



## QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF  
JOSEPH ZAMMIT MCKEON

Illum it-Tnejn 31 ta` Ottubru 2016

Kawza Nru. 21  
Rik. Nru. 281/16 JZM

Wave Bet International  
Limited (C27747)

*kontra*

X

Il-Qorti :

### I. Preliminari

Rat ir-rikors prezentat fis-6 ta` April 2016 li jaqra hekk :-

1. *Illi dan ir-rikors qiegħed isir a tenur tal-Artikoli 214(1)(a) u 214 (2)(a)(ii) tal-Att dwar il-Kumpanniji (Kap. 386 tal-Ligijiet ta` Malta) u fih*

qiegħed jintalab l-istralc tas-socjeta` rikorrenti minhabba l-insolvenza tal-istess ;

2. Illi s-socjeta` rikorrenti giet kostitwita fl-20 ta` Frar 2001 bhala Kumpannija ta` Responsabbilita` Limitata;

3. Illi l-uniku direttur tas-socjeta` rikorrenti huwa Andrei Mokh Bogdanovich (detentur ta` passaport Spanjol bin-numru XDC143165) filwaqt li Wave Bet Holding GmbH (bin-numru ta` registrazzjoni FN 69468s) u Wave Bet Holding Limited (bin-numru ta` registrazzjoni C27580) huma l-unici azzjonisti tal-kumpannija rikorrenti, kif muri fid-dokument hawn anness u mmarkat bhala Dok WBI 1 ;

4. Illi l-istatut tas-socjeta` rikorrenti qed jigi anness ma` dan ir-rikors u mmarkat bhala Dok WBI 2 ;

5. Illi s-socjeta` rikorrenti ghaddiet rizzoluzzjoni straordinarja hawn annessa u mmarkata bhala Dok WBI 3, fejn għar-ragunijiet kollha premessi gie deciz li s-socjeta` rikorrenti tigi xolta u konsegwentement stralcjata minn dina l-Onorabbli Qorti skont l-Art. 214(1)(a) u/jew l-Art. 214(2)(a)(ii) u dan a tenur tal-Art. 218(1) tal-Att dwar il-Kumpanniji ;

6. Illi jkun għaqli wkoll illi pendenti d-decizjoni finali ta` din il-Qorti jigi appuntat amministratur provvizorju sabiex jamministra s-socjeta` rikorrenti.

Għaldaqstant, u in vista tas-suespost, ir-rikorrenti umilment titlob illi dina l-Onorabbli Qorti jogħgobha, prevja kwalsiasi dikjarazzjoni necessarja u opportuna, u għar-ragunijiet premessi :

1. Tordna illi s-socjeta` Wave Bet International Limited tigi xolta u konsegwentement stralcjata minn dina l-Onorabbli Qorti abbazi tal-Art. 214(1)(a) u/jew l-Art. 214(2)(a)(ii) u dan a tenur tal-Art. 218 (1) tal-Att dwar il-Kumpanniji, bl-ispejjez a karigu tal-istess socjeta` rikorrenti ; u

2. *Tordna li sakemm tinghata decizjoni finali jigi appuntat amministrator provvizorju sabiex jiehu hsieb l-amministrazzjoni tal-istess socjeta` rikorrenti.*

Rat id-dokumenti li kienu prezentati mar-rikors promotur.

Rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat in-nota ta` osservazzjonijiet tar-rikorrenti.

Rat id-digriet li tat fl-udjenza tat-30 ta` Gunju 2016 fejn halliet il-kawza ghal-lum sabiex taghti provvediment *in difett ta` ostakolu.*

Rat l-atti l-ohra tal-kawza.

Rat li ma kien l-ebda ostakolu sabiex taghti provvediment llum.

