

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
GEOFFREY VALENZIA**

Seduta tat-8 ta' Jannar, 2007

Citazzjoni Numru. 1610/1995/1

Petrol Engineering Services Ltd

Vs

**Oil and Construction International Ltd u b'nota tat-2
ta' April 2002 l-isem tas-socjeta' konvenuta giet
mibdul ghal Engineering & Construction Management
Limited**

Il-Qorti

Preliminari

Rat l-atti **tac-citazzjoni** li permezz taghha l-atturi nomine
ippremettew illi:

Is-socjeta' konvenuta ghandha thallas lis-socjeta' attrici s-
somma ta' tlieta u hamsin elf, hames mija, u hamsa u
sebghin liri Maltin, u tlieta u disghin centezmi

Pagna 1 minn 22

Qrati tal-Gustizzja

(Lm53,575.93c,0), jew somma ohra verjuri, bilanc ta' somma akbar kif dovuta sas-16 ta' Ottubru 1995, import ta' diversi xoghlijiet ta' inginerija u kostruzzjoni esegwiti mis-socjeta' attrici fid-Dellimara Power Station, Dellimara, a favur u fuq inkarigu tas-socjeta' konvenuta, taht subappalt moghti lis-socjeta' attrici mis-socjeta' konvenuta fis-16 ta' Settembru 1994 in konnessjoni mal-progett maghruf bhala *"Diesel Oil Unloading and Forwarding System Storage Tanks and Miscellaneous Fire Fighting Equipment for Phase IIA Extension at Dellimara Power Station"*, skond il-kuntratt tal-korporazzjoni Enemalta Numru DPS 200-03, kwantu ghal Lm46,454.96c,0 dovuti in konnessjoni mas-subappalt baziku originali skond diversi fatturi kif elenkati fl-anness Prospett (Dokument "PES A") u kwantu ghal Lm7,120.97 dovuti in konnessjoni ma' xoghlijiet addizzjonali illi kienu gew ordnati min ghand is-socjeta' attrici skond diversi fatturi kif elenkati fl-anness Prospett (Dokument "PES B").

U peress illi nonostante illi giet interpellata diversi drabi mis-socjeta' attrici sabiex taddivjeni ghall-pagament tas-somma dovuta skond kif fuq premess, is-socjeta' konvenuta baqghet ghal kollox inadempjenti.

Tghid ghalhekk is-socjeta' konvenuta ghaliex, ghar-ragunijiet premissi:-

1. M'ghandhiex tigi kkundannata minn dina l-Onorabli Qorti sabiex thallas lis-socjeta' attrici s-somma ta' tlieta u hamsin elf, hames mija, u hamsa u sebghin liri Maltin, u tlieta u disghin centezmi (Lm53,575.93c0) jew somma ohra verjuri, bilanc ta' somma akbar kif dovuta sas-16 ta' Ottubru 1995, import ta' diversi xoghlijiet ta' inginerija u kostruzzjoni esegwiti mis-socjeta' attrici fid-Dellimara Power Station, Dellimara, a favur u fuq inkarigu tas-socjeta' konvenuta, taht subappalt moghti lis-socjeta' attrici mis-socjeta' konvenuta fis-16 ta' Settembru 1994 in konnessjoni mal-progett maghruf bhala *"Diesel Oil Unloading and Forwarding System Storage Tanks and Miscellaneous Fire Fighting Equipment for Phase IIA Extension at Dellimara Power Station"*, skond il-kuntratt tal-korporazzjoni Enemalta Numru DPS 200-03; bl-

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imghaxijiet kummercjali mill-iskadenzi relattivi tad-diversi fatturi sal-hlas effettiv.

Bl-ispejjez komprizi dawk ta' l-ittri legali tal-10 u tat-12 ta' Ottubru 1995, kif ukoll dawk tal-Mandat ta' Sekwestru kawtelatorju Numru 2359/95 ipprezentat fis-17 ta' Ottubru 1995 kontra s-socjeta' konvenuta ta' liema socjeta' r-rapprezentanti legali taghha huma minn issa stess ingunti sabiex jidhru ghas-subizzjoni.

Rat id-Dikjarazzjoni tal-attur nomie a fol.3 tal-process.

Rat in-Nota ta' l-Eccezzjonijiet tas-socjeta' konvenuta a fol.12 tal-process fejn eccepjet:

1. Illi, fl-ewwel lok, il-bilanc mitlub fis-somma ta' sitta u erbghin elf, erba' mija, u erba u hamsin lira 96 centezmu (Lm46,454.96) in konnessjoni mas-subappalt baziku mhux il-bilanc korrett u, fi kwalunkwe kaz, ghadu mhux dovut u ghalhekk it-talba attrici f'dan ir-rigward hi in parti nfondata u in parti ntempestiva;

2. Illi, fit-tieni lok, is-somma mitluba ta' sebat elef, mija u ghoxrin lira, 97 centezmu (Lm7,120.97) mhix dovuta stante li parti mix-xoghlijiet allegatament addizzjonali kienu komprizi fis-subappalt baziku; parti mix-xoghlijiet addizzjonali saru hazin; u parti saru minghajr debita awtorizzazzjoni skond il-kuntratt.

