



**QORTI TA' L-APPELL
(SEDE INFERJURI)**

IMHALLEF

ONOR. EDWINA GRIMA LL.D.

Seduta tat-30 ta' Settembru 2015

Appell Numru: 44/2012

TOAD Management Services Limited

Vs

Synthesis Management Services Ltd u Regjun Centrali

Il-Qorti,

Rat id-decizjoni moghtija mill-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici fit-08 ta' Ottubru 2012, fejn giet ipprunzjata is-segwent i decizjoni fl-ismijiet premessi:-

'This Board,

having noted that the appellants, in terms of their 'letter of objection' dated

19th April 2012 and also through their verbal submissions presented during the hearing held on the 16th May, 2012, had objected to the decision taken by the pertinent authorities;

having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 16th April 2012, the contracting authority had informed the appellant company that its offer was not considered as the most financially advantageous one and that the tender was recommended for award to Toad Management Services Ltd, (b) with regard to the draft tender document (1) one of the appellant company's contentions was that the recommended tenderer could have been in possession of the tender document prior to the issue of the call for tenders thus giving the company an edge over the appellant, (2) this claim was substantiated by an email sent on the 9th November 2011 by Ms Cynthia Misokova of the OPM to all regions whereby she furnished them with the draft tender document for the provision of authorised officer services and requested the regions to give their feedback on the document, (3) Mr Samuel Herd, executive secretary of the Central Region, sent emails on the 14th and 22nd November 2011 to Mr David Soler, a representative of Toad Management Services Ltd, the recommended tenderer, with the subject being this draft tender document and, in the latter email, Mr Herd requested Mr Soler to print the tender document by the following day, (4) according to the appellant company's representative, a copy of these emails were posted to the appellant company by unknown person's, (5) considering that the tender was issued on the 24 January 2012 one had to question why the draft tender document was in the possession of the recommended tenderer as early as November 2011 and if there could have been an indirect input in the drafting of the tender document by the recommended tenderer that could have put the said company at an advantage vis-a-vis its competitors, (6) this tender document was common for all regions

and the same issue might arise in adjudication of other tenders for this same service, (c) way back in October 2011 Mr David Soler, of Toad Management Services Ltd, had informed Mr Raphael Carabott, then a Toad Management Services Ltd employee (now an employee of Synthesis), in writing that he could no longer trust him, (d) the tender document sent to Mr Herd by Ms Misokova contained a number of amendments to the version published in connection with the previous call for tenders, (e) with regard to the 'Allocation of Points for Technical Evaluation' (1) one could not fail to note that each of the five evaluators allocated identical points in respect of each criterion that featured in the Technical Evaluation Grid as if one of the evaluators had a differing opinion on the various criteria under examination, (2) one also noted that the points allocated by two of the evaluators, Mr Joe Camilleri and Dr Malcolm Mifsud, were evidently corrected at some stage, (3,) one had also to keep in view that the award criterion was not price but based on a 'Most Economically Advantageous Tender' (MEAT) principle and (f) with regard to the 'Clarification Sought From Toad Management Services Ltd' (1) the contracting authority sought a clarification from the recommended tenderer to confirm whether the administrative staff mentioned in the tender submission would be utilised for the Authorised Officer Services and whether the Central Region would incur any expenses for their services, (2) no clarification was requested from the appellant company, (3) according to clause 1 2.3 at page 1,3 of the tender document 'Matrix for Points Scoring' under 'Work Plan', "a weak answer which did not provide sufficient information in the core aspect of the question and/or lacked clarity" merited 6 to 9 marks whereas "an average answer which has either left one or more non-core aspects unexplained or needed to provide additional information to provide clarity in response" merited 10 to 19 points, (4) given that the recommended tenderer was asked for a clarification then the maximum points that should have been allocated under

Work Plan” were 19 points and not 38 points which denoted an answer which exceeded the requirement;

Having considered the contracting authority’s representatives’ reference to the fact that (a) Synthesis Management Services Ltd with Reg. No. C 55191 was incorporated and registered on 1st February 2012, (b) therefore, any reference to something that had taken place in November 2011 , when the appellant company was not even registered, could not have led to any damages to the appellant firm, (c) that fact also led one to question whether the appellant firm possessed the 3 year experience required in the tender document, (d) in November 2011 members of Toad Management Services Ltd were rendering a service to the Central Region, (e) this tender had been issued on a previous occasion and Toad Management Services Ltd had participated and, in fact, it was the current provider of this service to Central Region, (f) the tender document which Mr Herd referred to Mr Soler was a draft and not the published tender document, (g) according to Mr Herd (1) in November 2011 he had his office at the Msida Local Council whereas the office of the Tribunal was at San Gwann and since he did not have a functioning printer he sent the draft tender document to the Tribunal’s office to be printed out so that he would start working on it, (2) in the email he sent to Mr David Soler (soledOO I @onvol.net) all that he requested was to have draft tender document printed out, (3) the other printer in the Msida office block belonged to the Msida Local Council but he was not attached to that council and he did not have a printer at home, (4) albeit the draft tender was considered a confidential document at that stage, yet it did not occur to him to print it out at a stationer’s so that it would remain for his eyes only but, instinctively, he sent it to Mr Soler’s private office at San Gwann where he performed the duties of authorised officer for the Central Region, (5) he had worked with Mr Soler for about 6 weeks until his office was set up at the Msida Local Council, (6) Ms Misokova had sent the

draft tender document to several other persons, including himself as evidenced from the email addresses, (7,) the tender document published in 2012 was an amended version of the draft tender document, (8) he could not tell if the published tender document was basically the same as that issued 5 years previously and he was not aware of the contents of the latter document, (h) once both bids were found to be technically of the same standing then the contracting authority had to decide on the award of the tender on the basis of price and in that regard it turned out that the recommended tenderer was about €5,000 cheaper (€42,000 vs €46,973) and (i) the estimated value of the tender was €120,000 per annum for 5 years, i.e. a total of €600,000, whereas the recommended offer was €42,000 per annum for 5 years, i.e. a total of €210,000;

Having considered the recommended tenderer's representatives' reference to the fact that (a) Mr Soler, representing Toad Management Services Ltd, under oath, confirmed that soled00l@onvol.net was the email address he used in the performance of his duties, (b) up to the time that this tender was issued members of the appellant firm were employees of Toad Management Services Ltd with ample access to commercially sensitive information, (c) there was evidence that the directors of Synthesis Management Services Ltd, e.g. Mr Raphael Carabott and Mr. Raymond Grima, had been planning for months to set up a new company to perform authorised officer services and they hung on to Toad Management Services Ltd to obtain commercially sensitive information, (d) prior to the reform undertaken with regard to the local councils system, the authorised officer and the executive secretary of the local council were one and the same person and, during the ensuing transition period, the executive secretaries and the (new) authorised officers worked side by side to ensure a smooth handover, (e) the adjudicating boards in such cases were appointed by the Department of Contracts, (f) one ought to exhibit the tender document

published in connection with the previous call for tenders some 5 years previous, draft tender document which was the subject of the email exchanged between Mr Herd and Mr Soler and the tender document published in 2012 so that it would be confirmed that the main changes concerned the job description of the executive secretary and of the authorised officer along with the award criteria (clause I 2.2 'Award Criteria), (g) the appellant company could not present contracts executed by the recommended tenderer as evidence of his experience and (h) the firm has been awarded the tender otherwise it would have lodged an appeal challenging the appellant company's eligibility on the grounds of experience;

Having considered the written submissions made to the Public Contracts Review Board by (a) the recommended tenderer - Toad Management Services Lid, particularly, wherein the said tenderer

- 1. Objected to the Public Contracts Review Board because they alleged that they were not given enough chance to prove their case and*
- 2. Demanded the abstention of the present Board and that the case be heard again by a different Review Board*

Furthermore. without prejudice, the recommended tenderer's submission proceeded by placing emphasis on the following, namely:

- 3. That even if the appellant company's representatives were misinformed by the contracting authority, they should have been knowledgeable enough to file a proper objection. It was thus further argued that misinformation by the contracting authority does not render the tendering process null.*
- 4. That the appellant company filed the objection under Rule 2 1 . while it should have been filed under Rule 84 which renders the objection null.*

5. That the deposit made by the appellant company should have been according to Regulation 84 and the amount actually deposited (400 euro) does not cover the necessary amount, again rendering the appeal null.

6. That the appellant company should have produced evidence that the sending of the email in question caused it prejudice or given advantage to others. The recommended tenderer argued that the appellant company failed to prove this.

7. That the appellant company was constituted on the 1 February 2012 and thus could not have suffered prejudice by an email sent when the company was not yet set up.

8. No evidence of collusion was produced, but only the naivety of the Executive Secretary was produced.

9. The appellant company should have used Rule 85(1) and filed a pre-contractual complaint and not let the process finish to file an appeal.

10. The Public Contracts Review Board should discard the production of the email in question as this is the private property of the receiver, Mr. David Soler.

11. That the appellant company was incorrect in stating that Toad Management Services Ltd should have had their points deducted because of the clarification sought from them, as this clarification only dealt with price issues.

12. that the appellant company should not have qualified as tenderers because, being set up on the 1st February 2012, they should have been disqualified under Clause

12 Because they lack the required experience and management of similar contracts of 50,000 euro per annum.

13. Complain that the Public Contracts Review Board did not hear members of the adjudication board giving explanations regarding points awarded and that the same Board cannot substitute its discretion for that of the adjudicating authority (b) the appellant company - Synthesis Management Services Ltd, particularly, wherein by way of reply to those filed by the recommended tenderer, inter alia stated that during the hearing of the 16 May 2012, everyone present had equal opportunities to put forward their views, and, as a result there was nothing objectionable in the way the proceedings were conducted.

Furthermore, the appellant company's submission proceeded by placing emphasis on the following, namely:

1. That Toad Management Services Ltd was put in an advantageous position and no proof was produced that Synthesis Management Services Ltd's directors received the same information.

2. That the document sent with the email was, in fact, the tender document as otherwise, Mr Herd testifying under oath would have denied it.

3. That, once it emerged during the hearing that the tender document had been sent via email by a member of the adjudication board to David Soler, who later submitted a bid. It follows that there was no need of further evidence, either by Toad Management Services Ltd or the contracting authority. As a consequence, Toad Management Services Ltd's claim that the proceedings breached their right to a fair hearing is to be rejected, so much so that they were allowed to file written submissions and

4. That any objections to the Board's decision should have been raised up there and then, but both Toad Management Services Ltd and the contracting authority remained silent, thus acquiescing to the Boards observation.

5. That the appellant company need not produce any proof of having suffered damages by the sending of the email, the possession of the draft contract by Toad Management Services Ltd clearly breached both the principle of equality and that of transparency. Even if Toad Management Services Ltd did not gain any advantage from the event, the process was still vitiated and the principle that justice must not only be done, but also seen to be done, should prevail.

6. The email sent by Mr Herd is relevant and thus admissible as evidence and does not breach David Soler's right to privacy.

7. That the Public Contracts Review Board did in fact ask the adjudication board members present, but no member offered any explanation, not even Mr Herd while testifying, offered any explanation for the points given.

(c) The contracting authority - Central Region, particularly, the submissions relating to the fact that

1. Since the appellant company filed the appeal under the wrong Rule this rendered this appeal as null and

2. It claimed that the Public Contracts Review Board has expressed its views before concluding the hearing on the validity of the appeal and thus this Board should not take cognizance of the case.

Furthermore, the contracting authority's submission proceeded by placing emphasis on the following, namely:

3. The fact that the contracting authority did not indicate the appropriate remedy in its letters to the appellant company dated 12th April and 16 April, does not render the tender null.

4. That the email of the 22nd November by Samuel Herd to David Soler did not vitiate the tendering process, because of the circumstances leading to it, as explained by the said witness.

5. That the appellant company's allegations of collusion and favouritism in favour of Toad Management Services Ltd are contradicted by facts and the adjudication board did not discriminate against any one of the bidders, so much so they were awarded the same points.

6. That the clarification requested from Toad Management Services Ltd was not related to the technical evaluation and thus carried no loss of points.

7. That the appellant company has not brought any evidence that Toad Management Services Ltd had in its possession the tender documents prior to the date when it was published.

8. The appellant company's claim that they appealed under Regulation 84 on the 12th April is unfounded as this letter was addressed to the Director of Local Councils and cannot be deemed as an appeal.

9. Finally, the contracting authority requests the rejection by the Public Contracts Review Board of any new pleas raised in the appellant company's note of submission, reached the following conclusions, namely:

1. On receipt of the first letter by the contracting authority, the appellant company filed an appeal on the 17th April 2012 under Rule 84 together with a deposit of Euro 200. On receipt of the second letter from the contracting authority, the same appellant company filed another objection, this time as directed by the second misleading letter, under Rule 21, accompanied by a deposit of Euro 400.

As the contracting authority informed the Public Contracts Review Board that the value of the tender was under Euro 120,000, the Public Contracts Review Board deemed the latest objection as being the most appropriate and decided to hear this objection. It was for this reason that Eurol200 deposited with the first objection were refunded.

The Public Contracts Review Board opines that it goes against all principles of justice, as the contracting authority seems to be doing when asking for the nullity of the objection filed under Rule 84, for one to first misdirect someone and then for the same authority to ask action to be taken against such person or entity for acting on one's misguided advice.

2. The Public Contracts Review Board agrees with the appellant company that the fact that the recommended tenderer was in possession of the tender document (regardless of whether this was in draft format or the final version including a number of amendments to the version published in connection with the previous call for tenders), prior to the issue of the call for tenders, would have given the company an edge over the appellant company. This Board cannot but question why a draft copy of the tender document under review - which was issued on the 24th January 2012 - was in the possession of the recommended tenderer as early as November 2011.

3. This Board acknowledges that all could have been carried out with the best of intentions such as the fact that, according to Mr Herd (a) in November 2011 he had his office at the Msida Local Council whereas the office of the Tribunal was at San Gwann and since he did not have a functioning printer he sent the draft tender document to the Tribunal's office to be printed out so that he would start working on it, (b) albeit the draft tender was considered a confidential document, yet, at that stage, it did not occur to him to print it out at a stationer's so that it would remain for his eyes only but, instinctively, he sent it

to Mr Soler's private office at San Gwann where he performed the duties of an authorised officer for the Central Region and (c) in the email he sent to Mr David Soler at onvol.net all that he requested was to have the draft tender document printed out, yet, this Board argues that even if Toad Management Services Ltd did not gain any advantage from the event, the process was still vitiated and the principle that justice must not only be done, but also seen to be done, should prevail. This Board finds it difficult to accept that the process possessed such transparency and this despite of the fact that it could have well been through naiveté, yet, regardless, this Board considers the process to be vitiated.

-1. The Public Contracts Review Board feels that the purpose of evaluating a tender on a Most Economically Advantageous Tender basis was to have a number of evaluators, in this case 5 evaluators, examining the technical aspects of each bid independently from one another and then the points allocated by each evaluator would be aggregated to arrive at the final mark. As a result, the fact that all five evaluators awarded the same number of points to both tenderers on all the different criteria that featured in the 'Technical Evaluation Grid' led to the evident conclusion that points were allocated by each evaluator after having been agreed to by all five evaluators. This Board contends that the way the technical evaluation was carried out defeated the scope of the contracting authority resorting to the Most Economically Advantageous Tender procedure and, in the Board's opinion, as a consequence, tainted the technical evaluation process.

5. The Public Contracts Review Board considers the fact that, with regard to the allegations made both by Toad Management Services Ltd and the contracting authority, the Public Contracts Review Board had already expressed itself on the matter during the hearing and should thus abstain, this

Board insists that it has always been its 'modus operandi' to point out clearly most or all of its' members' possible apprehensions during open sessions. Undoubtedly, this operational policy has never been challenged to date as all present had acknowledged that certain observations made during the hearing solely served to give the chance to everyone to rebut them as well as elucidate further those present, including this Board members, in order to facilitate the deliberation process which would take place following the hearing. One cannot but observe that any objections to this 'modus operandi' should have been raised up, there and then, during the hearing, but both Toad Management Services Ltd and the contracting authority remained silent, thus acquiescing to the Board's observations.

Furthermore, this Board cannot see the point in it requesting all parties to provide it with written submissions to allow more input from the latter with a view to enable this Board to become more informed thus conducting a better deliberation process and then, as a result, whilst availing of this preferential opportunity considering that this Board only allows written submissions to be filed after the hearing, yet the same authors of these written submissions end up stating that their clients' position was prejudiced due to observations made during the hearing which observations could have been both verbally, during the hearing, as well as, in the written submissions, subsequent to the hearing, duly contested by all parties involved. This Board considers its operational process as a vivid example of a democratic iter at its peak.

Also, no party's request was declined for evidence to be provided. This Board remains surprised by the claim made by the recommended tenderer's legal advisor wherein, inter alia, it was stated that the Public Contracts Review Board did not hear members of the adjudication board giving explanations regarding points awarded and that the same Board cannot substitute its

discretion for that of the adjudicating authority. [n the first instance, verbal and written submissions are considered more than enough for any interested party to make its case. Secondly, with regard to its discretionary powers, this Board argues that it has not only the right but the obligation to conduct proper analysis ofthe ‘modus operandi adopted by evaluation boards including the reasoning supporting all of the decisions taken.

As a result, this Board does neither agree (a) with the claim made that it was manifestly in breach of the principles of natural justice and the right to a fair hearing, nor (b) with the request made by both the recommended tenderers and contracting authority respective representatives to abstain and seek for a fresh hearing to be reappointed by a differently composed body.

6. This Board contends that albeit a participating tenderer has the opportunity to flea pre-contractual complaint yet the same legal provisions do not preclude any party from letting the process finish for it to tile an appeal.

7. The Public Contracts Review Board opines that is not fair for the contracting authority to raise up at the submission of written pleas stage the matter of eligibility of the appellant as after all, the same appellant company was found to be fully compliant at the adjudication stage. If in fact the appellant company were ineligible, this would further prove the loose way matters in the adjudication process were conducted.

8. The Public Contracts Review Board also opines that the contracting authority, as well as the evaluation board, could have administered, deliberated and decided upon this particular tender in a more cautious, transparent and effective manner.

In view of the above, this Board accedes to the appellant company’s request in its objection and recommends that this tender be cancelled and reissued.

The Public Contracts Review Board also recommends that the evaluation board to be appointed by the contracting authority to evaluate the tenders submitted in the fresh call will consist of new members in no way connected with the tender under review.

This Board also recommends that the deposit paid by the same appellant company for the appeal to be lodged should be reimbursed as, all things being equal, it became evident that the appellant company was not properly notified by the contracting authority as to the real reasons for it not being favourably considered.'

Illi s-socjeta appellanti TOAD Management Services Limited aggravata b'din id-decizjoni ressqet l-appell taghha fit-termini tas-segwenti aggravvji:

1. Illi d-decizjoni tal-Bord kissret d-dritt ghas-smiegh xieraq ta'l-esponenti u hija kontrarja ghal-principji tal-gustizzja naturali.
2. Illi l-Bord kien errat meta ma cahadx l-avviz t'oggezzjoni tas-socjeta appellata stante li ma kienx imsejjes fuq id-disposizzjoni tal-ligi idonja.
3. Illi l-Bord kien ukoll errat meta skarta bla ebda raguni l-eccezzjoni tas-socjeta appellanti li l-avviz ta' oggezzjoni tas-socjeta appellata ma kienx akkompanjat b'depositu fl-ammont prefiss mill-ligi.
4. Illi l-Bord naqas milli jindirizza eccezzjonijiet u osservazzjonijiet ta' natura legali sollevati mis-socjeta esponenti.

Illi s-socjeta appellata preliminarjament tissollewa il-pregudizzjali dwar in-nullita ta'l-appell interpost mis-socjeta appellanti billi l-istess gie ipprezentat oltre it-terminu statutorju stabbilit fil-ligi specjali li tirregola l-appelli mid-decizjonijiet moghtija mill-Bord ta' Revizjoni dwar il-Kuntratti Pubblici. Illi din

il-Qorti tqies illi fl-ewwel lok ghandu jigi sorvolat dan l-iskoll procedurali, in kwantu, jekk din tizzurta fondata, ma jkollhiex ghalfejn tinoltra ruhha fl-indagini tas-singoli aggravji prospettati mis-socjeta` appellanti.

Illi l-Avviz Legali 296 tal-2010 ifassal zmien ta' ghoxrin gurnata korrenti bhala it-terminu statutorju mehtieg ghal appell lil din il-Qorti mid-decizjonijiet tal-Bord tar-Revizjoni meta jiddisponi fl-artikolu 85(5) illi:

“Kull min ikollu interess u jhoss ruhu aggravat b’xi decizjoni li tittiehed mill-Bord skond dan ir-regolament jista’ jirreferi l-kwistjoni quddiem il-Qorti tal-Appell (Gurisdizzjoni Inferjuri) kif imwaqqfa skond l-artikolu 41(6) tal-Kodici ta’ Organizzazzjoni u Procedura Civili fi zmien ghoxrin gurnata kurrenti mid-decizjoni finali tal-Bord ta’ Revizjoni. Dak ir-riferiment m’ghandux madankollu jzomm lid-Direttur tal-Kuntratti jew lill-Kap ta’ awtorità kontraenti milli jimplementa d-decizjoni finali tal-Bord ta’ Revizjoni .”

Fuq din il-pregudizzjali li l-appell hu irritwali in kwantu *fuori termine* jibda biex jigi registrat illi huwa fil-generalita` tar-riti processwali taht id-diversi ligijiet u ghal liema hu konsentit appell, illi t-termini fihom preskritti ghall-appell jinkwadraw ruhhom fl-istitut tad-dekadenza. Dan huwa hekk ghas-semplici fatt materjali u oggettiv tad-dekorrenza taz-zmien¹.

“Huma termini perentorji u dwarhom, di regola, ma hemmx possibilita` la ta’ proroga, u lanqas ta’ sospensjoni jew interuzzjoni, jekk mhux fil-kazijiet eccezzjonalment mil-ligi prevvisti. Ad ezempju, fejn il-gurnata tal-iskadenza tat-terminu tahbat nhar ta’ Sibt jew il-Hadd jew xi gurnata festiva. Din in-natura inderogabbli tat-termini processwali ggib b’konsegwenza illi dwarhom ma jistghux jigu applikati provvedimenti sanatorji jew ta’ rimessjoni, ankorke d-

¹ Caterina Tabone -vs- Nobbli Gio Carlo Mallia *et*”, Appell Civili, 3 ta’ Ottubru, 1927

dekors inutile tagghom ma jkunx imputabbli lil parti interessata. Dan ghal motiv illi dik l-improrogabilita hi hekk necessarju ghal raguni ta' certezza u, ukoll, ta' uniformita`". Appell Civili Numru. 505/2009/1 Daniela Zwack-Wandrey vs Messrs. In-Sight Ltd.

“L-osservanza tat-termini stabbiliti fil-Kodici ta' Organizazzjoni u Procedura Civili u f'ligijiet ohra specjali li jirregolaw il-kondotta tal-proceduri quddiem il-Qrati u quddiem it-Tribunali huma ta' ordni pubbliku u ma jistghu jigu bl-ebda mod injorati u lanqas bil-kunsens tal-partijiet rinunzjati jew mibdula. Dawn it-termini jehtieg li jigu osservati u dan taht piena ta' irritwalita` u nullita` tal-proceduri li ghandha, fejn tokkorri u fejn hekk jirrizultaw lilha, tigi wkoll sollevata mill-Qorti ex officio In-nullita` tattakka l-att innifsu. Dak l-att il fil-procedura hu null ghandu jitqies daqs li kieku qatt ma kien intavolat quddiem il-Qorti li allura jehtiegilha tiskartah indipendentement mill-mod kif l-irregolarita` tkun giet migjuba a konoxxenza taghha” “Giuseppi Caruana -vs- Charles Psaila”, Appell mill-Bord li Jirregola l-Kera, 21 ta' Marzu, 1997”. “Salina Wharf Marketing Limited -vs- Malta Tourism Authority”, Appell Inferjuri, 12 ta' Dicembru, 2007

Huwa pacifiku illi l-ligijiet ta' procedura “*si debbono osservara alla lettera e non per equipollens*” (Vol XVIII pI p879). Dan ghaliex il-procedura hi konsiderata ligi ta' ordni pubbliku u in kwantu statwita mil-ligi “ma tistax tigi sostitwita bi procedura ohra, lanqas bil-kunsens tal-parti opposta. B'mod li l-eccezzjoni relattiva jekk ma tigix sollevata mill-parti l-ohra, jew tigi rinunzjata, ghandha tigi mill-Qorti sollevata ‘ex officio’”(Vol XXXVI pI p204; Vol XLIV pI p421).

Dan igib bhala konsegwenza illi t-terminu procedurali ghal proponiment ta' l-appell kellu jigi osservat strettament u '*ad unguem*'. Din mhix kwistjoni ta' formalizmu izda ta' mizura ta' dixxiplina processwali li mill-osservanza taghha tibbenefika l-andament kif imiss tas-sistema kollu. Ma jista' qatt ikun disputat illi t-termini ghal kompiment ta' atti processwali huma daww stabbiliti mil-ligi².

F'dan il-kaz il-ligi tistabilixxi terminu ta' ghoxrin gurnata mid-data tad-decizjoni finali tal-Bord tar-Revizjoni. Illi minn ezami tad-decizjoni impunjata jidher illi din giet moghtija fit-08 ta' Ottubru 2012 taht is-sottoskrizzjoni tal-membri tal-Bord. Ma hemm l-ebda prova in atti meta din id-decizjoni giet innotifikata lill-partijiet ghalkemm is-socjeta appellata fir-risposta taghha tikkontendi illi l-istess decizjoni wasslitilha fit-12 ta' Ottubru 2012. Illi s-socjeta appellanti minn naha taghha ma tressaq l-ebda prova, kif kien fid-dmir li taghmel bhala twegiba ghal pregudizzjali sollevata, dwar meta l-istess giet innotifikata lilha. Illi inghad:

“Certament, id-data tan-notifikazzjoni taghha lir-rapprezentanti tas-socjeta` appellanti ma ggibx ghal daqshekk modifikazzjoni fid-data tal-pronunzjament tas-sentenza u lanqas sostituzzjoni ta' dik il-*voluntas legislatoris* li *expressis* statwiet id-data minn meta kellhom jibdew jiddekorru l-hmistax-il gurnata ghall-prezentata ta' l-appell;³”

Premess dan johrog minn qari tad-disposizzjoni tal-ligi taht il-lenti tal-Qorti illi il-volonta tal-legislatur hija espressa b'mod car u inekwivoku illi d-dekorrimient tat-terminu ghal prezentata tal-appell kellu ikun ta' ghoxrin jum kurrenti mid-decizjoni finali tal-Bord (u mhux min-notifika ta'l-istess lill-partijiet) li f'dan il-kaz iggib id-data tat-08 ta' Ottubru 2012. Illi l-appell gie intavolat oltre dan it-

² Appell Civili Numru. 120/2000/1 Maurice u Rosaria sive Lucy mizzewgin Cefai vs Doris Fenech

³ Salina Wharf Marketing Limited vs Malta Tourism Authority. App Inf. 12/12/2007

terminu ta' ghoxrin gurnata imfisser fil-ligi billi mal-prezentata tieghu fl-1 ta' Novembru 2012, dan it-terminu kien skada bi tlett ijiem billi l-appell kellu jigi interpost sat-29 ta' Ottubru, stante illi l-jum tat-28 ta' Ottubru kien jahbat il-Hadd.

Ghal dawn il-motivi l-Qorti qed tilqa l-pregudizzjali sollevata mis-socjeta appellata, tiddikjara l-appell bhala wiehed intavolat *fuori termine* bi ksur tar-Regolament 85(5) tal-Avviz Legali 296 tal-2010 li jirrendieh irritu u null, u bla effett fil-ligi. Tastjeni milli tiehu konjizzjoni ulterjuri tieghu u tordna li l-istess appell jigi kancellat minn fuq il-listi, bl-ispejjez jibqghu sopportabbli mis-socjeta` rikorrenti appellanti.

(ft) Edwina Grima

Imhallelf

VERA KOPJA

Franklin Calleja

Deputat Registratur