



QORTI CIVILI PRIM'AWLA

**ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON**

Illum il-Hamis 26 ta` Mejju 2016

**Kawza Nru. 12
Rik. Nru. 140/16 JZM**

Carmelo Caruana (381058M)

u

Joseph Caruana (274663M)

u

**ALCASONS AND COMPANY
LIMITED (C-8039)**

kontra

X

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fit-23 ta` Frar 2016 li jaqra hekk :-

Illi l-esponenti Caruana huma d-diretturi u azzjonisti tal-kumpannija ALCASONS AND COMPANY LIMITED (C-8039).

Illi kif ser jigi spjegat fil-kors tal-kawza n-negozju tal-kumpannija ALCASONS AND COMPANY LIMITED (C-8039) ilu sospiz għall-perjodu bla waqfien ta` aktar minn erbgha u ghoxrin xahar.

Illi l-kumpannija ALCASONS AND COMPANY LIMITED (C-8039) ma tistax thallas id-djun tagħha.

Illi tenut kont tal-passiv kontingenti u prospettiv tal-kumpannija jirrizulta illi l-kumpannija ALCASONS AND COMPANY LIMITED (C-8039) gatt ma tista` thallas id-djun tagħha.

Illi hemm ragunijiet gravi bizzejjed li jiggustifikaw ix-xoljiment u konsegwentement l-istralc tal-kumpannija.

Illi għalhekk u ai termini tar-risoluzzjoni annessa mmarkata Alcas01 il-kumpannija rrizolviet b`risoluzzjoni straordinarja li l-kumpannija għandha xxolji u tkun stralcjata mill-Qorti;

Illi dan ir-rikors għal xoljiment u stralc qed isir ai termini tal-artikolu 218 skont l-artikoli 214(1) (a) u (2) (a) tal-Kap. 386.

Għaldaqstant ir-rikorrenti jitolbu illi dina l-Qorti jogħgobha :

(a) Tagħmel ordni urgenti għal stralc tal-kumpannija ALCASONS AND COMPANY LIMITED (C-8039).

U dana kollu taht dawk it-termini, il-pattijiet u kundizzjonijiet ohra illi dina l-istess Onorabbli Qorti jidhrilha xierqa u opportuna illi timponi fic-cirkostanzi.

Bl-ispejjez.

Rat il-lista tax-xhieda ndikati mir-rikorrenti.

Rat id-dokument li kien ipprezentat mar-rikors promotur.

Semghet ix-xiehda ta` Carmelo Caruana, Joseph Caruana u Arthur Turner fl-udjenja tas-7 ta` April 2016 u rat id-dokument li kien ipprezentat fl-istess udjenja.

Rat in-nota b`dokument li pprezentaw ir-rikorrenti fl-14 ta` April 2016.

Rat id-digriet li tat fl-udjenja tas-7 ta` April 2016 fejn halliet il-kawza ghal provvediment ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Xiehda

Ir-rikorrent Carmelo Caruana – Direttur Manigerjali u azzjonista tas-socjeta` rikorrenti (“**is-socjeta**”) – ikkonferma l-kontenut tar-rizoluzzjoni a fol 2 tal-process u gharaf fuqha l-firma tieghu. L-iskop tar-rizoluzzjoni kien li jxolju s-socjeta` billi m`ghandhomx mezzi biex ikomplu n-negozju, kif ukoll ghaliex kellhom debituri li ma hallsuhomx bil-konsegwenza li tgharrqu. In-negozju tas-socjeta` huwa dak ta` laundry u dry-cleaning. Kienu ilhom hamsin sena fin-negozju izda ma setghux ikomplu. Kull nhar ta` Tnejn filghodu jcemplu mill-banek kredituri taghom sabiex ihallsu d-dejn taghom. Qal li kien wasal fl-estremita` li kellu jigbed flus mill-credit card personali tieghu biex ihallas il-pagi.

