- MANDAT TA' INIBIZZJONI –

QORTI CIVILI
PRIM' AWLA

IMHALLEF

ONOR. LORRAINE SCHEMBRI ORLAND
LL.D., M.Jur. (Eur.Law), Dip.Trib.Eccles.Melit.

Digriet tallum it-Tlieta 19 ta' April 2016.

Rikors Numru: 375/2016/LSO

Rikors ghall-hrug ta' Mandat ta' Inibizzjoni Numru 375/2016/LSO fl-ismijiet:-

Av Jean-Pie Gauci-Maistre (345384M) bhala mandatarju specjali tas-socjeta` estera Vroon Containers B.V., socjeta` registrata l-Olanda, b'indirizz ufficjali Haven Westzijde 21, 4511AR, Breskens, Olanda.

vs

BALTICMAX HOLDING COMPANY LIMITED (C70765)

Il-Qorti,

I. PRELIMINARI.

Rat ir-rikors tal-Av. Jean-Pie Gauci-Maistre noe datat 9 ta' Marzu 2016 fejn inghad bil-qima u gie kkonfermat bil-gurament:

Illi l-esponent ghandu interess li jitharsu l-jeddijiet tal-esponenti;

Illi l-esponent, sabiex jikkawtela d-drittijiet tieghu, jixtieq izomm lis-socjeta` intimata minn:

(1) b'kwalunkwe mod tbiegh, titrasferixxi, tassenja jew tiddisponi, sew b'titolu oneruz jew gratuwitu jew b'xi mod taggrava jew taghti xi rahan, privilegg, dritt jew piz iehor fuq l-ishma ordinarji fis-socjeta' BalticMax Acquisition Corporation One Ltd (C70766); u
(2) tezercita xi dritt ta' vot jew kwalunkwe dritt iehor naxxenti mill-ishma ordinarji tas-socjeta' msemmija BalticMax Acquisition Corporation One Ltd (C70766) skont il-ligi u skont l-istatuti ta' l-istess kumpanija inkluz izda mhux limitat ghad-dritt li

jissejhu laqghat tal-azzjonisti tal-kumpanijia, id-dritt li jittiehdu rizoluzzjonijiet ta' l-azzjonisti tal-kumpanija, id-dritt li jigu mnehhija jew appuntati diretturi tal-kumpanija; id-dritt li l-kumpanija titqieghed fi proceduri ta' xoljiment jew stralc; id-dritt li jinbidlu l-istatuti tal-kumpanija jew kwalunkwe dritt iehor li jista’ jigi ezercitat minn azzjonisti tal-kumpanija;

u dan ghar-ragunijiet segwenti:

IIIi fis-6 ta' Ottubru 2015, Vroon Containers B.V. u BalticMax Holding Company Limited iffirmaw Senior Loan Note ghall-ammont ta' USD10,500,000 (annessa u mmarkata Dokument 'VC2') u Senior Bridge Loan Note ghall-ammont ta' USD10,500,00 (annessa u mmarkata Dokument 'VC3');

IIIi permezz tas-Senior Loan Note u s-Senior Bridge Loan Note surreferiti, Vroon Containers B.V. qieghdet ghad disponibbilta' ta' BalticMax Holding Company Limited l-ammont totali ta' USD21,000,000 b'forma ta' self;

IIIi BalticMax Holding Company Limited ghandha registrata f'isimha elfejn (2,000) ishma ordinarji ((100% 'paid up' b'valur nominali ta' US$1.00 kull sehem) u hmistax-il miljun seba’ mija sebgha u tletin elf u hames mitt (15,737,500) ishma privileggati li jistghu jigu mifdija ((100% 'paid up' b'valur nominali ta' US$1.00 kull sehem) fil-kumpanija BalticMax Acquisition Corporation One Ltd (C70766)

(Kopja tal-memorandum u statut u estratt tal-kumpanija mill-Registru ta' Kumpaniji, mmarkati Dokument 'VC4' u 'VC5' rispettivament);