3. Illi, fit-tielet lok, is-socjeta' attrici hi responsabbli lejn is-socjeta' konvenuta f'danni in konnessjoni mal-appalt *de quo* liema danni huma mertu ta' kawza separata ntavolata f'ismijiet inversi u ghalhekk hemm lok li jigi deciz min hu debitur ta' min.

4. Salvi eccezzjonijiet ulterjuri.

Rat id-digriet a fol 16, 21, u verbal a fol 22 fejn gie deciz li dina l-kawza kellha tinstemgha u tigi trattata flimkien mal-kawzi l-ohra bin-numri 1853/95, 113/96 u 1878/95 bejn l-istess partijiet u fuq l-istess mertu;

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Rat id-degriet a fol 249 li bih gie nominat l-espert Paul Cardona;

Rat ir-relazzjoni ta' l-imsemmi perit tekniku Paul Cardona;

Rat id-digriet a fol 308 li bih gew nominati periti addizzjonali;

Rat ir-relazzjoni taghhom a fol 372;

Rat id-domandi li saru lill perit addizzjonali in eskussjoni u r-risposti taghhom (ara fol 438, 454 u 458);

Rat in-noti ta' sottomissjonijiet tal-partijiet;

Semghet ix-xhieda bil-gurament;

Rapport tal-Perit Tekniku Paul Cardona

Premessi

Il-Perit tekniku Paul Cardona ppremetta li minhabba li l-erba' kawzi huma intrinsikament relatati, dawn gew trattati f'daqqa, pero' huwa kien ser jaghti l-opinjoni tieghu separatament fuq kull kawza. Ir-rapport ittratta kull parti tal-kuntratt bejn il-partijiet separatament. Inotlre billi r-rapprezentant ta' l-atturi huwa Ingliz u billi d-dokumentazzjoni hija bl-Ingliz u l-lingwa principali uzata kienet l-Ingliz, ir-rapport gie redatt bl-Ingliz.

FATTI

Il-konvenuti Oil and Construction International Ltd (li minn issa 'l quddiem il-Qorti se tirreferi ghalihom bhala OCI) kienu rebhu kuntratt ta' l-Enemalta ghal estensjoni tal-Power Station ta' Delimara – kopja tal-kuntratt Dok TQ-02. OCI ghamlu *subcontracting* ta' dan il-kuntratt lill diversi kumpaniji fosthom l-atturi Petroil Engineering Services Ltd (li l-Qorti se tirreferi ghalihom bhala Petroil). Il-kuntratt bejn il-partijiet hu datat 16/9/1994 - Dok TQ-02. Petroil kienet spiccat ix-xoghol fit 3 ta' Settembru 1995 u z-zebgha tat-tankijiet kompla wara dina d-data izda ma

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fixkilx l-operazzjoni ta' l-impjant. Ix-xoghol gie accettat mill-Enemalta li hallset u ma mponiet ebda penali ghad-dewmien fuq OCI. Huma ma wehlu ebda penali jew telf iehor minhabba xoghol hazin jew dewmien.

Il-Perit tekniku ghadha biex ezamina dawn il-partijiet tal-kuntratt in vista ta' l-eccezzjonijiet li jissemmew fic-citazzjoni u cjoe li

- Li t-talba attrici hi in parti nfondata u in parti ntempestiva;
- Li parti mix-xoghlijiet allegatament addizzjonali kienu komprizi fis-subappalt baziku;
- Li parti mix-xoghlijiet addizzjonali saru hazin; u parti saru minghajr debita awtorizzazzjoni skond il-kuntratt;
- Li s-socjeta' attrici hi responsabbli lejn is-socjeta' konvenuta f'danni in konnessjoni mal-appalt *de quo* liema danni huma mertu ta' kawza separata ntavolata f'ismijiet inversi.

A Failure of paint primer on steel plates used to build the fuel oil storage tanks leading to a claim for additional works by plaintiffs. (page 14 et seq of report).

Il-Perit tekniku jghid fost affarijiet ohra li :

It is evident that Petroil drew the attention of OCI in good time about the problems of low dry film thickness of the shop primer.

Enemalta accepted the painting of the tanks and there were no claims against OCI for the late delivery.

The drench tests had to be carried out and finalized prior to the commencement of the painting works.

Fl-opinjoni tal-perit tekniku (fol 30):

The main argument between Petroil and OCI was whether Petroil were late to start painting after the erection of the

tanks was completed. Petroil argued that there was inadequate dry film thickness of shop primer applied by Ratarrukki, and there were delays caused in carrying out the drench tests. On the other hand OCI argued that Petroil delayed in commencing with the cleaning and painting of the tanks when they were constructed and they did not inform OCI that the coating was being damaged, nor did they give the necessary details to OCI as to where the necessary securing U bolts for the cooling water rings on the fuel tanks.

