



QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 31 ta` Jannar 2017

Kawza Nru. 9
Rik. Nru. 541/16 JZM

Charles Borg Barthet
(ID 783452M)

kontra

Registratur tal-Kumpanniji

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien prezentat fil-5 ta` Lulju 2016 li jaqra hekk :-

1. *Illi huwa l-unika azzjonist fil-kumpannija Industrial Abrasive Converters Limited (C5359) li giet originarjament registrata fl-10 ta` Frar 1981 (Dok A : l-ahhar verzjoni tal-Memorandum and Articles of Association tas-socjeta` ; u Dok B : printout tal-persuni nvoluti fis-socjeta`).*

2. *Illi tali socjeta` giet xolta u struck off fit-12 ta` Settembru 2011 wara voluntary liquidation li saret bl-opra tal-likwidatur mahtur Benjamin Rizzo.*

3. *Illi bi zvista, fil-kors tal-likwidazzjoni u l-eventwali distribuzzjoni tar-rimanenti assi tas-socjeta`, l-istralcjarju naqas milli jiddistribwixxi propjeta` mmobiljari appartenenti lis-socjeta` konsistenti fl-utili dominju temporanju ta` 65 sena li bdew jiddekorru mill-21 ta` Mejju 2001 fuq bicca art Hal-Luqa ta` kejl ta` 1475 m.k. li s-socjeta` akkwistat permezz ta` kuntratt fl-atti tan-Nutar Marco Farrugia tal-21 ta` Mejju 2001 (Dok C).*

4. *Illi l-esponenti qieghed prezenjalment jitlob li jigi applikat ir-rimedju kif kontemplat fl-Artikolu 300B tal-Kap 386 billi fl-eventwali distribuzzjoni kien hemm illegalita` ta` natura materjali billi fl-iskema tad-distribuzzjoni l-istralcjarju ma wzax il-prudenza, id-diligenza u attenzjoni ta` bonus pater familias u kkawza hsara u apparti dan naqas milli jiehu kont tal-assi kollha tas-socjeta` fil-kors tal-likwidazzjoni tal-kumpannija minhabba traskuragni, imprudenza jew nuqqas ta` attenzjoni u ghalhekk dan jitqies bhala agir illegali.*

5. *Illi l-esponenti m`ghandux rimedju iehor biex isewwi din il-problema u apparti dan, jekk ma tigix accettata t-talba odjerna, l-esponenti jkun qieghed jigi deprivat mill-propjeta` u t-tgawdija tal-istess propjeta` mmobiljari jew ir-rikavat taghha mill-bejgh tal-istess.*

6. *Illi ghalhekk mill-premess jirrizulta illi :-*

i. *L-esponent ghandu l-interess li trid il-ligi skont is-subinciz 1 tal-Artikolu 300B;*

ii. *Illi l-istralc u t-thassir tal-kumpannija huwa vizzjat b`illegalita`;*

iii. *Illi tali llegalita` hija ta` natura materjali;*

iv. *Illi l-esponenti m`ghandux rimedju iehor ghad-disposizzjoni tieghu sabiex isolvi din il-problema;*

v. *Illi r-rikors odjern gie ntavolat qabel ma ghadda z-zmien ta` hames snin minn dakinhar li l-kumpannija giet stralcjata.*

Ghaldaqstant l-esponenti jitlob bir-rispett li din l-Onorabbli Qort, b`applikazzjoni tal-Artikolu 300B tal-Kap 386 tal-Ligijiet ta` Malta :-

i. Tordna li l-isem tal-kumpannija Industrial Abrasives Converters Limited (C5359) jerga` jitqiegħed fuq ir-Registru tal-Kumpanniji.

ii. Tordna li jerga` jinfetħ l-istralc tal-kumpannija Industrial Abrasives Converters Limited (C5359).

iii. Tordna lill-Awditur Benjamin Rizzo jew awditur iehor nominandi sabiex jerga` jassumi l-funzjonijiet, is-setghat u l-obbligi kollha ta` stralcjarju tal-kumpannija Industrial Abrasives Converters Limited (C5359).

iv. Tordna lill-istralcjarju hekk mahtur sabiex, sa zmien perentorju li jigi determinat minn din l-Onorabbli Qorti jagħlaq l-istralc tal-kumpannija Industrial Abrasives Converters Limited (C5359) wara li jkun ha wkoll in konsiderazzjoni tal-immobbli li għalihom saret referenza f`dan ir-rikors.

v. Tordna lill-intimat Registratur tal-Kumpanniji sabiex b`effett minn dakinhar li jigi stabbilit minn din l-Onorabbli Qorti jħassar b`mod definittiv l-isem tal-kumpannija Industrial Abrasives Converters Limited (C5359) mir-Registru tal-Kumpanniji u tagħti dawħ il-provedimenti l-ohra xierqa u opportuni.