IIIi skont Artiklu 6 tal-Memorandum tal-Kumpanija ta' BalticMax Acquisition Corporation One Ltd (C70766) huma biss l-elfejn (2,000) ishma ordinarji ((100% 'paid up' b'valur nominali ta' US$1.00 kull sehem) li ghandhom d-dritt ta' vot;

IIIi BalticMax Holding Company Limited hija proprjetarja ta' numru ta' bastimenti merkantili permezz tas-sussidjarji taghha f'liema sussidjarji, BalticMax Holding Company Limited hija l-unika sid beneficjarja (ara Dokument 'VC6');

IIIi permezz tas-Senior Loan Note surreferit, ftehim bejn Vroon Containers B.V. u BalticMax Holding Company Limited, l-imghax miftiehem huwa ta' ghaxra fil-mija (10%) fis-sena fuq il-bilanc tal-ammont principali sakemm tithallas l-ammont kollu dovut u BalticMax Holding Company Limited obbligat ruhha thallas l-*instalments* flimkien mal-interessi hmistax-il gurnata wara li taghlaq kull tliet xhur bl-ewwel pagament dovut fil-15 ta' Jannar 2016;

IIIi s-Senior Loan Note, jistabbilixxi c-cirkostanzi meta jsiru dovuti l-bilanc principali tad-debitu kollu u l-imghax akkumulat, dak imsejjah bhala 'Event of Default', u d-disa' paragrafu tas-Senior Loan Note jghid testwalment hekk:

"If any of the following events (individually an "Event of Default") shall occur for any reason whatsoever (whether it shall be voluntary of (sic) involuntary or occur by operation of any law or otherwise):

a) the failure of BHC [BalticMax Holding Company Limited] to make payment when due of any principal or interest payable under this Note [Senior Loan Note] unless the failure to pay is caused by an administrative or technical error, or payment is made within thirty (30) days of its due date or...

then, upon the occurrence of any such Event of Default, the entire unpaid principal amount of, and the unpaid accrued interest on, this Note shall become immediately due and payable.";

Illi permezz tas-Senior Bridge Loan Note surreferit, ftehim iehor bejn Vroon Containers B.V. u BalticMax Holding Company Limited, l-imghax miftiehem huwa ukoll ta' ghaxra fil-mija (10%) fis-sena fuq il-bilanc tal-ammont principali sakemm tithallas l-ammont kollu dovut u BalticMax Holding Company Limited obbligat ruhha thallas l-*instalments* flimkien mal-interessi hmistax-il gurnata wara li taghlaq kull tliet xhur, bl-ewwel pagament dovut fil-15 ta' Jannar 2016;

IIIi s-Senior Bridge Loan Note, jistabbilixxi c-cirkostanzi meta jsiru dovuti l-bilanc tad-debitu kollu u l-imghax akkumulat, dak imsejjah bhala 'Event of Default', u d-disa'

paragrafu tas-Senior Bridge Loan Note jghid testwalment hekk:

"If any of the following events (individually an "Event of Default") shall occur for any reason whatsoever (whether it shall be voluntary of (sic) involuntary or occur by operation of any law or otherwise):

a) the failure of BHC [BalticMax Holding Company Limited] to make payment when due of any principal or interest payable under this Note [Senior Bridge Loan Note] unless the failure to pay is caused by an administrative or technical error, or payment is made within thirty (30) days of its due date or...

then, upon the occurrence of any such Event of Default, the entire unpaid principal amount of, and the unpaid accrued interest on, this Note shall become immediately due and payable.";

Illi permezz tas-Senior Bridge Loan Note surreferit, ftehim iehor bejn Vroon Containers B.V. u BalticMax Holding Company Limited, l-imghax miftiehem huwa ukoll ta' ghaxra fil-mija (10%) fis-sena fuq il-bilanc tal-ammont principali sakemm tithallas l-ammont kollu dovut u BalticMax Holding Company Limited obbligat ruhha thallas l-*instalments* flimkien mal-interessi hmistax-il gurnata wara li taghlaq kull tliet xhur, bl-ewwel pagament dovut fil-15 ta' Jannar 2016;