Skond l-espert :

the main problem lies with the mechanism of the corrosion suffered by the steel plates used to construct these tanks... The main reason for the failure of the coating was the low thickness of shop primer applied by the steel mill. Petroil had advised OCI against this but OCI accepted the low thickness from the steel mill. The corrosion of the plates seems to have started whilst the plates were still stacked on each other and prior to and during erection of tanks, and so plaintiffs were right in refusing to accept OCI's order to start painting immediately after the completion of the tanks. Had they done so the coating would have failed as the corrosion below the paint would have remained active and OCI would have been liable to claims in excess of Lm 100,000. Under the circumstances the works carried out by Petroil were necessary and their claim for the additional work is considered to be justified.

Claims regarding floating suction mechanisms (page 50)

Petroil stated that they have been paid in full for their services and that they have no claim against OCI.

OCI presented a claim against Petroil for the sum of Lm696 and Lm1,338 (Dok TLG-11) made up as follows:

- *Identification of technically competent suppliers - Lm216*
- *Quality assurance management – Lm168*

- *Delayed works – Additional Expenses – Lm120*
- *Extra site management – Lm192*
- *Detail and design engineering (Silea) – Lm562*
- *Installation in the amount of Lm776*

Dawn it-talbiet gew konsidrati mill-espert tekniku bhala li m'humiex dovuti ghar-ragunijiet li huwa jelenka a fol 59 sa 62 tar-rapport u li mhux il-kaz li jergghu jigi ripetuti hawnhekk u hawnhekk qed issir ampja referenza ghalihom.

Fire main piping – Change of Specification Pipe Thickness. (page 63):

OCI is claiming that Petroil had given them the wrong advice where the pipe thickness was concerned. This had allegedly caused them an extra cost of Lm7,500 on material costs and transportation and they are now claiming this amount from Petroil.

The technical expert concluded that Petroil did not give OCI the wrong advice. It was the most technically sound. Schedule 40 piping was the only acceptable size of pipe, and so the extra cost being claimed by OCI is not due.

As regards the overall cost of the system, the technical expert submitted that Petroil should be paid the original amount agreed in the contract with OCI .i.e. Lm 18,657 whereas OCI's claim for LM 8,959,09 for work not done is not justified and has not been proved.

Design, building and testing of three diesel tanks. (page 79):

This formed Item 3 of Annex 11 of the Enemalta contract. The full cost was for Lm52,300 (less the agreed 3% overall reduction). The contestation of Petroil is on Lm21,340. The claim being made by OCI against Petroil is for Lm13,000. In the original claim document OCI claimed Lm13,000, however, Mr. Quereshi stated that the claim is for Lm20,000.

As regards OCI's claim that initial drawings were not supported by any engineering calculations, the technical expert concluded that Petroil's involvement with the design process was very active. They designed the tanks and they left the final details to the tank builders themselves, ICOS. Therefore, OCI's claim against Petroil is not justified.

As regards the calculation of the number of roof plates required for the job, Petroil carried out their initial list of plates required for these tanks on the original proposal by Enemalta. Once it was discovered that the design of the roof had to be changed, Petroil advised OCI accordingly. (see several faxes referred to on pages 100-101 of the report). According to the Court expert, Petroil had advised OCI in good time that extra plates would be required for the roof structure after the changes became necessary. It was up to OCI to obtain the details from ICOS. This claim therefore is not justified.

As regards tank testing, this was not part of the original claim by OCI and was put forward by means of Doc TQ-17.

Claim regarding fuel forwarding system (page 116)

This part falls under Item 10 of the contract between OCI and Petroil. OCI's claim against Petroil is based on the fact that they expected Petroil themselves to design this proprietary equipment, whereas Petroil submit that they are not equipment manufacturers but were contracted to carry out interface engineering. The Court expert submitted that as regards this claim OCI shows that they either had no experience with this type of project or else they are trying to see what they can get. Their claim is therefore not justified.

Claim by OCI regarding the design and detail engineering of the unloading arm. (page 129)

No claim was made in the originally by OCI against Petroil (Dok TQ-02). However a claim for Lm931.20 was made later in the OCI Final Account with Petroil Dok TQ-23 and details of the Final Account for works carried out by Petroil TQ-24. OCI's claim is included in Dok TQ-27.

The Court expert concluded that this claim is based on previous arguments that Petroil was not able to design this proprietary equipment themselves and thus the previously agreed amount should be claimed back.

The Court expert submitted that this item, that the amount charged relates to the design interface to integrate this equipment with the rest of the fuel system of the Enemalta Power Station, and so, under the circumstances, OCI's claim for the amount of Lm931.20 against Petroil is not fair and should not be awarded.

