

**D Gokulsing v Police**

**2024 PL3 62**

**BEFORE THE DISTRICT COURT OF PORT LOUIS (DIVISION III)**

In the matter of:

**PROVISIONAL CN: 7964/2023**

**DHARMADUTT GOKULSING**

**APPLICANT**

**v/s**

**POLICE**

**RESPONDENT**

**RULING**

1. The Applicant stands provisionally charged with the offence of ‘public official using his office for gratification’, for having, in or about the month of June 2020, at the Head office of the Mauritius Telecom Ltd, at Telecom Tower, Edith Cavell Street, Port Louis, whilst being a public official, wilfully, unlawfully and criminally, made use of his position for a gratification for another person, in breach of Sections 7 (1) and 83 of The Prevention of Corruption Act.
2. Applicant has, through Counsel, moved for the provisional information to be struck out on the ground of lack of reasonable suspicion. Respondent objected to the said motion. Argument was heard. Both parties were legally represented.
3. SI Deepchand posted at The Financial Crimes Commission (FCC) and the Enquiring Officer (EO) deponed on behalf of Respondent. Applicant exercised his right to silence and no witnesses were called on his behalf.
4. SI Deepchand deponed during the Examination in Chief on the different processes involved and alleged involvement of the Applicant as follows.
5. The Witness started testifying by explaining what gave rise to the investigation:

5.1 The present investigation started in February 2023, following a complaint made by the current Chief Executive Officer of *Mauritius Telecom* (hereinafter referred to as “*MT*”), pertaining to suspicion of malpractices in several contracts awarded by *MT* during the period of 2015 to 2022. The ICAC was investigating into both the corruption and money laundering aspects of the matter. The protagonists involved comprise both of individuals and corporate entities, some in

Mauritius and others in foreign jurisdictions, including UAE, India, Madagascar and other countries.

5.2 The FCC is investigating into contracts carrying a total financial implication of around 2.8 billion. One of the contracts pertains to a procurement made by *MT* for the development of the “*MyT Money 2.0 application(project)*” which is part of the “*MT Fintech Project*” and having a financial implication of around Rs 475 million. At this stage, the EO clarified the amount discrepancy between the particulars on the information which avers ‘*Rs 412,430,000*’ as follows: ‘*It is Rs 475 million rupees, it is the converted figure from USD.*” The Rs 475 million approximately, is related to the *MT Fintech Project*.

5.3 Applicant was the Head of the Procurement section and was responsible for all procurement matters in his professional capacity.

5.4 With respect to the above project, *MT* adopted a process was done in distinct stages, as follows (*the different stages are being referred by numbers for sake of comprehension*):

- 1) Seeking of offers
- 2) Evaluation of offers and retaining of offers for next stage
- 3) Invitation to submit offers
- 4) Opening of bids
- 5) The Evaluation Committee
- 6) Recommendation by The Evaluation Committee and submission of report
- 7) Tabling before Board of Directors
- 8) Negotiations

5.5 At stage 1, *MT* sought offers from four Globally Recognised Providers. At stage 2, following an evaluation of these offers, two offers were retained for the next stage, namely that of “*Temenos*” and “*Intellect Design Arena*”, represented in Mauritius by “*DNS Consult Ltd*” (hereinafter referred to as *IDA*). At stage 3, these two companies were invited to submit their respective offers following a request for quotation invitation. At stage 4, on the closing date for submission of offers, the bids were opened by a committee of which the Applicant is a member.

5.6 At stage 5, the bids were referred to the Evaluation Committee for an evaluation. The Applicant was not part of the evaluation committee. The procurement section was represented by his subordinate, Mrs Ramdenee. In the course of a financial evaluation of the offers, the evaluation committee decided to query both bidders on the allocation of costs of their respective bids over the expected life of the projects which was 7 years. This query was necessary because the respective prices submitted by both bidders pertained to the implementation year solely.

