

## **QORTI TAL-APPELL**

### **IMHALLFIN**

**S.T.O. PRIM IMHALLEF SILVIO CAMILLERI  
ONOR. IMHALLEF TONIO MALLIA  
ONOR. IMHALLEF JOSEPH AZZOPARDI**

**Seduta ta' nhar it-Tlieta 15 ta' Dicembru 2015**

**Numru**

**Citazzjoni Numru: 282/15**

**Capece Construction Limited (C53626)**

**v.**

**Bord ta' Revizjoni dwar il-Kuntratti Pubblici u  
Vaults Company Limited u  
d-Direttur Generali tad-Dipartiment tal-Kuntratti**

**Il-Qorti:**

### **Preliminari;**

Dan hu appell imressaq fis-7 ta' Awwissu 2015, mis-socjeta` Capece Construction Ltd. wara decizjoni datata 20 ta' Lulju, 2015. moghtija mill-Bord ta' Revizjoni dwar Kuntratti Pubblici (minn hawn 'l quddiem imsejjah "il-Bord") fil-kaz referenza ECT 3185/2014 (kaz numru 822).

Dan il-kaz huwa marbut mas-sejha ghall-offerti li hareg id-Direttur Generali tad-Dipartiment tal-Kuntratti ghal “*design and build tender for the restoration and consolidation of Casino Notabile Mdina – using environmentally sound materials and products*”. Ghal dan it-tender applikaw diversi entitajiet, fosthom is-socjeta` Capece Constuction Ltd u s-socjeta` Vaults Co. Ltd, liema socjeta` giet maghzula bhala l-offerent preferut; l-offerta tas-socjeta` Capece Construction Ltd. giet imwarrba ghax ma tissodisfax il-kriterji teknici tas-sejha. Is-socjeta` Capece Construction Ltd. ma qablitz ma’ din id-decizjoni u ressqet appell quddiem l-imsemmi Bord li b’decizjoni tal-20 ta’ Lulju, 2015, cahad l-appell u kkonferma d-decizjoni tad-Direttur Generali tad-Dipartiment tal-Kuntratti. Id-decizjoni tal-Bord hija s-segwenti:

“This Board

“Having noted the Appellant’s objection in terms of the “Reasoned Letter of Objection” dated 18<sup>th</sup> May 2015 where the Appellant had objected to the decision taken by the pertinent Authority, in that:

“a) The Appellant contends that since this tender is a “Design and Build” Tender, the Bidder is allowed to submit proposals which are slightly different from those shown on the plan attached to the Tender Document;

“b) The Appellant maintains that since the spiral staircase and ceiling thereof are to be dismantled and reinstated, there will be structural movement;

“c) The Appellant contends that he had submitted a complete “Bill of Quantities”, in full and does not agree that his offer was considered as being “Administratively and Technically” non compliant.

“Having considered the Contracting Authority’s “Letter of Reply” received on the 30<sup>th</sup> June 2015, in that:

“a) The Contracting Authority maintains that the Appellant’s first and

second contention does not hold water, as the same Contracting Authority must abide by the conditions as dictated in the Tender Document. In this regard, the Appellant did not abide by the drawings and plan as attached to the Tender;

“b) The Contracting Authority contends that the fact that the Appellant Company submitted a complete bill of quantities does not, in any way, qualify the Appellant’s offer as being “Administratively and Technically compliant”. In assessing whether an offer is fully compliant, the Evaluation Committee takes other important factors into account to determine compliance;

“c) The Appellant was fully aware of the parameters by which the tendered works had to be carried out via clarification 3, which was ignored by the same Appellant.

“Reached the following conclusions:

“1. With regards to the Appellant’s first grievance, this Board, after having examined the conditions stipulated in the Tender Document, justifiably opines that although this was a “Design and Build” Tender, the parameters were clearly indicated in the plans’ attached to the Tender Document.