## II. Xhieda

**Andrei Mokh Bogdanovich** xehed illi huwa l-uniku direttur ta` l-kumpannija rikorrenti li qabel kellha l-isem : “Wettpunkt International Limited”. Kien appuntat direttur fl-10 ta` Settembru 2015. Il-kumpannija kienet kostitwita fl-20 ta` Frar 2001 minn (i) Wettpunkt International Holding Limited (C27580) li hija *private limited liability company* registrata Malta b`1,499 *shares* ; u minn (ii) Hannes Bohine – Passaport Awstrijak Nru A0055627 b`*share* wahda. Ir-rikorrenti kellha *Class 2 Remote Gaming Licence* Nru MGA/CL2/139/2000 li kienet imgedda fit-13 ta` Gunju 2011 ghal hames snin ohra. Kellha wkoll *Class 1 Remote Gaming Licence* Nru MGA/CL1/139/2000 li kienet ukoll imgedda fit-13 ta` Gunju 2011 ghal hames snin. Ir-rikorrenti cediet din l-ahhar licenza fl-2015.

Kompla jixhed illi r-rikorrenti hija *fully owned subsidiary* ta` Wave Bet Holding GmbH li qabel kellha l-isem : “Hannes Bohine Gesellschaft m.b.H.” (FN 96468s) kumpannija registrata l-Awstrija. Wave Bet Holding GmbH kienet tiffirma parti minn FGS Group li kien jaqa` taht il-kumpannija F.G.S

Intercopo Holding GmbH li hija grupp ta' kumpanniji mill-Awstrija proprjeta' ta' Hannes Bohine. Fis-17 ta' Jannar 2011, Hannes Bohine ttrasferixxa is-sehem li kellu go Wave Bet International Limited lil SPORT 7 Zeitungsverlags GmbH li hija *subsidiary* ta' F.G.S. Intercopo Holding GmbH. Aktar tard fl-istess sena l-*indirect ownership* ta' Wave Bet International Limited ghadda minghand l-FGS Group ghal Global Bet Holding GmbH.

Stqarr illi fit-22 ta' Awissu 2014, kien hemm *merger* ta' F.G.S. Intercopo Holding GmbH ma' Hannes Bohine Gesellschaft m.b.H. li hija *100% subsidiary* ta' F.G.S. Intercopo Holding GmbH. Ghalhekk Hannes Bohine Gesellschaft m.b.H. giet assenjata id-drittijiet u l-assi ta' F.G.S. Intercopo Holding GmbH inkluzi l-ishma fi SPORT 7 Zeitungsverlags GmbH.

Kompla jghid illi fit-23 ta' Settembru 2014, saret *merger* ta' SPORT 7 Zeitungsverlags GmbH ma' Hannes Bohine Gesellschaft m.b.H. sabiex b'hekk saret il-propjetarja tas-sehem li SPORT 7 Zeitungsverlags GmbH kellha go Wave Bet International Limited.

Fisser illi fl-2015, l-*indirect ownership* ta' Wave Bet International Limited mar ghand Global Bet Investment GmbH, u wara mar ghand Mokh Beteiligungs GmbH li hija soċjeta' proprjeta' tieghu.

Kompla jghid illi ghalhekk Hannes Bohine Gesellschaft m.b.H. hadet l-istem ta' Wave Bet Holding GmbH li hija attwalment *wholly owned subsidiary* ta' Mokh Beteiligungs GmbH.

Xehed illi l-attivitajet principali ta' Wave Bet International Limited hija dik illi topera *internet betting agency* minn Malta. Fit-22 ta' Dicembru 2008, ir-rikorrenti ghamlet *joint venture agreement* ma' Zartello limited li hija kumpannija registrata go Gibilta' bl-ufficcju registrat taghha : 124, Irish Town, Gibilta. Zartello Limited hija *wholly owned subsidiary* ta' Control System Limited, li hija *private limited liability company* registrata Malta li tiffirma parti minn Mokh Beteiligungs GmbH. L-attivitajet principali ta' Zartello Limited hija l-*marketing, promotion, technical support, supply of information* u *procurement of software*. Fl-istess data, Control System Limited ghamlet ftehim ta' *support service* ma' Zartello Limited li permezz tieghu Control System Limited tat licenzja tas-*software* taghha lil Zartello Limited. Dak is-*software* intuza minn Wave Bet International Limited skont

il-pattijiet ta' l-*Joint Venture Agreement* raggunt. Madanakollu gara li Wave Bet International Limited ma setghetx twettaq l-obbligi taghha skont il-*Joint Venture Agreement* li ghamlet ma' Zartello Limited bil-konsegwenza li spiccat debitrice ta' Zartello Limited fl-ammont ta' €6,667,204. Dan sehh peress r-*receivables* kontra Control System Limited fl-ammont ta' €6,994,828 gew *written off* minhabba dikjarazzjoni ta' *insolvency* ta' Control Systems Limited.

