, merit to DMCI-PDI's argument that if the Civil Code[113] gives third party beneficiaries to a contract the right to demand the contract's fulfillment in its favor, the reverse should also be true.[114] A beneficiary who communicated his or her acceptance to the terms of the agreement before its revocation may be compelled to abide by the terms of an agreement, including the arbitration clause. In this case, Northrail is deemed to have communicated its acceptance of the terms of the agreements when it accepted D.M. Consunji, Inc.'s funds.

Finally, judicial efficiency and economy require a policy to avoid multiplicity of suits. As we said in *Lanuza*:

> Moreover, in *Heirs of Augusto Salas,* this court affirmed its policy against multiplicity of suits and unnecessary delay. This court said that "to split the proceeding into arbitration for some parties and trial for other parties would "result in multiplicity of suits, duplicitous procedure and unnecessary delay." This court also intimated that the interest of justice would be best observed if it adjudicated rights in a single proceeding. While the facts of that case prompted this court to direct the trial court to proceed to determine the issues of that case, it did not prohibit courts from allowing the case to proceed to arbitration, when circumstances warrant.[115]

WHEREFORE, the petitions are **DENIED**. The February 9, 2006 Regional Trial Court Decision and the June 9, 2006 Regional Trial Court Order are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

---

[113] CIVIL CODE, art. 1311 provides:
ART. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[114] *Rollo* (G.R. No. 173170), pp. 571–574.

[115] *Lanuza v. BF Corporation,* G.R. No. 174938, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/174938.pdf> pp. 16–17 [Per J. Leonen, Second Division], *citing Heirs of Salas, Jr. v. Laperal Realty Corporation,* 378 Phil. 369, 376 (1999) [Per J. De Leon, Jr., Second Division].

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

MARIA LOURDES P. A. SERENO
Chief Justice