Claim by OCI against Petroil regarding their alleged failure to work to ISO 9000 requirements. (Page 133)

The claim made by OCI on this item is for Lm 21,570. OCI did not produce a breakdown of this figure to justify this claim. The claim is case on the following items:

- *Breakdown of primer on the plates of the tanks*
- *The defective transformer fire fighting pipe work*
- *The faulty floating suction mechanism*
- *The faulty level gauges*

A claim based on ISO 9000 requirements can only be made against non-conformities on specifically agreed procedures or industrial standards. OCI insisted that Petroil work on ISO 9000 standards without arriving at a mutual agreement as to when and at what level the quality standards were to be applied. Petroil's procedures were accepted by Enemalta as they met their Quality Assurance Requirements. If Petroil broke the rules of ISO 9000 as OCI is alleging then OCI should have forwarded its complaints in writing as required by ISO 9000 and insist on corrective actions being taken. Enemalta

accepted the whole installation without any outstandings and there were no claims against OCI and no penalties were imposed on them. The Court expert concluded that OCI did not prove that Petroil did not follow a Quality Assurance System. (See other reasons on pages 143/144.) Therefore the sum claimed of Lm21,570 is not due to OCI and the amount of Lm4,716.83 originally agreed between OCI and Petroil is due to Petroil.

Ultrasonic level gauges (page 158)

OCI are claiming a total of Lm4,800 against Petroil for not carrying out the activity of identification of technically competent suppliers. In this case the Makers accepted their responsibility and supplied the new replacement parts free of charge. Petroil carried out their duty and recommended technically competent suppliers. OCI, as the main contractor, bore the responsibility to solve the problems for Enemalta. OCI's claim, according to the Court expert, is not justified and Petroil are not responsible for the failure of part of the proprietary equipment supplied by a reputable maker. If OCI wanted to claim their additional expense they should have claimed against the Makers. However, as the main contractor, they should have known that such failures do occur and they should have made allowances.

Problems between Petroil and OCI related to pipe trestles and valve access platforms. (page 164)

The Pipe support trestles are covered by para A 48 (pages 63-64) of the tender document. Enemalta lists four types of pipe trestles and gives the quantity required of each. The Bill of Quantities supercedes the tender specification. Normally the original plans and the final product are different. The magnitude of the difference varies from project to project. Enemalta did not accept the claim for extra work under this item and no efforts seem to have been made by OCI to recover the costs for this extra work. The Court expert submitted that OCI should pay Petroil this full amount of Lm5,396.86.

As regards the tank field Enemalta was right in not accepting to pay for this item. OCI are claiming the sum of Lm4,730 against Petroil (Dok TQ-25) for not producing these trestles and valve access platforms. The Court expert concluded that in this case Petroil are partly responsible for the lack of planning which led to this problem. Petroil should be held responsible for the manufacturing/installation costs of Lm945, whilst OCI should be held responsible for the rest. Although OCI is claiming Lm4,730 (without any proof that they paid a third party this amount) the Court expert is of the opinion that they should have taken advantage of the offer made by Petroil. Thus they should pay for any extra expenses they incurred themselves.

Claim by OCI against Petroil following works carried out to repair faulty DC Motor (Page 191)

OCI presented Dok TLG-09 to substantiate their claim against Petroil. The Court expert found that this claim is not justified because Petroil carried out their task properly and the failure was a typical failure one finds with this type of installation. OCI was the main contractor to Enemalta and OCI cannot pass this charge on to Petroil.

Claim by OCI against Petroil relating to the breakdown of the unloading line filter. (Page 195)

OCI are claiming that the unloading line filter was to be designed and installed by Petroil. Their claim is covered in dok TLG -25. The Court expert found that the manufacturer identified by Petroil was the same one whose filter elements Enemalta made use of, so Petroil had carried out its task properly. It was the responsibility of OCI, as main contractor, to manage the problems that arose during the guarantee period. This claim is not justified.

Problem regarding the fitting of valves on the spare nozzles of the 3 fuel tanks. (page 199)

The Court expert stated that Petroil was correct in their interpretation of the Tender document, and OCI received full payment (including the amount being claimed by Petroil) from Enemalta, therefore Petroil should receive the payment claimed by them for Lm538.20.

Claims by OCI against Petroil regarding (page 205)

Site Management

The basis for OCI's claim is that they had to employ a Project Coordinator due to Petroil's failure in managing the contract. For this OCI is claiming Lm20,000 but it did not provide a breakdown of this figure. The Court expert submitted that all expenses relating to the employment of the Project Coordinator basically form part of OCI's staff expenses and their claim against Petroil is not justified. (See the reasons given by the expert on page 214 of the report). OCI did not prove that they had the technical experience to handle a project of this type and magnitude. The manning level was grossly inadequate to handle this project. (see reasons on page 215). On the other hand Petroil proved that it had a track record with projects of this type. (see AF-09). OCI did not prove that Petroil did not carry out the project management with the other subcontractors.