Qal illi ghalkemm zammet il-*Class 2 Licence*, Wave Bet International Limited hija attwalment *dormant* u waqfet min-negozju taghha.

Fisser illi ghalkemm ir-rikorrenti ghamlet xi snin tiggenera profit, ghaddiet ukoll minn zmien hazin fejn garrbet telf minhabba l-ispiza relatata mal-*joint venture* sabiex tinvesti fil-*marketing* u fis-*software* kif ukoll minhabba spiza fl-immanigjar ta' *agency network*.

Qal illi l-mudell tan-negozju li kienet topera bih, kif ukoll il-*gaming software*, li kien jiswa' hafna biex jithaddem, u li fl-istess hin ma kienx attraenti ghall-klijenti, flimkien ma' l-ispejjez li Wave Bet International Limited kienet taghmel ghar-reklamar, gabu fix-xejn kwalsiasi profit li kienet taghmel ir-rikorrenti. Imbaghad bl-introduzzjoni ta' taxxi fuq *gaming* u *betting* fl-Awstrija, kien hemm ukoll riperkussjoni negattivi fuq il-prospettivi futuri tal-kumpanija.

Spjega illi r-rikorrenti ghandha kwistjoni pendenti mal-Malta Gaming Authority ghal rimbors ta' *gaming tax* fl-ammont ta' €1,600,000. Qal illi ma jafx jekk tali l-MGA hijiex sejra thallas dak l-ammont. Ir-rikorrenti ghandha wkoll pendenza mal-awtoritajiet fiskali tal-Awstrija dwar attivitajiet li sehew bil-licenzja Class 1 ghaz-zmien ta' bejn Jannar u Gunju 2011. Ir-rikorrenti kellha talba biex thallas bilanc ta' €2,161,655.13 ; din it-talba qeghda tigi kkontestata fil-Qrati tal-Awstrija. Ir-rikorrenti talbet ukoll li tinghata zmien biex thallas *tax assessment* u penali ghal pagament tardiv, fl-ammont ta' €2,222,013.82. It-talba kienet accettata mill-ufficju tat-taxxi fl-Awstrija bil-konsegwenza li d-dejn kien dikjarat bhala *assessed* izda mhux li huwa dovut. Ma sarx *tax audit* mill-awtoritajiet tat-taxxi ghaz-zmien ta' bejn Lulju 2011 u Dicembru 2014 ghal attivitajiet relatati mal-ezercizzju tal-licenza Class 1. Kien beda *tax audit* ghaz-zmien ta' bejn Lulju 2011 u Jannar 2013 ghall-attivitajiet relatati mal-licenza Class 2 izda l-*audit* ma kienx ghadu lest. Ma kienx hemm *audit* ghaz-zmien ta' bejn Frar 2013 sa 31 ta'

Dicembru 2014 kemm ghar-rigward tal-licenza Class 1 kif ukoll ghal-licenza Class 2.

Kompla jghid illi ghal dawn ir-ragunijiet, *fl-audited financial statements* ghas-sena li ghalqet fil-31 ta` Dicembru 2014, partikolarment Note 16, ir-rikorrenzi stmat li l-ammont relatat mal-claim ghat-taxxa tal-*gaming* tal-Awstrija in konnessjoni ma` l-attivita` skont il-licenza Class 1 kien ta` €17,349,028. Dan l-ammont ghandu jitqies bhala *contingent liability*.