Bl-ispejjez kontra l-intimat li minn issa huwa ngunt għas-subizzjoni.

Rat il-lista tax-xhieda.

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

Rat ir-risposta li pprezenta l-intimat fil-5 ta` Awwissu 2016 li taqra hekk :-

Illi in kwantu ghall-meriti fattwali ta` din il-kawza l-intimat Registratur jirrimetti ruhu ghall-provi u ghall-gudizzju ta` dina l-Onorabbli Qorti.

Illi l-esponent ihoss illi l-interess tieghu f`din il-kawza ghandu jikkoncerna dak li ghandu x`jaqsam ma` l-operat tieghu bhala Registratur kif mitlub minnu mil-ligi partikolarment fejn jikkoncerna r-registrazzjoni ta` dokumenti skont xi wahda mid-disposizzjonijiet ta` l-Att dwar il-Kumpanniji.

Illi meta r-Registratur ircieva d-dokumentazzjoni rilevanti ghall-kancellament tal-kumpannija Industrial Abrasive Converters Limited (C5359) wara illi kkonferma illi dawn huma konformi mal-Att dwar il-Kumpanniji 1995 huwa mexa sabiex jirregistrahom skont kif jitlob minnu l-artikolu 401 tal-Att.

Illi ghaldaqstant wara li l-esponent irregistra l-liquidation accounts li gew mibghuta mill-istralcjarju huwa pproceda sabiex jippubblika l-avviz dwar il-kancellament tal-kumpannija skont il-ligi fejn l-isem tal-kumpannija in kwistjoni kelli jigi mhasrar minn fuq ir-registru ghelug it-tlett xhur mill-pubblikazzjoni tal-avviz u cioe` fil-31 ta` Awissu 2011.

Illi minkejja l-imsemmija publikazzjonijiet, la r-rikorrent u lanqas is-socjeta` ma ghamlu ebda oggezzjoni ghat-thassir tal-isem tas-socjeta` in kwistjoni matul it-tlett xhur preskritti.

Illi d-direttur fil-kaz odjern qieghed jitlob lil dina l-Onorabbli Qorti sabiex l-isem tal-kumpannija jerga` jitqieghed fuq ir-registru sabiex il-process ta` l-istralc jerga` jigi miftuh u sabiex l-istralcjarju jkun jista` jaghmel dawk il-proceduri kollha necessarji sabiex ikun jista` jiehu in konsiderazzjoni l-immobbnli li allegatement thalla barra.

Illi l-imsemmi artikolu 300B jirrikjedi illi r-rikors ghandu jsir minn persuna illi ghandha interess, meta l-Qorti tkun soddisfatta illi l-istralc u t-thassir tal-kumpannija kien ivvizzjat minn frodi jew minn illegalita` materjali u skont l-att il-Qorti ghandha tilqa` t-talba biss kemm-il darba dan ikun l-uniku rimedju ghar-rikorrent. F`dan ir-rigward ir-Registratur jixtieq umilment jissollewa illi abbazi tal-fatti ndikati fir-rikors promotur forsi kien ikun ahjar illi r-rikorrent invoka d-disposizzjonijiet tal-artikolu 300A tal-Att. Dan jipprovi illi meta fil-kors tal-istralc l-istralcjarju ma jkun ikkalkula xi assi tal-kumpannija, persuna interessata tista` titlob lil dina l-Onorabbli

Qorti biex tordna r-rettifika tal-iskema ta` distribuzzjoni taht dawk id-direttivi illi jidhrilha xierqa skont il-kaz. Dan minghajr il-htiega illi l-isem tal-kumpannija jerga` jidhol fuq ir-registru sabiex b`hekk ikun jista` jigi ssanat in-nuqqas ta` inkluzjoni ta` xi assi li thallew barra mill-iskema.

Illi kemm-il darba l-Qorti tilqa` din it-talba sabiex l-isem tal-kumpannija jerga` jitpogga fuq ir-registru u l-istralc jerga` jinfetah allura skont l-istess artikolu 300B il-Qorti tkun tista` taghti u timponi dawk il-kondizzjonijiet li jidhrilha xierqa. Fl-ahharnett l-artikolu 300B jipprovi illi l-Qorti ghandha tiddetermina jekk l-iordni jew d-diretvi taghha ghandhom ikunu effettivi fir-rigward ta` kulhadd jew inkella ghandhom japplikaw limitatament ghal persuni specifici li jkunu ndikati fis-sentenza.