This Board also credibly points out that a “Design and Build” tender does not in any way imply proposed substantial changes by the Appellant to those parameters dictated in the Tender Document. The parameters for the dismantling of the walls were clearly marked and indicated on the “Plan” of the Tender document and were also emphasized in Clarification Number 3, which vividly stated that “The maximum allowable dismantling is that indicated in the Tender Drawings”.

“This Board notes that this Clarification and Confirmation of the Parameters for the Dismantling of the walls, was completely ignored by the Appellant. In this regard, this Board does not uphold the Appellant’s first contention.

“2. With regards to the Appellant’s second grievance, this Board justifiably opines that the Contracting Authority had every right to impose parameters and on the other hand the Appellant Company was in duty bound to abide by the same in the execution of the tendered works. It is evidently clear that the Appellant by ignoring Question 1 of Clarification Note 3 was not compliant with regards to the dismantling of the walls as specified in the Tender Drawings.

“This Board opines that the fact that the spiral staircase and ceiling thereof had to be dismantled just does not provide justification for a change in the parameters for the dismantling of

the walls “outside” the specifications of the Tender Drawings. In this regard, this Board does not uphold the Appellant’s second contention.

“3. With regards to the Appellant’s third grievance, this Board justifiably opines that a “complete bill of quantities” does not, in any credible way, represent an “Adnubustrative and Technical Compliancy” issue. There are other considerations which makes an offer “Administratively and Technically” compliant. In this regard, this Board does not uphold the Appellant’s Third contention.

“In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.”

Is-socjeta` rikorrenti Capece Construction Ltd appellat mid-decizjoni tal-Bord ghax issostni li s-seduta quddiem il-Bord saret f’jum u hin li ma gewx notifikati lilha u, fil-meritu, li l-Bord ghamel hazin meta skwalifikaha ghax hi ipproponiet twaqqieh ta’ hitan mhux indikati fil-pjanti mahruga mas-sejha ghall-offerti; is-socjeta` appellanti tghid li dan ma kienx prekluz.

Wara li semghet it-trattazzjoni tad-difensuri tal-partijiet u rat l-atti kollha tal-kawza, din il-Qorti sejra tghaddi ghas-sentenza taghha.

Ikkonsidrat:

Fil-kuntest tal-ewwel aggravju, ma hemmx ghalfejn li jinghad b’hafna dettal li kull tribunal ghandu jirrispetta r-regola fundamentali li kull parti ghandha jkollha l-opportunita` li ggib il-quddiem il-provi taghha u

taghmel l-osservazzjonijiet pertinenti ghall-kaz. Dan il-principju ta' *audi alteram partem* ma jfissirx, pero`, li l-provi tal-parti inkwistjoni jridu bilfors jinstemghu, izda li dik il-parti tinghata l-opportunita` li tressaq il-provi (ara **Camilleri noe v. Players and Coaches Complaints Board tal-Malta Football Association** deciza mill-Prim' Awla tal-Qorti Civili fit-23 ta' Novembru, 2001).

Isegwi, li din il-Qorti trid tezamina l-*iter* tal-procediment quddiem il-Bord biex jigi determinat jekk is-socjeta` appellanti inghatatx l-opportunita` li ssemmi lehenha. Bhala fatt, jirrizulta li ghas-seduta quddiem il-Bord hadd ghas-socjeta` appellanti ma deher.

Mill-atti tal-kawza jirrizulta dan li gej:

- i. Fit-8 ta' Mejju 2015 id-Dipartiment tal-Kuntratti gharraf lill-kumpannija apellanti li l-offerta taghha ma kinitx teknikament konformi mal-htigijiet tas-sejha u li l-kuntratt pubbliku inkwistjoni kien qieghed jigi rakkomandat li jinghata lill-kumpannija Vaults Co. Limited;
- ii. Permezz ta' ittra datata 18 ta' Mejju 2015 il-kumpannija appellanti kkontestat din id-decizjoni quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubblici;

iii. B'*e.mail* datata 8 ta' Gunju 2015 fil-hin tas-6.06 AM Carmen Vella infurmat lis-Sur Marzio Filippo f'isem Capece Construction Limited fuq l-indirizz elettroniku [mcapece.cc@gmail.com](mailto:mcapece.cc@gmail.com) li l-Bord ta' Revizjoni dwar il-Kuntratti Pubblici kien qieghed jappunta l-oggezzjoni taghha ghas-smigh fis-7 ta' Lulju 2015;

iv. Aktar tard fl-istess jum fil-hin tat-14.41 l-istess Carmen Vella regghet baghtet *e.mail* ohra lis-Sur Marzio Filippo fuq l-istess indirizz elettroniku fejn qaltlu li l-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici kien minhabba cirkostanzi imprevedibbli caqlaq is-smigh tal-kawza ghall-Hamis, 2 ta' Lulju 2015;

v. Dejjem fl-istess jum tat-8 ta' Gunju 2015 izda fil-hin tal-22.25 is-Sur Marzio Filippo kien mill-indirizz elettroniku tieghu [mcapece.cc@gmail.com](mailto:mcapece.cc@gmail.com) ghamel *forward* bir-rimarka "*Whaow*". tal-*e.mail* precedenti ta' Carmen Vella mibghuta fis-6.06 AM lil Josephine Casabene fuq l-indirizz elettroniku [jocasabene.cc@gmail.com](mailto:jocasabene.cc@gmail.com);

vi. Fit-2 ta' Lulju 2015 inzammet is-seduta quddiem il-Bord ta' Revizjoni Dwar il-Kuntratti Pubblici. Skont l-ewwel pagna tas-sentenza tal-Bord ghall-udjenza dehru r-rapprezentanti tal-kumpannija Vaults Co. Limited, tad-Direttorat tar-Restawr u tad-Dipartiment tal-Kuntratti izda hadd ma deher min-naha tal-kumpannija Capese Construction Limited

minkejja li kienu msejjha diversi drabi;

vii. Billi ghac-Chairman tal-Bord ta' Revizjoni dwar il-Kuntratti Pubblici kien jirrizulta li l-kumpannija appellanti kienet mgharrfa bl-appuntament tas-smigh tal-kawza u din naqset milli tattendi ghas-seduta, ic-Chairman iddecieda li jkompli s-seduta fl-assenza taghha u wara dawk prezenti tista' tghid irrimettew ruhhom ghall-atti miktuba, is-seduta ntemmet u l-process mexa ghall-ghoti tas-sentenza;

viii. Is-sentenza tal-Bord ta' Revizjoni dwar il-Kuntratti Pubblici ngheatat fl-20 ta' Lulju 2015;

Minn dawn il-ftit fatti johrog car li l-ilment tal-kumpannija appellanti li hija ma kinietx taf bl-anticipar tas-smigh tas-seduta m'ghandux mis-sewwa. Jekk Carmen Vella baghtet zewg *e.mails* fl-istess jum fis-6.06AM u fit-14.41 fl-istess indirizz elettroniku [mcapece.cc@gmail.com](mailto:mcapece.cc@gmail.com) u Marzio Filippo ghamel *forward* tal-ewwel *e.mail* fl-22.25, allura meta huwa ghadda din l-*e.mail* li l Josephine Casabene huwa seta' jara wkoll it-tieni *e.mail* mibghuta minn Carmen Vella. Tassew meta Marzio Filippo kellu l-*e.mail* tieghu miftuh fl-22.25 huwa seta' jara kemm l-*e.mail* tas-6.06 AM kif ukoll dik tat-14.41 ladarba dawn iz-zewg *e.mails* ghandhom hin li jipprecedi l-22.25. Fi kliem iehor, Marzio Filippo bhalma ra l-ewwel *e.mail* tas-6.06 AM, seta' jara wkoll l-*e.mail* tas-14.41;