Qal illi fl-10 ta` Marzu 2016, GO p.lc. ipprezentat ittra ufficjali kontra r-rikorrenzi ghall-hlas ta` €60,741.77 in konnessjoni ma` *Contract for the Provision of Customer Co-Location Services and Related Technical Support Services, the Contract for the Provision of Internet Connectivity Services and Dual Stream ISDN* u servizzi telefonici. Fl-14 ta` Marzu 2016, GO plc ipprezentat mandat ta` qbid bin-nru 402/2016 ghall-istess ammont. Ipprezentat ukoll mandat ta` sekwestru. L-ammont pretiz kien depozitat fir-Registru tal-Qorti b`cedola mill-Bank of Valletta plc fl-4 ta` April 2016.

Xehed illi skont *statement of affairs* li sar fil-31 ta` Jannar 2016 irrizulta illi r-rikorrenzi kellha passiv ta` €6,778,542. Qal illi r-rikorrenzi ma tistax thallas id-djun taghha. Kopja tal-*istatement of affairs* kienet annessa mar-rizoluzzjoni tal-azzjonisti tal-21 ta` Marzu 2016 li tat bidu ghal dan il-procediment. Ikkonferma l-kontenut tar-rizoluzzjoni, tar-rikors promotur u tal-*istatement of affairs*.

**L-Awditur Paul Giglio** xehed illi huwa l-awditur ta` Wave Bet International Limited sa minn mindu kienet kostitwita. Ikkonferma l-*auditor`s report* li huwa anness mal-*financial statements* tar-rikorrenzi ghas-sena li ghalqet fil-31 ta` Dicembru 2014. Skont il-*financial statements* debitament uditjati jirrizulta li r-rikorrenzi kellha attiv nett ta` €1,525,302 fil-*balance sheet* u dan fil-31 ta` Dicembru 2014. B`referenza ghall-*istatement of affairs* taghha tal-31 ta` Jannar 2016, liema dokument mhuwiex uditjat, jirrizulta li sa din id-data, ir-rikorrenzi kellha passiv nett ta` €6,778,542 . Ikkonferma li l-*istatement* huwa fis-sostanza korrett.

### III. **Locus stanti**

Qabel tghaddi biex tqis il-mertu tal-istanza odjerna, il-Qorti tghid illi persuna li tkun trid titlob ix-xoljiment u l-istralc ta` kumpannija, trid toqghod ghal dak li jipprovdi l-**Art 218(1) tal-Kap 386** li jaqra hekk –

*Talba lill-qorti (aktar `il quddiem imsejha "rikors ghal stralc") ghal -*

(a) *stralc ta` kumpannija mill-qorti skont l-artikolu 214(1)(a) ;*

(b) *xoljiment u stralc ta` kumpannija mill-qorti skont l-artikolu 214(2)(a) ; jew*

(c) *xoljiment u stralc ta` kumpannija skont l-artikolu 214(2)(b),*

*ghandha ssir b`rikors li jista` jsir jew mill-kumpannija wara decizjoni tal-laqgħa generali jew mill-bord tad-diretturi tagħha jew minn xi detentur ta` obligazzjoni, kreditur jew kredituri, jew minn xi kontributorju jew kontributorji :*

*Izda rikors skont il-paragrafi (b) jew (c) jista` wkoll isir minn xi azzjonist jew direttur tal-kumpannija.*

Fil-kaz tal-lum, jirrizulta li kienet il-kumpannija rikorrenti stess li hadet id-decizjoni li tmur ghax-xoljiment u l-istralc.

Ghalhekk ir-rikorrenti ghandha locus standi sabiex tippromwovi l-istanza tal-lum.

Ir-rikorrenti qeghda titlob li tkun xjolta u stralcjata skont l-**Art 214(1)(a) tal-Kap 386** fejn kumpannija tirrizolvi b`rizoluzzjoni straordinarja li għandha xxolji u tkun stralcjata mill-qorti.

Ir-Registratur tal-Kumpanniji kien notifikat fid-9 ta` Frar 2016 b`kopja tar-rikors promotur skont l-**Art 218(8) tal-Kap 386**.

Jirrizulta li r-rikorrenti kienet registrata bin-nru C27747 fl-20 ta` Frar 2001.

Skont il-*memorandum* u l-*articles of association* taghha, l-ghan principali huwa :-

(a) *to carry on all or any of the business of a bookmaker, to act as a gaming and betting operator and to run a gaming and betting office for the purpose of operating visual online computerised gaming and betting and conducting gaming and betting transactions by electronic means, and to manage and maintain such business, in terms of a licence granted by the competent authority ;*

(b) *to act as consultants, advisers, managers, agents and providers of all kinds of services related to the previous object ;*

(c) *to obtain in the name of the company all types of licence and rights ;*

(d) *to do any other act which is ancillary or related to any of the above objects.*

Jirrizulta li l-*issued share capital* taghha – li huwa *fully paid up*. L-*ishma* ghandhom valur nominali ta` €1 kull sehem. Il-kapital azzjonarju huwa kompost in kwantu ghal 5,342,049 *ordinary shares* ta` Wave Bet Holding Limited, soċjeta` registrata Malta bin-nru C27580, u in kwantu ghal sehem wiehed ta` soċjeta` estera Wave Bet Holding GmbH bin-nru FN 96468s. L-azzjonisti ghandhom l-istess li kienu meta kienet kostitwita r-rikorrenti (Dok WBI 1 a fol 4).

Jirrizulta li Andrei Mokh Bogdanovich huwa d-direttur.

Skont il-klawsola 16(2) ta` l-*articles of association*, biex ikun hemm xoljiment tal-kumpannija, hija mehtiega *extraordinary resolution* tal-azzjonisti. Imbaghad fi klawsola 16(4) jinghad illi : “*An extraordinary resolution shall be deemed to have been validly carried only if consented to by a member or members entitled to attend and vote at the Meeting and holding seventy-five per cent (75%) in nominal value of all the shares represented and entitled to vote at the meeting.*”

Il-Qorti tqis illi r-risoluzzjoni tal-21 ta` Marzu 2016 (Dok WBI 3 a fol 20) tikkwalifika bhala risoluzzjoni straordinarja skont il-klawsola 16, u kwindi hija bizzejjed biex twassal ghax-xoljiment tal-kumpannija. Mid-



dokument, jirrizulta li din iggib il-firma ta` l-azzjonisti tas-socjeta` rapprezentati t-tnejn minn Andrei Mokh Bogdanovich. Fit-test tar-rizoluzzjoni hemm riflessi il-premessi tal-istanza odjerna. Il-kontenut tar-rizoluzzjoni kien anke bil-gurament minn Andrei Mokh Bogdanovich. L-istess sar fil-kaz tal-premessi tar-rikors promotur. Abbazi tad-dokumenti prezentati bhala prova, jirrizulta sa inqas minn tliet xhur qabel il-presentata tar-rikors tal-lum, u cioe` fil-31 ta` Jannar 2016, ir-rikorrenti kellha passiv nett ta` €6,778,542.

**Il-Qorti hija tal-fehma illi, fil-kuntest tal-fatti u tac-cirkostanzi ta` dan il-kaz, kif jirrizultaw mill-provi, huma sodisfatti r-rekwiziti tal-Art 214(1)(a) tal-Kap 386 u ghalhekk ir-rikorrenti ghandha tigi xjolta u stralcjata. Fl-ambitu tal-Art 214(1)(a), il-Qorti m`ghandhiex diskrezzjoni. Ghalhekk fil-kaz li jkun ippruvat dak li jrid l-Art 214(1)(a), il-Qorti trid tghaddi ghax-xoljiment u ghall-istralc.**

**V. L-Art 214(2)(ii) u l-Art 214(5)(b) tal-Kap 386**

**Ir-rikorrenti talbet ukoll lill-Qorti sabiex tordna x-xoljiment u l-istralc taghha anke abbazi tal-Art 214(2)(ii) u tal-Art 214(5)(b) tal-Kap 386.**

Il-Qorti sejra tghaddi biex tqis din it-talba.

*Skont l-Art 218(1) tal-Kap 386 talba lill-qorti ... ghax-xoljiment u stralc ta` kumpannija mill-qorti skont l-artikolu 214(2)(a) ... ghandha ssir b`rikors li jista` jsir ... mill-kumpannija wara decizjoni tal-laqgħa generali.*

Fil-kaz tal-lum, ir-rikorrenti ghandha *locus standi* biex tmexxi bl-azzjoni skont l-Art 214(2)(a)(ii).

**Diversament mill-Art 214(1)(a), fl-Art 214(2)(b)(ii) il-ligi taghti lill-Qorti diskrezzjoni li xxolji u tistralcja kumpannija jekk issib li *ma tkunx tista` thallas id-djun taghha*.**

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

**Tnejn** huma c-cirkostanzi definiti fil-ligi :-

(a) *jekk id-dejn dovut mill-kumpanija jkun baqa` ma thallasx ghal kollox jew f`parti wara erbgħa u ghoxrin gimgha mill-ezekuzzjoni ta` titolu eżekuttiv kontra l-kumpanija b`xi wiehed mill-atti eżekuttivi msemmin fl-artikolu 273 tal-Kodici ta` Organizzazzjoni u Procedura Civili ;*

*jew*

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

**Fil-kaz tal-lum, ir-rikorrenti qegħda toqghod fuq ic-cirkostanza (b) biss.**

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

Fil-ligi Ingliza, ix-xoljiment u l-istralc ta` kumpaniji kien trattat permezz ta` legislazzjoni *ad hoc* u cioe` l-Insolvency Act 1986.

Meta sar l-Att XXV tal-1995 dwar il-Kumpaniji, ix-xoljiment u l-istralc kienu integrati permezz ta` disposizzjonijiet fl-Att stess.

Fil-ligi taghna, li *kumpanija ma tkunx tista` thallas id-djun taghha* għandu **sinjifikat preciz u definit.**

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

**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.*

Fl-Insolvency Act Ingliza 1986, insibu disposizzjoni li **TIXBAH** dik tal-ligi taghna, ghalkemm mhijiex l-istess.

Il-Qorti qeghda tirreferi ghall-**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** ghal dik tal-ligi Ingliza.

**Id-divergenza** bejn iz-zewg ligijiet 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-kontenut tal-*financial statements* illi r-rikorrenti waqfet ghal kollox l-attivita` kummercjali taghha u fil-prezent hija *dormant*. Ix-xiehda ta` Andrei Mokh Bogdanovich u ta` l-Awditur Paul Giglio tirrispekkja fedelment dak li jirrizulta mill-*financial statements* sal-31 ta` Dicembru 2014 u l-*statement of affairs* sal-31 ta` Jannar 2016. Abbazi tal-*financial statements* jidher illi ghalkemm ir-rikorrenti kellha attiv nett ta` €1,525,302, imbaghad kellha *contingent liabilities* ta` madwar €17,349,028. Fir-rapport tal-awditur jinghad :- *“Without qualifying our opinion, we refer to note in the financial statements . The company has been served with a claim for tax due to the Tax Authorities for the period 1 January 2011 to 30 June 2011 amounting to EUR 2,222,014. Had we to extrapolate these figures to 31 December 2014 the total amount due would tally approximately to EUR 17,349,028. The company is contesting these claims.”*

Tajjeb jigi rilevat ukoll illi hemm potenzjal ta` passiv prospettiv tal-kumpannija fid-dawl tax-xiehda ta` Bogdanovich fejn dan spjega illi ghadhom

ma sarux *tax audits* ghal diversi zminijiet li fihom kienet ghadha topera s-socjeta` rikorrenti. Issemma dejn ma` GO p.l.c fl-ammont ta` €60,741.77. B`zieda ma` dan, mill-*statement of affairs*, irrizulta illi passiv nett ta` €6,778,542. Ghalhekk huwa ben evidenti li r-rikorrenti tinsab minn taht minn kull aspekk ta` solidita` finanzjarja. Mir-rizoluzzjoni straordinarja hija evidenti l-intenzjoni tal-azzjonisti li ma jhallsu xejn aktar minn taghhom, u ghalhekk waslu ghd-decizjoni li kemm fl-interess taghhom kif ukoll tar-rikorrenti jmorru għax-xoljiment u għall-istralc taghha.

**Il-Qorti ssib kien ippruvat għas-sodisfazzjon taghha dak rikjest mill-Art 214(5)(b) tal-Kap 386.**

**Accertat din il-prova, il-Qorti sejra tara jekk għandhiex tezcercita d-diskrezzjoni taghha li tordna x-xoljiment u l-istralc tar-rikorrenti.**

Hija l-fehma konsiderata tal-Qorti illi s-socjeta` ma għandhiex intenzjoni illi tghin ruhha u tipprova topera sabiex tinsorgi. Ma hu qed isir xejn mill-azzjonisti għall-fini ta` risanament. Is-socjeta` waqfet għal kollox mill-*esercizzju* tan-negozju li għalih kienet kostitwita. L-istampa li tohrog mill-*financial statements* hija negattiva. Kif diga` kellha okkazjoni tghid fi provvedimenti precedenti taghha, din il-Qorti terga` ssostni li kumpannija li ma taghmilx negozju hija entita` bla ruh. Kumpannija li ma tiggenerax attivita` ekonomika ma jistax ikollha dhul, u minghajr dhul, ma tista` qatt thallas id-dejn taghha. Per konsegwenza, din il-Qorti sejra wkoll tezcercita d-diskrezzjoni taghha u sejra tordna x-xoljiment u l-istralc tal-intimata ukoll abbazi tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b) tal-Kap 386.

### **Provvediment**

**Għar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar it-talba tas-socjeta` rikorrenti billi :**

**Riferibbilment għall-ewwel talba, tiddikjara li fir-rigward tal-kumpannija rikorrenti Wave Bet International Limited (C27747) jirrizultaw pruvati sal-grad rikjest mil-ligi r-rekwiziti tal-Art 214(1)(a), tal-Art 214(2)(a)(ii), u tal-Art 214(5)(b) tal-Kap 386 tal-Ligijiet ta` Malta.**

Riferibbilment ukoll għall-ewwel talba, tordna x-xoljiment u l-istralc tal-kumpannija rikorrenti Wave Bet International Limited (C27747) b`effett mill-21 ta` Marzu 2016, skont it-tieni proviso ta` l-Art 223(1) tal-Kap 386.

Tahtar lir-Ricevitur Ufficjali bhala stralcjarju tal-kumpannija rikorrenti Wave Bet International Limited (C27747) bis-setghat u bidmirijiet kollha stabbiliti fil-Kap 386 tal-Ligijiet ta` Malta.

Bla hsara għall-generalita` ta` dawk is-setghat u dmirijiet, l-istralcjarju għandu –

1) jagħmel verifika aggornata ta` l-assi u tad-djun tal-kumpannija rikorrenti Wave Bet International Limited (C27747) u dwar il-gradwazzjoni tad-djun.

2) jiehu taht il-kustodja jew kontroll tieghu l-assi tal-kumpannija rikorrenti Wave Bet International Limited (C27747).

3) jagħmel jew jiddefendi kull azzjoni jew procediment legali iehor fl-isem u fl-interess ta` l-kumpannija rikorrenti Wave Bet International Limited (C27747).

4) jipprezenta rapport sa zmien xahrejn mil-lum.

Tastjeni milli tiehu konjizzjoni ulterjuri tat-tieni talba.

Bl-applikazzjoni tal-Art 236(2) tal-Kap 386, tordna lill-kumpannija Wave Bet Holding GmbH (FN96468s) bhala azzjonista tal-kumpannija Wave Bet International Limited (C27747), lill-kumpannija Wave Bet Holding Limited (C27580) bhala azzjonista tal-kumpannija rikorrenti Wave Bet International Limited (C27747), u lill-istess kumpannija rikorrenti Wave Bet International Limited (C27747) sabiex *in solidum* bejniethom ihallsu l-ispejjez kollha ta` dan il-procediment, kif ukoll l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tal-istralcjarju.



**Thalli l-istralc ghall-udjenza ta nhar il-Hamis 26 ta` Jannar  
2017 fid-9.00 a.m.**

**Onor. Joseph Zammit McKeon  
Imhallef**

**Amanda Cassar  
Deputat Registratur**