



QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 27 ta` Marzu 2018

Kawza Nru. 10
Rik. Nru. 281/17/1 JZM

**Lorenzo Dellavalle (Karta
tal-Identita` Taljana Numru AO
7204236)**

kontra

**Astonfield Solar International
Limited (C41349)**

Il-Qorti :

Rat ir-rikors ipprezentat fit-30 ta` Marzu 2017 li jaqra :-

Illi permezz ta` sentenza ta` din l-Onorabbli Qorti tal-4 ta` Ottubru 2016 is-socjeta` intimata giet kanonizzata bhala debitrice tar-rikorrenti fis-somma ta` mitejn elf Dollaru Amerikan (USD200,000) ekwivalenti ghas-somma ta` mija wiehed u temnin, sitt mija u tliet ewro (€181,603) meta mahduma bir-rata tal-kambju mahruga mill-Bank Centrali ta` Malta tal-20 ta` Lulju 2016 fejn ewro (€1) huwa ekwivalenti ghal wiehed punt wiehed xejn wiehed tlieta Dollaru Amerikan (USD1.1013), kif jirrizulta mill-kopja tas-sentenza hawn annessa bhala Dok A.

Illi minn mandat ta` sekwestru li nhareg kontra s-socjeta` intimata fis-7 ta` Lulju 2016 (mandat kawtelatorju mhux ezekuttiv) l-unika flejjes li gew maqbuda kienet is-somma ta` €1,139.36 kif jirrizulta mic-cedola ta` depozitu hawn annessa bhala Dok. B.

Illi s-socjeta` intimata ilha ma tintavola accounts mar-Registru tas-Socjetajiet sa mis-16 ta` Mejju 2013, liema accounts qed jigu hawn esibiti bhala Dok C. Dawn l-accounts iwasslu biss sal-31 ta` Dicembru 2010 u skont dawn l-accounts dis-socjeta` kellha assi biss ta` €54 ! u liabilities ammontanti ghal €16,825.

Illi huwa palezi li dis-socjeta` mhijiex f`pozizzjoni li thallas id-djun taghha ai termini tal-artiklu 214(2)(a)(ii) u 214(5)(b) tal-Kap. 386.

Illi l-esponent kontestwalment ma` dan ir-rikors qiegħed ukoll jintavola mandat ta` sekwestru ezekuttiv u qiegħed jirrizerva li jekk ikun il-kaz jestendi l-interpretazzjoni tal-artiklu 214(2)(a)(ii) ukoll ai termini tal-artiklu 214(5)(a) tal-Kap. 386.

Illi l-esponent għandu informazzjoni li l-unika assi li għandha s-socjeta` intimata huma xi assi f`socjeta` fl-Oman liema assi għandhom valur ferm inferjuri għad-debitu mar-rikorrent.

Illi jekk dawn l-assi se jithallew jinbieghu mis-socjeta` intimata d-dejn mar-rikorrent se jigi totalment eluz, u l-esponent ma jkunx f`pozizzjoni li jirkupra lanqas parti zghira mill-ammont lilu dovut.

Illi b`hekk hemm ukoll bzonn impellenti li b`effett immedjat jigi mahtur amministratur provizorju sabiex jiehu l-kontroll legali ta` dawn l-ishma, u pendent d-decizjoni finali dwar l-istralc, jissalvagwardja dak li hu salvabli.

Illi ai termini tal-artiklu 214(2)(a)(ii) tal-Kap. 386, il-Qorti għandha diskrezzjoni li tordna x-xoljiment ta` socjeta` jekk tali socjeta` mhijiex f`pozizzjoni li thallas id-djun taghha.

Għaldaqstant l-esponent umilment jitlob :

1. *Li s-socjeta` intimata Astonfield Solar International Limited (C41349), tigi xolta minn din il-Qorti ai termini tal-artiklu 214(2)(a)(ii) tal-Kap. 386.*

2. *Li b`effett immedjat, ai termini tal-artiklu 228 tal-Kap. 386, jigi mahtur amministratur provizorju sabiex jamministra l-assi tas-socjeta` intimata, sakemm tinghata ordni dwar l-istralc kif mitlub permezz tal-ewwel talba.*

Rat il-provvediment illi tat fis-27 ta` Gunju 2017 dwar it-tieni talba tar-rikorrent.

Semghet ix-xiehda u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat illi l-kawza thalliet ghal provvediment ghal-lum dwar l-ewwel talba.

Rat l-atti l-ohra tal-kawza.