Kompla jghid illi s-socjeta` waqfet in-negozju taghha ghal habta tal-2007 wara li miet missierhom fl-2006 billi ma setghux ikomplu. Hallelw disa` snin qabel taw bidu ghal din il-procedura ghaliex waqghu lura fil-hlasijiet tas-sigurta` socjali tal-haddiema u anke tal-VAT. Ghalhekk kellhom jaghmlu program ta` hlas mal-awtoritajiet. Sahansitra kellu jbiegh il-propjeta` li kellhom sabiex ihallas id-dejn. Issa pero` gew fix-xejn.

Stqarr illi qabel waqfu n-negozju fl-2007 huma ppreparaw lill-haddiema minn qabel. Dwar il-ftit haddiema li kien fadal – minn erba` sa sitta – ghamel ftehim ma` min kien se jixtri l-makkinarju minghandhom sabiex izommhom fl-impieg mieghu ghal perijodu minimu ta` zmien – speċjalment l-antiki. Ghamlu minn kollox sabiex il-haddiema ma jbatux il-konsegwenzi tal-waqfien min-negozju.

Qal illi l-kumpannija m`ghandhiex assi billi bieghu dawk li kellhom sabiex isiru l-hlasijiet tas-sigurta` socjali.

Dwar djun, stqarr li fadal xi haga zghira.

Ir-rikorrent Joseph Caruana – direttur u azzjonista tas-socjeta` - ikkonferma l-kontenut tar-rizoluzzjoni a fol 2 u gharaf il-firma tieghu. Bir-rizoluzzjoni huma hadu decizjoni li jxolju s-socjeta`. Hadu dik id-decizjoni ghaliex beda jakkumula d-dejn. Is-socjeta` kienet ilha li waqfet topera *fuq disa` snin* (kliem ix-xhud). Joseph Caruana xehed fl-udjenza tas-7 ta` April 2016.

L-Awditur Arthur Turner xehed illi huwa kien ilu l-awditur tas-socjeta` ghal aktar minn erbatax-il sena. Qal illi s-socjeta` kellha laundry go Hal-Tarxien b`impjant li kien ihaddem hafna nies. Is-socjeta` ltaqghet xi problemi finanzjarji l-aktar mill-banek ghaliex ma kenitx qeghda tlahhaq mal-ispejjez. Il-konsegwenza kienet illi s-socjeta` ghalqet, bieghet il-propjeta` kollha u waqfet topera. Waqfet ghal kollox sitt snin ilu fic-cert.

Il-Qorti staqsiet lix-xhud ghaliex is-socjeta` gralha hekk meta tqis illi fil-pajjiz hawn tant laundries. Ix-xhud wiegeb illi illum sabiex tmexxi laundry bi qliegh trid tinvesti f'tagħmir modern li jrendi ghaliex johrog il-prodott b`aktar efficjenza. Dan it-tip ta` negozju ghandu l-problemi tieghu ghaliex huwa *labour intensive*. Bil-makkinarju li kellha, u bl-ghadd tan-nies li kellha, is-socjeta` ma setghet tagħmel il-qliegh. B`zieda ma` dan, ghalkemm is-socjeta` ppruvat ittejjeb l-operat b`tagħmir aktar adattat, irrizulta li kellha debitori, l-aktar mill-industrija tat-turizmu, li baqghu ma hallsux. Il-*bottomline* ta` dan l-assjem ta` fatti u cirkostanzi kien illi s-socjeta` ma bdiex tlahhaq mad-djun li kellha hi – speċjalment mad-Dipartimenti tas-Sigurta` Socjali u VAT – u ghalhekk waqfet l-operat tagħha.

Stqarr illi l-ahhar *audited accounts* li saru kienu daww ghas-sena li ghalqet fit-30 ta' Marzu 2016. Mill-kontijiet huwa evidenti illi s-socjeta` hija *on a break-up basis* ghaliex mhijiex *a going concern*.