Illi kemm-il darba dina l-Onorabli Qorti joghghobha taghti dan ir-rimedju eccezzjonali ghandhom jigu stabbiliti b`mod car l-iskop u l-perijodu kif ukoll jinghataw id-direttivi u l-kondizzjonijiet kollha li hemm bzonni. B`hekk ir-Registratur tal-Kumpanniji filfunzjoni pubblika tieghu jkun jista` jipprocedi ghat-thassir definitiuv mir-registru tas-socjetajiet tal-kumpannija in kwistjoni sabiex tigi assigurata certezza dwar l-istatus tas-socjeta` u l-affarijiet ma jitwalux minghajr bzonni.

Illi r-Registratur m`ghandux jinzamm responsabbli ghall-ebda spejjez gudizzjarji konnessi ma` dan il-kaz ghaliex huwa mexa b`mod korrett u skont kif titlob minnu l-ligi.

Rat ix-xiehda bl-affidavit tar-rikorrent, ta` Clive Farrugia u ta` Benjamin Rizzo.

Rat il-verbal tal-udjenza tat-28 ta` Novembru 2016.

Rat id-digriet li tat fl-istess udjenza fejn halliet il-kawza ghall-provvediment ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Provi

Ir-rikorrent xehed illi huwa l-uniku azzjonista tal-kumpannija Industrial Abrasive Converters Limited (C5350) [**IACL**]. Fil-21 ta` Mejju 2001 IACL akkwistat l-utile dominju temporanju ghal 65 sena ta` bicca art Hal-Luqa tal-kel ta` 1475 m.k. (Dok C). Fuq l-art inbniet fabbrika mnejn bdiet topera l-kumpannija, u kumpannija ohra tieghu bl-isem Industrial Chemical Products Limited [**il-propjeta**].

Stqarr illi ghal ragunijiet kummercjali, mexxa bil-procedura tax-xoljiment volontarju ta` IACL, u kien mahtur Benjamin Rizzo bhala stralcjarju. Wara li l-istralc kien konkluz, u thassar l-isem ta` IACL mir-Registru fit-12 ta` Settembru 2011, sab illi l-istralcjarju kien halla barra l-propjeta` mill-iskema ta` distribuzzjoni. Dan gara propju ghaliex l-istralcjarju ma vverifikax tajjeb l-attiv tal-kumpannija. Huwa halla kollox f`idejn l-istralcjarju u sar jaf b`dan kollu ricentement. Ighid illi huwa vitali ghalih li l-propjeta` tkun inkluza fl-iskema ta` distribuzzjoni.

Clive Farrugia xehed li huwa jaghmel parti mid-ditta ta` Accountants u Awdituri bl-isem 3a Malta. Fl-2007 id-ditta hadet ix-xoghol ta` IACL minghand l-awdituri ta` qabel li kienu MGI Malta. Kienu nfurmati mir-rikorrent illi ried ixolji u jistralcja IACL. Fil-fatt il-kumpannija kienet diga` xoljiet u kienet fl-istadju tal-istralc. Fil-fatt id-*declaration of solvency* kienet saret fis-16 ta` Dicembru 2006. Dak iz-zmien l-istralcjarju kien Peter Paul Darmanin. Dan irrizenja fil-31 ta` Dicembru 2009. B`effett mil-1 ta` Jannar 2010, inhatar Benjamin Rizzi bhala stralcjarju u mexxa bl-iskema ta` distribuzzjoni. La huma u lanqas Benjamin Rizzo ma ghamlu ricerki biex jistabilixxu xi propjeta` mmobbli kellha l-IACL.

Benjamin Rizzo xehed illi huwa kkwalifikat bhala accountant u awditur. Fl-1 ta` Jannar 2010 sar stralcjarju ta` IACL. Kompla minflok l-awditur Peter Paul Darmanin. Ighid illi huwa ghamel l-iskema ta` distribuzzjoni, ghalaq l-istralc u l-isem thassar mir-Registru. Kien biss dan l-ahhar li sar jaf illi IACL kellha art b`cens temporanju fejn hemm fabbrika. Ighid : *Jiena ma kontx naf b`din il-propjeta` meta llikwidajt il-kumpannija. Meta hadt over kont fhimt li din il-materja kien ha hsiebha l-istralcjarju ta` qabli. Illum nirrealizza li missni ghamilt ricerka ta` trasferimenti izda dak iz-zmien ma kontx ghamilt dan l-ezercizzju.*

III. L-Art 300B tal-Kap 386

L-Art 300B dahal fil-Kap 386 bis-sahha tal-Att IV tal-2003.