II. Provi

Ir-rikorrent xehed li huwa kreditur ta` Astonfield Solar International Limited ("**Astonfield**") ghaliex sabiex jinbena photovoltaic power plant fl-Oman, huwa kien silifha l-flus li kellhom jithallsu lura fi zmien erba` xhur.

Kompla jghid illi s-socjeta` nkorriet spejjez finanzjarji, izda dejjem weghdet li kienet sejra thallsu lura. Skont il-ftehim huwa kien imwieghed li jsir azzjonist tal-kumpannija tal-Oman fil-kaz illi l-flus mislufa ma jkunux thallsu.

Xehed illi fl-2015 huwa ltaqa` mas-CEO ta` Astonfield u dan weghdu li ser ihallsu lura l-flus dovuti fi zmien sitt xhur izda baqa` nadempjenti.

Fisser illi Astonfield hija kumpannija li ghandha xi power plant fl-Indja li kellha xi problemi ; ghalhekk garrbet problemi finanzjarji.

Kompla jghid illi wara li baqa` ma thallasx harrek lil Astonfield u ha sentenza kontra taghha.

In segwitu tkellem ma` Alfredo Giardina u ghamel kuntatt mas-CEO ta` Astonfield. Minkejja l-weghdiet, il-hlas baqa` ma sarx.

Ikkonferma li baqa` ma thallas xejn milli kellu jiehu.

Stqarr illi pprezenta mandat ta` sekwestru kawtelatorju izda kienu sekwestrati biss EUR 1,000.

In segwitu sab illi l-ahhar *financial statements* li kien prezentati lir-Registru tal-Kumpanniji kienu daww ghas-sena 2010.

Xehed illi Astonfield ma kellhiex assi Malta.

Huwa kien preokkupat li Astonfield tbiegh is-sehem li ghandha fil-kumpannija fl-Oman. Jaf li ghandha negozju fil-Kenya, l-India u fil-Mauritius.

Av. Dr. Richard Galea Debono huwa l-Amministratur Provvizorju ta` Astonfield u kien mahtur bil-provvediment ta` din il-Qorti tas-27 ta` Gunju 2017.

Xehed illi Astonfield ghandha assi go kumpannija bl-isem ta` BASP li tinsab fl-Oman.

Huwa baghat korrispondenza l-Oman izda qatt ma rcieva risposta lura.

Ma rrizultax li Astonfield kellha djun ohra.

L-accounts tal-kumpannija ma setghux jinstabu u meta talab l-informazzjoni, din ma nghatatx lili.

Qal li huwa giel ghamel kuntatt ma` avukat Taljana li kienet indikata lil mir-rikorrent li qaltlu fejn ghandu jaghamel kuntatt fl-Oman.

Dunstan Magro xehed illi huwa l-awditur ta` Astonfield.

Stqarr illi l-ahhar *audit* li ghamel kien tas-sena li ghalqet 31 ta` Dicembru 2010. L-accounts kienu ffirmati Jannar 2013.

Kompla jghid li lejn nofs l-2015, tnehha minn awditur.

Warajh ma jaf li nhatar hadd ghaliex ma jaf li ta handover lil hadd.

Spjega li l-klijenti kienu mill-Indja, u ma kienx nghata d-dokumentazzjoni kollha mehtiega.

Qal li fl-2010, il-qagħda finanzjarja kienet fin-negattiv ghaliex il-kumpanija kellha *negative value* ta` EUR 16,771 peress li kellha *accumulated losses* ta` EUR 17,671. Kull ma kellha *assets* fl-2010 kienet is-somma ta` GBP 54. Ma kellhiex *tangible assets*.

III. **Locus standi**

Qabel ma tghaddi għall-analizi approfondita tad-disposizzjoni li fuqha r-rikorrent qieghed jistrieħ għall-fini tal-istanza tiegħu, il-Qorti trid bilfors tirreferi *in primis* għall-**Art 218(1) tal-Kap 386** ghaliex din hija d-disposizzjoni li tirregola kif u minn min ghandha tigi promossa talba ghax-xoljiment u l-istralc ta` kumpanija.

Id-disposizzjoni tghid hekk :-

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

- (a) *stralc ta` kumpanija mill-qorti skont l-artikolu 214(1)(a) ;*
- (b) *xoljiment u stralc ta` kumpanija 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`obbligazzjoni, 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.

Jirrizulta mill-provi akkwiziti illi meta pprezenta l-kawza, ir-rikorrent kien kreditur tal-kumpannija de qua.

Għalhekk seta` jippromwovi l-istanza odjerna.