III. Dokumenti

Bhala prova, kienu pprezentati tliet dokumenti :-

- (a) Ir-risoluzzjoni
- (b) *Ir-report and financial statements as at 31 ta' Marzu 2016*
- (c) *Il-memorandum u l-articles of association*

(a) Ir-risoluzzjoni

Din iggib il-firma tad-diretturi u tal-azzjonisti tas-socjeta` u cioe` Carmelo Caruana u Joseph Caruana. Fiha hemm rifless tal-premessi li bhala rikorrenti dawn gabu `l quddiem fil-procediment tal-lum sabiex jaghmlu t-talba għax-xoljiment u l-istralc tas-socjeta`.

Tenut kont tad-disposizzjonijiet tal-Kap 386 li abbazi tagħhom qed jintalab ix-xoljiment u l-istralc tas-socjeta`, ir-risoluzzjoni tissodisfa l-vot tal-Art 218 u għalhekk ir-rikorrenti għandhom *locus standi* sabiex imexxu bil-procediment tal-lum.

(b) Il-kontijiet

Ix-xieħda tal-Awditur Turner tirrispekkja fedelment dak li jirrizulta mill-*financial statements as at 31st March 2016*.

(i) Directors` Report

Jirrizulta li matul is-sena mertu tal-kontijiet, is-socjeta` *did not trade*. Kien hemm *loss for the year after taxation* ta` €91,733 li b`zieda mal-*accumulated losses* it-telf tela` għal €211,294.

(ii) Independent Auditors` Report

Fost hwejjeg ohra, jinghad hekk :-

The financial statements have been prepared on a break up basis in view of the fact that the company during the year ended 31 March 2016 had net liabilities amounting to €188,000 and ceased to trade ...

(iii) Income statement

Dan juri li ma kien hemm l-ebda *turnover* fl-2015 u fl-2016, u li filwaqt li fl-2015 it-telf kien ta` €1,181, fl-2016 dan kien €91,733.

(iv) Balance sheet

Il-*balance sheet* turi *current liabilities* ghall-2016 ta` €188,526 imqabbel ma` €496,883 ghall-2015.

(v) Cash flow

Fiz-zmien taht ezami, il-*cash flow* kien nil.

(vi) Notes to the financial statements

Inter alia jinghad illi *the company did not trade during the year under review and is not in a position to continue trading. The assets helds by the company are not sufficient to honour the liabilities ...*

(vii) Property, plant and equipment

Sal-31 ta` Marzu 2016, is-socjeta` ma kellha xejn.

(viii) Detailed income statement

Dan juri *nil turnover* sal-31 ta` Marzu 2016, u telf ta` €91,733 għall-istess zmien.

(c) Il-memorandum u l-articles

Minn ezami tad-dokument, jirrizulta :-

i) Illi l-*object* principali tas-socjeta` huwa :-

To undertake the laundry, drycleaning and pressing of articles of clothing and soft furnishings.

ii) Illi l-*issued share capital* ta` 500 sehem huwa maqsum indaqs bejn Carmel Caruana u Joseph Caruana u huwa 20% *paid up*.

iii) Illi Carmel Caruana u Joseph Caruana huma d-diretturi tal-kumpannija.

iv) Illi fil-kaz ta` rizoluzzjoni straordinarja, din tghaddi b`maggoranza ta` 75% tal-membri.

IV. It-talba tar-rikorrenti

Qieghed jintalab ix-xoljiment u l-istralc tas-socjeta` abbazi :

- (a) tal-**Art 214(2)(a)(i) tal-Kap 386** ;
- (b) tal-**Art 214(2)(a)(ii) u l-Art 214(5)(b) tal-Kap 386** ;
- (c) tal-**Art 214(2)(b)(iii) tal-Kap 386**.