Id-disposizzjoni taqra hekk :-

(1) *Meta kumpannija tkun thassret minn fuq ir-registru, kull persuna interessata tista' b'rikors, titlob lill-Qorti biex tordna hi li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah.*

(2) *Meta, fuq rikors maghmul taht is-subartikolu (1), il-Qorti tkun sodisfatta li l-istralc u t-thassir tal-kumpannija jkun vizzjat bi frodi jew b'illegalità ta' natura materjali, il-Qorti tista' tordna li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah ghal daww ir-ragunijiet u ghal dak iz-zmien li l-Qorti tispecifica fid-decizjoni taghha, u l-Qorti ghandha taghti daww id-direttivi u timponi daww il-kondizzjonijiet li jidhrilha xieraq.*

(3) *Il-Qorti ghandha tilqa' t-talba biss jekk tkun sodisfatta li dak ikun l-uniku rimedju li jkun hemm.*

(4) *Fid-decizjoni taghha l-Qorti ghandha wkoll tiddeciedi jekk l-ordnijiet u d-direttivi taghha jkunux effettivi favur il-persuni kollha jew jekk ghandhomx japplikaw limitatament ghal persuni specifiki indikati fid-decizjoni.*

(5) *Ma jista` jsir ebda rikors taht dan l-artikolu wara li jghaddu hames snin mid-data li fiha l-isem tal-kumpannija jkun thassar mir-registru.*

Fil-Ligi Ingliza, il-procedura tentata mir-rikorrent hija maghrufa fil-bhala **restoration of dissolved companies to the register**. Guristi awtorevoli tad-dritt soċjetarju Ingliz kellhom okkazjoni jaghmlu analizi mirquma tal-ligi li tirregola l-procediment, l-iskop tieghu, kif jithaddem u fejn iwassal.

Bhala ntroduzzjoni, il-Qorti sejra tirreferi ghal pagna 778 ta` **Sealy's Cases and Materials in Company Law** (9th Edition – OUP – 2010) fejn jinghad hekk –

Restoration of dissolved companies to register may be necessary if, for example, further assets are discovered, or someone wishes to bring a damages claim for which the former company was insured.

There are two procedures available for restoring companies to the register :

An administrative procedure available when companies have been incorrectly struck off as defunct under CA 2006 s 1000 or 1001 (see ii and vii above) requiring application to the registrar by the company's former directors or former members within six years of the date of dissolution (CA 2006 s 1024)

and

A judicial procedure, requiring application to court (CA 2006 s 1029) in all other cases. The application may be made by a wide class of people [s 1029 (2)] and must generally be made within six years of the dissolution of the company although there are various exceptions. For example there is no time limit where the application is for the purpose of bringing proceedings against the company for damages for personal injury (s 1030 1). The court has wide powers to make restoration including any case in which the court thinks it is just to do so (s 1031 1 c)

CA 2006 ss 1024-1034 provide detailed rules on the pre-conditions and consequences of the procedures, including special supplementary rules dealing with company names and with restoration of property that had vested in the Crown.

Gower and Davies fil-**Principles of Modern Company Law** (8th Edition – Sweet & Maxwell – 2008) jidhlu fl-isfond tal-legislazzjoni ta` qabel (Companies Act 1985) u ta` dik vigenti fil-prezent (Companies Act 2006), u jaghmlu analizi aktar dettaljata tal-procedura. Minn pag 1232 et seq ighidu hekk –

A contrast between the death of an individual and that of a company is that without divine intervention a dissolved company can be resurrected.

Following the CLR, the Act made two innovations in this area. First it introduced a limited form of administrative restoration to the register a result which had previously required a court order. Secondly a single method of court restoration replaced the formerly existing two methods which the courts had found some difficulty in making sense of and which overlapped to a considerable extent.

Administrative restoration

The new form of administrative restoration applies only where the company was dissolved by the Registrar under the provisions relating to defunct companies. Thus it does not apply to either voluntary striking off or to dissolution after winding up. The conditions for administrative restoration to the register confine it to situations where the company was carrying on business or in operation at the time it was struck. Thus the main purpose of

administrative restoration is to deal more cheaply with reversing a striking off, which, ideally, should not have occurred in the first place. For probably the same reason, the application for restoration may be made only by a former director or former member of the company, but no application for restoration may be made more than six years after its dissolution. If any of the company's property is vested in the Crown as bona vacantia, the Crown's representative must consent and the applicant must offer to pay any costs of the Crown in relation to the application and more importantly dealing with the property during the period of dissolution. Finally the applicant must deliver to the Registrar such documents as are necessary to bring the company's public records up-to-date and to pay any penalties outstanding at the time the company was dissolved.

If these conditions are met the Registrar is under a duty to restore the company to the register. Notice of the decision must be given to the applicant and the restoration takes effect when that notice is sent. Public notice must be given of the restoration. The effect of restoration is that the company is deemed to have continued in existence as if it had not been struck off. However any consequential directions, if necessary, for placing the company and all other persons in the position (as nearly as possible) as they would have been in, had the company not been struck off, are to be given, not by the Registrar, but by a court, to which application may be made within three years of restoration.