5.7 Mrs Ramdenee was asked to see to these queries. She did so by emailing a template called the “*Template Cost of Ownership*” (*TCO*) to both bidders. The *TCO* is a tabular representation of the cost structure over the projects life expectancy which was 7 years. The reasons for requesting a *TCO* was for the evaluation to be done properly and to bring both bidders at par, particularly because their respective financial proposals were made at different

costs components. The *TCO* was requested from both bidders, through an email sent by Mrs Ramdenee. Applicant was copied to the email. The replies received from both bidders were addressed to Mrs Ramdenee and copied to Applicant. The replies from both bidders contained new offers (*TCO*). The difference between the initial offers of *IDA* and *Temenos* were as follows:

5.7.1 Before the *TCO* request:

- A. *Temenos* made a financial offer priced at around 4.9 million USD plus an annual maintenance cost of around 475,000 US;
- B. *IDA* made a financial offer of around 7.1 million USD inclusive of a hardware component of 980,000 USD and the offer also had an annual maintenance cost of 20%.

5.7.2 After the *TCO* request (the new offers):

- A. *TEMENOS*: The offer was priced at around 11.7 million USD and the new price submitted by it was in line with its original price structure;
- B. *IDA*, as part of its *TCO* reply, submitted 2 options:
  - 1) Option 1 was priced at 18 million USD and was in line with *IDA*'s initial price structure;
  - 2) Option 2 from *IDA* excluded the hardware component of 980,000 USD and also included a reduction in annual maintenance cost from 22% to 15 %.

5.8 At stage 6, The Evaluation Committee conducted the evaluation process and evaluated option 2 from *IDA* against the offer made by *Temenos*. At this stage, the EO emphasised on the following:

5.8.1 The investigation has established that Option 2 from *IDA* was non-responsive because it excluded the hardware component which was one of *MT* requirement for the present procurement;

5.8.2 Option 2 from *IDA* was in breach of the written guidelines of *MT* for procurement which amongst others, provide that no bidder shall be allowed to make a material amendment to its financial proposal during its evaluation of bids. The Option 2 of *IDA* used for evaluation was around 1 million USD cheaper than the offer made by *Temenos*. Option 2 was in fact priced at 10,310,750 USD.

5.9 The Evaluation Committee recommended that the award be made to *IDA* and prepared a report to that effect. The report was submitted to Applicant because he was the one responsible for all procurement.

5.10 At stage 7, it was now for Applicant to trigger the process which would lead to the report and its recommendation being tabled before the Board of Directors for decision-making. This process was followed. The Board approved for the award to be made to '*IDA*, represented by *DNS Consult Ltd*, in the price of 10,310,750 USD and subject to negotiations made between *IDA* and *DNS Consult Ltd* and *MT*.

5.11 At stage 8, in cases where the Board requests for negotiations, *MT* would be represented by the Applicant as Head of Procurement section. Applicant was indeed part of negotiations with *IDA* and *DNS Consult Ltd*. The outcome of the negotiations was that an annual maintenance of cost of 11.5 % was secured from the 15% that was proposed in Option 2.

6. The EO then highlighted that *MT* was seeking and required a 'Full Turnkey' solution, that is one which included the hardware components. In the initial financial proposals made by both bidders, they had each accounted for the hardware component in their respective pricing structure. However, in the subsequent offers, whilst the offer of *Temenos* had a hardware component, *IDA* in its option 2, had removed the hardware component. The offers which were evaluated by The Evaluation Team, for *Temenos* was a *Turnkey* offer whilst for *IDA*, which was its Option 2, was *non-Turnkey*.
7. Thereafter the EO explained the role of the Applicant in his capacity as Head of Procurement at *MT* in the present alleged offence as follows:
  - 7.1 The Applicant is an experienced procurement professional holding certification in the field. Even if Applicant did not have an active role during the evaluation of offers, he was nonetheless kept in the loop, particularly by way of emails sent by Mrs Ramdenee during the request made for TCO and through which emails he was "aware" of the respective responses from both bidders.
  - 7.2 Subsequently, Applicant was handed a copy of the evaluation report recommending award to *IDA*. He averred that at this point, Applicant had the first opportunity to raise a red flag upon becoming aware that an offer which was non responsive and in breach of *MT's Procurement Guidelines* had been evaluated and recommended for award. Nonetheless, Applicant allowed the process to proceed and this led to approval for award by the Board of Directors.
  - 7.3 During the negotiations Applicant had a second opportunity to draw attention to the above issue but once again allowed the process to proceed, resulting in *MT* entering into a contractual with *DNS Consult Ltd* and *DNA International Ltd*, both representing *IDA*.
8. The EO then testified as to Applicant's version as follows: During enquiry, when Applicant was confronted with evidence establishing the departures from procurement procedures, he admitted that Option 2 of *IDA* was non-responsive and non-Turnkey. Moreover, upon being asked as whether Applicant stated during enquiry as to why no red flags were raised by himself after he knew that a non-Turnkey had been evaluated, Applicant's version was that it is only upon being informed at level of inquiry, upon being confronted with the evidence and being informed of the reasonable suspicion of his having committed a corruption offence, that Applicant so realised and admitted that a non-turnkey offer had been evaluated and recommended for award.
9. The EO was duly cross-examined and the following was elicited:

- 9.1 With respect to the stages involved: The procurement process starts with a '*Request For Information*', a "*RFI*" which in present case was prepared by the '*User Department*' of *MT* and was then communicated directly to Mrs Ramdenee who was part of the team for evaluation of offers received further to *RFIs*. During *RFI*, requests were made by *MT* from the four potential solution providers who were Globally Recognised in the field of 'Mobile Banking Service' and which were selected following a search made on the "*Gartner Magic Quadrant*". It was the '*User Department*', Mobile Financial Services which identified the potential bidders. With respect to the potential bidders, the EO recalled only the names of *IDA* and *Temenos*. Applicant was not a member of the '*User Department*' and could not have been involved in identification of *IDA* as a bidder.
- 9.2 The *RFI* Stage was the initial stage of the procurement and the four bidders were solely asked to submit technical offers and commercial offers. It was only after assessment of the *RFI* offers that *Temenos* and *IDA* would be retained for the next stage of the procurement, that is the *RFQ* stage and asked to submit technical and financial offers.
- 9.3 At the *RFQ* stage, it was the Senior Buyer, Mrs Ramdenee from the procurement department and a subordinate of Applicant who requested the technical bids from *Temenos* and *IDA*. She emailed bidders and requested for offers. Applicant was copied to this emails as a matter of administrative practice. Upon being asked as to whom exactly did both *Temenos* and *IDA* inform of their interest, he replied Mrs Ramdenee.
- 9.4 The next stage, the '*Technical Evaluation*', was conducted by *The Technical Evaluation Committee*. Applicant was not a member of it. It was that *Technical Evaluation Committee* which recommended *Temenos* and *IDA* and precisely, the recommendation was to proceed with the evaluation of Financial offers made by *IDA* and *Temenos* respectively. The EO disagreed that to proceed with the financial evaluation, a request for proposal was prepared by the '*User Department*' and sent to the procurement department. Rather, the technical and financial offers submitted by *IDA* and *Temenos* were further to *RFQ* invitation which were sent to the two bidders. It was the User Department, which was the Mobile Financial Services, which prepared the *RFQ*. There was no request for proposal subsequently made after technical evaluation and prior to financial evaluation.
- 9.5 Upon being asked as to whether The Evaluation Committee considered a '*Turnkey*' solution as an additional requirement as per *RFP*, he answered that The Turnkey solution was sought right from the start as part of the *RFQ* document to both bidders and which included the specification sought by *MT*. He confirmed that Applicant was not part of the Evaluation Committee which evaluated the financial bids. He was not aware as to whether as per the Evaluation Committee, instructions were given to the Chief Mobile Financial officer, Mr Molabaccus to open the Financial offers. However, based on the documents secured during enquiry, there is a standing committee namely the "*Bid Opening Committee*" of which the Applicant is a member and which Committee had opened financial proposal that were initially made by the bidders.