V. Risultanzi

(a) L-Art 214(2)(a)(i) tal-Kap 386

Skont l-**Art 214(2)(a)(i) tal-Kap 386**, *kumpannija tista' xxolji u tkun stralcjata mill-qorti ... jekk in-negozju tal-kumpannija jkun sospiz għal perjodu bla waqfien ta' erbgħa u ghoxrin xahar.*

Ir-rekwiziti tad-disposizzjoni huma :

- (i) is-sospensjoni tan-negozju ;
- (ii) ghal erbgha u ghoxrin (24) xahar ;
- (iii) bla waqfien.

Is-sussistenza tar-rekwiziti hija fattwali ; ghalhekk trid tirrizulta mill-provi.

Jidher illi d-disposizzjoni kellha l-origini taghha fl-**Art12(1)(d) tal-UK Insolvency Act 1986**, liema disposizzjoni Ingliza m`ghadhiex taghmel parti mill-Act, ghax kienet superata b`legislazzjoni aktar ricenti.

Fil-kaz tal-lum, ir-rekwiziti ta` l-Art 214(2)(a)(i) kienu ppruvati kollha, billi rrizulta (a) li s-socjeta` mhux biss issospendiet in-negozju taghha izda waqfet ghal kollox ; (b) li s-socjeta` waqfet tinneozja fl-2007 ; (c) li wara li waqfet l-*operations* taghha, ma regghetx ghamlet negozju ; (d) kull ma sar kien tentattiv sabiex jithallsu d-djun mill-bejgh tal-assi tas-socjeta` ; (e) mill-assi ma fadal xejn ghalkemm id-dejn ma thallasx kollu kif jixhdu l-*financial statements* ghas-sena li ghalqet fil-31 ta` Marzu 2016.

b) Art 214(2)(a)(ii) tal-Kap 386

Jista` jkun hemm xoljiment u stralc ta` kumpannija jekk il-kumpannija ma tkunx tista' thallas id-djun taghha.

Id-disposizzjoni trid tinqara flimkien ma` l-**Art 214(5)** li jistabilixxi meta skont il-ligi taghna, kumpannija ghandha titqies li ma tkunx tista` thallas id-djun taghha.

Tnejn huma c-cirkostanzi definiti fil-ligi :-

(a) *jekk id-dejn dovut mill-kumpannija jkun baqa' ma thallasx ghal kollox jew f`parti wara erbgha u ghoxrin gimgha mill-ezekuzzjoni ta' titolu ekekuttiv kontra l-kumpannija b`xi wiehed mill-atti ekekuttivi msemmijin fl-artikolu 273 tal-Kodici ta' Organizzazzjoni u Procedura Civili ;*

iew

(b) jekk ikun ippruvat ghas-sodisfazzjon tal-qorti li l-kumpannija ma tkunx tista' thallas id-djun taghha, meta din tqis ukoll il-passiv kontingenti u prospettiv tal-kumpannija.

Fil-kaz tal-lum, ir-rikorrenti qeghdin joqghodu fuq l-Art 214(5)(b) tal-Kap 386.

c) L-Art 214(5)(b) tal-Kap 386

Il-Qorti tirrileva illi meta tfassal il-mudell ghal-ligi taghna l-gdida dwar il-kumpanniji, sabiex tiehu post il-Commercial Partnerships Ordinance 1962, il-qafas maghzul kien dak tal-Companies Act Ingliza 1985.

Fil-ligi Ingliza, ix-xoljiment u l-istralc ta` kumpanniji kien trattat permezz ta` legislazzjoni *ad hoc* u cioe` l-Insolvency Act 1986. Meta sar l-Att XXV tal-1995 dwar il-Kumpanniji, ix-xoljiment u l-istralc kienu ntegrati permezz ta` disposizzjonijiet fl-Att stess.

Kif diga` accennat, li *kumpannija ma tkunx tista' thallas id-djun taghha* ghandu **sinjifikat preciz u definit** fil-ligi taghna.

