Computer Interface Singapore Ltd v Compaq Computer Asia Pte Ltd
[2003] SGHC 239

Case Number : Suit 574/2002

Decision Date : 15 October 2003

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Harpal Singh and L Devadason (Harpal Mahtani Partnership)for the plaintiffs; Philip Tay and Chia Song Yeow (Rajah & Tann) for both defendants

Parties : Computer Interface Singapore Ltd — Compaq Computer Asia Pte Ltd

Contract – Formation – Whether binding contract entered into between parties.

1 Reuters Singapore Pte Ltd ("Reuters Singapore") had, prior to 1993, a technical division within it which provided field support services to customers subscribing to Reuters information services. These field services comprised the installing, servicing, relocating, recovering and maintaining the hardware and software installed by Reuters Singapore at the offices of its customers. In 1993, Reuters Singapore decided to outsource the provision of such field services. As a result its field services division had to be closed. Some employees from within that division grouped together and incorporated a company – Computer Interface Singapore Pte Ltd ("CIS") – to provide those services from outside. From that time onwards CIS has been providing field services to Reuters Singapore under consecutive contracts of between 2 and 3 years duration. The last such contract was for a period of 2 years commencing 30 June 2000. One Bala Supramaniam ("Bala") was the Managing Director of CIS.

2 In December 1999, as required under the terms of its contract, CIS gave notice to Reuters Singapore of its willingness to negotiate the renewal of the contract but was informed by Reuters Singapore that it had received a directive from its Head Office in London that in order to save costs, tenders should be called for the provision of such services. Thereafter, Reuters Singapore invited five companies – CIS, IBM, Siemens, Gentronics and Compaq Computer Asia Pte Ltd ("Compaq"), the defendants in this action – to bid for the provision of field services for a period of 3 years with effect from 1 July 2000 and formal tender documents were sent to these companies. The Director of Compaq in charge of this matter was Lawrence Mok ("Mok").

3 Reuters Singapore was anxious that its services to its customers should not suffer any disruption by any change in the service provider and therefore requested the five companies to explore possibilities of working together with CIS in the event their tender was accepted. Compaq took up this request. Mok had several discussions with Bala on the possibilities of co-operation. Amongst the alternatives discussed were: (a) Compaq making the bid and, if successful, sub-contracting to Reuters Singapore; (b) Compaq and CIS submitting a joint bid; and (c) both Compaq and CIS submitting separate bids and whoever is successful consider entering into a sub-contract with the other in order to capitalise on their respective capacities in different areas of operation. These discussions did not result in any agreement and it was decided that Compaq and CIS would bid separately.

4 After the tenders had been received, Reuters Singapore called in CIS and Compaq and informed them that they were the two lowest tenderers and asked them to re-submit their bids as their quotes were still too high. Both CIS and Compaq complied with this request and submitted fresh bids.

5 It turned out that Compaq submitted a bid lower than CIS. Reuters Singapore, however, was

hesitant about awarding the tender to Compaq as Reuters Singapore had misgivings about the ability of Compaq to provide the field services as efficiently as CIS had been doing. Dennis Lim ("Dennis"), the Managing Director of Reuters Singapore, communicated this misgiving to Mok and asked Compaq to do a presentation detailing the manner in which Compaq would carry out the services.

6 At the presentation made on 16 May 2000, one of the options (Option 2) suggested by Compaq was that Compaq would provide the services in conjunction with CIS. Option 2 attracted the interest of Reuters Singapore and on 18 May 2000 Reuters Singapore issued a "Conditional Letter of Intent" stating that Compaq would be awarded the field services contract with effect from 1 July 2000 provided Compaq met the following conditions:

(a) Compaq will work with CIS as proposed under Option 2.

(b) Compaq will, within 5 working days (19 – 25 May 2000), finalise the Compaq/CIS partnership.

(c) By 26 May 2000, Compaq would give Reuters Singapore a document detailing the partnership arrangement with CIS with CIS signature on it.

(d) A 3-party (Compaq/CIS/Reuters Singapore) meeting was to be held not later than 29 May 2000.

The Conditional Letter of Intent ended on the note that Reuters Singapore, in deciding whether to award the contract to Compaq or otherwise, will assess the proposal as a whole.

7 Compaq forwarded the Conditional Letter of Intent to CIS and intensive discussions ensued between Compaq and CIS as to how the two companies could work together. On 26 May 2000 – the day stipulated in the Conditional Letter of Intent – Compaq and CIS signed a Memorandum of Understanding ("MOU") and Compaq forwarded that MOU to Reuters Singapore. The MOU envisaged that CIS will be a sub-contractor and not a partner or agent of Compaq in the provision of the field services. Recital 4 of the MOU stated that "a formal services sub-contract will be entered into between CIS and Compaq within a reasonable period of time which shall not be more than 30 days from the date of signing of this MOU".