9.6 Following the opening of bids, there was a Consolidated Evaluation Report submitted by The Evaluation Committee along with recommendations for award, to the Applicant. It is the Consolidated Evaluation Report which recommended *IDA* for the project. Applicant was not part of the Evaluation Committee but was only the recipient of the Consolidated Evaluation Report. However, it was Applicant who channelled the said report Top Management for tabling before the Board of Directors and that he did so despite the fact that a non-responsive offer had been recommended.

10. The following was further elicited during cross-examination:

10.1 The EO could not say who prepared the board paper for the 169<sup>th</sup> Board of Directors Meeting where *IDA* was recommended to the Board of Directors but averred that there were two signatories on that Board paper, one of them was the then CEO and the second signatory was either the Chief Financial Officer ('CFO'), or the then Deputy CEO.

10.2 There was an 'Action Note' sent by the Company secretary Mr Colymalay to the 'CFO', Mr Perrin regarding the Board's decision for award and the Directives for negotiation. There was a handwritten instruction on the 'Action Note' requesting the Head of Procurement Function to carry out negotiations. Applicant being the Head was requested to carry out negotiations with *IDA*, after the award of the contract to *IDA*. For the negotiation part, Applicant was involved after the contract was awarded by *MT*.

10.3 Applicant did not have an 'active participation' during bid evaluation but:

(a) Applicant was the representative of *MT* during negotiation;

(b) Upon being asked as to what measures did the Applicant take to ensure that *IDA* be awarded the contract, the EO explained that he did so by turning a blind eye to the fact that a non-responsive Turnkey offer had been evaluated and recommended for award and which omission of Applicant has led to the contract being awarded to DNS Consult Ltd. The award is the gist of the present investigation for suspected corruption offences in this specific project.

(c) Though Applicant followed the recommendation of the three different evaluation committees which had recommended *IDA* and that those recommendations were addressed to him, at the time Applicant received the Consolidated Evaluation Report, he knew that a non-responsive Turnkey had been recommended for award and he did not take any action at this point and this is the basis of the reasonable suspicion;

(d) Although the Applicant did not admit having committed the corruption offence, upon being confronted with the evidence, he admitted that a non-responsive offer had been evaluated.

11. Respondent closed its case. Applicant exercised his right to silence and no witnesses were called on his behalf.
12. Both Counsel have duly filed written submission and bundle of authorities. This Court has carefully considered all the evidence on record and submissions of counsel for both parties.
13. The present motion is for striking out of the provisional information. When deciding thereon, I bear in mind the purpose of the information, at what stage of the criminal process it is sought and its importance in guaranteeing the constitutional rights of the provisional charged under Sections 5 and 10 under The Constitution, as explained in **DPP v INDIAN OCEAN INTERNATIONAL BANK AND AJAY SHANTO** [\[1989 MR 110\]](#). Importantly, the Supreme Court has emphasized the need to respect human rights even during the combat against corruption as was held in **MANRAJ D D & ORS v ICAC** [\[2003 SCJ 75\]](#).
14. The role of the Court here, is to act as arbiter between the citizen and the executive and control the regularity of the arrest, as explained in **GORDON-GENTIL ALAIN v STATE OF MAURITIUS** [\[1995 MR 38\]](#). In its duty as arbiter, one of the grounds on which the Court may strike out a provisional information is lack of reasonable suspicion. This is in light of Section 5 (1)(e) of The Constitution which lays down the parameters for lawful arrest or detention as follows: “*upon reasonable suspicion of his having committed, or being about to commit, a criminal offence*” as explained in **AH SUE MARIO ALAIN CHUNG CHING v THE STATE OF MAURITIUS** [\[2015 SCJ 110\]](#).
15. The issue before this Court therefore is whether the present provisional information is based on reasonable suspicion. What amounts to reasonable suspicion has been explicitly explained **AH SUE MARIO ALAIN CHUNG CHING (above)** and the following extract is relevant:

*“The principles applicable to justify an arrest are aptly summarised in the following terms in **Manraj (supra)** –*

*“... First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr. App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view of an officer or his subjective standard. It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236. It should not be equivocal with his implication and his non implication. ...”* [emphasis is mine].

16. The burden of proof is on prosecution to establish that there is reasonable suspicion. The standard of proof is lesser than required to establish a prima facie case against the Applicant. In **THE STATE OF MAURITIUS v UTCHANAH M.** [\[2023 SCJ 172\]](#), the Court held as follows:

*“We also find it appropriate to remind the learned Magistrate that the test to be adopted in deciding the issue of reasonable suspicion is one which is of a lesser standard than that required to establish a prima facie case against the suspect (see **Shaaban Bin Hussien v Chong Fook Kam [1970] AC 942**). We may in that respect refer to the following extract in **Blackstone’s Criminal Practice 2003** at **paragraph D1.5** which reads **“Reasonable Cause for Arrest: ...it is a lower standard than information sufficient to prove a prima facie case. Prima facie proof must rest on admissible evidence. Reasonable suspicion may take into account matters which are not admissible in evidence or matters which, while admissible, could not form part of a prima facie case”**. [emphasis is mine].*

17. However, throughout the assessment as to whether there is reasonable suspicion, the Court should be very mindful of the extent of appreciation of the evidence. **KISTOO AND ORS. VS COMMISSIONER OF PRISONS** [\[1967 MR 1\]](#), although an application for habeas corpus, is relevant and the Supreme Court held as follows:

*“Now, a writ of habeas corpus is intended as a safeguard for the subject against illegal detention but an application therefore cannot be resorted to as an indirect appeal against the bona fide decision of those entrusted with the task of prosecuting offenders. In other words the Court on an application for a writ of habeas corpus cannot review the evidence on which a decision to prosecute a person for a particular offence has been taken by the appropriate authority. Counsel for the petitioners conceded that he had not been able to find any direct authority in support of his submission, nor have we been able to find any. What the Court must do is to enquire into the cause of detention and see whether or not it is legal, as distinct from enquiring into the grounds which led to that cause.*

.....

*Here the cause of detention is not in dispute: the petitioners are detained in Her Majesty’s Prisons on the authority of a warrant issued by a magistrate under the District Courts (Criminal jurisdiction) Ordinance (Cap. 174), after a provisional information for the offence of murder had been filed against them by a Police Officer on the advice and instructions of the Assistant Attorney General. What Counsel for petitioners wished the Court to do was to examine evidence gathered by the Police and to say whether the decision of the Law Officer that such evidence reveals a prima facie case of murder against the petitioners is justified or not. This is no part of the duty of the Court and indeed, if the Court did so, it would be encroaching on the prerogatives of the Attorney General and the Assistant Attorney General who are empowered to prosecute all offenders in the name and on behalf of Her Majesty.” [emphasis is mine]*

18. Therefore, the issue before This Court is whether, based on the evidence adduced, Respondent has established that there is reasonable suspicion that Applicant was involved in



the commission of the offence with which he stands provisionally charged and that to ‘a lesser standard than that required to establish a prima facie case’.

19. In the information dated 15<sup>th</sup> September 2023, Applicant stands provisionally charged with having, in or about the month of June 2020, at the Head office of the Mauritius Telecom Ltd, at Telecom Tower, Edith Cavell Street, Port Louis, whilst being a public official, wilfully, unlawfully and criminally, made use of his position for a gratification for another person, in breach of Sections 7 (1) and 83 of The Prevention of Corruption Act. The particulars of the charge read as follows:

*“In or about the aforesaid month and place, the said Dharmadutt Gokulsing, whilst being the Head of Sourcing and Supply Chain at the Mauritius Telecom Ltd and actively involved in the procurement process for the MT Fintech Journey/ MyT Money 2.0 project, took all such illicit measures to ensure that “DNS International Ltd and DNS Consult Ltd,” beneficially owned by one Danesh Ellayah, be awarded the contract for the supply, installation and commissioning of a turnkey solution for the mobile core banking system for a total amount of approximately MUR 412,430,000.”*

19. The court has had the opportunity to listen and assess the demeanour of the EO, SI Deepchand, witness for Respondent. He has deponed under oath in a coherent and straight forward manner. I find him to be a reliable witness and that weight can be attached to his testimony.

20. I take into account the following evidence as per testimony of the EO, bearing in mind all the above quoted principles:

20.1 There is a complaint made by the current Chief Executive Officer of MT pertaining to suspicion of malpractices in several contracts awarded by MT including a contract pertaining to a procurement made for the development of the “MyT Money 2.0 application(project)”, which is part of the “MT Fintech Project” and to which the present provisional information relates;

20.2 Applicant is an experienced procurement professional holding certification in the field and was the Head of the Procurement section, responsible for all procurement matters in his professional capacity;

20.3 The process for the above project was done at different stages. At the initial stages of seeking offers from Globally Recognised Providers, evaluation of these offers, inviting selected companies, namely “Temenos” “IDA”, to submit quotation, Applicant was not involved. Applicant becomes involved upon the closing date for submission of offers where bids were opened by a committee of which Applicant was a member. The extent of Applicant’s involvement at this stage has not been detailed. Accordingly, it can safely be simply assumed that Applicant was aware of the project at this stage. More inferences as to a more active involvement of Applicant or not at this stage ought not be made and is not made in light of the status of evidence on record;

20.4 At the next stage of Evaluation, by The Evaluation Committee, Applicant was not part of the Committee. The Procurement Section was represented by his subordinate, Mrs Ramdenee. At this stage, there was a need to query both bidders on their financial proposals. Mrs Ramdenee was designated to handle same. How did she do so? Through email exchanges enclosing the TCO template to both bidders and did so by copying Applicant to the emails. When the bidders replied to Mrs Ramdenee, they equally copied their email replies to Applicant and the said replies contained the new offers. I note that during cross-examination the EO did confirm that these emails being copied to Applicant was done as a matter of administrative practice. Nonetheless, it cannot be denied that Applicant was aware of the TCO request as well as recipient of the new offers as per TCO template sent by both bidders. Importantly, it was not mere communication request for the offers or querying about the offers, but rather the offers themselves were included in the emails. Furthermore, Applicant was being so copied to the emails in his professional capacity at MT, as Head of Procurement and as explained by the EO, Applicant was '*kept in the loop*'. Accordingly, this is not a case where Applicant is in complete ignorance of the matter;

20.5 The offers made by the two bidders before and after the TCO request respectively, are as follows

A. *Temenos*

- (a) Before the TCO request: A financial offer priced at around 4.9 million USD plus an annual maintenance cost of around 475,000 US;
- (b) After the TCO request: The offer was priced at around 11.7 million USD and the new price submitted was in line with its original price structure;

B. *IDA*

- (a) Before the TCO request: A financial offer of around 7.1 million USD inclusive of a hardware component of 980,000 USD and the offer also had an annual maintenance cost of 20%.
- (b) After the TCO request (the new offers): *IDA* submitted 2 options:
  - (i) Option 1: Offer priced at 18 million USD and in line with *IDA*'s initial price structure;
  - (ii) Option 2: Offer excluded the hardware component of 980,000 USD and included a reduction in annual maintenance cost from 22% to 15 %.

20.6 The new offer of *Temenos* was a Turnkey offer whilst Option 2 of *IDA* was

20.6.1 In breach of the written guidelines of *MT* for procurement. The guidelines prohibit bidders from making material amendments to financial proposals during the evaluation of bids;

20.6.2 Non-Turnkey as it excluded the hardware component and thus non- responsive. *MT* was seeking a full Turnkey solution that is one which included the hardware components. One of the requirements for this procurement therefore was that the hardware component be included. The

Turnkey solution was sought right from the start and was part of the *RFQ* document sent to both bidders and which included the specification sought by *MT*. Importantly, in the initial financial proposals by both bidders, they had each accounted for the hardware component in their respective pricing structure;

20.7 Applicant has admitted during enquiry that Option 2 of *IDA* was non-responsive and non-Turnkey, although he denied having had knowledge of this fact at the material time;

20.8 Eventually, The Evaluation Committee recommended that the award be made to *IDA* and prepared a Consolidated Evaluation Report to that effect. The Report was submitted to Applicant. Applicant received the Report in his capacity as Head of the Procurement section. Applicant was at this stage aware of all matters pertaining to the offer of *IDA* as detailed in the Report as well as the fact that it was non-responsive. Applicant did not do anything to raise a red flag pertaining to the non-responsive nature of the offer;