Fil-ligi Ingliza, il-posizzjoni hija aktar wiesgha. Il-koncett ta` insolvenza fil-kaz taghna huwa aktar ristrett minn dak tal-ligi Ingliza ghalkemm hemm *overlaps*.

Fit-Tmien Edizzjoni (2012) ta` l-ktieb **Boyle & Birds` Company Law** (pubblikat minn Jordans) pg 859 jinghad hekk –

There are two principal, although not exclusive or exhaustive, tests of insolvency : a company is insolvent if it unable to pay its debts as they fall due (“cash flow insolvency”) ; it is also insolvent if its liabilities exceed its assets (“balance sheet insolvency”) ...

Dan premiss, il-Qorti sejra tghaddi għall-konsiderazzjoni tal-Art 214(5)(b) tal-Kap 386.

Fit-test bl-Ingiliz l-Art 214(5)(b) tal-Kap 386 jaqra hekk :-

For the purposes of subarticle (2)(a)(ii), a company shall be deemed to be unable to pay its debts ...

if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

Fil-Insolvency Act 1986 tar-Renju Unit, insibu disposizzjoni li TIXBAH dik tal-ligi taghna, ghalkemm mhijiex l-istess.

Il-Qorti qeghda tirreferi għall-Art 123(2) tal-Insolvency Act 1986 li jaqra hekk –

A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

Il-Qorti diga` rrilevat illi d-disposizzjoni fil-ligi taghna TIXBAH PERO` MHIJIEX IDENTIKA għal dik tal-ligi Ingliza.

Id-divergenza bejn iz-zewg legislazzjonijiet hija li filwaqt li fil-kaz taghna l-mizura hija semplici : u cioe`

the company is unable to pay its debts account being taken also of contingent and prospective liabilities of the company.

Fil-kaz tal-ligi Ingliza, il-kriterju huwa divers ghaliex il-Qorti tkun trid tqis illi :

the value of the company`s assets is less than the amount of its liabilities ...

billi tiehu kont tal- ... *contingent and prospective liabilities.*

Ghal din il-Qorti, id-differenza mhijiex ta' *drafting* izda ta' sostanza.

Fl-istess waqt, il-Qorti hija tal-fehma li xorta wahda ghandha tfittex sintesi bejn id-disposizzjoni tal-ligi taghna u dik tal-ligi Ingliza. U s-sintesi hija kostitwita mill-koncett ta' *contingent and prospective liabilities*.

Il-Qorti sejra tirreferi ghal dak li tghid id-dottrina fl-Ingilterra dwar il-materja li tikkostitwixxi l-mertu tal-istanza tal-lum.

Bid-debiti riservi, u tenut kont tad-**disparita**` fid-disposizzjonijiet ta' bejn il-ligi Ingliza u dik taghna, il-Qorti sejra tirreferi ghal dak li tghid id-dottrina Ingliza dwar dak li huwa maghruf bhala ***balance sheet insolvency*** meta abbinat mal-**Art 123(2)** tal-Insolvency Act 1986 tar-Renju Unit.

Fil-Pag 19 tal-ktieb **Insolvency Law – Corporate and Personal** (2003 – Pearson Longman) Andrew R Keay u Peter Walton ighidu dwar *balance sheet insolvency* kif mifhuma fil-kuntest tal-Insolvency Act 1986 –

In determining whether the assets are outweighed by the liabilities a court is able to take into account contingent and prospective liabilities, but not contingent and prospective assets [Byblos Bank SAL v. Al-Khudhairi (1986) 2 BCC99, 549 (CA)] It has been said that “liabilities” is a broadened term compared with “debts” [Re A debtor (No 17 of 1966) (1967) Ch 590 ; (1967) 1 All ER 668]. “Liabilities” is defined for the purposes of winding up in rule 13.12 (4) to mean “a liability to pay money or money’s worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution”. Then rule 13.12 (3) states that it is immaterial whether the liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

Clearly with this test it is only possible to take into account the assets owned by the company including the uncalled capital of the company [Re National Livestock Insurance Co (1858) 26 Beav 153 ; 53 ER 855 ...