In conclusion on this item, the Court expert said that OCI have totally failed to prove that they needed to employ a Project Coordinator due to the failing of Petroil to carry out their duties. The Project Coordinator they employed lacked the experience to manage a project of this size and type. The Claim for Lm20,000 by OCI against Petroil therefore is not justified.

Additional expenses due to delayed work

It has already been shown that the cause for these conditions was not the fault of Petroil but of OCI.

Extra project management time, due to Petroil engineering services shortcomings.

The same can be said for this item.

Claims by OCI against Petroil regarding the supply of the:

(OCI produced Dok TLG -05 and Petroil produced Dok PC-19)

Operation and Maintenance Manuals (page 221)

OCI's claim for this is Lm3,531. The Court expert allotted Lm400 for this item as Petroil failed to collect and collate these Manuals.

Quality Assurance Manual

OCI's claim for this is Lm1,490. Petroil presented their Dok PC -19. Petroil have proved that this Manual was forwarded to OCI. The claim for Lm1,490 is not justified.

Submission of drawings to Enemalta

OCI's claim for this is Lm412. It is confirmed that Petroil forwarded all drawings on AutoCAV V 12 so the claim for Lm412 is not justified.

Claims by OCI against Petroil regarding oil road tanker installation. (page 228)

No claim was made by OCI in the first statement of claim included in Dok TQ -02. This was subsequently claimed in the Details of Final Account for works carried out by Petroil Dok TQ -25. This item is included in Schedule 1A, Item 8 of the contract between OCI and Petroil. The total amount for this item is Lm7,588. OCI are claiming Lm5,279.90. OCI was paid in full for the project, and has not supplied any information or supporting documentation on this item, so the claim for this item is not proved.

Claims by OCI against Petroil for the provision of the site office space. (Page 232)

(see page 10 para 6.8 in Dok TQ- 25)

The Court expert submitted that according to Petroil, OCI had offered this office space free of charge to them. This was not contested by OCI. Therefore the claim for Lm2,400 is not justified.

Periti perizjuri

Il-Periti addizzjonali wkoll ghamlu r-rapport taghhom bl-Ingiliz minhabba r-ragunijiet diga imsemmija, kif ukoll ghax l-ewwel rapport hu bl-Ingiliz.

The additional referees appointed by this Court, in view of the voluminous amount of documents presented, asked the parties to identify the points in contestation. The parties made their submissions: OCI's submissions are in pages 378-400 and Petroil's in pages 401-403 in the additional referees' report.

As regards the general comment of OCI that the technical expert did not exercise his brief in full and in the proper manner, the additional referees submit that this is not so as the technicalities were the main bone of contention. As regards the question of bias, these allegations were not substantiated and the comments made by the technical referee were within his brief.

Dwar id-diversi items ezaminati mill-espert tekniku, l-periti addizzjonali qalu dan li gej:

Film thickness of plates.

The works carried out by Petroil were necessary and their claim for the additional work is justified. The technical expert was correct.

Floating suction mechanism

As regards this item Petroil declared that they have been paid in full and what remains is OCI's claim for delayed works and extra site management costs. The additional

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referees agree with the technical expert and his conclusions on this matter were correct.

Fire main piping – change of specification.

The technical referee was correct in stating that the amount of Lm18,657 is due to Petroil.

Design Building and testing of three diesel tanks.

The additional referees on this matter are in agreement with the technical referee that a reduction of 50% has to be made. There is here a discount of Lm3,900 in favour of OCI.

Fuel Forwarding system

OCI's submissions are not acceptable and Petroil acted within their project management brief.

Claim by OCI regarding the design and detail engineering of the unloading arm.

The issue here is the same as that of the fuel forwarding system. If Petroil were to charge for the design the fee would not be Lm931.20.

Claim by OCI against Petroil regarding their alleged failure to work to ISP 9000 requirements.

The technical referee was correct in stating that there was no mutual agreement as to when and what level the quality standards were to be applied.

Ultrasonic level gauges

This claim was not substantiated. Moreover Petroil could not be held responsible for the failure of part of the proprietary equipment provided by the maker.

Pipe trestles and valve excess platforms.

Enemalta paid OCI for this item. If Petroil did part of the works, they are to be paid for their works. The technical referee was right in indicating that Petroil are to pay OCI L 945.

Fitting of valves on spare nozzles of three fuel tanks.

The same argument applies here as OCI were paid by Enemalta and the technical referee's conclusions were right.

Claim against Petroil by OCI re site management, additional expenses due to delayed works and extra project management time due to Petroil engineering services shortcomings.

There is no breakdown for the figure of Lm20,000 claimed. Once Enemalta settled with OCI directly the matter of delay should not have been raised.

The appointment of the project manager was necessitated by the size of the project and not by any negligence or non-observance of contract conditions by Petroil.

Supply of operational maintenance manuals etc.

The conclusions reached by technical referee are correct.

Oil road tanker installation

No proof was forthcoming to substantiate this claim.

Site office space.

The technical expert was correct in concluding that it was the responsibility of OCI to provide office space and any financial considerations in this regard had to be dealt with in the relative contract.

Il-perit addizzjonali pprezentaw ir-risposti taghhom ghal mistoqsijiet maghmula lilhom minn OCI a fol. 439 u 440. Regghu xehdu fis-seduta tal-5 ta' April 2006

fejn wiegbu ghad domandi ta' Dr. P. Galea. Regghu sarulhom domandi ohra a fol. 453 u gew imwiegba a fol. 458.

Il-Periti addizzjonali kkonfermaw ir-rapport taghhom u qalu li huma ttrattaw kull punt imqajjem minn OCI fuq tlett binarji – dak kontrattwali, dak tekniku u dak ta' *project management*.

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Illi dina l-kawza nstemghet u giet trattata flimkien mal-kawzi l-ohra konnessi Citaz 1853/95, 1878/95 u 113/96.

Petroil mhux qed jikkontestaw il-konkluzzjonijiet tal-espert tekniku u lanqas dawk tal-periti addizzjonali li qablu mal-konkluzzjonijiet ta' l-ewwel perit. Huma spjegaw li ghalkemm jaqblu ma dawn ir-rapporti, kien hemm ragunijiet ghad-deduzzjonijiet li ghamlu l-periti. Huma ma jaqblux li ghandhom jehlu Lm3,783.25 taht l-item 1C Tank Testing tar-rapport fol 278.

Illi fin-nota ta' sottomissjonijiet taghhom OCI regghu ttrattaw kull punt li tqajjem f'dawn il-proceduri, cjoie quddiem il-perit tekniku u quddiem il-periti addizzjonali, biex jippruvaw johorgu interpretazzjoni li fl-opinjoni taghhom hija dik gusta u fil-parametri tal-ligi fuq il-fatti esposti.

Illi dawn il-punti gew kollha ezaminati fil-fond u ezawrjentement mill periti nominati u dawn espremew l-opinjoni taghhom fir-rigward li pero' OCI mhix qed taqbel maghhom.

Kif jirrizulta mir-relazzjonijiet, il-konkluzzjonijiet tal-periti ma jistghux jigu spezzettati taht aspekk wiehed, ezempju l-aspekk tekniku biss, bhal ma tiehu in konsiderazzjoni wkoll l-aspekk kuntrattwali, jew l-aspekk tal-*project management*. Il-konkluzzjonijiet tal-periti jinkludu dawn l-aspetti kollha u ma tistax taqbad aspekk wiehed biss minnhom u tghid li ma taqbilx jew li ma jaghmilx sens (ezempju l-kwisjtoni tal *failure of paint primer*).

OCI issottomettiet li kull ma tista tithallas Petroil f'dan il-kaz huma Lm1,000 kif approvati minnha u Petroil ma kellha taghmel ebda xogholijiet minn rajha minghajr l-approvazzjoni ta' OCI. Skond il-periti Petroil ghamlet dan ix-xoghol a vantagg ta' OCI ghax altrimenti din kienet tidhol fi spejjez akbar. Petroil ma kienux qed jipprovaw jiddettaw it-termini tal-kuntratt imma qed jeseqwexxi bl-ahjar mod il-kuntratt li kien fdat f'idejhom u fl-istess hin taderixxi mar-rekwiziti tal-Korporazzjoni Enemalta li kienet tat struzzjonijiet dwar il-*primer*.

Dwar il-*Fire Main Piping*, OCI qed jargumentaw li l-prezz patwit ta' Lm18,657 ghandu jigi rivedut u ridott ghal Lm12,434 peress illi kien hemm bidla fl-ispecifications. Hi m'ghandiex tigi ritenuta li thallas is-somma ta' Lm5,137 ghal *grooving machine* li nxtrat u baqghet ghand Petroil. Tikkontendi wkoll li qatt ma qablet mal-prezz li talbet Petrol, u li *overtime charges* mhumiex sostanzjati, mhumiex gustifikati u lanqas approvati.

L-espert tekniku ttratta dina l-materja fir-rapport tieghu a fol 63 il-quddiem u partikolarment a fol 71. Hu jghid li dawn l-ammonti huma dovuti, billi kien hemm twaqfij temporanju tal-kuntratt minn OCI li nnecessita dan l-*extra cost* ghal Petroil. OCI minn naha taghha ma ppruvatx dak li qed titlob (ara r-ragunijiet a fol 71 sa 73).

Dwar id-*Tank Design*, OCI tissottometti li d-disinn li ghamlet Petroil mhux dak li l-industrija tirrikjedi fil-kaz ta' disinn ta' tankijiet. Skond OCI, Petroil messha mhux biss ghamlet id-*drawings* ghall approvazzjoni, imma messha kienet involuta f'kull punt tal-process u tiehu hsieb id-disinn tat-tankijiet sa ma dawn jigu mibnija. Ghalhekk Petroil ma ghamlitx ix-xoghol kollu li kienet inkarigata li taghmel. Dwar it-testing tat-tankijiet, OCI tghid li r-rapprezentanti ta' Petroil ma kienux *on site ghat-testing*.

