

CSAT/8(No.1)

THE ARBITRAL TRIBUNAL OF THE COMMONWEALTH SECRETARIAT
IN THE MATTER BETWEEN:

SUMUKAN LIMITED (formerly Asset Management Shop Limited)

Applicant

AND

THE COMMONWEALTH SECRETARIAT

Respondent

AND IN THE MATTER OF AN INTERLOCUTORY APPLICATION BY THE RESPONDENT

Before the Tribunal constituted by

Professor Duncan Chappell, President

RULING

On 28 April 2003, the Tribunal received an Application from Ms Jan Jananayagam, Director of Sumukan Limited (hereafter the Applicant) pursuant to the Statute of the Tribunal. The Applicant in essence, alleges a breach by the Commonwealth Secretariat (hereafter the Respondent) of a contract entered into between the Applicant and the Respondent for the supply by the Applicant of software and related consultancy services in connection with a project described as "Namibia Project"

The Applicant claims, among other things, a Declaration that the ownership of certain materials produced by the Applicant pursuant to the contract belong to the Applicant, specific performance and general damages for slander and negligent misrepresentations made against the Applicant by the Respondent.

After some delay arising from the need for corrections to be made to the Application by the Applicant in order to meet the requirements of the Rules of the Tribunal, a revised Application was received from the Applicant on 2 June 2003. A copy of the revised Application was served on the Respondent the same day.

By a letter dated 17 June 2003, on my Directions in accordance with Rule 7(4) of the Rules of the Tribunal, the Secretary of the Tribunal informed Counsel for the Respondent that the Respondent's Answer should be filed within 4 months, namely by 17 October, 2003.

On 15 October 2003, the Tribunal received from Counsel for the Respondent an Interlocutory Application seeking Orders, *inter alia*, that

- the Application filed by the Applicant on 28 April 2003 be struck out, on the ground that it is statute-barred pursuant to Article 11 Clause 2(ii)(a) of the Statute of the Tribunal; and
- the operation of Rules 7, 8, and 9 of the Rules of the Tribunal be stayed until determination of the interlocutory application.

On 16 October 2003 the Secretary sent a copy of the interlocutory application to the Applicant and on 21 October, on my Directions, was asked by the Secretary to show cause by 19 November 2003 why the Tribunal should not make the Orders sought by the Respondent.

On 12 November the Tribunal received from Counsel for the Applicant a response to the Respondent's interlocutory application directed specifically to issue of whether their client's application was statute-barred.

In their response, Counsel for the Applicant have produced copies of correspondence between the parties which appear to suggest that attempts to settle the dispute between them by negotiation and agreement, as required by the contract, were still being made at least as late as 27 February 2003.

The issue that I now have to decide is simply this: from what date is the three months deadline for filing the application, in accordance with the Statute of the Tribunal, to be calculated. It is clear that if attempts were still being made as late as 27 February 2003 to settle the dispute amicably, and if such attempts proved ultimately to be unsuccessful as would appear to be the case, the base date for calculating the three months would have to be a date not earlier than 27 February 2003. Most probably, it would be a date later than 27 February 2003. In that event, an application filed on 28 April 2003 would be well within the 3 month limitation period.

Having considered the documents and explanatory statements presented by the parties in support of their respective cases, I am satisfied that the Applicant has showed sufficient cause to satisfy me not to make the Order sought by the Respondent to strike out the Application filed by the Applicant on 28 April 2003.

Accordingly, the Respondent's interlocutory application to strike out the Application filed by the Applicant on 28 April 2003 is dismissed. Flowing from and in consequence of this, the Respondent is hereby ordered to submit, in accordance with Rule 7 of the Rules of the Tribunal its Answer to the Application on the merits within 10 weeks of this Ruling, namely by 30 January, 2004.

I make no Order as to costs.

Given on this , -5 day of November 2003 in London

Professor Duncan Chappell President