

PHL to pay P800 million for Laguna Lake project scrapped by Aquino administration

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THE International Center for the Settlement of Investment Disputes (ICSID) has ordered the Philippine government to pay P800 million to Baggerwerken Decloedt En Zoon (BDC) for scrapping the P18.7-billion Laguna Lake Rehabilitation Project (LLRP) in 2011.

ICSID issued the award on January 23, 2017, six years after former President Benigno S. Aquino III junked the deal that was twice declared by then-Justice Secretary Leila M. de Lima as “legal and binding”.

Former Justice Secretary Alberto Agra also issued a legal opinion affirming the validity of the contract entered into between BDC and the Arroyo administration through the Department of Environment and Natural Resources (DENR.)

The BDC project was originally crafted to dredge the 94,900-hectare Laguna de Bay and deepen its average depth of 2.5 meters, and called for the creation of navigational channels in the waterway, which has Class C water quality deemed to be inappropriate for human consumption.

The Laguna de Bay cannot be a source of water for purification, since its average depth is 2.5 meters, well below the global standard of a minimum of 2.8 meters depth for harvesting water for purification.

A Belgian company, BDC had designed the project under the official development assistance (ODA) scheme of Brussels and supported by then-Belgian King Albert, but former President Aquino did not accede to the plea of the king to salvage the project, calling it as a project that calls for merely transferring the silt from one part of the lake to another.

BDC also worked on securing 37.4 percent of the funding from a Belgian export agency to enable it to be covered by ODA and secured additional financing from BNP Paribas.

Belgian executives calculated the P18.7-billion LLRP could be paid in nine years, if the Laguna de Bay is dredged, its water-holding capacity expanded, and measures are implemented to improve the quality of water flowing from 100 rivers and creeks from the Sierra Madre, Quezon, Rizal, Cavite and Laguna, with the revenues coming from Manila Water Co. Inc. and Maynilad Water Services Inc.

ICSID took jurisdiction of the case, which was covered by an investment treaty among the Philippines, Belgium and Luxembourg signed in 1998, and invoked the applicable rules of the ICSID convention and arbitration rules on October 11, 2011.

The ICSID tribunal was constituted on February 29, 2012, with Pierre Tercier of Switzerland appointed by the parties as president, Stanimir A. Alexandrov of Bulgaria as arbitrator named by BDC and J. Christopher Thomas of Canada, who was named arbitrator by the respondent, the Philippine government.

Allen & Overy of Hong Kong represented BDC as counsel, while the Office of the Solicitor General of the Philippines, retired Supreme Court Associate Justice Florentino P. Feliciano and the law firm White & Case of Washington also took the cudgels for the Aquino administration.

The tribunal decided in favor of BDC, with Tercier concurring and Alexandrov issuing a separate opinion.

ICSID said the tribunal was constituted in accordance with Article 37(2)(a) of the ICSID Convention and started its proceedings by compelling the parties to produce their documents, with the first session held via teleconference on April 30, 2012.

BDC filed its memorial on the merits on June 25, 2012, with the Philippine government responding with a memorial of its own on October 17, 2012, along with a memorial on jurisdiction, including counter-claims and the filing of cost hearing briefs, the tribunal declared the proceedings closed on November 28, 2016, based on ICSID Arbitration Rule 38(1).

On January 23, 2017, the tribunal agreed with BDC, and said the 150-year-old Belgian dredging company was the aggrieved party.

BDC was compelled to sue the Aquino administration before ICSID in April 2011 for breaching its contract after all its efforts to push the project with Finance Secretary Cesar V. Purisima and President Aquino failed.

The company sought at least P6 billion in damages from the Aquino administration.

BDC officials said Aquino was wrong in tagging the project as “graft-ridden” and Sen. Franklin M. Drilon described dredging projects as a source of corruption during a year when Iloilo, his home province, had six dredging projects supported by state funds.

Sen. Loren B. Legarda also described the dredging project as contributing to flooding, which flooded BDC, its engineers and hydrologists.

The Aquino administration then did not explain to the Belgian government why the LLRP was scuttled despite the Belgian counterpart’s plea to let the project proceed.

In 2010 Dimitry Dutilleux, BDC’s North Asia manager, explained that under the 850-day LLRP, there was little chance for fishermen and settlers to be evicted from the lake region, since the principal concern of the project was to deepen the lake and allow boats to navigate from Laguna to Rizal and the National Capital Region and vice versa.

BDC spent close to P400 million to undertake studies on the lake, including its water quality, its geology and geomorphology, the species still existing in the lake, and the social and economic impact of the LLRP.

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