Il-Perit tekniku ttratta dina l-materja teknika minn fol. 79 il-quddiem tar-rapport u a fol. 98 il-quddiem jesprimi l-opinjoni tieghu ghaliex t-talba ta' OCI mhiex gustifikata (ara fol 100). Hu jghid li Petroil kienet avzat minn qabel

Kopja Informali ta' Sentenza

bil-bzonnijiet li kienu nqalghu wara li kienu saru necessarji certi tibdiliet. Dwar it-*tank testing* l-espert jghid li dawn ma kienux parti mit-talba originali.

Rigward l-*input* ta' Petroil fid-disinn, l-esperti addizzjonali taw l-opinjoni taghom a fol. 448 il-quddiem tal-process meta huma gew eskussi.

Dwar il *claim* fuq il-*fuel forwarding system* OCI tghid li Petroil m'ghandiex tithallas ta' xoghol li m'ghamlitx. Il-perit tekniku kien ittratta dana l-punt a fol. 116 tar-rapport u tah l-opinjoni tieghu minn fol. 126 il-quddiem tar-rapport fejn qal li Petroil ma kienux il-manifatturi tal-*equipment* imma kienu gew imqabba biex jaghmlu l-*interface engineering* u huwa ghal dana li huma qed jitlobu l-hlas.

L-item dwar *design and detail engineering of the unloading arm* gie trattat mill-perit tekniku a fol. 129 u l-opinjoni tieghu tinsab a fol. 131 et seq. OCI qed tissottometti l-istess argument li ghamlet fuq il-*fuel forwarding system*. L-esperti jsostnu li l-ammont ta' Lm931.20 qatt ma jista' jkun dovut biex ikopri disinn ta' *equipment*.

Dwar it-talba ta' OCI kontra Petroil li huma ma hadmux skond li *standard requirements* ISO 9000, dina l-materja wkoll giet trattat mill-perit tekniku a fol. 133 tal-process u l-opinjoni tieghu tinsab a fol 141 et seq. OCI tghid li kien hemm ftehim bejn il-partijiet li Petroil tahdem skond ISO 9000 *standards* u ghalhekk is-somma ta' LM 4716.83 ghal xoghol li ma sarx skond il-ftehim ma tistax tkun dovuta. Il-Perit tekniku jghid li ma kienx intlahaq ftehim specifiku bejn il-partijiet li jindika meta u sa liema livell li *standards* ta' kwalita kienu se jigi applikati. Jekk, kif qed jissottomettu OCI, Petroil ma mxietx skond ir-regoli tal ISO 9000 hi messha ghamlet *complaint* bil-miktub kif jitolbu l-istess regolamenti u tinsisti biex Petroil tirregola ruhha. Jirrizulta li l-Enemalta accettat ix-xoghol u m'ghandha ebda talbiet fil-konfront ta' OCI u lanqas ma gew imposti xi penali.

Rigward il-problemi li kien hemm bejn il-partijiet dwar *Pipe Trestles* u *Valve access platforms*, din il-materja giet trattata mill-espert a fol 164 tar-rapport u tah l-opinjoni tieghu a fol. 177 et seq. OCl qed tissottometti li l-ammont li Petroil ghandha tkun ordnata li thallas ghandu jkun wisq aktar minn dak li fil-fatt issuggerixxa l-Perit Tekniku. Il-Qorti f'dan ir-rigward, billi dina hija kwistjoni ta' natura tekniku, thoss li m'ghandhiex tidhol fiha u ghalhekk qed taccetta s-suggeriment tal-perit tekniku.

Rigward il-*project management*, din il-materja hi trattata mill-espert fir-rapport tieghu minn fol. 205 u l-opinjoni tieghu tinsab a fol. 213 et seq tar-rapport. OCl terga tinsisti li kieku Petroil wettqet l-obbligi taghha ta' *project management* kieku ma kienx ikun hemm bzonn li jitqabbad *Project Coordinator*. Dan l-argument gie ezaminat fil-fond mill-espert tekniku (ara fol. 214 tar-rapport) u sab li l-impieg ta' *Project Coordinator* minn OCl kienu spejjez li OCl kellha taghmel biex timpjega n-nies taghha u jkollha staff adekwat ghall progett u ma kienx dovut ghax Petroil naqset mill-obbligi taghha. Ma jsegwiex li ghax OCl qabbdet lill *Project Coordinator* taghha bilfors Petroil naqset mill-obbligazzjonijiet taghha.

Dwar l-*office space*, OCl qed tippretendi li tithallas Lm2,400. L-espert tekniku ta' diversi ragunijiet (ara fol. 235) ghaliex dana l-ammont mhux dovut, u fost l-ohrajn isemmi li ma kienx hemm ftehim u lanqas ma gie inkluz fil-kuntratt li Petroil kellha thallas xi somma fix-xahar ghal *office space*, u ghalkemm Petroil insistiet li OCl kienet offriet l-*office space* b'xejn, dana ma giex kontestat minn OCl fil-provi prodotti.

L-istitut tal-prova permezz ta' perizija huwa intiz sabiex l-Qorti tkun tista' tistabilixxi fatti rilevanti ghall-mertu ta' kawza illi jkunu ta' natura tali illi jirrikjedu tahrig jew taghlim specjali jew specjalizzat appuntu sabiex jigu determinati.

Opinjoni teknika, bhal kull prova, sakemm ma tigix skossa minn prova ohra kuntrarja, attendibbili u kredibbili, tifforma l-bazi tal-gudizzju tal-Qorti. Il-Qorti ghandha *mano libera* li

taccetta jew tirrifjuta opinjoni teknika lilha sottomessa mill-perit tekniku. Bhal kull prova ohra tista' tigi skartata mill-Qorti . Dan pero' mhux leggerment jew kapricciosament imma biss jekk tirrizulta raguni valida fl-atti. Kien ghalhekk ukoll li l-ligi tipprovdi ghan-nomina ta' periti addizzjonali biex ikun hemm mezz ta' verifika ta' l-opinjoni teknika li l-ewwel perit ikun issottometta. (Ara Sentenza App Camilleri vs Debattista 9/2/2001 u sentenza Appell Ivan Borg pro et noe vs George Aquilina, 19 ta' Ottubru, 2005; *Carmel Sciortino vs Helen Camilleri et Appell deciz fil-31 ta' Lulju, 1996 u Veronica Camilleri vs Joseph Thorne et Civil Inferjuri deciza fit-2 ta' Dicembru, 2002*).

Fil-kaz in ezami l-esperti teknici kollha nominati minn dina l-Qorti gew indikati mill Kamra tal-Inginiera bhala l-aktar persuni kwalifikati biex jigu nominati u kien hemm qbil bejn il-partijiet biex jigu nominati dawn l-esperti.

L-artikolu 681 tal-Kap 12 jistabilixxi li: Il-Qorti mhix marbuta li taccetta l-konkluzzjonijiet tar-rapporti tal-periti kontra l-konvinzjoni taghha nfisha. Gie stabilit mill-Qrati taghna li "r-rapport tekniku huwa kontrollabbli mill-gudikant bhal kull prova ohra" N. Ellul vs Mary Caruana P.A. 28.2.2002 u ghandu jigi skartat mill-Qorti meta jkun jidher "sodisfacement illi l-konkluzzjonijiet peritali huma fil-kompless kollha tac-cirkostanzi, irragjonevoli" G. Bugeja vs E. Muscat et App 23.6. 1967 L1-1-390. Jew jezistu bizzejjed "ragunijiet li gravement ipoggu fid-dubbru l-opinjoni teknika lilha sottomessa". P.Grima vs C.Mamo App 29.5.1998

Illi hafna mill-osservazzjonijiet maghmula minn OCI ma jistghux jinghataw l-piz intiz minnhom billi dawn l-osservazzjonijiet qeghdin isiru f'kuntast fejn il-Qorti - priva minn taghlim tekniku sabiex tapprezzahom ahjar mill-periti nominati minnha - ma tistghax taghtihom apprezzament divers ghal dak moghti mill-istess periti teknici. Certament is-sottomissjonijiet ta' OCI ma humiex tali li jinewtralizzaw il-konkluzzjonijiet peritali jew urew li huma irragjonevoli.

Il giudizio dell'arte mhux facili li jigi skartat (ara Sentenza App P.Grima vs C.Mamo et 29/5/98).

Il-Qorti, wara li rat ir-relazzjoni u ezaminat il-provi, hija tal-fehma li l-kostatazzjonijiet kollha maghmulin mill-periti tekniciu, kif ukoll il-konkluzzjonijiet minnhom raggunti, huma gusti u korretti u tikkondividihom u taghmilhom taghha.

KONKLUZZJONI

Petroil talbu s-somma ta' Lm53,575.93c,0, kwantu ghall Lm46,454,96 bhala bilanc u Lm7,120 bhala *additional works*. Il-Perit Tekniku (kif ukoll il-periti addizzjonali) accettaw li l-ammont ta' Lm46,454.96 hu dovut izda bhala *extra works* akkordaw biss Lm6,627.37. **B'Kollox Lm53,082.33** (ara Section 2 tar-rapport a fol 237).

DECIZJONI

Ghal dawn il-motivi

Il-Qorti tiddeciedi billi tilqa t-talba' attrici

Tikkundanna lis-socjeta konvenuta thallas is-somma ta' tlieta u hamsin elf, tnejn u tmenin lira Maltin u tlieta u tletin centezmi (Lm53,082.33)

Bl-ispejjez kontra s-socjeta' konvenuta

U bl-imghax legali mid-data tal-fatturi rilevanti

< Sentenza Finali >

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