Restoration by the court

The two court-based restoration methods previously provided were contained sections 651 and 653 of the 1985 Act. The current provisions are based on those of section 653, the somewhat simpler procedure. The court-based procedure applies to all forms of dissolution and a much wider range of persons may apply for restoration. These include not just former directors or members but any creditor of the company at the time of dissolution, anyone who but for the dissolution would have been in a contractual relationship with it, any person with a potential legal claim against the company, any manager or trustee of an employee pension fund, and the Secretary of State. This caters for a much wider range of reasons for wanting to have the company restored to the register, a common one being in order to sue or assert a right against it. Normally such persons must act within six years of the date of dissolution, but a claim for restoration in order to bring a claim for damages for personal injury against the company may be made at any time.

The court has power to order restoration if (a) in the case of striking off of a defunct company, it was carrying on business or in operation at the time ; (b) in the case of voluntary striking off, the conditions for such a striking off were not complied with ; and (c) in any other case the court thinks it just to do so. Restoration, if ordered, takes effect from the time the court's order is

delivered to the Registrar and the Registrar must give publicity to the order in the usual way. The effect of restoration by the court is the same as with administrative restoration and the court may give the necessary directions to effect the principle that the company should be treated as if never dissolved.

Apparti l-pronunzjamenti dwar id-disposizzjoni li tat din il-Qorti **kif presjeduta**, il-Qorti ltaqghet ma` zewg pronunzjamenti taghha ohra, meta kienet diversament presjeduta (**PA/GV**) :-

1) L-ewwel wiehed huwa dak tat-2 ta` Frar 2007 fir-Rikors Nru 1108/2006 fl-ismijiet **“Rikors konguntiv ta’ George (401744M) u Maruccia (217951M) konjugi Muscat ai termini tal-Artikolu 300B ta’ l-Att dwar il-Kumpanniji (Kap 386 tal-Ligijiet ta’ Malta)”**.

2) It-tieni wiehed huwa dak tad-19 ta` Novembru 2007 fil-kawza fl-ismijiet **“Salvatore Pisani vs Registratur tal-Kumpanniji”**.

Il-Qorti tghid mill-ewwel li dawn iz-zewg kazi kienu jirrigwarda soċjetajiet *en nom collectif* mhux kumpanniji bhal fil-kaz tal-lum.

Fl-ewwel kaz, is-socji ddecidew li jxolju s-socjeta` in kwistjoni. Meta r-Registratur tal-Kumpanniji kien avzat bid-decizzjoni ta` xoljiment ha l-passi necessarji sabiex is-socjeta` tigi kancellata mir-Registru kif fil-fatt sar. Gara pero` li meta sar il-kancellament, is-socjeta` kien ghad kellha assi mmobbli registrati f`isimha li kienu ghadhom ma ddevolvewx fuq is-socji f`isimhom personali jew fuq terzi. Ghalhekk saret talba lill-Qorti sabiex is-socjeta` ma tibqax imhassra mir-registru sakemm tiddisponi mill-propjeta`, u mbaghad wara li dan isir, tithassar b`mod definittiv. Il-Qorti laqghet it-talba ghax sostniet li t-thassir tal-kumpannija sar bi zball.

Fit-tieni kaz, wiehed miz-zewg socji miet u ma nhatar hadd minfloku. Is-socju rimanenti xolja s-socjeta` meta s-socjeta` kien ghad kellha dejn x`jithallas lil terzi kif ukoll propjeta` mmobbli x`tigi trasferita. Ghalkemm sar l-avviz tax-xoljiment, l-ebda kreditur ma resaq biex jaghmel *claim* u s-socjeta` thassret mir-registru. Is-socju rimanenti talab sabiex is-socjeta` terga` titpogga fir-registru sabiex jithallas id-dejn ta` terzi u sabiex il-propjeta` mmobbli tigi trasferita lilu ; imbaghad setghet tithassar b`mod definittiv. Il-Qorti laqghet it-talba billi kienet tal-fehma li l-procedura ghat-thassir tas-socjeta` kienet inkompleta.

Fil-Principles of Maltese Company Law (MUP – 2007 – pag 43)
Andrew Muscat hekk jikkummenta dwar l-Art 300B –

The amending Act introduced another novel provision dealing with the situation where the winding up and striking off of a company has been vitiated by fraud or illegality of a material nature. A typical example would be where the liquidator deliberately fails to take into account a pending claim against the company.

The new article (article 300B of the Companies Act) empowers the court, upon an application filed by any interested person to order that the name of the company be restored to the register and the winding up be reopened for such purposes and such period as the court specifies in its decision. The court is also entitled to give such directives and impose such conditions as it may consider appropriate. No application may be filed after the expiration of five years from the date on which the name of the company has been struck off the register. Prior to the introduction of article 300B, the Maltese courts had in a number of cases tackled situations where a claim against a company was not taken into account by the liquidator who proceeded to finalise the winding up and have the company's name struck off the register. In these cases the courts applied a remedy involving the effective revival of the company.

It should be remarked that the courts have been willing to provide such a remedy even where the omission by the liquidator to take into account a pending claim against the company was purely inadvertent. Article 300B however empowers the court to grant a remedy where it is satisfied that “the winding up and striking off of the company has been vitiated by fraud or illegality of material nature”. Would an inadvertent omission constitute “illegality”. A wide interpretation ought to be afforded to the term “illegality”. A liquidator who, whether negligently or fraudulently, fails to take into account a pending claim will, if it is submitted, have acted unlawfully. After all, in terms of general principles of law, a person who does not use the prudence, diligence and attention of a bonus paterfamilias and causes damage as a result is deemed to have acted unlawfully. Moreover a liquidator is clearly bound by law to take into account all pending claims against the company and if he fails to do so through negligence, imprudence or want of attention he should also be deemed to have acted unlawfully.

Huwa maghruf u mizmum fid-dritt soċjetarju li kumpannija tibqa' tezisti u tgawdi l-personalita' guridika taghha sa dak il-hin li isimha jithassar mir-Registru tal-Kumpanniji. Meta jithassar l-isem ta' kumpannija, hija titqies legalment bhala persuna li tkun “mietet”. Din il-qaghda taghha tibqa' hekk sakemm ma jkunx hemm raguni serja bizzejjed biex terga' “tixxxtaha” skont kif jipprovdi l-Art 300B tal-Kap 386.

Bhala principju generali, ir-ravvivar ta` kumpannija m`ghandux jigi facilment accettat. Irid jigi assikurat li l-kaz huwa wiehed genwin u m`ghandux jinghata lok ghall-abbuz jew xi forma ta` kolluzzjoni bejn il-partijiet interessati. Azzjonisti ta` socjeta` m`ghandhomx jiprocedu ghal-likwidazzjoni u thassir taghha b`mod legger, bl-idea *zbaljata* li jekk `il quddiem jinqala` l-kaz, il-kumpannija tkun tista` tigi rattivata. Fil-kaz tal-ligi taghna, il-Qorti hija prekluziva milli taccetta l-*irxuxtar* tal-kumpannija jekk ma jirrizultawx il-linji traccejati mill-Art 300B.

Meta wiehed iqabbel l-Art 300B mad-disposizzjonijiet prevalenti fil-ligi Ingliza isib li filwaqt li f`din tal-ahhar, ir-rimedju huwa miftuh ghal numru ta` persuni li lista taghhom tirrizulta fil-ligi stess, fil-kaz tal-ligi taghna, il-legislatur ma llimitax ruhu ghal lista specifika jew ghal kategorija ta` persuni, izda fetah ir-rimedju ghal *kull persuna interessata* (ara is-subinciz 1 tal-Art 300B). Min jikkwalifika bhala *persuna interessata* jrid jitqies skont il-fatti u cirkostanzi ta` kull kaz.

Il-Qorti ma tarax il-htiega li fil-kaz tal-lum taghmel analizi ta` x`ried ifisser il-legislatur bil-frazi *kull persuna interessata* ghaliex ma hemmx dubju li r-rikorrent bhala l-uniku azzjonista ta` IACL (u allura l-*beneficial owner*) ghandu kull interess li jippromwovi dan il-procediment, ladarba rrizulta li fil-kors tal-istralc, thalliet barra mill-iskema ta` distribuzzjoni l-propjeta` li ghalih saret referenza fir-rikors promotur, bil-konsegwenzi negattivi u gravi li l-omissjoni gabet maghha.

Sodisfatt il-kriterju tal-*interest* skond is-subinciz 1 tal-Art 300B, il-Qorti sejra tara issa jekk humiex sodisfatti r-rekwiziti tas-subinciz 2 tal-Art 300B.

Il-Qorti teskludi mill-ewwel illi fil-kaz tal-lum saret xi allegazzjoni jew prova li l-istralc u thassir tal-kumpannija kien vizzjat bi frodi.

Eskluz il-vizzju bi frodi, il-Qorti trid tara jekk tirrizultax ir-rekwizit alternattiv tal-illegalita` ta` natura materjali.

Il-Kap 386 ma jaghti l-ebda tifsira ta` x`tikkostitwixxi *illegalita`* ghal-fini tas-subinciz 2 tal-Art 300B. Li jfisser li l-interpretazzjoni ta` *illegalita`* ghandha tkun wiesgha, mhux restrittiva ghal fergħa jew ohra tad-dritt.

B'*illegalita`* il-Qorti qeghda tifhem att mhux permess mil-ligi. L-unika restrizzjoni li tara l-Qorti hija li mhux kull *illegalita`* tiskatta l-jedd ghal rimedju skond is-subinciz 2 izda l-*illegalita`* trid tkun ta' *natura materjali*. X'hinu *materjali* jiddependi mill-fattispeci ta' kull kaz. Irid pero` jinghad illi l-materjalita` tal-illegalita` trid tkun tali li tivvizzja l-istralc. Huwa propju ghalhekk li l-procediment skond l-Art 300B huwa specjali u straordinarju ghaliex li jigri huwa li wara li jinghalaq l-istralc, u jkun thassar l-isem tal-kumpanija mir-registru, jintalab li l-isem jerga` jidhol fir-registru. Fil-ligi taghna (mhux daqstant taht il-ligi Ingliza) ir-ragunijiet ghat-talba huma ristretti u ghalhekk il-materjalita` tal-illegalita`.

Fil-kaz tal-lum, irrizulta bhala fatt ippruvat u nkontestat illi wara li rikorrent, bhala l-uniku azzjonista ta` IACL, ha d-decizzjoni li jxolji volontarjament il-kumpanija, inhatar stralcjarju. Sal-31 ta` Dicembru 2009 l-istralcjarju kien Peter Paul Darmanin. B`effett mill-1 ta` Jannar 2010, inhatar Benjamin Rizzo. Dan kompla l-istralc, hejja l-iskema ta` distribuzzjoni, u ghalaq l-istralc. L-gheluq kien komunikat lir-Registatur tal-Kumpaniji li ghadha ghat-thassir tal-isem li kien pubblikat fit-12 ta` Settembru 2011 (Dok D).

Irrizulta ppruvat illi mill-iskema ta` distribuzzjoni l-istralcjarju Rizzo halla barra l-propjeta` in kwistjoni.

Ighid testwalment :

Jiena ma kontx naf b`din il-propjeta` meta llikwidajt il-kumpanija. Meta hadt over kont fhimt li din il-materja kien ha hsiebha l-istralcjarju ta` qabli. Illum nirrealizza li missni ghamilt ricerka ta` trasferimenti izda dak iz-zmien ma kontx ghamilt dan l-ezercizzju.

Ghal din il-Qorti, dan mhux zball semplici jew zvista izda att ta` negligenza grossolana ghaliex l-istralcjarju falla palesement fl-ezekuzzjoni tad-dmirijiet tieghu bil-konsegwenzi kollha ta` kull xorta li att gravi ta` din ix-xorta jgib mieghu. Dan mhux kaz ta` xi leggerenza li tghaddi izda huwa frott ta` traskuragni minn persuna kwalifikata li accetta li jaqdi funzjoni li hija regolata b`dettall, b`termini u b`obbligi mill-Kap 386. Bil-fatt li halla barra l-propjeta` in kwistjoni ghax ma ghamilx xogholu tajjeb, hareg bi skema ta` distribuzzjoni zbaljata, u dan tort tieghu u ta` hadd aktar.

Il-Qorti toqghod fuq ix-xieghda ta` Benjamin Rizzo. Li kieku kull ma gara kien konsegwenza ta` *zball jew zvista* allura ma setax jissussisti r-rekwizit tal-*illegalita` ta` natura materjali* ghaliex il-procediment skond l-Art 300B mhuwiex intiz biex jirrimedja ghal *zballi jew zvisti*. Pero` mkien fix-xieghda tieghu ma jghid Rizzo li l-propjeta` thalliet barra bi *zball jew zvista*. Kien car u tond meta stqarr illi thalliet barra ghaliex ma sarux ir-ricerki u qaghad b`ghajnejh maghluqa fuq dak li kien ghamel ta` qablu.

Fil-kaz tal-lum, il-Qorti ssib li kien hemm *illegalita` ta` natura materjali* ghaliex l-istralcjarju naqas b`mod grossolan fid-dmirijiet legali tieghu bhala stralcjarju.

Infatti, anke il-kaz ta` stralc volontarju, huwa obbligu legali tal-istralcjarju li jaghmel dawk il-hwejjeg li jkunu mehtiega biex jigi stralcjat in-negozju tal-kumpannija u sabiex jitqassam l-attiv taghha. Bhala parti mill-process fejn jistabilixxi l-attiv, l-istralcjarju jrid jiddetermina l-konsistenza tal-assi kollha tal-kumpannija, speċjalment l-immobbli. Il-Qorti taghmel enfasi fuq l-immobbli ghaliex dawk jikkostitwixxu l-assi l-aktar solidi li fuqhom l-istralcjarju jista` jwettaq l-istalc. Il-presenza ta` immobbli fil-patrimonju ta` socjeta` jista` jigi stabbilit bi precizjoni tramite ricerki pubblici. Bir-ricerki ma jkunx stabbilit biss x`beni mmobbli jkollha kumpannija izda jkun maghruf jekk ghandhiex djun versu terzi li huma kawtelati b`ipoteki jew privileggi. Fil-kaz tal-lum, l-istralcjarju falla fit-twertieq tal-inkariku tieghu ghaliex l-*ischeme of distribution* ittebba` negattivament bl-omissjoni grossolana tal-immobbli. In-nuqqas tal-istralcjarju huwa sanzjonat bl-**Art 312 tal-Kap 386** meta dan *inter alia* jirreferi ghal cirkostanza fejn *waqt l-istralc ta` kumpannija sew jekk bil-qorti jew volontarjament ikun jidher li persuna li ... kienet tagixxi bhala stralcjarju tal-kumpannija ... kienet hatja ta` ... ksur ta` dmir dwar il-kumpannija*.