8 The 30-day stipulation in the Recital of the MOU for the contract between Compaq and CIS to be concluded was, no doubt, necessitated by the fact that Compaq would have to commence providing its services to Reuters Singapore by 1 July 2000: it would therefore be important to both Compaq and CIS have the sub-contract in place by then.

9 The MOU (in an attachment) contained, inter alia, the following clauses:

1. A subcontract agreement will be entered into with CIS for providing services of installation and maintenance. The Terms and conditions will be *back to back* depending on Reuter's agreement with Compaq. Price to be given to CIS will be determined based on further negotiation between Compaq and CIS. CIS will give Compaq a formal quote for the work to be done which shall not be more than the amount quoted by CIS to Reuters.

…

5. The subcontract *agreement will run for 3 years* and is cancelable at the option of Compaq if the services provided by CIS are not in line with generally accepted levels of service indicated by

Reuters in the Contract or not as per the subcontract agreement entered into with Compaq. Any notice for cancellation will give detailed reasoning for cancellation and cancellation would be effective only after 60 days from the date of giving the notice. [Emphasis added]

It was clear from the MOU and its attachments that it was, from the beginning, envisaged that the sub-contract term would be for a term of 3 years and that its terms would be "back-to-back" with the terms of the main contract between Compaq and Reuters Singapore. It was also clear that the parties were envisaged that this 3-year sub-contract was not to be terminated except for cause.

10 As required in the Conditional Letter of Intent, a meeting was held on 29 May 2000 at the office of Reuters Singapore between Reuters Singapore, Compaq and CIS for Reuters Singapore to decide whether to award the contract to Compaq. Dennis told the court that he noted from cll 1 and 5 of the MOU (which are quoted above) that Compaq would have a back-to-back agreement with CIS for the provision of the field services for the duration of Compaq's contract with Reuters Singapore and this satisfied him that Compaq would be able to provide the necessary level of services that Reuters Singapore expected. He was therefore prepared to accept the tender of Compaq. Bala, however, was not at the meeting and Dennis did not want to make a final decision until he was sure that Bala was satisfied with the arrangement. Dennis therefore re-scheduled the meeting to enable Bala to attend.

11 At the re-scheduled meeting held in early June 2000, Dennis sought confirmation from Bala that CIS would perform the field services as Compaq's sub-contractors on the terms contained in the MOU. Upon Bala giving this confirmation, Dennis informed Compaq that their tender was accepted. Upon such acceptance the terms contained in the tender submitted by Compaq would constitute the contract (the main contact) between Compaq and CIS. The formal contract between the two was signed on 13 July 2000, about 2 weeks after CIS accepted the LOA.

12 The MOU called for the sub-contract between Compaq and CIS to be entered into within 30 days of the MOU. On 30 June 2000 – the last day of the existing CIS field services contract with Reuters Singapore – Compaq issued to CIS a document headed "Letter of Award" for acceptance by CIS. Attached to the Letter of Award ("LOA") were various schedules, taken mainly from the tender documents detailing, inter alia, the services to be rendered, the charges payable and the terms of the engagement of CIS. The LOA reflected the terms that had been agreed upon and so Bala signed the acceptance of the LOA by CIS at the space provided.

13 Confident that the grant of the LOA was sufficient evidence that the main terms of the sub-contract had been agreed, CIS, from 1 July 2000 onwards, continued to provide the field services to the customers of Reuters Singapore on behalf of Compaq. It is interesting to note that even after Compaq became the service provider of Reuters Singapore, Reuters Singapore continued to send its work orders for field services work – as it had for the past several years – to CIS and CIS carried out the work requested. As CIS was carrying out these services on behalf of Compaq, CIS invoiced Compaq for the services in accordance with the payment terms set out in the LOA. This state of affairs continued for about 18 months.

14 It would appear that at about the time that Compaq and CIS were having the discussions referred to above, negotiations were going on in London between the head offices of Compaq and Reuters – negotiations in which Compaq in Singapore and Reuters in Singapore played no role – with a view to entering into a framework agreement whose provisions would, as far as possible, apply to any service contract that any Compaq company may secure with any Reuters company anywhere in the world. These negotiations were successfully concluded and a Framework Agreement was signed in London on 1 July 2000 – one month after Compaq's tender for the Reuters Singapore contract had

been accepted by Compaq.

15 The London negotiations did not feature in the discussions held between Compaq, CIS and Reuters Singapore in connection with the Reuters Singapore tender exercise. It was not alleged, on behalf of Compaq, that CIS had been put on notice about the impending Framework Agreement and the implications, if any, that that Agreement, if entered into, may have on any agreement that Compaq may enter into with CIS.

16 The work relationship between CIS and Compaq when CIS started providing field services to Reuters Singapore on behalf of Compaq was fairly smooth. Compaq duly paid all the invoices from CIS in accordance with the rates contained in the schedule to the LOA and even made an advance payment of $210,000 to CIS towards those invoices. Problems only began to surface many months on.

17 The contents of the LOA constitute a pivotal part of CIS claim and Compaq's defence. It will therefore be useful to set out the LOA in full:

> Dear Mr Supramaniam
>
> LETTER OF AWARD ("LOA")
>
> 1 It is our pleasure to hereby confirm that, *subject to final terms and conditions being agreed* between Compaq Computer Asia Pte Ltd ("COMPAQ") and Computer Interface Singapore Pte Ltd ("CIS"), we have *selected CIS to supply the installation, maintenance and related services* for the Reuters Field Outsourcing project in Singapore.
>
> 2 *The attached schedules will form part of the Agreement. By accepting this LOA, CIS agrees to commence the project on the terms stated on the schedules*. Both parties agree that they will take all reasonable steps to ensure that the Agreement is negotiated and signed on or before Friday 14th July 2000. If the Agreement has not been entered into by 17th July 2000, a new target date for the signing of the Agreement will then be mutually agreed between the parties.
>
> 3 *The Agreement shall take effect on 1st July 2000 and subject to any ability to terminate it under the Agreement shall expire 3 years after such date*.
>
> 4 Both parties also agree that the operations will be reviewed six months from 1 July 2000 for better control in economic of scale and improvement in productivity, which cost could be saved and passed on to Compaq.
>
> 5 We would like to take this opportunity to thank you and your staff for the keen support and co-operation that you have extended to us *during the negotiations*. We look forward to the establishment of a mutually beneficial relationship.
>
> Yours faithfully Accepted by
>
> COMPAQ COMPUTER COMPUTER INTERFACE
> ASIA PTE LTD SINGAPORE PTE LTD

Sd: Lawrence Mok Sd: Bala Supramaniam

Director, Customer Services Managing Director

30 June 2000 30 June 2000

[Emphasis added]

The schedules to the LOA were essentially extracts from the tender documents. This was only to be expected as, upon acceptance of its tender by Reuters Singapore, the terms of the tender documents submitted by Compaq became the contract between Compaq and Reuters Singapore (the main contract) and the sub-contract with CIS, at least as per the understanding contained in the MOU, was to be "back-to-back" with the main contract. The prices to be paid to CIS for its services and which were incorporated in the schedule to the LOA were the prices that CIS had quoted in its revised bid to Reuters Singapore.

18 The LOA in cl 1 made reference to "final terms" being agreed and cl 2 provided that the parties would take all reasonable steps to ensure that the agreement containing the final terms would be signed by 14 July 2000. The clause also provided that if the agreement was not signed by 17 July 2000 a new target date for the signing would be mutually agreed. The task of drafting that agreement was undertaken by Compaq: Compaq, being a large organisation with a legal division to attend to such matters. However, Compaq ignored those time lines and left the drafting of that document in abeyance.

19 To co-ordinate and monitor the services provided to Reuters Singapore by Compaq, frequent tripartite management meetings were held between Reuters Singapore, Compaq and CIS. The minutes of such a meeting held on 1 August 2000 show that Bala requested Compaq for the draft agreement and it was recorded that the draft would be provided by 11 August 2000. The minutes of a meeting held on 10 August 2000 reflect that Bala again made the same request and it was represented that the draft would be ready by 18 August 2000.

20 A draft agreement was eventually e-mailed to Bala by Janet Heng ("Janet"), the Consumer Service Accounts Manager of Compaq, in late August/early September 2000. It was a lengthy document based on Compaq's standard re-seller agreement: a document which Bala considered was totally inappropriate to serve as a basis for a service and maintenance contract. Bala made extensive deletions, variations and suggestions to try and make the draft more appropriate for the purpose in hand and e-mailed it back to Janet with his comments. Bala also sent to Janet the previous Reuters Singapore/CIS field services contract as a more appropriate model to follow. The first draft sent by Janet to Bala envisaged a 3-year agreement between Compaq and CIS.

21 There was no response for a long time to Bala's e-mail. The minutes of the Management Meeting on 27 October 2000 show that Bala again raised the matter of the draft. The response, as stated in the minutes, was: "Waiting for JH [Janet] to redraft". The same formula "Waiting for JH to redraft" appear in the minutes of the meetings held on 14 November 2000 and 7 December 2000. In the minutes of 7 December 2000 it was noted: "The contract should be available on the week of Dec 11".

22 Sometime after 11 December 2000, Janet e-mailed Bala a draft containing various modifications from the previous draft. Bala had some discussions with Janet on the draft but, on 13

February 2001, Janet informed him that with immediate effect one Choo Choon Teck ("Choo") would deal with Bala on the draft. Bala never heard from Choo.

23 I noted that Mok who – in order to comply with Reuters Singapore requirements in the Letter of Intent issued to Compaq – had been very active in getting the co-operation of CIS, took a back-seat after CIS signed the LOA. The drafting of the agreement (which was to include the final terms that were agreed) was left to junior officers in Compaq and it was obvious from the evidence of Janet, Choo and Mok, that the signing of the sub-contract was not a matter of any urgency to Compaq.

24 This lack of enthusiasm on the part of Compaq to draft the agreement could be an indication that Compaq was satisfied that there was already a binding contract between it and CIS and therefore saw no urgent need to sign a formal agreement. It could also be an indication that it suited Compaq – in the event Compaq decided to reduce the volume of work to be performed by CIS or even to get rid of CIS altogether – not to entrench CIS position with a further signed contract.

25 On 16 January 2001, whilst the discussions with Janet on her revised draft were going on, Compaq sent a somewhat curt e-mail to Bala stating:

> … this is to inform you that we will be doing some of the installation as and when necessary. This will cover all the product range of Reuters.

This e-mail was a precursor to other steps taken by Compaq to whittle down CIS involvement in the Reuters Singapore project. Bala told the court that he was upset by this e-mail. He was upset because Compaq, without any prior discussion, was going to take over some of the work that had been sub-contracted to CIS. Bala considered this directive to be contrary to the agreement that all field services would, for the duration of the 3 years, be performed by CIS.

26 Bala responded immediately to Compaq. In his e-mail to Compaq, Bala stated:

> this is not the way to conduct business, I was told by lawrence that all reuters work will be given to us until further notice if there is change of plan please inform us accordingly so that we can cut our manpower requirement. it is no use having staff sitting here doing nothing if you are going to takeover the reuter work. pls get your act togather (sic) and let me know exactly what you want to do so that we can plan our resources accordingly.

I noted that Bala in that e-mail had not, in terms, taken the position that this reduction of businesses of CIS was a breach of Compaq's sub-contract with CIS. Bala's explanation for this was that CIS, as a small company dependent almost entirely on the Reuters business for its survival, was in no position to confront Compaq and therefore had to be as accommodating as possible.

27 As noted earlier, Reuters Singapore had, from 1 July 2000, been sending all their work orders direct to CIS. Soon after the exchange of the above e-mails, Compaq made arrangements with Reuters Singapore for all work orders to be sent in the first place to Compaq. Bala told the court that by instituting this change Compaq was able to gradually take away work that would otherwise have been performed by CIS.

28 From about August 2001, Compaq began to press CIS to reduce the prices at which CIS was rendering its field services. Not getting the desired reduction, Venkat Eswaran, the Finance and Operations Manager of Compaq, on 25 October 2001, wrote to CIS asking CIS to review its installation prices and stating that Compaq was: "expecting a downward adjustment in the installation prices".

29 CIS response to Compaq, by letter dated 26 November 2001, was as follows:

> In our numerous past meetings and discussions, we have at length, been very open and detailed with the computation of our installation costs to your colleagues. This fact stems well even before Compaq and us agreed to collaborate in providing a back-to-back outsourcing agreement to Reuters. The cost that you have today were further adjusted and importantly, accepted by your colleagues more then (sic) eighteen months ago.
>
> Thus far, the call for us to reduce our installation prices to you comes as a surprise, considering what was told to us at that time. Additionally, the past year also, saw some aspects of the back-to-back agreement for Reuters installations ignored, as Compaq have taken anything from 20% to more than 50% of the work that were available.
>
> It is therefore with great difficulty that we have to revert to you that we are unable to accede to your requirement at this point in time. We are however, more than ready, as offered in previous meetings with your colleagues, to help you to renegotiate with Reuters on some of the installation prices, to bring it to some degree of parity. Thank you and best regards.

There was no direct response from Compaq to this letter. CIS continued to invoice Compaq on the basis of the rates originally agreed to and the invoices were paid by Compaq.

30 By letter dated 18 December 2001 Compaq informed CIS that Compaq had, at the request of Reuters Singapore, agreed to make certain changes to the services that Compaq was providing to Reuters Singapore. The letter went on to say:

> For the past year and a half, you have been providing services to Reuters on our behalf. This was done notwithstanding the fact that CIS and Compaq have not signed any agreement for these services although we recognize that a draft agreement was discussed. However, given the request from Reuters and our continued working relationship with CIS, we would like to discuss with yourselves the following changes to the operational model. In the new model, Compaq will:
>
> 1. Use existing CIS resources as appropriate and directly manage these resources,
> 2. Set up a field office and will consider sub-leasing existing facilities from CIS as appropriate, and
> 3. Look to revising the financial and commercial terms with CIS to reflect the new requirement.
>
> Reuters have given us a deadline to fully implement the new model. As time is of the essence we would like to discuss and conclude with you by 24th December 2001 the role that CIS can participate in the new model, the resources and facilities that can be offered to Compaq and the financial and commercial terms of the arrangement.

The proposed alterations to the service model proposed by Compaq in their letter of 18 December 2001 were extensive and CIS felt that the time dead-line of 24 December 2001 was unrealistically short.

31 On 24 December 2001, CIS wrote to Compaq asking for more time to consider the proposal. In this letter CIS stated:

> Our understanding from our past interaction with COMPAQ personnel (Ramaraj, Lawrence, Srikant etc.) has been that our contract with you will stay status quo for three years based on a "back-to-back" outsourced agreement reached with REUTERS SINGAPORE. While no contract has been signed, given that COMPAQ did not replace the person that left, who was responsible for finalizing the terms and conditions, we have continued to provide support based on trust and sincerity. It

is apparent and unfortunate that this has not be enough to see through the existing agreement, albeit, the signed MOU issued by COMPAQ.

We hope you could set a more realistic time-line so that all parties concerned can agree a more accurate set of costing/financials without resorting to any drop in service levels.

Thank you for you understanding and support and "Merry Christmas".

Compaq's response to this letter – given that same evening by one Job Chan – was curt: Compaq was prepared to extend the time only to 9am on 26 December 2001. The letter explicitly stated that there would be no further extensions of time and that Compaq will not accept any quotation beyond 9am on 26 December 2001.

32 On 26 December 2001, Bala wrote to Mok explaining why CIS could not accept the new service model. He said:

This letter is in response to Mr Job Chan's email of 24 December 2001 at 6.36 p.m.

We refer to your letter dated 30 June 2000 and wish to reiterate that we have already forwarded the draft agreement with proposed amendments on our part and there was no response from your side. Hence, the agreement was not signed.

Despite this, for the last one and a half years both parties have been providing Reuters with the necessary services jointly. It was a clear understanding of the parties that there was to be mutual provision of services jointly and it was also our understanding that Reuters Singapore had imposed the condition that although Compaq has a direct contract with them, Compaq has to work jointly with us to provide these services.

However, on the 18 December 2001, we were surprised and astonished to receive a letter from Mr Lawrence Mok which in a nutshell clearly stipulates that the joint venture agreement to provide services to Reuters is no longer to continue to be valid, and that you are to provide direct management and operational control and complete contact with Reuters. This will reduce our service to that of a mere subcontractor. You are aware that we will not be able to work on this basis as it will lead to substantial financial losses for us and not to mention that we will not have direct management, operation and control of the services provided to Reuters. In substance, no partnership or joint co-operation exists between Compaq and Computer Interface based on this new delivery model.

Finally, if we cannot sit and negotiate an agreement which is mutually and commercially beneficial to both of us, as was the arrangement previously mentioned in the MOU, i.e. based on joint co-operation and partnership, we are not in a position to continue on the new model. By your new model as per your letter dated 18/12/01, you are seeking unilaterally imposed terms and conditions, which are not commercial viable to us. If you insist on the terms in your letter dated 18/12/01, we have no alternative but to seek legal redress.

Compaq's response to this letter was to terminate, with immediate effect, its "arrangement" with CIS.

33 The letter of termination was dated 28 December 2001 and it was signed by Mok. It read:

We refer to our letter dated 18 December 2001 and our subsequent meetings and telephone conversations. We note that in you letter of 26 December 2001 you do not agree to the new

service delivery model required by Reuters. We previously advised that time is of the essence and the need to finalize the new arrangements with Computer Interface Singapore Pte Ltd ("CIS") by 24 December 2001 and in subsequent communications with you this was moved to 26 December 2001. This time has now passed.

We regret to inform you that *the arrangement between CIS and Compaq is terminated with immediate effect* and we will move to implement the new model for Reuters without CIS' participation.

We are still open to your participation in a suitable manner, based on the new service delivery model required by Reuters, should you revert to us by 5 January 2002. [Emphasis added]

Bala testified that he found it "odd" that Compaq, having refused to accept any quotation from CIS after 9am on 26 December 2001, should now invite CIS to discuss further. I do not see that invitation as "odd". What Compaq was doing by this letter was terminating the (existing) "arrangement" between Compaq and CIS and seeking a fresh agreement with CIS.

34 On receiving the letter of termination, Bala got in touch with Les Clemenson ("Clemenson") who had taken over from Dennis as the Managing Director of Reuters Singapore. Bala learnt from Clemenson that while it was true that Reuters Singapore was seeking to re-negotiate its contract with Compaq, Reuters Singapore had not required Compaq to re-negotiate its arrangements with CIS. Soon after this conversation with Clemenson, CIS instructed its solicitors, Harpal Mahtani Partnership ("HMP"), to respond to Compaq's letter of termination of 28 December 2001.

35 HMP wrote to Compaq on 2 January 2002 and in that letter stated:

Our clients' instructions are as follows:

1. our client have made their position very clear to you in their letter of 26 December 2001, i.e. that it would not be commercially liable (sic) for them to continue in joint corporation with you on the new service delivery model, even if the same is imposed by Reuters;

2. that the new service delivery model is not being imposed by Reuters;

3. if you still insist on the new service delivery model which you are seeking to impose unilateral (sic) on our clients and which is not agreeable to them, your notice to terminate our clients' contract with immediate effect after 1½ years is not valid. Our clients have not breached the agreement and further they have engaged professional and other staff on a three (3) years contract pursuant to the letter of award dated 30 June 2000; and

4. that our clients are entitled to full compensation of 1½ years as the agreement of joint corporation was for a period of three (3) years.

Our clients further instructs us to reiterate that they are prepared to continue to provide services in joint corporation with you, but not on the new service delivery model.

It is clear from the last paragraph of this letter that CIS was, even at this stage, keen to continue providing field services to Reuters Singapore but was not prepared to accept the variations now being proposed by Compaq.

36 According to Bala, Compaq had, by the time it issued the letter of termination, recruited

sufficient staff strength to provide the requisite services to Reuters Singapore without the assistance of CIS. Nevertheless, Compaq continued to pass some work orders on to CIS. CIS could have refused to handle these work orders but the management of CIS – who, according to Bala, still had strong loyalty to Reuters Singapore – did not want to cause difficulties to Reuters and so continued to carry out the work orders in spite of the letter of termination.

37 On 18 January 2002, Clemenson, followed up on his discussions with Bala and wrote to CIS as follows:

> Following on from our telephone discussion last week I have as I promised reviewed the situation from the Reuters perspective which included me meeting with Compaq's senior management yesterday.
>
> Reuters has a contract with Compaq for the provision of services in Singapore and how Compaq deliver their contractual obligations is outside of Reuters control. When we signed with them, we made it clear that we believed Reuters interest would be best served by them having a back to back arrangement with yourself.
>
> After 18 months of the contract period we, for our own business reasons elected to enter fresh negotiations with Compaq. This forms part of a global strategic review of field services outsourcing arrangements in the AP region. We decided to do this because of market conditions and also because our global sourcing programme required that we reconsider some of the ways we have been doing this locally to bring them in line with our global best practices.
>
> Reuters has made no suggestions to Compaq to renegotiate the arrangement with CIS nor for your company to be removed as their subcontractor. However in order to meet the new requirements we placed on them it would seem from what I have been told by them and yourself that Compaq wished to enter into fresh negotiations with you.
>
> It is not really for Reuters to comment on the processes or discussions that have taken place between you. When we spoke you told me that you thought Compaq were being unreasonable and their actions would lead to CIS having major financial difficulties.
>
> My concern is to ensure that Reuters customers receive the service level we wish to provide them. To this end it remains in our interest to ensure there is continuity of service provision as the Compaq and CIS relationship resolves itself.
>
> Compaq have given me their assurance that they are negotiating with you in good faith and that the offer they have put before you will in their opinion ensure continuity of service to us and is also a fair commercial arrangement. I am not party to the inner details and have no wish to be, they do however tell me they:
>
> a) offered to retain the services through CIS of 20 of the current 24 engineering staff who work on the Reuters account
>
> b) offered to retain the services through CIS of 3 help desk staff
>
> c) offered to purchase and retain further assets and staff (vehicles and drivers)
>
> d) have guaranteed to pay for the lease of the whole CIS office through until mid 2003 (ie the end of the original three year period) and make space available to CIS within this for your

non Reuters business.

They implied to me that they are awaiting your answer on this offer. I trust this information is correct, albeit and to repeat what I said before, the finer detail is unknown to me.

Given this understanding and Compaq's assurance that they are negotiating with you in good faith I am not sure what else I can do to assist – if you can think of something I am more than happy to consider it.

Compaq and CIS, encouraged by Reuters Singapore, held discussions to try to resolve the difficulties between them. These discussions, however, came to naught.

38 Bala, in a letter to Mok dated 30 January 2002, set out the reasons why CIS could not accept Compaq's proposal and concluded the letter by stating:

In view of the above, unless we are able to revert to the previous back to back arrangement or you have other proposals which can add value and provide financial benefits to CIS, we cannot see how we can continue with our business relationship for the future.

On 1 February 2002, Mok responded to say that in the circumstances Compaq will make the necessary arrangements to continue providing the services to Reuters Singapore on its own.

39 The discussions with Compaq having failed, CIS commenced this suit against Compaq wherein CIS claimed that there was a sub-contract between Compaq and CIS for the provision of field services to Reuters Singapore and claimed damages from Compaq for the wrongful termination of that sub-contract. It was CIS case that the said sub-contract was partly in writing, partly by conduct and partly oral and that when CIS commenced work on 1 July 2000 that sub-contract was in effect and Compaq was obliged by its terms to allow CIS to provide field services to Reuters Singapore for a period of 3 years on a back-to-back basis with the contract that Compaq had with Reuters Singapore at that time.

40 At about the time the writ was issued CIS terminated the services of 37 members of its staff. This was because Reuters Singapore had always been the principal client of CIS and with the termination of its sub-contract with Compaq, these staff members had no work to do. CIS claim for damages for breach included the salary and retrenchment benefits paid to these staff members. It was, however, agreed that the hearing would be confined to liability and that the question of damages will be considered separately if CIS is successful in this suit.

41 The documents that CIS was relying on to support the alleged sub-contract were the MOU; the LOA; the drafts exchanged between Bala and Janet; and the letter from Compaq to CIS dated 18 December 2001. Save for the drafts, the contents of these documents have been set out above. The only aspect of the drafts exchanged between Bala and Janet that CIS was relying on was the fact that the drafts envisaged a 3-year contract. The conduct relied on was the fact that CIS had provided the requisite field services to Reuters Singapore from 1 July 2000 and Compaq had paid for those services as agreed. It was argued on behalf of CIS that this conduct was evidence of the fact that there was a binding agreement between Compaq and CIS for CIS to perform the field services to Reuters Singapore on behalf of Compaq on terms set out in the LOA.

42 Compaq denied having entered into any sub-contract at all with CIS. Compaq argued that the words "subject to final terms and conditions being agreed" in the LOA meant that there could be no contract between Compaq and CIS until the agreement referred to in cl 2 of the LOA was signed.

It was Compaq's case that as that agreement had not been signed, the LOA amounted to no more than a mere "arrangement" whereby CIS, if requested by Compaq, would perform the services requested by Compaq at the fees set out in the Schedule thereto. It was submitted by Mr Philip Tay ("Mr Tay"), counsel for Compaq, that such an arrangement had no binding effect except when CIS in fact performed any service requested by Compaq in which event Compaq would be legally bound to pay for that service in accordance with the fees set out in the Schedule. Compaq, he submitted, was acting entirely within its rights when it terminated this "arrangement" on 28 December 2001.

43 Mr Tay also submitted that the conduct of CIS – particularly in pressing for the draft and its somewhat mild reaction when informed about the proposed reduction of work orders – indicated that CIS also accepted that it had no binding contract with Compaq. Mr Tay submitted that none of the documents relied on by CIS constituted a contract. The draft exchanged between Bala and Janet, he submitted, was no more than a draft; the LOA was "subject to final terms and conditions being agreed" and was therefore not a contract; and the MOU, as the MOU itself provided, was "not a binding or definitive agreement and creates no legal or binding obligation on either party".

44 The fact that CIS had pressed Compaq to produce the draft agreement did not, in my view, necessarily mean that there was at that stage no binding contract between the parties. The LOA had envisaged that a formal agreement would be signed and all that Bala was doing was pressing for that to happen. Neither did the fact that CIS tried to accommodate and not confront Compaq, when Compaq reduced the volume of work orders to be attended to by CIS, necessarily mean (unless waiver or estoppel was pleaded and established) that there was no enforceable contractual obligation between them. These are, however, relevant factors to take into account when considering the conduct of the parties. In that consideration, other relevant factors – such as the fact that for a considerable period after the award of the LOA, CIS had, on behalf of Compaq, provided all the field services required by Reuters Singapore – have to be taken into account.

45 The most critical of the documentary evidence produced in this case was the LOA of 30 June 2000. The fact that Compaq gave this letter the heading "Letter of Award" was significant. Such a heading gives the impression that the negotiations between the parties had been successfully concluded and Reuters Singapore was "awarding" the work to CIS. That impression is – if one ignores the words "subject to final terms and conditions being agreed" – reinforced by cl 1 of the LOA. In that clause, Compaq "confirmed" that it had "selected" CIS to supply the installation, maintenance and related services for the Reuters Field Outsourcing project in Singapore. That clause – drafted by Compaq – does not impose any limitation or other qualification on the installation, maintenance and related services that CIS was to provide. In the absence of any words of limitation, the effect of that clause, as a matter of construction, would be that "all" such works would be carried out by CIS: a construction consistent with Compaq sub-contracting the works "back-to-back" to CIS as envisaged in the MOU.

46 Ignoring for the time being the effect of the words "subject to final terms and conditions being agreed", the language used in the LOA, namely:

- the description of the letter of 30 June 2000 as a "Letter of Award";
- the confirmation in cl 1 thereof that Compaq had *selected* CIS to provide the requisite services;
- the statement in cl 2 that CIS by accepting the LOA agrees to commence work on the terms stated in the Schedules to the LOA;
- the emphatic statement in cl 3 that "the Agreement shall take effect on 1st July 2000";
- the expression of thanks to CIS in cl 5 for their co-operation during the negotiations;

all indicate that the negotiations between Compaq and CIS had, by 30 June 2000, been successfully concluded and that, upon CIS signing its acceptance in the space provided in the LOA, the agreement

was in place.

47 The fact that after accepting the LOA, CIS rendered the requisite services for a period of 18 months was also a strong indicator that by 1 July 2000 the terms of the sub-contract between Compaq and CIS had been agreed. The fact that the LOA required the "award" to be "accepted" by CIS and that prior to commencing work on 1 July 2000 CIS had accepted that award is also significant. This is conduct indicative of a desire to enter immediately into a binding arrangement.

48 Nowhere in the LOA did Compaq say – as is their claim now – that until a formal agreement was signed CIS was to provide "such services as may from time to time be requested by Compaq". This does not appear in the MOU either. If that was the arrangement that Compaq wished to have with CIS for the provision of field services to Reuters Singapore from 1 July 2000, then Compaq – unless it wanted to mislead CIS – should (and indeed would) have made that clear in the LOA. I say this because providing "such services as may from time to time be requested by Compaq" is a far cry from the "back-to-back" arrangement envisaged in the MOU and the tenor of the discussions held after that.

49 I have no doubt – and I accept Bala's evidence in this regard – that had the MOU stated that CIS would only provide such services as Compaq may "from time to time" request, CIS would not have agreed to the MOU. Similarly, I accept Bala's evidence that if the LOA had stated that CIS, until a formal agreement is signed, would provide such services to Reuters Singapore as Compaq may "from time to time" request, CIS would not have accepted the LOA and would not have provided the services it did to Reuters Singapore from 1 July 2000.

50 The question that has to be considered is whether the words "subject to final terms and conditions being agreed" in cl 1 of the LOA derogates from the award by Compaq to CIS of the sub-contract. Numerous cases were cited in support of the proposition that when a document states that it is "subject to contract" the courts, unless there is cogent evidence of a contrary intention, construe those words so as to postpone the incidence of liability until a formal document has been drafted and signed. Those cases, however, are not of any particular relevance here since the words used here were not the words "subject to contract" but the words "subject to final terms and conditions being agreed". I will also not deal with the cases where different formulae were used as the words involved and the factual matrix of those cases were so different from the present case that those cases cannot provide much assistance.

51 The approach taken when dealing with formulae other than the formula "subject to contract" is summarised in Cheshire, Fifoot and Furmston's Law of Contract (Second Singapore and Malaysian Edition 1998) at 100 as follows:

> Upon the particular phrase "subject to contract" the pressure of litigation has stamped a precise significance. In other cases it is often difficult to decide if the language used justifies the inference of a complete and final agreement. The task of the courts is to extract the intention of the parties both from the terms of their correspondence and from the circumstances which surround and follow it, and the question of interpretation may thus be stated. *Is the preparation of a further document a condition precedent to the creation of a contract or is it an incident in the performance of an already binding obligation?* As in all questions of construction, the comparison of decided cases is apt to confuse rather than to illuminate. It would appear, however, that, whenever there is evidence that the parties have acted upon the faith of a written document, the courts will prefer to assume that the document embodies a definite intention to be bound and will strive to implement its terms. [Emphasis added]

Mr Harpal Singh, who appeared for CIS, submitted that the answer to the question posed in the above passage – Is the preparation of a further document a condition precedent to the creation of a contract or is it an incident in the performance of an already binding obligation? – would determine whether in this case a contract was or was not in existence. He submitted that in this case the essential terms of the contract had not only been agreed but had been implemented and that the signing of a formal agreement was therefore no more than an incident in the performance of an already binding obligation.

52 On the evidence I heard, I was satisfied that as of the date of the LOA all material terms and conditions necessary for CIS to commence providing the installation, maintenance and related services to Reuters Singapore had been agreed upon in the LOA and CIS had, for a considerable period of time thereafter, been providing the services on the terms agreed. The use of the word "final", in the phrase "subject to final terms and conditions being agreed", also suggests that at the date of the LOA the terms and conditions had been agreed upon but as there were some final terms that the parties may agree upon, those terms (if agreed) would be included in the formal agreement to be signed.

53 The general tenor of the LOA (discussed in paras 45 and 46 above); the fact that Compaq, in spite of the deadline of 14 July 2000 it set in the LOA, saw no urgency to draft the agreement in question; and the fact that CIS provided the required services for a period of 18 months, all indicate that the signing of a formal agreement was not in the nature of a condition precedent to the creation of a contract but merely an incident in the performance of an already existing contract. In other words, when CIS accepted the LOA, an agreement came into being which agreement – with the addition of such final terms and conditions as may be agreed – was to be incorporated into a formal agreement. I will add that even if the words "subject to final terms and conditions being agreed" could be considered as being similar in meaning to the words "subject to contract", there was in this case cogent evidence that the parties intended the LOA to have immediate contractual effect.

54 The agreement that came into being as a result of the acceptance by CIS of the LOA was that CIS would, for a period of 3 years with effect from 1 July 2000, provide the installation, maintenance and related services for the Reuters Field Outsourcing project in Singapore on the terms set out in the Schedules to the LOA. By withholding some of those services from CIS and by terminating this agreement without cause before the 3-year period had run, Compaq was, in my view, in breach of its contractual obligations to CIS.

55 CIS, in its Statement of Claim, sought compensation for the loss and damage it suffered when Compaq wrongfully terminated its services. The parties had, however, requested at the commencement of the hearing that the assessment of that compensation should be dealt with separately and this request had been granted. I therefore give judgment (with costs) for CIS in respect of the wrongful termination of its services and order that the assessment of the damage arising from the said termination form the subject matter of a separate hearing to be conducted by the Registrar.

Plaintiffs' claim allowed.

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