



**QORTI CIVILI
(SEZZJONI TAL-KUMMERC)**

**ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON**

Illum il-Hamis 28 ta` Gunju 2018

**Kawza Nru. 1
Rik. Nru. 840/17 JZM**

Christopher Vella (762724M)

u

**Pentasia Co Holding Limited
(C43471)**

kontra

**Marco Ciliberti (243975M)
Jeremy Tan (204491695)**

u

Recruitair Limited (C51448)

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fl-**14 ta` Settembru 2017** ai termini tal-**Art 218 tal-Kap 386** li jaqra hekk :-

Illi l-esponenti Christopher Vella u s-socjeta` Pentasia Co Holding Ltd (C43471) huma t-tnejn azzjonisti fis-socjeta` esponenti fl-ammonti rispettivi ta` tliet mija u erbgha u tmenin sehem (348) u mitejn u hamsin (252) sehem minn total ta` elf u mitejn (1,200) sehem tas-socjeta` ntimata. Dan ifisser illi flimkien l-esponenti jhaddnu nofs l-ishma fl-istess socjeta` ntimata.

Illi l-esponent Christopher Vella huwa wkoll direttur tal-istess socjeta` ntimata filwaqt illi s-socjeta` esponenti hija rapprezentata fuq il-Bord tad-Diretturi tas-socjeta` ntimata tramite d-direttur Rob Dowling.

Illi s-socjeta` ntimata giet registrata nhar is-17 ta` Dicembru 2010 bil-presuppost li topera bhala "recruitment agency" bil-ghan illi ssib impjegati prospettivi ghall-klijenti taghha fl-industrija tal-avjazzjoni.

Illi filwaqt illi s-socjeta` ntimata kienet qeghda topera ghal xi zmien, wara ftit beda jinqala` xi dizgwid bejn id-diretturi, liema diuzgwid kompli jikber tant li eventualment wassal sabiex l-istess kumpannija ssib ruhha f`impasse li sa issa ghadu ma ssolviex u li ma jidhirx li jista` jssolva.

Illi konsegwentement is-socjeta` ntimata ilha ma topera ghal xhur u sahsitra snin shah.

Illi minkejja li waqt laqgha tal-Bord tad-Diretturi li sehhet nhar id-9 ta` Frar tas-sena 2016 gie maqbul, almenu in principju, illi ghandu jitniehda l-process sabiex is-socjeta` ntimata tigi xolta volontarjament, sal-lum dan il-process ghadu ma tnehdiex propju minhabba l-inadempjenza tal-intimati Marco Ciliberti u Jeremy Tan.

Illi din is-sitwazzjoni qieghda, u ser tkompli, tippregudika serjament lill-esponenti minhabba li dawn qeghdin, u ser ikompli, igarrbu dannu kemm fil-forma ta` telf mis-socjeta` ntimata izda wkoll bhala nuqqas ta` introjtu minhabba t-telf ta` opportunitajiet sabiex jinvestu flushom b`mod aktar vantaggju.

Illi konsegwentement is-sitwazzjoni tas-socjeta` ntimata hija wahda li, fil-fehma umli tal-esponenti, tinkwadra ruhha taht l-Art 214(2)(a) u l-Art 214(2)(b)(iii) tal-Kap 386 tal-Ligijiet ta` Malta, u li ghalhekk dina l-Onorabbli Qorti ghandha d-diskrezzjoni u l-poter li tordna x-xoljiment tal-istess socjeta` at termini tal-Art 218(1)(b) u (c) tal-istess Kap 386.

Ghaldaqstant l-esponenti, in vista tal-premess suespost, umilment jitolbu lil din l-Onorabbli Qorti joghghobha, salv kull provvediment li jidhrilha xieraq u opportun, tordna x-xoljiment u l-istralc konsegwenzjali tas-socjeta` ntimata Recruitair Limited (C51448).

Bl-ispejjez kollha ta` din il-procedura kontra l-intimati Marco Ciliberti u Jeremy Tan.

Rat illi l-intimati kienu notifikati skont il-ligi.

Rat in-nota li pprezentaw l-intimati Jeremy Tan u Dr Marco Ciliberti fid-**9 ta` Jannar 2018** li taqra hekk :-

... jirrileva illi kif sewwa dikjarat fir-rikors ta` Christopher Vella u Pentasia Co. Holding Limited kien hemm qbil f`laqgħa tad-diretturi li saret fid-9 ta` Frar 2016 illi l-kumpannija Recruitair Limited ghandha tigi xjolta volontarjament madanakollu mhuwiex minnu li dan ma sarx minhabba inadempjenza tal-esponenti tant illi l-esponenti kien gia pprovda l-firma tieghu duq declaration of solvency li nghaddiet ghall-firma ta` Christopher Vella u ta` Pentasia Co Holding Limited u dan filwaqt li jippuntwalizzaw illi ma kien hemm l-ebda htiega li huma jigu mharrka f`dawn il-proceduri ghall-istralc tas-socjeta` Recruitair Limited u ghandhekk m`ghandhomx ibatu l-ebda spejjez kif pretiz mir-rikorrenti.

Semghet ix-xiehda ta` Christopher Vella u ta` Oscar Vella fl-udjenza tat-22 ta` Mejju 2018.

Semghet ix-xiehda ta` Robert Dowling fl-udjenza ta` l-24 ta` Mejju 2018 u rat id-dokumenti li kienu prezentati fl-istess udjenza.

Rat illi l-kawza thalliet għal provvediment għal-lum.

Rat l-atti l-ohra tal-kawza.

II. Provi

1. Xhieda

Tlieta kienu l-persuni li xehdu fil-kawza tal-lum.

Dawn huma Christopher Vella, Oscar Delia u Robert Dowling.

a) Christopher Vella (azzjonista u direttur ta` Recruitair Limited)

Xehed illi l-azzjonisti l-ohra huma Dr Marco Ciliberti, Jeremy Tan u Pentasia Co Holding Limited li hija kumpannija li taghha huwa direttur.

L-iskop tal-kumpannija kien illi jsir ingagg ta` persuni fil-qasam tal-avjazzjoni abbazi tal-esperjenzi fis-settur li kellhom l-azzjonisti

Il-kumpannija bdiet topera fl-2010. Wara li bdiet tahdem ghall-ewwel ftit, il-kumpannija ma bdietx taghmel flus pero` bdiet tkun self-sufficient.

Ghalkemm hadu overdraft, kien evidenti li x-xoghol ma kienx qed jaqbad. Fl-2014 jew l-2015 sabu li ma kienx hemm bizzejjed flus biex is-socjeta` topera minn rajha. Huwa personalment ma riedx johrog flus minn tieghu. Ghalhekk kien deciz li tinghata s-sensja lill-impjegat li kellhom u x-xoghol waqaf ghal kollox.

Stqarr illi huwa ghamel proposta lill-azzjonisti l-ohra li l-kumpannija tigi xjolta. Gara pero` li ma sar xejn minkejja li kien hemm kuntatti b`emails. Il-kumpannija waqfet topera ghal kollox fin-negozju fl-2014.

Xehed illi fl-2016 saret laqgħa tal-azzjonisti bil-ghan illi jkun determinat il-futur tal-kumpannija. Kien hemm qbil li d-dejn jinqasam bejn

it-tliet azzjonisti. Huwa hallas il-parti tieghu tad-dejn li kien hemm ma` APS Bank Limited. L-ahhar audited accounts li saru kienu dawn tal-2012.

**b) Oscar Delia
(awditur)**

Xehed illi huwa ghamel l-audit ta` Recruitair Limited ghas-snin 2011 u 2012. Sal-2012, il-kumpannija kellha *operating loss* ta` €21,000/€22,000. Fl-2011, kellha *operating loss* ta` €9,600. Minghajr is-sostenn tal-bank, tal-kredituri, u dak dirett tal-azzjonisti, il-kumpannija ma setghetx topera aktar.

**c) Robert Dowling
(azzjonista u direttur ta` Recruitair Limited)**

Fis-sostanza, ikkorabora d-deposizzjoni ta` Christopher Vella.

Xehed illi :

When, in about 2014, Recruitair`s position did not improve, it was clear that the company had to be dissolved to avoid incurring any further losses. At first it seemed that all four company directors were in favour of dissolution, and in fact it had been agreed, at least in principle, to proceed with Recruitair`s voluntary liquidation after the company would have settled all its dues.

Ighid ukoll :

... at least to my knowledge, the company has ceased to operate at least 2014. Furthermore the company has now been in an impass for far too long, given that no tangible agreement could ever be reached with the other two shareholders and directors of Recruitair b`riferenza ghal Dr Marco Ciliberti u Jeremy Tan.

2. Dokumenti

Kienu esebiti l-memorandum u l-articles of association tas-socjeta` ntimata, u l-audited accounts taghha ghas-snin 2011 u 2012.

a) Il-memorandum

Il-principal object tal-kumpannija huwa to act as recruitment agency and to hold such licences as are required by law to act as a recruitment agency and to provide ancillary services in connection therewith.

L-authorized u l-issued share capital huwa l-istess u cioe` one thousand two hundred Euro (€1,200) divided into one thousand two hundred (1,200) Ordinary Shares of one Euro (€1.00) each.

L-ishma huma maqsuma f'erba` klassijiet :

348 "A" shares huma ta` Dr Marco Ciliberti.
348 "B" shares huma ta` Christopher Vella.
252 "C" shares huma ta` Jeremy Tan.
252 "D" shares huma ta` Pentasia Holding Co. Limited.

Kull klassi ta` ishma tappunta direttur. Id-diretturi huma Dr Marco Ciliberti, Christopher Vella, Jeremy Tan u Robert Dowling. Is-segretarju huwa Dr Marco Ciliberti.

b) L-audited accounts ghas-sena 2011

Jirrizulta li ghaz-zmien ta` bejn is-17 ta` Dicembru 2010 u l-31 ta` Dicembru 2011, il-kumpannija kellha :

<i>net operating loss</i>	:	€ 9,675 ;
<i>total assets</i>	:	€ 18,808 ;
<i>total current liabilities</i>	:	€ 27,283.

c) L-audited accounts ghas-sena 2012

Jirrizulta li ghaz-zmien ta` bejn is-17 ta` Dicembru 2010 u l-31 ta` Dicembru 2011, il-kumpannija kellha :

<i>net operating loss</i>	:	€ 21,011 ;
<i>total assets</i>	:	€ 9,497 ;
<i>total current liabilities</i>	:	€ 36,983.

III. It-talba

Ir-rikorrenti qeghdin jitolbu x-xoljiment u l-istralc ta' s-socjeta` ntimata abbazi :

- (a) tal-Art 214(2)(a) tal-Kap 386 ;
- (b) tal-Art 214(2)(b)(iii) tal-Kap 386.

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

Skont din id-disposizzjoni, kumpannija **tista`** xxolji u tkun stralcjata mill-qorti fic-cirkostanzi li gejjin -

- (i) jekk in-negozju tal-kumpannija jkun sospiz ghal perjodu bla waqfien ta` erbgħa u ghoxrin xahar ;
- ii) il-kumpannija ma tkunx tista` thallas id-djun tagħha.

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

Skont din id-disposizzjoni, kumpannija **ghandha** tkun xjolta jekk il-qorti tkun tal-fehma li hemm ragunijiet gravi bizzzejjed li jiggustifikaw ix-xoljiment.

IV. Sospensjoni bla waqfien tan-negozju

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 ghal perjodu bla waqfien ta` erbgħa u ghoxrin xahar.

Ir-rekwiziti huma (i) **sospensjoni tan-negozju** tal-kumpannija ; (ii) **bla waqfien** ; u (iii) ghal erbgħa u ghoxrin **(24)** xahar.

Ir-rekwiziti huma materja ta` fatt.

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

Mill-provi rrizulta li l-kumpannija waqfet taghmel negozju fl-2014. Sad-data tal-presentata tar-rikors promotur, kienu ghaddew aktar minn erbgha u ghoxrin xahar. In-negozju mhux biss kien sospiz izda waqaf ghal kollox u hekk ghadu sal-lum. L-uniku mpjegat li kellha tal-kumpannija nghata s-sensja u mas kienx sostwit.

Ir-rekwiziti tad-disposizzjoni huma ppruvati.

`Il quddiem il-Qorti sejra tesprimi ruhha dwar jekk ghandhiex tipprocedi bix-xoljiment u l-istralc tal-intimata.

V. Ma tistax thallas id-djun taghha

Bl-**Art 214(2)(a)(ii)**, il-Kap 386 jaghti lill-qorti d-diskrezzjoni li xxolji u tistralcja kumpannija jekk issib li din ma tistax thalla d-djun taghha.

Sabiex tasal ghal dak l-accertament, il-qorti trid ta` bilfors tirreferi ghall-**Art 214(5)** tal-Kap 386 li jistabilixxi meta kumpannija ghandha titqies li ma tistax thallas id-djun taghha.

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

(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 ezekuttiv kontra l-kumpannija b`xi wiehed mill-atti ezekuttivi msemmijin fl-artikolu 273 tal-Kodici ta` Organizazzjoni u Procedura Civili ;

jew

(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.

Ma tirrizultax il-prova ta` dak jghid is-sub-paragrafu (a).

Ghalhekk il-Qorti qeghda tifhem illi l-istanza li l-kumpannija ma tistax thallas id-djun taghha qeghda tkun prospettata abbazi tas-sub-paragrafu (b).

Il-Qorti tishaq ghal darb`ohra li l-ghajn tad-dritt taghna tinsab fil-ligi Ingliza u ghalhekk ikun bil-wisq imprudenti jekk ma tirreferix ghad-dottrina u ghall-gurisprudenza Ingliza bhala sors u arrikkiment.

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 fil-Kap 386.

Fil-qasam aktar wiesgha tad-dritt socjetarju, 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 l-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-differenza bejn il-legislazzjoni Ingliza u 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-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-Khudhairy (1986) 2 BCC99, 549 (CA)] It has been said that “liabilities” is a broaded 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 igħid 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 jgħid 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, apparti d-deposizzjoni ta` tnejn mid-diretturi, kienu prezentati bhala prova l-unici zewg audited accounts tal-kumpanija li saru sal-lum u cioe` dawk ghas-snin 2011 u 2012.

Huwa bil-wisq evidenti illi dak mistqarr miz-zewg diretturi li xehdu huwa korraborat minn dak li jirrizulta mill-audited accounts li kienu kkonfermati mill-awditur li ppreparahom.

Jirrizulta illi n-*net operating losses* tal-kumpanija li fl-2011 kienu €9,675 qabzu d-doppju ghal €21,011 fl-2012, bit-*total assets* jonqsu mit-

€18,808 tal-2011 ghal kwazi n-nofs u cioe` €9,497 fl-2012. Anke *t-total current liabilities* zdienu minn €27,283 tal-2011 ghal €36,983 tal-2012.

Il-Qorti hija sodisfatta illi s-socjeta` ntimata mhijiex fil-qaghda li thallas id-djun taghha abbazi tal-Art 214(5)(b) tal-Kap 386.

VI. Id-diskrezzjoni tal-qorti

Ghalkemm il-kumpanija waqfet ghal kollox min-negozju taghha, u mhijiex fil-qaghda 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 ghal **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 hadet nota tal-fatt illi l-azzjonisti l-ohra u cioe` Dr Marco Ciliberti u Jeremy Tan mhux qeghdin jopponu x-xoljiment u l-istralc tal-kumpanija.

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.”

Dan premiss, hija l-fehma konsiderata tal-Qorti illi l-kumpannija ntimata issa ilha aktar minn erba` snin ma taghmel propju xejn biex tinsorgi. L-operating losses taghha baqghu jizdiedu. Mhux l-istess l-assi ghaliex dawn naqsu. Waqfet ghal kollox mill-esercizzju tan-negozju li ghalih kienet kostitwita. L-istampa li

tohog mill-*financial statements* taghha hija negattiva. Ma sar l-ebda tentattiv ta' *fresh capital injection* fil-kumpanija sabiex din terga' tiehu r-ruh. *L-overdraft* li kjarament ittiehed sabiex ikun hemm *working capital* twaqqaf. Kumpanija li ma taghmilx negozju hija entita' bla ruh. Ma tkunx qeghda taqdi l-ghanijiet taghha. Kumpanija li ma tiggenerax attivita' ekonomika ma jistax ikollha dhul, u minghajr dhul, ma tistax tikber. Huwa evidenti li l-azzjonisti wrew li m'ghandhom l-ebda hajra jew intenzjoni li jinvestu fil-kumpanija.

Tenut kont tal-fatti u cirkostanzi ta' dan il-kaz, il-Qorti tghid illi l-ahjar haga li tista' taghmel hija li tuza d-diskrezzjoni taghha u tordna x-xoljiment u l-istralc tal-kumpanija ntimata.

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

Ma tarax li hemm htiega li tistharreg jekk kienx ippruvat ukoll l-Art 214(2)(b)(iii) tal-Kap 386.

Provvediment

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

Tiddikjara illi n-negozju ta' l-kumpanija ntimata *Recruitair Limited (C51448)* baqa' sospiz bla waqfien ghal perijodu ta' erbgħa u ghoxrin (24) xahar skont l-Art 214(2)(a)(i) tal-Kap 386.

Tiddikjara illi l-kumpanija ntimata *Recruitair Limited (C51448)* mhijiex f'qagħda li thallas id-djun taghha skont l-Art 214(2)(a)(ii) u l-Art 214(5)(b) tal-Kap 386 tal-Ligijiet ta' Malta.

Tordna x-xoljiment u l-istralc tal-kumpanija ntimata *Recruitair Limited (C51448)* b'effett mill-14 ta' Settembru 2017 skont l-Art 214(2)(a)(ii) u l-Art 223(1) tal-Kap 386 tal-Ligijiet ta' Malta.

Tahtar lir-Ricevitur Ufficjali bhala stralcjarju tal-kumpannija ntimata Recruitair Limited (C51448) bis-setghat u bid-dmirijiet li huma stabbiliti fil-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, u l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tal-istralcjarju.

Thalli l-istralc ghall-udjenza ta` nhar it-Tlieta 2 ta` Ottubru 2018 fid-9.00 a.m.

**Onor. Joseph Zammit McKeon
Imhalled**

**Amanda Cassar
Deputat Registratur**