20.9 Applicant then, in the execution of his duty and in his official capacity, caused the Report and its recommendation to be tabled before the Board of Directors. The purpose was for the Board of Directors to take a decision on the matter. The Board of Directors would therefore rely on the content of the Report and its recommendations to act. Applicant at this stage had an opportunity to raise a red flag to the effect that the *IDA* offer which had been recommended by The Evaluation Committee was in breach of The *Procurement Guidelines* of *MT*, non-Turnkey and non-responsive. He nonetheless allowed the recommendations to proceed, resulting in approval of the award by The Board;

20.10 The award was approved by The Board but it was subject to negotiations between *MT* and *IDA* and *DNS Consult Ltd*. I note at this stage that although the decision to award to *IDA* has already been made by The Board, it was '*subject to negotiations*'. Accordingly, it cannot be said that at this stage there was a final decision to award to *IDA* made by The Board. Importantly, it is Applicant himself, in his position as Head of Procurement who was elected to represent *MT* during the negotiations with *IDA* and *DNS Consult Ltd*. The outcome of the negotiations was that an annual maintenance of cost of 11.5 % was secured from the 15% that was proposed in Option 2. I note that again, at this stage, Applicant had an opportunity to raise a red flag pertaining to the non-responsive, non-Turnkey offer of *IDA* under its Option 2 but failed to do so;

20.11 When observing the conduct of Applicant, it is important to bear in mind in what capacity he was so acting as well as his professional background.

21. Counsel for the Applicant made it a live issue as to whether the latter was '*actively involved*' in the procurement process and did take '*illicit measures*' as averred in the particulars, as opposed to merely failing to raise a red flag and turning a blind eye, highlighting the following factors:

21.1 Applicant became involved in the process only afterwards and was not actively involved in the initial processes (*RFI* stage and not involved at stage of identification of bidders);

21.2 The fact that there were other persons such as Mrs Ramdenee who was in direct contact with the potential bidders as opposed to Applicant who was more in a 'passive' role;

21.3 Applicant was only copied in emails at level of *RFQ* stage;

21.4 Applicant was not a member of the Technical Evaluation Committee which had recommended *Temonos* and *IDA* but simply recipient of the Consolidated Evaluation Report which had recommended the award to *IDA*;

21.5 Applicant become involved only at a later stage in the procurement process;

21.6 The nature of his acts were more in the nature of an omission in contrast to being 'actively involved'.

22. I have considered and analysed all the evidence on record. I am satisfied that the suspicion forming the basis of the provisional information is based on facts. The suspicion has a concrete basis. Respondent is not basing itself on mere instinct, hunches or guess work. Rather, it has based itself on facts and which when viewed objectively are consistent with the involvement and implication of Applicant, in his professional capacity, as Head of Procurement of *Mauritius Telecom* in the present case.

23. I find that the cumulative effect of the facts as highlighted at paragraph 20 above and whilst taking into account the factors raised during cross-examination at paragraph 21 above, provide ample basis for reasonable suspicion that Applicant is involved in the present offence. These facts point towards the unequivocal implication of Applicant and are consistent with guilt.

24. I have also considered the factors highlighted by Counsel for Applicant, referred to at paragraph 21 above. I bear in mind the stage of proceedings whereby police are still conducting enquiry and that there is no need for police at this stage to discount all possible defence or have complete proof of the offence. I remind myself of the standard of proof which is lesser than required to establish a *prima facie* case against the Applicant.

25. Furthermore, with respect to the issue of Applicant's implication as revealed by the testimony of EO as not being exactly as per the particulars as averred in the information, suffice it to say that the provisional information is not the final charge and may culminate in it being simply struck out without any further charge or a formal charge (main case) for the same facts and circumstances but for another offence under the law.

26. For all the reasons given above, the motion for the provisional information to be struck out on ground of lack of reasonable suspicion is set aside.

N Sakauloo

District Magistrate

This 16<sup>th</sup> August 2024