IV. L-Art 214(2)(a)(ii) u l-Art 214(5) tal-Kap 386

Bl-Art 214(2)(a)(ii), il-Kap 386 jagħti lill-Qorti d-diskrezzjoni li xxolji u tistralcja kumpanniji jekk issib li ma tistax thalla d-djun tagħha.

Sabiex tasal għal dak l-accertament, il-qorti trid ta` bilfors tifferei għall-Art 214(5) tal-Kap 386 li jistabilixxi meta kumpannija għandha titqies li ma tistax thallas id-djun tagħha.

L-Art 214(5) jirreferi għal zewg sitwazzjonijiet :-

(a) jekk id-dejn dovut mill-kumpannija jkun baqa`ma thallasx għal kollox jew f`parti wara erbgħa u għoxrin gimgħa mill-ezekuzzjoni ta` titolu eżekuttiv kontra l-kumpannija b`xi wiehed mill-atti eżekuttivi msemmijin fl-artikolu 273 tal-Kodici ta` Organizzazzjoni u Procedura Civili ;

jew

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

Fil-kaz tal-lum, ir-rikorrent qieghed jibbaza ruhu fuq l-Art 214(5)(b).

Il-Qorti tishaq ghal darb`ohra li l-ghajn tad-dritt taghna jinsab fil-ligi Ingliza u ghalhekk ikun bil-wisq imprudenti jekk din il-qorti ma tirreferix ghad-dottrina u ghall-gurisprudenza Ingliza bhala sors u bhala arrikkiment fl-izvilupp tal-hsieb taghha.

Fil-ligi Ingliza, ix-xoljiment u l-istralc ta` kumpanniji kienu trattati fl-Insolvency Act 1986 li ghadha fis-sehh sal-lum.

Meta fl-1995 saret il-ligi taghna l-gdida dwar il-kumpanniji li hadet post il-Commercial Partnerships Ordinance 1962, id-disposizzjonijiet li jolqtu x-xoljiment u l-istralc kienu integrati fl-Att tal-1995.

Fil-qasam aktar wiesgha tad-dritt soċjetarju, fl-Ingilterra, il-Companies Act 1985 (is-sors ewlieni tal-Att tal-1995 dwar il-Kumpanniji) kienet superata bil-bosta bil-Companies Act 2006, ghalkemm ghal xi aspetti il-Companies Act 1985 baqghet veljanti.

Fejn si tratta ta` dritt Ingliz, dak li l-aktar jixbah il-kaz taht ezami huwa dak maghruf bhala *balance sheet insolvency*.

Fl-Insolvency Act 1986 tal-Ingilterra, id-disposizzjoni li tixbah li taghna fl-Art 214(5)(b) tal-Kap 386 hija l-Art 123(2) li taqra 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.

Id-divergenza bejn il-legislazzjoni Ingliza u dik taghna hija li filwaqt li fil-kaz taghna, il-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 ta' **Insolvency Law – Corporate and Personal** (2003 – Pearson Longman) Andrew R Keay u Peter Walton ighidu hekk 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 broad 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.

V. Risultanzi

Ir-rikorrent kien kanonizzat kreditur ta' Astonfield bis-sahha ta' sentenza moghtija fl-4 ta' Ottubru 2016 fil-kawza fl-ismijiet *Lorenzo Dellavalle vs Astonfield Solar International Limited* li ghaddiet in gudikat fejn Astonfield kienet ikkundannata thallas lir-rikorrent is-somma ta' USD 200,000 ekwivalenti ghal EUR 181,603, flimkien ma' l-imghaxijiet legali mit-13 ta' Dicembru 2013 sad-data tal-effettiv pagament.

Ghalkemm ir-rikorrent ipprezenta biss mandat kawtelatorju mhux mandat ezekuttiv u allura ma setax jitlob ix-xoljiment ta' Astonfield abbazi tal-Art 214(5)(a) tal-Kap 386, il-fatt illi huwa kreditur taghha fl-ammont sostanzjali ta' EUR 181,603 jiftah il-bieb berah ghar-rikorrent li jaghmel it-talba skont l-Art 214(5)(b) tal-Kap 386 kif fil-fatt ghamel.

Dan premiss, jirrizulta li l-ahhar *annual report and financial statements* li ghamlet Astonfield kienu dawk ghas-sena li ghalqet fil-31 ta` Dicembru 2010 (fol 7 sa fol 15).

Ghalhekk fin-numru ta` snin ta` wara l-qaghda finanzjarja taghha mhijiex maghrufa, li ghal din il-Qorti huwa fatt negattiv ferm ghaliex l-obbligu li jigu prezentati dawk id-dokumenti jiggerantixxi t-trasparenza ghas-serhan tal-mohh ta` terzi.

Minn ezami ta` dan id-dokument, jirrizulta li l-kumpannija kellha telf ta` GBP 4,313. Fl-2009, kellha telf ta` GBP 4,423.

Fir-rapport tad-diretturi kien dikjarat hekk :-

“The company did not trade during the year under review.

...

The results for the year ended 31 December 2010 are shown in the come statement on page 5. The directors report a loss for the year of L 4,313 which has been added to losses brought forward of L 13,458 thus leaving accumulated losses of L 17,771, to be carried forward to next year.” (fol 8)

Il-*profit and loss account* juri l-figura ta` GBP 16,771 in kwantu ghal GBP bhala telf u GBP 1000 bhala bilanc ta` *share capital*.

Fin-*notes to the financial statements* (fol 15), kien osservat :-

“Note 5 Taxation

...Loss for the year L 4,313.....

Note 11 ... Liquidity risk

The company is exposed to liquidity risk in relation to meeting future obligations associated with its financial liabilities, which comprise principally

trade and other creditors (note 7). Although prudent liquidity risk management included maintaining sufficient cash and committed credit lines to ensure the availability of an adequate amount of funding to meet the company's obligations, the company's conditions as at 31 December 2010 and 2009 indicate the continued financial support of its shareholders in its ability to continue as a going concern."

Sabiex ikun hemm *balance sheet insolvency*, il-*liabilities (contingent u prospective)* iridu jaqbzu l-assi.

Bl-informazzjoni li ghandha, il-Qorti tqis illi l-kumpanija m`ghamlet ebda negozju matul l-2010 u baqghet bit-telf.

Skont ix-xiehda tal-Amministratur Provvizorju, huwa ma sabx koperazzjoni minn Astonfield sabiex jistabilixxi l-entita` tal-assi taghha.

Tenut kont tal-premess, il-Qorti hija sodisfatta illi s-socjeta` intimata mhijiex fil-qagħda li thallas id-djun taghha abbazi tal-Art 214(5)(b) tal-Kap 386.

VI. Id-diskrezzjoni tal-qorti

Accertat illi Astonfield mhijiex fil-qagħda li thallas id-djun taghha, ix-xoljiment u l-istralc taghha mhuwiex awtomatiku izda jibqa` fid-diskrezzjoni taghha kif ighid kjarament l-Art 214(2)(a)(ii) tal-Kap 386.

Il-Qorti taghmel riferenza għal **Palmer's Company Law** (Edition 25 - Sweet & Maxwell) fejn jinghad hekk –

*"The court's jurisdiction is discretionary and the fact that the petitioner can establish this ground does not give him an automatic right to an order (re. **Metropolitan Railway Warehousing Co. Ltd** 1887.36.LJCh 827). The court has refused to make an order where there are good reasons for the delay and where the great majority of members desire that the company shall continue. An order may however*

be made in appropriate circumstances against the majority's wishes. Where the business has merely been suspended the court must be satisfied of an abandonment or inability to carry on. In ascertaining such intention the court will have regard to the opinion and wishes of the majority of shareholders whose names appear on the register. Merely abandoning one of several objects is insufficient (re. Norwegian Titanic Iron Co. (1866) 35 Beav.223).

Il-Qorti ghamlet esami akkurat tad-dokumenti.

Skont ir-rikorrent, b'effett ta' mandat ta' sekwestru kawtelatorju li kien ipprezenta, kienu sekwestrati EUR 1,000. Ghadux fis-sehh dak il-mandat mhux maghruf ghaliex il-Qorti hija sprovvista mill-prova ta' jekk il-mandat kienx konvertit ghal mandat eżekuttiv wara li kienet deciza l-kawza fejn ir-rikorrent kien kanonizzat kreditur ta' Astonfield.

Apparti din il-konsiderazzjoni, il-Qorti m'ghandhiex prova ta' jekk kienx hemm flus ohra depozitati.

Tibqa' njota minn din il-Qorti l-posizzjoni finanzjarja attwali ta' Astonfield ghar-ragunijiet li baqghet ma pprezentatx il-financial statements taghha lir-Registatur tal-Kumpanniji.

Sahansitra baqghet kontumaci fil-procediment tal-lum.

Brenda Hannigan fil-ktieb **Company Law** (Lexis Nexis Butterworths 2003) tghid hekk :

“winding up or liquidation ... is the process by which the assets of the company are collected in and realised, its liabilities discharged and the net surplus, if there is one, distributed to the persons entitled to it. Only when this has been done is the company's existence finally terminated by a process known as dissolution ... Insolvent winding up occurs essentially when companies are unable to pay their debts in full. When a company cannot pay its debts in full, difficult problems arise as to how the assets that are available should be distributed. In theory, as we shall see, the law tries to maintain an equality between creditors so that assets are pooled and distributed pari passu ie rateably according to the size of each creditor's claim.”

Brenda Hannigan taghmel referenza ghall-Cork Committee Report (Cmnd 8558, Ch 4) dwar l-ghanijiet ta' *good modern insolvency law*.

Fost ohrajn, inghad li l-ghanijiet huma :

“... to recognise that the world in which we live and the creation of wealth depend upon a system founded on credit and that such a system requires, as a correlative, an insolvency procedure to cope with its casualties; ... to relieve and protect where necessary the insolvent, and in particular the individual insolvent, from any harassment and undue demands by his creditors ... at the same time, to have regard to the rights of creditors whose own position may be at risk because of the insolvency; ... to realise the assets of the insolvent which should properly be taken to satisfy his debts, with the minimum of delay and expense; to distribute the proceeds of the realisations among the creditors in a fair and equitable manner, returning any surplus to the debtor; to ensure that the processes of realisation and distribution are administered in an honest and competent manner, ... To recognise that the effects of insolvency are not limited to the private interests of the insolvent and his creditors, but that other interests of society or other groups in society are vitally affected by the insolvency and its outcome and to ensure that these public interests are recognised and safeguarded, ... to provide the means for the preservation of viable commercial enterprises capable of making a useful contribution to the economic life of the country.”

Jispikka l-fatt li l-procedura ta' xoljiment u stralc ta' kumpannija mhijiex wahda li ghandha tkun istitwita b`mod legger sabiex taghmel pressjoni fuq debitur. Il-legislatur haseb ghal varji metodi ta' kif kreditur jista' jittenta jigbor il-kreditu tieghu. Dak li trid taccerta ruhha l-Qorti huwa jekk bil-fatt li ssir il-prova li kumpannija mhijiex fil-qaghda li thallas id-djun taghha ghandhiex fic-cirkostanzi tal-kaz tghaddi ghad-dikjarazzjoni ta' xoljiment u stralc.

Fil-kaz tal-lum hija bil-wisq censurabbli l-imgieba fl-assjem ta' Astonfield. Apparti n-nuqqasijiet gravi diga' senjalati, sahansitra kien injorat da parti taghha l-involvement tal-Amministratur Provvizorju li skont il-ligi ghandu funzjoni partikolari u rilevanti ferm bejn id-data tal-presentata tar-rikors promotur u d-data tad-dikjarazzjoni ta' xoljiment u stralc.

Minghajr l-icken esitazzjoni, tghid illi l-ahjar haga li tista' taghmel hija tuza d-diskrezzjoni taghha sabiex tordna x-xoljiment u l-istralc tal-kumpannija.

Provvediment

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tid-disponi mill-ewwel talba tar-rikorrent billi :-

Tiddikjara illi l-kumpannija intimata Astonfield Solar International Limited (C41349) mhijiex fqaghda li thallas id-djun taghha abbazi tal-Art 214(5)(b) tal-Kap 386 tal-Ligijiet ta` Malta.

Tordna x-xoljiment u l-istralc tal-kumpannija intimata Astonfield Solar International Limited (C41349) b`effett mit-30 ta` Marzu 2017 abbazi tal-Art 214(2)((a)(ii) u tal-Art 223(1) tal-Kap 386 tal-Ligijiet ta` Malta.

Tahtar lill-Avukat Dottor Richard Galea Debono bhala stralcjarju tal-kumpannija intimata Astonfield Solar International Limited (C41349) bis-setghat u bid-dmirijiet li huma stabbiliti mill-Kap 386 tal-Ligijiet ta` Malta.

Tordna lill-istralcjarju sabiex jipprezenta rapport tal-hidma tieghu sa zmien xahrejn mil-lum.

Bl-applikazzjoni tal-Art 236(2) tal-Kap 386 tal-Ligijiet ta` Malta, tordna lill-partijiet sabiex *in solidum* bejniethom ihallsu l-ispejjez kollha ta` dan il-procediment, inkluzi l-ispejjez tal-Amministratur Provvizorju, kif ukoll l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tal-istralcjarju.

Thalli l-istralc ghall-udjenza ta` nhar il-Hamis 21 ta` Gunju 2018 fid-9.00 a.m.

Onor. Joseph Zammit McKeon
Imhallee

Amanda Cassar
Deputat Registratur