Is-socjeta` appellanti ma tghidx li ma ircevitx it-tieni *e.mail tal-14.41*, anzi jidher li, f'xi zmien irceviet l-istess ghax gie esebit minnha stess mar-rikors ta' dan l-appell. Ma hemmx prova li hi irceviet dan l-avviz tard, u l-*e.mail* innifisha hija prova tan-notifika tieghu fil-jum u fil-hin indikat. Kif intqal minn din il-Qorti, Sede Inferjuri, fil-kawza **Vassallo noe v. Direttur tal-Kuntratti** deciza fit-8 ta' Jannar, 2010, hu bizzejjed li l-avviz jintbaghat fl-*e.mail address* li jkun indika dak li ressaq appell quddiem il-Bord. Kif kompliet tghid din il-Qorti:

“Maghdud dan, xorta wahda ma hemmx qbil ma' l-asserzjoni tas-socjeta` appellanti illi hi baqghet ma rcevietx “formalment” il-komunikazzjoni ta' l-avviz mibghut lilha mid-Direttur. Ghall-Qorti, fil-previzjoni tal-precitat Regolament 82(4) hi attestazzjoni sufficjenti tal-fatt tar-ricazzjoni ta' l-avviz d-dikjarazzjoni espressa mis-socjeta` appellanti fl-*e-mail* taghha tad-19 ta' Gunju, 2009 illi dak l-avviz kien twasslilha zgur u fl-*e-mail address* minnha indikat fit-18 ta' Gunju, 2009. Li jfisser, b'interpretazzjoni, illi n-notifikazzjoni tieghu pperfezzjonat ruhha almenu minn din l-ahhar data. Agguntivament, imbaghad, wiehed ma jistax ma jzidx, b'osservazzjoni, illi r-Regolament innifsu ma jahsebx ukoll ghal xi forma sacramentali ghal kif l-avviz ghandu jkun komunikat izda bizzejjed li dan jigi hekk sempliciment imwassal u notifikat;”

(Sottolinear ta' din il-Qorti).

Issa jekk kif x'aktarx gara Marzio Filippo ghamel *forward* tal-ewwel *e.mail* u mhux tat-tieni *e.mail*, allura l-kumpannija appellanti ghandha biss tlum lilha nnifisha talli hadet dan l-izball. Wara kollox wiehed ma jridx jinsa li din l-*e.mail* intbaghtet fit-8 ta' Gunju 2015 u s-seduta quddiem il-Bord ta' Revizjoni dwar il-Kuntratti Pubblici nzammet fit-2 ta' Lulju 2015, jigifieri Mario Filippo kellu zmien bizzejjed biex jerga' jidhol



fl-*e.mail* tieghu u jintebah li huwa kien ircieva dik l-*e.mail* li biha giet anticipata s-seduta tal-Bord ta' Revizjoni dwar il-Kuntratti Pubblici. Jekk Marzio Filippo ma tax kaz jew ma hax hsieb idur l-*e.mails* allura *imputet sibi*. Fi zgur f'dan il-kaz ma jistax jinghad li l-kumpannija appellanti ma kinitx notifikata bl-appuntament rivedut tas-smigh tal-kawza.

Is-socjeta` appellanti indikat l-*e.mail* taghha bhala l-indirizz taghha ghall-fini ta' korrisspondenza, u kellha tiehu hsieb hi li tara l-*e.mails* kollha li jaslulha relolarment. Kif jghid il-Vivante (Trattato di Diritto Commerciale), ovvjament fl-ambjent ta' zmienu,

*“Se egli stesso per fatto proprio p. es, allontanandosi o chiudendo il suo negozio nelle ore in cui giunge la posta, non puo` ricevere l'accettazione nel tempo prefisso, la condizione dell'arrivo in tempo deve ritenersi verificata.”*

Il-kuntest ta' dan it-taghlim seta' kien differenti, izda l-principju jibqa' li fil-kummerc wiehed irid joqghod attent kif jagixxi (ara bhala rifless fuq dan il-kawza **Accountant General v. Vella noe**, deciza mill-Qorti tal-Kummerc fis-27 ta' Lulju, 1989.

Ifisser li s-socjeta` appellanti ma tistax tilmenta li ma nstemghetx meta l-avviz tas-smigh intbaghat lilha u hi kienet jew setghet tkun taf bih. Kien nuqqas taghha jekk ma ratx l-avviz mibghut lilha fl-indirizz desinjat mill-parti, kif kien imnizzel fit-*Tender Dokument*.

Din il-Qorti izzid, kif osservat din il-Qorti fil-kawza **Spiteri v. Muscat et** deciza fis-6 ta' Ottubru, 2000:

*“hi wkoll zbaljata s-sottomissjoni tal-appellanti illi l-principju audi alteram partem kien wiehed li jittraxxendi r-regoli ta' procedura ... u li l-partijiet kienu tenuti u obbligati li josservaw.”*

L-ewwel aggravju qieghed ghalhekk jigi michud.

Fil-kuntest tat-tieni aggravju, din il-Qorti, fl-ewwel lok, tirribadixxi li bhala qorti ta' revizjoni, ma hux mistenni li tezamina fid-dettal kwistjonijiet ta' natura teknika, li mhux ir-rwol taghha.

Issa f'dan il-kaz, kif wiehed jista' josserva minn qari tad-dokument tas-sejha, l-ghan warajha kien li jigi ristawrat u konsolidat Casino Notabile fl-Imdina. Ghalkemm skont is-sejha l-offerent kien igawdi minn certu liberta` fejn ghandu x'jaqsam ma' metodologija, madankollu l-istess offerent skont pagna 23 tad-dokument tas-sejha kien marbut li jhares lejn Annex 1 li kien fih *Restoration Method statements for works* u *Ground investigation Work Report*.

Barra minn hekk id-dokument tas-sejha f'pagna 106 kien jinkludi mieghu diversi pjanti fosthom *proposed plan* u *proposed elevations*. Dejjem skont din il-pagna 106, *“These documents are considered to form an*

*integral part of this Tender Document and for the understanding of the tender requirements*".

Sinifikanti li dawn il-pjanti kienu juru indikat bl-isfar liema kienu dawk il-partijiet li riedu jigu mwaqqa' u mibnija mill-gdid. Naturalment wiehed kellu jifhem li dawk il-partijiet l-oħra li ma kienux indikati hekk bl-isfar ma setghux jigu demoliti.

L-ottemperanza ma' dawn il-pjanti proposti kienet importanti hafna għaliex dawn kienu jiformaw parti mill-applikazzjoni ta' żvilupp li giet sottomessa mill-Gvern għall-approvazzjoni tal-MEPA u għalhekk ma setax ikun hemm caqliq minnha.

Gara issa li waqt li kien għaddej il-perjodu għat-tfigh tal-offerti wiehed mill-offerenti prospettivi għamel din il-mistoqsija, "*Can further parts of the Casino structure (in particular section G-H-A) be dismantled in addition to those proposed for demolition in the tender drawings, in order to facilitate consolidation works?*" Din it-talba għall-kjarifika mill-operatur interessat kienet saret *ai termini* tal-**Artikolu 6.1** tal-**General Rules Governing Tenders**.

Fit-23 ta' Jannar, 2015, id-Direttur tal-Kuntratti b'harsien mal-**Artikolu 6.2** tal-**General Rules Governing Tenders**, kien ippubblika *clarification*

*note* numru 3 li fiha huwa kien wiegeb ghal din id-domanda billi qal li, “*The maximum allowable dismantling is that indicated in the tender drawings*”. Jigifieri jekk kien hemm xi dubju b’din in-nota gie kkjarifikat li setghu jitnehhew biss daww il-hitan li fil-pjanti kienu mmarkati li setghu jitnehhew. Il-hitan l-oħra li fil-pjanti ma kienux immarkatai li setghu jitwaqqghu qallura kellhom jibqghu hemm.

Din il-*clarification note* giet ippubblikata fuq is-sit elettroniku [www.etenders.gov.mt](http://www.etenders.gov.mt) fit-taqsimha dedikata ghal din is-sejha partikolari. Malli giet ippubblikata l-*clarification note* skont l-**Artikolu 6.2**, din “*constitute an integral part of the tender documentation and it is the responsibility of tenderers to visit this website and be aware of the latest information published online prior to submitting their Tender*”.

Mhux hekk biss l-**Artikolu 1.1** f’pagna 7 tad-dokument tas-sejha kien jghid ukoll li, “*In submitting a tender, the tenderer accepts in full and in its entirety, the content of this tender document, including subsequent Clarifications issued by the Central Government Authority/Contracting Authority (CGA/CA), whatever his own corresponding conditions may be, which he hereby waives*”.

Issa meta giet evalwata u meqjusa l-offerta tal-kumpannija appellanti irrizulta li din il-kumpannija kienet qeghda tipproponi li twaqqqa’ u terga’

tibni hajt li skont il-pjanti annessi mad-dokument tas-sejha ma kienx immarkat ghad-demolizzjoni. Fiha wiehed jista' jara li hija kienet qed tipproponi li zzarma partijiet minn sections G-H-A li skont il-pjanti annessi mad-dokument tas-sejha ma kienux indikati ghad-demolizzjoni.

Ghalhekk billi wiehed mill-ghanijiet tas-sejha kienu li certu partijiet ma jintmessux, tant li din giet enfasizzata anke fil-*Clarification Note 3*, u billi l-offerta moghtija mill-kumpanija appellanti ma kinitx ser tassikura illi jigu prezervati dawn il-partijiet, il-kumitat tal-evalwazzjoni gustament iddecieda li jiskwalifika l-offerta sottomessa mill-kumpanija appellanti.

Id-dokumenti annessi mas-sejha ghall-offerti kienu jindikaw b'mod car liema hitan setghu jitwaqqghu, bir-riferenza ovvja li l-ohrajn ma setghux jitwaqqghu, punt li gie klarifikat bin-*Note 3* ikkommunikata lill-pubbliku bl-istess mod li kienet is-sejha. Dak li hu importanti, biex jinzamm l-ispirtu ta' trasparenza, huwa (i) li l-kandidati kollha ghall-kuntratt ikollhom l-istess opportunitajiet, inkluz fid-dritt taghhom li jaghmlu l-mistoqsijiet, (ii) li dawn il-mistoqsijiet jigu ippubblikati, u kif ukoll (iii) li r-risposti moghtija u l-eventwali tibdiliet jew emendi li jigu inkorporati fid-dokumentazzjoni jsiru fil-miftuh u jkunu maghrufa lill-imsemmija kandidati. B'hekk ikun hemm trasparenza wkoll fil-proceduri u fil-kriterji tal-evalwazzjoni u tal-aggudikazzjoni; dan hu proprju dak li gara f'dan il-kaz. Is-sisien legali ta' din il-kjarifika f'dani l-kaz, kien johrog mit-termini

stess tas-sejha, specifikament mill-**Artikolu 6** li kien jippermetti ghal *explanation/clarification notes* tat-tender documents. Mhux hekk biss, izda kif gia` intwera, din l-istess klawsola fil-paragrafu 2 kienet taghmilha cara li, "*Clarification notes will constitute an integral part of the tender documentation, and it is the responsibility of tenderers to visit this website and be aware of the latest information published online prior to submitting their Tender*".

Lanqas jista' jinghad li, biex isir ix-xoghol, bilfors li jridu jitwaqqghu hitan ohrajn, kif tissottometti s-socjeta` appellanti. Fil-fatt, kien hemm kumpaniji ohra li applikaw ghall-kuntratt u qaghd u precizament ghall-konsiderazzjonijiet mitluba fis-sejha. L-offerent preferut, fil-fatt, accetta li jwaqqa' biss dawk il-hitan indikati fil-pjanti annessi mas-sejha, u jekk is-socjeta` Capece Construction ma kienetx kapaci taghmel ix-xoghol minghajr ma twaqqga' hitan ohra, ma kellhiex tapplika ghall-kuntratt.

Fil-kuntest tad-dokumenti annessi mar-rikors tal-appell, li taghhom qed jintalab l-isfilz, din il-Qorti ma tqisx l-istess dokumenti bhala relevanti. Darba s-sejha kienet tindika b'mod car liema hitan setghu jitwaqqghu, hija inutili l-opinjoni tal-perit tas-socjeta` appellanti li jkun desiderabbli jew utili li jitwaqqghu hitan ohra. Is-sejha kienet cara meta tghid li "*the maximum allowable dismantling is that indicated in the tender*

*documents*”, u l-offerta tas-socjeta` appellanti li kienet tindika li kien se jitwaqqa’ aktar minn dak permess, kellha, kif giet, tigi skwalifikata.

Ilment iehor tal-kumpannija appellanti huwa li l-Bord ta’ Revizjoni dwar il-Kuntratti Pubblici naqas milli jqis li s-sejha ghall-offerti kienet wahda ta’ *design and build*. Huwa minnu li kuntratt ta’ din ix-xejra jaghti certu liberta` lill-offerent imma b’daqshekk dan ma jfissirx lil-kumpannija appellanti ma kellhiex thares l-istruzzjonijiet minimi li kien hemm indikati fis-sejha. F’dan il-kaz is-sejha kienet qed tfittex proposti ta’ disinn li jinvolvu limitu stabbilit u specificat ta’ demolizzjoni. Ladarba l-proposta tal-kumpannija appellanti harget ’il barra mill-parametri ta’ dawn il-limiti hija ma tistax tinheba wara l-pretest li s-sejha kienet wahda tat-tip ta’ *design and build*. Anke jekk kif tghid il-kumpannija appellanti fir-rikors tal-appell taghha l-proposta taghha kienet l-orhos wahda, haga li fil-verita` mhijjex, pero` xorta jibqa’ l-fatt li dak li proponiet ma kienx dak li ried id-Direttorat tar-Restawr. Ghalhekk anke dan il-parti tal-ilment ghandu jigi skartat.

Fil-kuntest tal-ilment tas-socjeta` appellanti li hi messet giet mitluba ticcara jew issewwi l-offerta taghha, gia` inghad minn din il-Qorti fil-kaz **Steelshape Ltd. v. Direttur tal-Kuntratti et**, deciza fis-7 ta’ Awwissu, 2013, li “*Dak li offerent ghandu jghid, ghandu jghidu mal-offerta u mhux jippretendi li jkun mistoqsi d-dettalji tal-modus operandi tieghu.*”

Il-principju ta' trasparenza u ugwaljanza ma jippermettix li xi offerent jigi vantaggjat billi jinghata l-fakolta` jispjega jew ibiddel l-offerta tieghu.

Ghaldaqstant ghar-ragunijiet premissi, tidisponi mill-appell ta' Capece Construction Ltd. billi tichad l-istess u tikkonferma d-decizjoni li ta l-Bord ta' Revizjoni dwar il-kuntratti pubblici fl-20 ta' Lulju 2015, bl-ispejjez jithallsu mis-socjeta` rikorrenti appellanti.

Silvio Camilleri  
Prim Imhallef

Tonio Mallia  
Imhallef

Joseph Azzopardi  
Imhallef

Deputat Registratur  
df