Il-Qorti tirrileva li l-istralcjarju ghandu funzjonijiet, setghat u allura responsabilitajiet kbar. Mhux kulhadd huwa eligibbli biex ikun stralcjarju (ara l-**Art 305 tal-Kap 386**). Il-persuna li taccetta l-hatra, speċjalment fi stralc volontarju bhal ma kien dak tal-lum, *non puo` lasciare niente al caso* izda ghandha turi kawtela, tkun vigilantanti – *mohhu hemm*, kif ighid il-Malti – biex il-process li jibda mix-xoljiment, ighaddi mill-istralc sa ma jintemm bl-*striking off* mhux biss ikun trasparenti u kondott b`kompetenza izda fuq kollox bl-osservanza tal-ligi. **Fil-kaz tal-lum, mhux hekk gara.** Id-dmirijiet legali tal-istralcjarju kienu jesigu minnu li jistabilixxi b`mod oggettiv u awtonomu l-konsistenza tal-assi tal-kumpannija. Ghax l-istralcjarju naqas fl-obbligu ewlieni tieghu, il-konsegwenzi kienu negattivi. B`hekk kienet skorretta l-procedura li wasslet ghat-thassir tal-isem tal-kumpannija mir-Registru. Hija l-fehma konsiderata ta` din il-Qorti li l-

omissjoni tal-istralcjarju tikkostitwixxi *llegalita`* mhux biss ghaliex kien hemm ksur tad-disposizzjonijiet tal-*lex specialis* u cioe` tal-Kap 386 izda wkoll tal-*lex generalis* u cioe` tal-Kap 16 (Art 1032).

Il-Qorti tghid illi huwa sodisfatt ir-rekwizit tas-subartikolu 2 tal-Art 300B.

Daqstant iehor huwa sodisfatt ir-rekwizit tas-subartiolu 3 ghaliex huwa evidenti ghal din il-Qorti li dak tal-lum huwa l-uniku rimedju ghad-disposizzjoni tar-rikorrent.

L-istess ighodd ghas-subartikolu 5 stante li r-rikorrent ittenta dan il-procediment fit-terminu stabbilit mil-ligi.

Ghar-rigward tal-intimat, din il-Qorti ma ssib propju xejn x`ticcensura fl-operat tar-Registratur tal-Kumpanniji. Ghalhekk m`ghandux jinkorri spejjez.

Provvediment

Ghar-ragunijiet kollha premessi, b`applikazzjoni tal-Art 300B tal-Kap 386 tal-Ligijiet ta` Malta, il-Qorti qeghda tiddisponi mit-talbiet tar-rikorrent billi :-

1) Tordna li l-isem tal-kumpannija Industrial Abrasives Converters Limited (C5359) jerga` jitqieghed fuq ir-Registru tal-Kumpanniji.

2) Tordna li jerga` jinfetah l-istralc tal-kumpannija Industrial Abrasives Converters Limited (C5359).

3) Tordna lill-Awditur Benjamin Rizzo sabiex jerga` jassumi l-funzjonijiet, is-setghat u l-obbligi kollha ta` stralcjarju tal-kumpannija Industrial Abrasives Converters Limited (C5359).

4) Tordna lill-istralcjarju Awditur Benjamin Rizzo sabiex, sa zmien perentorju ta` sitt xhur mil-lum, jiehu hsieb jaghlaq tajjeb u kif trid il-ligi l-istralc tal-kumpannija Industrial Abrasives Converters Limited (C5359) wara li jkun accerta ruhu li l-iskema ta` distribuzzjoni tkun tinkludi l-immobbli msemmi fir-rikors promotur.

5) Tordna lill-intimat Registratur tal-Kumpanniji sabiex b`effett mill-31 ta` Lulju 2017, ihassar b`mod definittiv l-isem tal-kumpannija Industrial Abrasives Converters Limited (C5359) mir-Registru tal-Kumpanniji.

6) Tordna lir-rikorrent sabiex ihallas l-ispejjez kollha ta` dan il-procediment.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur