MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
KATJA PSAILA SAVONA**

Seduta tas-27 ta' Settembru, 2012

Talba Numru. 347/2010

**Advanced Telecommunications Systems Limited (C-9170)
Vs
Fondazzjoni ghall-Iskejjel ta' Ghada**

It-Tribunal,

Ra l-avviz li permezz tieghu s-socjeta' attrici ppremettiet illi s-socjeta' mittenti titlob lil dan it-Tribunal jordna lill-Fondazzjoni intimate thallas is-somma kumplessiva ta' elf, seba' mija, hamsa u erbghin ewro (€1,745) rapprezentanti bilanc fuq prezz ta' merkanzija kkonsenjata u servizzi rezi mis-socjeta' rikorrenti lill-Fondazzjoni intimata fuq inkarigu taghha stess, liema hlas sal-lum ghadu ma sehhx u dan minghajr ebda raguni valida skont il-ligi.

Bl-imghaxijiet legali sad-data tal-pagament effettiv u bl-ispejjez kontra l-intimata minn issa ngunta in subizzjoni.

Ra r-risposta tal-Fondazzjoni konvenuta li ppremettiet li l-merkanzija supplita ma kienx tal-kwalita' pattwita u l-

ammont gie mizmum skont il-kuntratti sa kemm jitrangaw il-problemi.

Ra li fis-seduta ta’ nhar it-18 ta’ Marzu, 2010, kien hemm inverzjoni tal-provi;

Ra l-affidavit tal-Inginier Albert Ellul (Inginier tal-Fondazzjoni ta’ l-Iskejjel ta’ Ghada), Christopher Pullicino (Chief Finance Officer tal-Fondazzjoni ta’ l-Iskejjel ta’ Ghada).

Sema’ x-xhieda ta’ Adrian Sciberras (Accountant tas-socjeta’ attrici) u Paul Aguis (Managing director tas-socjeta’ attrici).

Ikkunsidra:
Din hija talba ghal-hlas ta’ somma mizmuma mis-socjeta’ konvenuta cioe *retention money* li huwa 5% tal-valur totali tax-xoghol u li qeda tirrifjuta li l-Fondazzjoni konvenuta qeda tirrifjuta li thallas ghaliex ix-xoghol ma kienx skont dak pattwit.

Il-fatti huma s-segwenti:
Fis-sena 2006 inghata *tender* lil Advanced Telecommunications Systems Co. Limited min-naha tal-Fondazzjoni Ghall-iskejjel ta’ Ghada biex jigu suppliti *computer hardware* lill-Kulleg ta’ San Benedettu , Kirkop.

Illi l-qofol tat-*tender* kien li jipprovdu wiehed u erbghin (41) kompjuter li kellhom jigu nstallati w ikkomissjonati biex jahdmu ghal-uzu intiz mill-iskola.

Illi l-*handover* sar fil-15 ta’ Settmbru 2006 u fit-18 ta’ Settembru thallas hamsa u disghin fil-mija (95%) mil-valur tax-xoghol.

Illi skont ix-xhieda, moghtija mir-rapprezentanti tal-Fondazzjoni tal-Iskejjel ta’ Ghada (ara fol 13 tal-process), il-kompjuters kienu koperti b’garanzija ta’ sena mill-*comissioning* u cioe’ mid-data tal-15 ta’ Settembru 2006 u ghalhekk inzamm hamsa fil-mija (5%) mill-valur tax-xoghol certifikat u cioe’ elf seba’ mija erba’ u erbghin ewro u tlieta

u ghoxrin centezmu (€1744.23) (is-somma tat-talba odjerna) biex jekk isiru xi hsarat jew jkun hemm problemi w l-kumpanija li hadet it-*tender* tonqos milli tirrimedja, hi tkun tista' tuza dawn il-flus biex issolvi l-problemi. Illi waqt il-perjodu tal-garanzija jidher li kien hemm diversi problemi (ara Dok. 33 sa 41 a fol. 19 et seq) u skont il-Fondazzjoni konvenuta dawn ma ssolvewx u ghalhekk inzammet il-hamsa fil-mija (5%) *retention sum.*

Illi l-atturi kkontestaw illi m'onorawx il-garanzija. Iddikjaraw illi din kienet ghal sentejn u mhux sena u li fil-fatt kienu rrangaw d-difetti fis-sistema.

Illi Adrian Sciberras qal li meta fi Frar tas-sena 2008 kkunttatja lil-Inginier Ellul dan qallu li ma kellux problema li jhallsu r-*retention money* basta illi jgib ittra minghand is-Surmast tal-iskola. Pero' s-surmast inbiddel u li kellhom *tender* gdid fit-2007 fejn bidlu il-kompjuters kollha tal-iskola.

Skont il-Fondazzjoni konvenuta kellhom l-problemi mill-bidu (ara fol. 19 *memorandum* datata 15 Mejju 2006):

"*Since commissioning various defects have developed on the equipment as follows:*
Some flat screens have developed vertical lines. These have been replaced. A number of keyboards have developed non responding keys. Some have been replaced while others are still pending.
Computer mice: these were delivered scroll type instead of optical. ……pending. Presently there are five computer systems that are not functional and require seeing to by the contractor.."

Illi sal-15 ta' Jannar 2007 apparti difetti ohrajn fl-ittra l-problemi tal-keyboards, il-*computer mice* kienu ghadhom ma ssolvewx. (fol. 21, ara ukoll fol. 24). Illi fit-22 ta' Mejju 2007 – u cioe' fiz-zmien fejn il-kompjuters kienu taht garanzija jidher illi kien ghad hemm difetti fis-sistema pprovduta.
"1. Lab 3 all keyboards have some keys not working;
2. Lab 3 faulty network card

3. lab 4 PC1 and 13 Faulty mouse
4. Lab all keyboards have some keys not working"

Illi a fol. 27 tal-process ittra datata 17 ta' Frar 2008 tindika s-segwenti:

1. Lab 3 - All keyboards have some keys not working. Pending
2. Lab 3 PC 3 faulty network card. Fixed
3. Lab 4 PC1 and 13 TFT monitors faulty. Fixed
4. Lab 4 PC 7 - faulty mouse. Pending
5. Lab 4 - All keyboards have some keys not working not working". Pending

Illi f'din l-ittra kien hemm diffetti ohrajn li gew irrapportati pero' d-dati ma gewx rapportati. Illi f'din l-ittra ukoll gie ddikjarat illi gew migbura xi kompjuters biex jigu msewwija u li dawn ma gewx ritornati minhabba l-problema li kien ghad hemm dovuta somma flus.

Min-naha taghhom l-atturi ddikjaraw li dejjem solvew il-problemi u li sa fl-ahhar tas-sena 2007 kienu ghamlu diversi xoghlijiet (ara Dok B6-B9 - l-ahhar datata 15.01.2008). Illi ddikjaraw illi l-*computer mice* kienu tbiddlu u li anke tmien (8) *keyboards* gew mibdula. Illi skont id-dokumenti pprezentati fil-11 t'Ottubru 2007 u Novembru 2007 tlett *monitors* gew mibdula.

It-Tribunal ra klawzola 2.23 li tindika li l-garanzija hija ghal-sena u li l-kuntrattur ghandu jaghmel tajjeb ghad-diffetti a spejjez tieghu. Illi l-klawsola tghid is-segwenti: "**Quote clause 2.23 : (e) A sum amounting to 5% of the Contract Value is to be retained after delivery until the garantee period expires**".

Illi ghalhekk il-konvenut kellu kull dritt izomm il-hamsa fil-mija (5%) sakemm il-problemi u d-diffetti li nqalghu fis-

sena mill-*comissioning* kienu solvuti. Illi jidher li hafna mill-problemi li kien hemm gew solvuti bhal tal-*compter mice*.

Fil-fehma tat-Tribunal difetti li dehru matul dan il-perjodu ta' sena u li ma gewx korreguti kellhom jigu korretti mill-kuntrattur anke jekk skadiet is-sena u mhux sentejn. Ghalhekk il-kompitu ta' dan it-Tribunal huwa li jara effettivament jekk il-problemi li nqalaw fis-sena ta'garanzija kienux gew issorvolati o meno. Illi jidher li l-problemi damu jkaxkru sentejn u certu difetti baqghu ezistenti bhal per ezempju il-*keyboards* li mill-bidu jidher li kien hemm difetti fihom. Illi fix-xhieda tieghu Paul Aguis qal li l-problema kienet dwar il-lingwa li skont il-kuntratt "dawn bdew jghidu li hemm xi *keyboards* illi x-xoghol ma kienx kif suppost, li apparentament il-*keyboards* ma kinux bl-Ingliz kienu bil-Malti, ma kienux bil-Malti kienu bl-Ingliz." Skont il-kuntratt il-*keyboards* kellhom jkunu bil-Malti pero' ma jirrizultawx. Qatt ma deher li kien hemm kontestazzjoni bil-miktub ghal dan fil-korrispondenza mibghuta u lanqas ma hareg aktar informazzjoni mix-xhieda.

Illi l-kuntratt tat-*tender* de quo jghid is-segwenti :-

"(a) The Contractor shall be entitled to be paid up to 95 % (ninety five percent) of the value of the works delivered to site to the satisfaction of the Architect –in-Charge.

(b) the balance i.e. 5 percent of the contract sum will be retained for twelve (12) months after completion and refunded only if defective work, if any, had been made good to the satisfaction of the Architect-in-Charge and the Chairman, Foundation for Tomorrow's School. Final measurements of all works carried out shall be prepared within a reasonable period after the works are completed".

Illi ghalhekk hemm stipulazzjoni espressa fil-kuntratt li tghid illi jekk ma jinghatax il-*clearance* r-*retention money* ma jistghax jigi mhallas. Illi fil-fatt l-Inginier Ellul qatt ma ta *clearance* u l-ahhar riferenza tieghu anke fix-xhieda mir-rapprezentanti tas-socjeta' attrici li ma kellux problema li jhallas jekk kien hemm *clearance cretificate* da parti tal-kap tal-iskola. Illi dan ma sarx ghaliex skont is-socjeta'

attrici kien inbidel u lanqas biss kien jaf bil-kompjuters ghaliex dawn ukoll gew mibdula. Illi s-socjeta attrici setghet tipprova ggib is-surmast li kien inbidel, biex jaghti x-xhieda tieghu u jikkonferma li x-xoghol kien sar u/jew jikorrobora l-fatt li dawn il-kompjters gew mibdula. Illi min-naha l-ohra pero' fl-ittra mill-kompjuter *technician* tal-iskola lill-Inginier Albert Ellul jghid storja ohra w inkonsistenti ghal dak allegat minn Adrian Sciberras. Din l-ittra tindika l-problemi kienu baqghu ezistenti u li dawn il-problemi kienu ezistenti qabel ma skada t-terminu tal-garanzija.

Ghaldaqstant u in vista tac-cirkostanzi, t-Tribunal ihoss illi l-Fondazzjoni gabet prova adegwata ta' dak li kienet qieghda tallega u cioe' illi x-xoghol kien diffettuz u ghaldaqstant jichad it-talbiet attrici bl-ispejjes ta' din il-kawza jigu ssoportati mis-socjeta' attrici.

< Sentenza Finali >

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