IlIi s-Senior Bridge Loan Note, jistabbilixxi c-cirkostanzi meta jsiru dovuti l-bilanc tad-debitu kollu u l-imghax akkumulat, dak imsejjah bhala 'Event of Default', u d-disa' paragrafu tas-Senior Bridge Loan Note jghid testwalment hekk:

"If any of the following events (individually an "Event of Default") shall occur for any reason whatsoever (whether it shall be voluntary of (sic) involuntary or occur by operation of any law or otherwise):

a) the failure of BHC [BalticMax Holding Company Limited] to make payment when due of any principal or interest payable under this Note [Senior Bridge Loan Note] unless the failure to pay is caused by an administrative or technical error, or payment is made within thirty (30) days of its due date or...

then, upon the occurrence of any such Event of Default, the entire unpaid principal amount of, and the unpaid accrued interest on, this Note shall become immediately due and payable.";

IlIi sal-lum BalticMax Holding Company Limited naqqset mill-obbligazzjonijiet taghha taht is-Senior Loan Note u s-Senior Bridge Loan Note u dan, *ai termini* tal-klawsoli surrefiti, jikkostitwixxu 'Event of Default' taht is-Senior Loan Note kif ukoll taht is-Senior Bridge Loan Note u la dan sehh, ifisser li l-bilanc tal-ammont principali kollu kif ukoll l-imghax akkumulat, taht iz-zewg ftehimiet, saru dovuti u

pagabbli immedjatament fil-15 ta' Frar 2016, jigifieri tletin jum wara d-data ta' meta l-pagament tal-*instalment* u l-interessi kienu dovuti, li kien il-15 ta' Jannar 2016;

Illi l-ammont dovut minnha lis-socjeta` rikorrenti mhix inqas minn hmistax-il miljun, seba' mija sebgha u tletin elf u hames mitt Dollaru Amerikan (USD15,737,500) u dan oltre l-imghax ta' ghaxra fil-mija (10%) fis-sena;

Illi l-ishma illi s-socjeta` intimata ghandha fis-socjeta' BalticMax Acquisition Corporation One Ltd huma l-unika assi illi l-istess socjeta' intimata ghandha f'Malta u ghalhekk ghar-ragunijiet surreferiti s-socjeta' rikorrenti ghandha interess car illi s-socjeta` intimata tigi mizmuma milli taghmel kwalunkwe att sabiex l-ishma ordinarji jigu zvalutati, trasferiti jew jigu uzati sabiex jigu zvalutati l-kumpaniji sussidjari tal-BalticMax Acquisition Corporation One Ltd u dana ghaliex kull trasferiment ta' l-ishma ordinarji fil-kumpanija Maltija imsemmija jfisser trasferiment tal-bastimenti merkantili imsemmija;

Illi ghaldaqstant jekk il-mandat odjern ma jigix milqugh b' mod urgenti, is-socjeta` rikorrenti ser tbati pregudizzju irrimeddjabbli ghar-ragunijiet fuq spjegati.

Rat id-digriet tad-9 ta' Marzu 2016 fejn il-Qorti laqghet it-talba provizorjament u appuntat l-istess rikors ghas-smigh ghas-16 ta' Marzu 2016, u ordnat in-notifika tal-istess rikors lill-kontro-parti b'erbat ijiem (4) zmien ghar-risposta.

Rat ir-rikors ta' BalticMax Holding Company Limited datata 28 ta' Marzu 2016 a fol 85 tal-process fejn l-esponenti talbet estensjoni tat-terminu ghar-risposta – possibbilment sat-8 ta' April 2016 u cioe` erbat ijiem qabel is-seduta; u l-Qorti laqghet it-talba u estendiet t-terminu sat-8 ta' April 2016, kif jidher bid-digriet moghti fis-7 ta' April 2016.

Rat ir-risposta ta' BalticMax Holdings Company Limited (BHC) datata 8 ta' April 2016 a fol 91 tal-process.

Rat il-verbal tas-seduta mizmuma fit-12 ta' April 2016 fejn meta ssejjah ir-rikors dehru Dr Jean-Pie Gauci Maistre u Dr Austin Gauci Maistre ghar-rikorrenti, u Dr Henri Mizzi ghas-socjeta` intimata. Il-partijiet qablu li s-socjeta` rikorrenti ghandha 50% tal-ishma fis-socjeta` konvenuta, u li l-*board* tas-socjeta` konvenuta huwa kompost minn zewg diretturi, wiehed mahtur mis-socjeta` rikorrenti, u l-iehor mahtur mis-socjeta` Marsoft International AS illi ghandha l-50% l-ohra tal-ishma. Il-Qorti semghet it-trattazzjoni tad-difensuri tal-partijiet, liema trattazzjoni giet registrata fuq is-sistema eletronika. Ir-rikors gie pospost. Meta rega' ssejjah ir-rikors regghu dehru d-difensuri tal-partijiet. Dr Austin Gauci Maistre irtira t-tieni talba. Ir-rikors gie differit ghal digriet kamerali fuq l-ewwel talba.

Rat id-dokumenti kollha esebiti.

Rat l-atti kollha pprezentati.

II. KONSIDERAZZJONIJIET.

Ikkonsidrat li s-socjeta' rikorrenti adixxiet lil din il-Qorti sabiex titlob li is-socjeta' intimata tigi inibita milli tbiegh, tittrasferixxi tiddisponi jew tassenja bl-aktar mod ampju l-ishma ordinarji li ghandha fis-socjeta' BalticMax Acquisition Corporation One Limited, kumpannija registrata wkoll f'Malta. Jirrizulta li s-socjeta' rikorrenti qed tagixxi sabiex tikkawtela krediti pretizi naxxenti minn *Senior Note Loan* ghall-ammont ta' USD 10,500,000 **(Dok. V1)** u *Senior Bridge Loan Note* ghall-ammont ta' USD 10,500,000, iffirmati bejn is-socjetajiet rispettivi fis-6 ta' Ottubru 2015.

Illi huwa premess li l-ghan ta' talba ghall-hrug ta' mandat ta' inibizzjoni huwa dak li jzomm persuna milli taghmel xi haga li tista' tkun ta' hsara jew pregudizzju lil parti li titlob il-hrug tal-mandat (**Art.873 tal-Kap.12 tal-Ligijiet ta' Malta)** u ghalkemm fil-procedura mahsuba skont l-**artikolu 874 tal-Kap 12** mhuwiex mehtieg ir-rekwizit tal-pregudizzju irrimedjabbli, tali rekwizit hu mehtieg fil-procedura kif ifformulata tallum ,proprju b'applikazzjoni tal-artikolu 873 tal-Kap. 12 . Ghalhekk fil-kaz odjern huwa mehtieg li r-rikorrent jissoddisfa z-zewg elementi kumulattivament - il-jedd *prima facie* u l-htiega irrimedjabbli sabiex it-talba tirnexxi.

Illi kif ivverbalizzat fis-seduta tat-12 ta' April 2016 is-socjeta' rikorrenti rtirat it-tieni talba u ghalhekk din il-Qorti mhix ser tiehu aktar konjizzjoni taghha.

Ikkonsidrat li huwa pacifiku bejn il-partijiet li l-krediti pretizi jezistu u ghadhom ma thallsux. Madanakollu d-difiza tas-socjeta' intimata hija bbazata fuq il-fatt, ukoll inkontestat, li s-socjeta` kreditrici hija azzjonista ta' 50% mill-ishma fil-kumpannija intimata BalticMax Holding Company Limited u ghandha id-dritt li tahtar wiehed mix-zewg diretturi, kif fil-fatt ghamlet. Tant hu hekk li d-difensur tas-socjeta' konvenuta talab direzzjoni miz-zewg diretturi tas-socjeta' intimata sabiex ikun jista' jipprocedi bid-difiza tieghu fil-proceduri odjerni.

Fl-imsemmija seduta li nzammet quddiem din il-Qorti gie proprju ivverbalizzat a skans ta' kull ekwivoku hekk:

"Il-partijiet qablu li s-socjeta` rikorrenti ghandha 50% tal-ishma fis-socjeta` konvenuta, u li l-bord tas-socjeta` konvenuta huwa kompost minn zewg diretturi, wiehed mahtur mis-socjeta` rikorrenti, u l-iehor mahtur mis-socjeta` Marsoft International AS illi ghandha l-50% l-ohra tal-ismha."

Illi l-ewwel haga li r-rikorrenti jrid juri hu li l-mandat huwa mehtieg biex jitharsu l-jeddijiet pretizi mir-rikorrenti tant li bin-nuqqas ta' hrug tieghu ir-rikorrenti ser isofri pregudizzju;[1]

Ikkonsidrat li d-difensur tas-socjeta' intimata ssottometta li tali htiega ma tirrizultax billi l-kreditur Vroon huwa

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[1] Ara f'dan is-sens *"**Grech proprio et nomine vs Manfre**"* – A.C. – Dec.14 ta' Lulju 1988 – Vol. LXXII.ii.290; u *"**40, Main Street Catering Establishment Limited vs L-Awtorita` tal-Ippjanar**"* (P.A. (RCP) - Dec. 2 ta' Novembru 2010).

f'posizzjoni li jizgura li jwaqqaf u jikkontrolla kull decizjoni tal-istess socjeta' intimata rigwardanti l-jeddijiet fuq l-ishma mertu ta' dan il-mandat. Tali decizjonijiet ma jistghux jittiehdu minn wiehed biss mill-azzjonisti. Wiehed jifhem ukoll li qabel ma tghaddi ghall-bejgh, rahan jew ghall-kostituzzjoni ta' xi piz fuq l-ishma taghha, l-istess socjeta' ikollha tottjeni rizoluzzjoni f'dan is-sens skont l-istatut taghha, u dan ikun jinvolvi l-azzjonisti li ghandhom l-istess attiv u *voting rights* fis-socjeta' kif ukoll id-direttur li jirraprezenta l-interessi tal-kreditur , ir-rikorrent odjern fl-imsemmi kumpannija.

Illi in fatti s-socjeta` rikorrenti ma gabet l-ebda argument siwi li tista' ixxejjen l-argument li hija gja ghandha l-aktar mezzi efficjenti a disposizzjoni taghha biex tixxejjen kull tentattiv ghat-trasferiment jew anke ghall-izvalutazzjoni tal-ishma jekk mhux bil-kunsens dirett u espress taghha. Hija azzjonista bin-nofs fil-kumpannija intimata u rapprezentata fuq il-Bord tad-Diretturi bl-istess poteri u awtorita' daqs l-uniku azzjonist l-iehor.

Illi fid-dawl ta' dan kollu premess, filwaqt li ssib li l-jedd *prima facie* tar-rikorrenti biex tressaq it-talba taghha jirrizulta, hija tal-fehma konsiderata taghha li r-rikorrenti ma rnexxilhiex tipprova l-htiega ghal dan il-mandat.

III. DECIDE.

Illi ghalhekk ghal dawn il-motivi, din il-Qorti, wara li rat l-atti kollha relattivi, u semghet it-trattazzjoni, **taqta' u**

tiddeciedi, billi tirrevoka *contrario imperio* d-digriet taghha tad-9 ta' Marzu 2016 fejn laqghet it-talba provizorjament, u minnflok, tichad it-talba.

L-ispejjez jigu sopportati mis-socjeta' rikorrenti.

Degretat.

Onor. Mhallef Lorraine Schembri Orland
LL.D., M.Jur.(Eur.Law), Dip.Trib.Eccles.Melit.
19 ta' April 2016

Josette Demicoli
Deputat Registratur
19 ta' April 2016