Fil-Pag 114 tar-Raba` Edizzjoni (2011) ta` **Principles of Corporate Insolvency Law** (Sweet & Maxwell) Roy Goode ighid hekk –

The idea underlying this test ... is that it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets and these are insufficient for the purpose ...

Fil-Pag 130 ikompli hekk –

The mere excess of liabilities over assets is not in itself determinative. What has to be shown is that by reason of the deficiency of its assets the company has reached the point of no return.

Fil-Pag 134 sa 136, l-awtur jittratta n-nozzjoni ta` **contingent liability** u jghid hekk –

To give the phrase “contingent liability” any meaning we must restrict it to a liability or other loss which arises out of an existing legal obligation or state of affairs but which is dependent on the happening of an event which may or may not occur. Many of the cases have stressed the need for the liability to arise out of an existing obligation.

... in considering whether there is a contingent liability the court has regard to the existing commercial situation, not merely an existing legal obligation. In this regard, assistance can be derived from Financial Reporting Standard 12 which defines a contingent liability in the following terms :

(a) “A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the entity`s control ; or

(b) a present obligation that arises from past events but is not recognised because :

(i) it is not probable that a transfer of economic benefits will be required to settle the obligation ; or

(ii) the amount of the obligation cannot be measured with sufficient reliability.”

... the term “contingent liabilities” is ultimately not a term of art and its precise meaning will depend on its context. The court is thus entitled to have regard to commercial realities ...

Fil-Pag 136 u 137, l-awtur jittratta n-nozzjoni ta' **prospective liability** u jghid hekk –

... The phrase “prospective liability” is neither a legal nor an accounting term of art. It has been judicially defined as : “ ... a debt which will certainly become due in the future, either on some date which has already been determined or some date determinable by reference to future events.”

... it has been described ... as unmatured liability which will inevitably ripen into a debt with the passage of time. Such a definition encompasses all forms of debitum in praesenti, solvendum in futuro including an indisputable claim for unliquidated damages which remains only to be quantified and will result in a debt far more than a nominal amount. “Prospective liability” thus embraces both future debts, the sense of liquidated sums due, and unliquidated claims.

Fil-kaz tal-lum, jirrizulta ppruvat mhux biss mid-deposizzjoni tax-xhieda izda wkoll mill-*financial statements* illi s-socjeta` mhijiex a *going concern* ghaliex waqfet l-*operations* taghha snin ilu. L-ahhar *accounts* saru on a *break up basis*. Tant hemm *break up* illi s-socjeta` m`ghandhiex assi. Bieghet l-impjant. U bieghet ukoll il-propjeta` sabiex thallas id-djun taghha. Eppure ghad fadal dejn sostanzjali kif jirrizulta mill-*accounts*. Sostanzi mnejn jithallas id-dejn li fadal ma hemmx u hija evidenti l-intenzjoni tal-azzjonisti ma jhallsu xejn aktar minn bwiethom. Ir-rekwiziti tal-Art 214(5)(b) huma ppruvati.

d) Id-diskrezzjoni tal-Qorti

Accertat illi jirrizultaw ippruvati r-rekwiziti tal-Art 214(2)(a)(i), tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b), il-Qorti sejra tara jekk fuq il-provi akkwiziti, ghandhiex hi tezercita d-diskrezzjoni taghha li tordna x-xoljiment u l-istralc tas-socjeta`.

Hija l-fehma konsiderata tal-Qorti illi s-socjeta` issa ilha s-snin ma taghmel propju xejn biex tinsorgi. Esawriti l-assi li ntuzaw sabiex thallas parti mid-dejn, ma sar propju xejn mill-azzjonisti sabiex jaghtu hajja lura lis-

socjeta`. Is-socjeta` waqfet ghal kollox mill-esercizzju tan-negozju li ghalih kienet kostitwita. L-istampa li tohrog mill-*financial statements* hija negattiva. Sabiex is-socjeta` forsi tiehu r-ruh, hemm htiega li l-azzjonisti jaghmlu *a capital injection*. Jidher evidenti l-azzjonisti m`ghandhom l-ebda hsieb jaghmlu dan ghaliex qatghu qalbhom. Eventwali investment f`makkinarju gdid u modern u s-sejbien ta` post mnejn jigi gestit in-negozju jista` ma jkunx bizzzejjed ghaliex kemm ilha wieqfa, is-socjeta` tilfet il-klijentela kollha u ghalhekk trid tibni kollox mill-gdid. F`suq fejn il-kompetizzjoni titkejjel mhux biss bis-servizz izda bil-prezz ikun diffiqli ferm ghall-azzjonisti li jaqbd u l-art mill-gdid *in the short term* ghaliex l-investment taghhom jista` forsi jrendi fit-tul. Il-Qorti tifhem *that there is too much at stake* u r-riskju finanzjarju huwa qawwi wisq ghall-azzjonisti. Kif diga` kellha okkazjoni tghid fi provvedimenti precedenti taghha, din il-Qorti terga` ssostni li kumpanija li ma taghmilx negozju hija entita` bla ruh. Kumpanija li ma tiggenerax attivita` ekonomika ma jistax ikollha dhul, u minghajr dhul, ma tista` qatt thallas id-dejn taghha, aktar u aktar meta fil-kaz tal-lum irrizulta bhala fatt illi l-azzjonisti wrew li m`ghandhom l-ebda intenzjoni li jinvestu fil-kumpanija. Ghal din il-Qorti, ix-xoljiment u l-istralc tal-intimata huwa inevitabbli.

e) L-Art 214(2)(b)(iii) tal-Kap 386

Billi l-Qorti qeghda tezercita d-diskrezzjoni taghha u sejra tordna x-xoljiment u l-istralc tal-intimata abbazi tal-Art 214(2)(a)(i), tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b) tal-Kap 386, il-Qorti mhijiex sejra tqis l-Art 214(2)(b)(iii) tal-Kap 386.

Provvediment

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi hekk :-

1) Tiddikjara li fir-rigward tal-kumpanija ALCASONS AND COMPANY LIMITED (C8039) jirrizultaw privati sal-grad rikjest mil-ligi r-rekwiziti tal-Art 214(2)(a)(i), tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b) tal-Kap 386 tal-Ligijiet ta` Malta.

2) A tenur tal-Art 214(2)(a)(i), tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b) tal-Kap 386 tal-Ligijiet ta` Malta, tordna x-xoljiment tal-

kumpannija ALCASONS AND COMPANY LIMITED (C8039) b`effett mit-23 ta` Frar 2016 skont l-Art 223(1) tal-Kap 386. Tordna wkoll l-istralc taghha.

3) Tastjeni milli tiehu konjizzjoni ulterjuri ta` fejn intalab mir-rikorrenti x-xoljiment u l-istralc tal-kumpannija ALCASONS AND COMPANY LIMITED (C8039) skont l-Art 214(2)(b)(iii) tal-Kap 386 tal-Ligijiet ta` Malta.

4) Tahtar lill-Avukat Dottor Malcolm Mallia bhala stralcjarju bis-setghat u bid-dmirijiet kollha previsti mid-disposizzjonijiet tal-Kap 386 tal-Ligijiet ta` Malta.

5) Tordna li l-ispejjez ta` dan il-procediment, kif ukoll l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tal-istralcjarju, jithallsu mir-rikorrenti *in solidum* bejniethom, u dan bl-applikazzjoni tal-Art. 236(2) tal-Kap 386.

6) Thalli l-istralc ghall-udjenza ta` nhar il-Hamis 29 ta` Settembru 2016 fid-9.00 a.m.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur