



MALTA

**Fit-Tribunal ta' Revizjoni Amministrattiva
Magistrat
Dr. Gabriella Vella B.A., LL.D.**

Rikors Nru. 39/12VG

V.F. Group Limited

Vs

Kummissarju tat-Taxxi Interni u l-Kummissarju tat-Taxxi

Illum 25 ta' Ottubru 2018

It-Tribunal,

Ra r-Rikors ipprezentat mis-socjetà V.F. Group Limited fit-3 ta' April 2012 permezz ta' liema titlob li t-Tribunal ihassar u jirrevoka *in toto* l-Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 mahruga fil-konfront taghha mill-Kummissarju tat-Taxxi Interni relattivament ghall-akkwist ta' ishma fis-socjetà E.G. Property Holdings Limited in forza ta' share transfer agreement datat 15 ta' Settembru 2008, bl-ispejjez kontra l-Kummissarju tat-Taxxi Interni;

Ra d-dokumenti annessi mar-Rikors promotur markati Dok. "VF1a" sa' Dok. "VF04" a fol. 3 sa' 27 tal-process;

Ra r-Risposta tal-Kummissarju tat-Taxxi Interni permezz ta' liema jopponi ghall-appell tas-socjetà Rikorrenti mill-Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 u jitlob li l-istess jigi michud, bl-ispejjez kontra taghha, u minflok l-imsemmija Likwidazzjoni ta' Taxxa kkonfermata stante li d-decizjoni mehuda minnu u l-Likwidazzjoni mahruga minnu huma gusti u saru skond il-Ligi;

Sema' x-xhieda ta' Emanuel Farrugia moghtija waqt is-seduta tat-18 ta' Gunju 2012¹ u x-xhieda ta' Josette Fenech, in rappresentanza tad-Direttur Generali (Taxxi Interni), moghtija waqt is-seduti tat-22 ta' Jannar 2013² u tat-2 ta' Lulju 2013³, ra l-kopja tal-file tad-Dipartiment tat-Taxxi Interni relattiv ghas-socjetà Rikorrenti u pertinenti ghall-kaz mertu ta' dawn il-proceduri, esebit mid-Direttur Generali

¹ Fol. 43 sa' 48 tal-process.

² Fol. 50A sa' 50E tal-process.

³ Fol. 187 u 188 tal-process.

(Taxxi Interni) permezz ta' Nota pprezentata fil-5 ta' Frar 2013 a fol. 56 sa' 180 tal-process;

Ra li waqt is-seduta tat-18 ta' Gunju 2012⁴ il-partijiet kontendenti qablu li ma hemmx kontestazzjoni dwar il-veracità tal-prezz dikjarat fis-share transfer agreement, izda l-kwistjoni tittratta dwar kif gew valutati l-ishma traferiti lis-socjetà Rikorrenti u ra li waqt is-seduta tat-18 ta' Frar 2014⁵ id-difensur tal-Kummissarju tat-Taxxi ddikjarat li ma hemmx kontestazzjoni dwar il-fatti stante li l-kwistjoni mertu ta' dawn il-proceduri tirrigwarda primarjament l-interpretazzjoni tal-Ligi għall-fini li jigi stabbilit il-valur reali ta' l-ishma trasferiti;

Ra n-Nota ta' Sottomissjonijiet tas-socjetà Rikorrenti a fol. 192 sa' 195 tal-process u ra n-Nota Responsiva tad-Direttur Generali (Taxxi Interni) a fol. 198 sa' 201 tal-process;

Ra l-atti kollha tal-kawza;

Ikkonsidra:

Bil-proceduri odjerni s-socjetà Rikorrenti tikkontesta Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 datata 8 ta' Marzu 2012⁶, permezz ta' liema l-Kummissarju tat-Taxxi qed jesigi hlas minghandha tas-somma ta' €19,082.55 bhala taxxa fuq il-valur addizzjonali taxxabli ta' €381,560 in konnessjoni ma' l-akkwist ta' ishma fis-socjetà E.G. Property Holdings Ltd. in forza ta' share transfer agreement datat 15 ta' Settembru 2008. Is-socjetà Rikorrenti titlob li l-imsemmija Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 tigi revokata u mħassra *in toto* stante li: (i) l-istima mahruġa mill-Kummissarju tat-Taxxi ma nhargitx “properly”, “reasonably” u “fairly”; (ii) hija akkwistat l-ishma għall-valur dikjarat u l-valur dikjarat jirrappreżenta l-valur reali ta' l-ishma kalkulati skond il-Ligi; (iii) il-kalkoli tal-Kummissarju huma għal kollox zbaljati u bazati fuq premissi hżiena; (iv) l-istima ma saritx sew għaliex ma tiehux in konsiderazzjoni djun li jbaxxu l-valur ta' l-ishma; u (v) ir-rapport taxxa perikolata/multi amministrattivi w imghax punittiv jippekkaw serjament f'dak li huwa proporzjonalità.

Il-Kummissarju tat-Taxxi Interni, illum Kummissarju tat-Taxxi, jopponi għall-appell tas-socjetà Rikorrenti u jitlob li l-istess jigi miċhud u minflok il-Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 tigi kkonfermata stante li d-decizjoni mehuda minnu u l-Likwidazzjoni mahruġa minnu huma gusti u saru ai termini tal-Ligi.

Mill-provi prodotti u mill-atti processwali jirrizulta li:

- In forza ta' skrittura privata datata 15 ta' Lulju 2008⁷, is-socjetà El Dara Limited u Ernest u Joan konjugi Grech obligaw ruhhom li jittrasferixxu a favur is-socjetà

⁴ Fol. 42 tal-process.

⁵ Fol. 191 tal-process.

⁶ Fol. 24 tal-process.

⁷ Fol. 3 sa' 7 tal-process.

Rikorrenti, li a sua volta obbligat ruhha li takkwista 593 “A” Ordinary Shares kull sehem b’valur nominali ta’ €2.3294 u 1 “A” Ordinary Share b’valur nominali ta’ €2.3294, minnhom rispettivament mizmuma fis-socjetà E.G. Property Holdings Limited verso: (i) il-prezz ta’ €930,181 għall-593 “A” Ordinary Shares tas-socjetà El Dara Limited; u (ii) il-prezz ta’ €1,568 għall-1 “A” Ordinary Share tal-konjugi Grech;

- It-trasferiment in kwistjoni gie definittivament esegwit permezz ta’ Share Transfer Agreement datat 15 ta’ Settembru 2008⁸ in forza ta’ liema s-socjetà Rikorrenti appuntu akkwistat: (i) 593 “A” Ordinary Shares kull sehem b’valur nominali ta’ €2.3294 u 1 “A” Ordinary Share b’valur nominali ta’ €2.3294, fis-socjetà E.G. Property Holding Limited minghand El Dara Limited għall-prezz ta’ €930,181; u (ii) 1 “A” Ordinary Share b’valur nominali ta’ €2.3294 fl-istess imsemmija socjetà minghand il-konjugi Grech għall-prezz ta’ €1,568;
- L-ishma in kwistjoni gew trasferiti għall-valur ta’ €1,568 għal kull sehem;
- In forza ta’ Likwidazzjoni ta’ Taxxa bil-Kont Nru. SVO50020 datata 8 ta’ Lulju 2009⁹, il-Kummissarju tat-Taxxi talab lis-socjetà Rikorrenti thallas is-somma ta’ €19,082.55 bhala taxxa fuq il-valur addizzjonali taxxabbli ta’ €381,500, in konnessjoni ma’ l-akkwist ta’ l-imsemmija ishma fis-socjetà E.G. Property Holdings Limited;
- Is-socjetà Rikorrenti oggezzjonat għal din il-Likwidazzjoni ta’ Taxxa b’ittra ta’ oggezzjoni datata 22 ta’ Jannar 2010¹⁰, stante li *the parent company loan has not been taken into account in the valuation of the shares by the department. Copy of our letter dated 17 February 2009 and addressed to Ms. J. Fenech is enclosed in support of our objection;*
- Fl-ittra datata 17 ta’ Frar 2009¹¹, indirizzata lill-Kummissarju tat-Taxxi, is-socjetà Rikorrenti ppremettiet illi *we refer to the share transfer of the above company and our meeting regarding the same. As verbally explained, our above client obtained a loan from the Group to finance the development of Spinola. As can be seen from the attached statement Doc. 1¹² the Group Companies paid Lm298,777 for the acquisition of the land and to the building contractors for the construction of the Complex. The Group Companies had also charged E.G. Property Holdings Limited the amount of Lm186,126 in bank interest on both the Bank facilities obtained by E.G. Property Holdings Limited directly and the Group Bank facilities used to finance the project. We had also pointed out that 50% (later reduced below 50%) of the shares were held by a third party El Dara Ltd., which company in not in any way related to V.F. Group. The third party has in fact agreed that E.G. Property Holdings Limited hypothec its property in favour of the Bank for Group loans obtained to finance the Project. We as auditors of V.F. Group also confirm that it is the Group policy that loans and overdrafts are as far as possible obtained by the Holding Company and then the funds redirected to the subsidiary companies. As can be seen from the above and the Bank sanction letter to V.F. Group Limited, E.G. Property Holdings Limited*

⁸ Fol. 145 tal-process.

⁹ Fol. 80 tal-process.

¹⁰ Fol. 81 tal-process.

¹¹ Fol. 83 tal-process.

¹² Fol. 84 tal-process.

is hypothecating its property up to € 750,000, later upgraded to € 930,000 for facilities accorded by the Bank through the Parent Company (Doc. 2)¹³. As you can understand this automatically secures the inter-company facilities as the Bank would not release the property unless authorised by the Parent Company;

- *Il-Kummissarju tat-Taxxi però caħad l-oggezzjoni tas-socjetà Rikorrenti b’decizjoni datata 8 ta’ Marzu 2012¹⁴, in bazi għall-konsiderazzjoni li: by Article 42(2)(c)(ii) of the Duty on Documents and Transfers Act, it is established that for determining the value of the shares being transferred “there shall not be deducted any liability in excess of the value of all assets excluding the value of any such immovable property or any real right thereon other than ... a debt registered at the Public Registry relating to the acquisition cost of the aforesaid immovable, where such debt is registered within three months from the date of acquisition of the said immovable, proved in each case by the production of such documents to the satisfaction of the Director General (Inland Revenue), as the Director General (Inland Revenue) may require”. At objection’s stage, the Director General (Inland Revenue) asked Mr. Farrugia to provide documents showing that such liabilities were incurred directly by E.G. Property Holdings Limited. The transferee failed to produce such evidence. Under the circumstances, the Director General (Inland Revenue) sees no valid reason for discarding his assessment and confirms it in that respect;*
- *In segwitu għal din id-decizjoni l-Kummissarju tat-Taxxi kkonferma l-Likwidazzjoni ta’ Taxxa bil-Kont Nru. SVO50020 mahruġa fil-konfront tas-socjetà Rikorrenti għall-hlas tas-somma ta’ €19,082.55 bhala taxxa fuq il-valur addizzjonali taxxabli ta’ €381,560 in konnessjoni ma’ l-akkwist ta’ l-ishma fis-socjetà E.G. Property Holdings Limited¹⁵;*
- *Il-Kummissarju tat-Taxxi ma huwiex qed jiddubita mill-fatt li l-prezz miftiehem għat-trasferiment ta’ l-ishma in kwistjoni u li effettivament thallas mis-socjetà Rikorrenti lil El Dara Limited u lill-konjugi Grech kien ta’ €930,181 u €1,568 rispettivament. Di fatti dan gie ddikjarat b’mod car waqt is-seduta tat-18 ta’ Gunju 2012¹⁶. Izda, huwa jikkontesta il-mod kif gew valutati l-ishma, in kwantu skontu dan ma sarx a tenur ta’ dak provdut fl-Artikolu 42(2)(c) tal-Kap.364 tal-Ligijiet ta’ Malta, kontestazzjoni din opposta mis-socjetà Rikorrenti;*
- *Kif dikjarat minn entrambe l-partijiet kontendenti waqt is-seduta tat-18 ta’ Gunju 2012¹⁷ u kif ikkonfermat mill-Kummissarju tat-Taxxi waqt is-seduta tat-18 ta’ Frar 2012¹⁸, il-qofol tal-mertu tal-proceduri odjerni jirrivolvi madwar l-interpretazzjoni tal-Ligi, senjatament ta’ l-Artikolu 42(2)(c)(i) u (ii) tal-Kap.364 tal-Ligijiet ta’ Malta, għall-fini li jigi stabbilit il-valur reali ta’ l-ishma.*

*A tenur ta’ l-Artikolu 42(1)(b) tal-Kap.364 tal-Ligijiet ta’ Malta kif applikabbli fiz-zmien pertinenti għal dawn il-proceduri, ossia fl-**2008**, iz-zmien tat-trasferiment: taxxa ta’ zewġ Euro għal kull mitt Euro jew parti minnha ta’ l-ammont jew valur ta’ dak li jkollu jingħata bi hlas jew tal-valur reali, skond liema jkun l-ogħla, ta’*

¹³ Fol. 88 sa’ 95 tal-process.

¹⁴ Fol. 26 u 27 tal-process.

¹⁵ Fol. 24 tal-process.

¹⁶ Fol. 42 tal-process.

¹⁷ *Ibid.*

¹⁸ Fol. 191 tal-process.

valur negozjabbli ghandha tithallas: (b) fuq kull dokument li bih valur negozjabbli, barra minn dawk imsemmija fil-paragrafu (a), ikun trasferit lil jew minn persuna f'Malta. Is-subartikolu (2) ta' l-imsemmi artikolu tal-Ligi, dejjem kif applikabbli fiz-zmien pertinenti ghal dawn il-proceduri, kien jipprovdli ulterjorment illi: meta jirrizulta li hamsa u sebghin fil-mija jew aktar mill-assi, eskluzi l-assi kurrenti kollha minbarra l-proprjetà immobbli, tal-kumpannija li l-valur negozjabbli taghha jkun se jigu trasferiti inter vivos jew ikunu trasmessi causa mortis ghar-rigward ta' persuni li minnhom jorigina t-trasferiment causa mortis li mietu fi jew wara l-1 ta' Jannar 2000, jkunu jikkonsistu f'immobbli jew f'xi dritt reali fuq xi immobbli, it-taxxa li tithallas bis-sahha tas-subartikolu (1) ghandha tizdied bi tlett Euro ghal kull mitt Euro jew parti minnha ta' l-ammont jew valur tal-korrispettiv jew tal-valur reali tal-valur negozjabbli, skond liema jkun l-oghla. A tenur ta' l-imsemmi artikolu kif applikabbli fiz-zmien pertinenti ghal dawn il-proceduri, **fid-determinazzjoni ta' l-ammont jew valur tal-korrispettiv jew tal-valur reali ta' dak il-valur negozjabbli, ma ghandu jitnaqqas ebda dejn li jkun jeccedi l-valur ta' l-assi kollha minbarra l-valur ta' dik il-proprjetà immobbli jew xi dritt reali fuqha hlief:- (i) self mill-bank fuq l-ispiza ta' l-akkwist u benefikati ta' l-akkwist tal-proprjetà immobbli jew dritt reali fuqha; jew (ii) dejn registrat fir-Registru Pubbliku fuq l-ispiza tal-proprjetà immobbli hawn qabel imsemmija, li f'kull kaz tingieb prova dwaru billi jinwerew dawk id-dokumenti ghas-sodisfazzjoni tal-Kummissarju, skond ma jista' jitlob il-Kummissarju**¹⁹.

Mill-provi prodotti u kif ammess mis-socjetà Rikorrenti stess, ghall-fini ta' l-akkwist u zvilupp tal-proprjetà gewwa San Giljan, ossia l-fondi numri 80, 81, 82, 83, 84 u 85, Spinola Road, San Giljan, liema proprjetà tikkostitwixxi iktar minn 75% ta' l-assi tas-socjetà E.G. Property Holdings Limited, l-imsemmija E.G. Property Holdings Limited ottjeniet self/finanzjament minghand is-socjetà Rikorrenti stess u mhux minghand Bank. In effetti fl-ittra indirizzata lill-Kummissarju tat-Taxxi datata 17 ta' Frar 2009²⁰, Emanuel Farrugia, Awditur tas-socjetà Rikorrenti, iddikjara li *it is the Group policy that loans and overdrafts are as far as possible obtained by the Holding Company and then the funds redirected to the subsidiary companies*. Fid-dawl ta' tali fatt ghalhekk huwa evidenti li l-provvediment ta' l-Artikolu 42(c)(i) tal-Kap.364 tal-Ligijiet ta' Malta, li jittratta dwar self mill-bank fuq l-ispiza ta' l-akkwist u benefikati ta' l-akkwist tal-proprjetà immobbli jew dritt reali fuqha, ma jsibx applikazzjoni fil-kaz in ezami.

Is-socjetà Rikorrenti in verità tibbaza l-kontestazzjoni taghha fuq l-**Artikolu 42(c)(ii)** tal-Kap.364 tal-Ligijiet ta' Malta, li fiz-zmien applikabbli ghall-kaz in ezami kien jittratta dwar dejn registrat fir-Registru Pubbliku fuq l-ispiza tal-proprjetà immobbli in kwistjoni. Id-dejn li skond is-socjetà Rikorrenti jista' u ghandu jittiehed in konsiderazzjoni u jitnaqqas ghall-finijiet tal-valutazzjoni ta' l-ishma akkwistati minnha fis-socjetà E.G. Property Holdings Limited huwa fl-ammont ta' €750,000 ottenut mis-socjetà Rikorrenti minghand l-APS Bank u garantit bi proprjetà tas-socjetà E.G. Property Holdings Limited, senjatament bil-

¹⁹ Enfasi u sottolinear tat-Tribunal.

²⁰ Fol. 83 tal-process.

proprjetà gewwa San Giljan, li skontha jkopri ghall-inqas in parte l-ispiza ghall-akkwist u zvilupp da parte tas-socjetà E.G. Property Holdings Limited ta' l-imsemmija proprjetà gewwa San Giljan. Fir-rigward fl-ittra datata 17 ta' Frar 2009²¹ gie premiss li *as can be seen from the above and the Bank sanction letter to V.F. Group Limited, E.G. Property Holdings Limited is hypothecating its property up to €750,000 later upgraded to €930,000 for facilities accorded by the Bank through the Parent Company. As you can understand this automatically secures the inter-company facilities as the Bank would not release the property unless authorised by the Parent Company.*

Il-Kummissarju tat-Taxxi però ma jqisx li dan id-dejn partikolari jaqa' taht il-provvedimenti ta' l-Artikolu 42(c)(ii) tal-Kap.364 tal-Ligijiet ta' Malta u dan kif jirrizulta kemm minn *e-mail* ta' Josette Fenech, rapprezentant tal-Kummissarju, indirizzata lil Emanuel Farrugia, datata 28 ta' Novembru 2008²², fejn infurmatu li *I went through the document provided* (ossia s-Sanction Letter mahruga mill-APS Bank lis-socjetà Rikorrenti). *It does not transpire that any loan in the said document was taken specifically to finance the acquisition of the property in E.G. Property Holdings Ltd. May I refer you to Article 42(2)(i) and (ii) of the Duty on Documents and Transfers Act, wherein it is clearly stated that Bank Loans and/or debts registered at the Public Registry should be related to the acquisition cost of the property in the Company. In your case the property in question is itself held as security for loans taken by another Company which are not related in any way with its acquisition, kif ukoll mid-decizjoni ta' Rifjut ta' Oggezzjoni datata 8 ta' Marzu 2012²³, fejn gie kkunsidrat u kkonstata li: by Article 42(2)(c)(ii) of the Duty on Documents and Transfers Act, it is established that for determining the value of the shares being transferred "there shall not be deducted any liability in excess of the value of all assets excluding the value of any such immovable property or any real right thereon other than ... a debt registered at the Public Registry relating to the acquisition cost of the aforesaid immovable, where such debt is registered within three months from the date of acquisition of the said immovable, proved in each case by the production of such documents to the satisfaction of the Director General (Inland Revenue), as the Director General (Inland Revenue) may require". At objection's stage, the Director General (Inland Revenue) asked Mr. Farrugia to provide documents showing that such liabilities were incurred directly by E.G. Property Holdings Limited. The transferee failed to produce such evidence. Under the circumstances, the Director General (Inland Revenue) sees no valid reason for discarding his assessment and confirms it in that respect.*

Wara konsiderazzjoni akkurata tas-Sanction Letter mahruga mill-APS Bank lis-socjetà Rikorrenti²⁴ u ta' l-Artikolu 42(c)(ii) tal-Kap.364 tal-Ligijiet ta' Malta, it-Tribunal huwa tal-fehma li l-Kummissarju tat-Taxxi gustament wasal ghall-konkluzzjoni li dak il-provvediment tal-Ligi ma jsibx applikazzjoni fil-fattispecie tal-kaz in ezami u per konsegwenza l-ammont ta' €750,000 ma jistax u ma ghandux jittiehed in konsiderazzjoni u b'hekk jitnaqqas ghall-finijiet tal-valutazzjoni ta' l-ishma fis-socjetà E.G. Property Holdings Limited akkwistati mis-socjetà Rikorrenti.

²¹ Fol. 83 tal-process.

²² Fol. 123 tal-process.

²³ Fol. 97 u 98 tal-process.

²⁴ Fol. 88 sa' 93 tal-process.

Mis-Sanction Letter datata 9 ta' Settembru 2008²⁵, jirrizulta car li din tittratta dwar facilitajiet bankarji konnessi mill-APS Bank lis-socjetà Rikorrenti, liema facilitajiet jikkonsistu fis-segwenti:

- Loan 2 ghall-valur ta' €65,873 - *Originally granted to effect an investment in MCK Ltd.*;
- Loan 3 ghall-valur ta' €591,130 - *Originally granted to invest in subsidiary/associated companies and to finance the purchase of billboards*;
- Loan 4 ghall-valur ta' €610,000 - *Originally granted to hive-off from the overdraft and to finance investments within the Group*;
- Loan 5 ghall-valur ta' €930,000 - *To purchase shares in E.G. Property Holdings Ltd. held in the name of El Dara Ltd.*;
- General Banking Facility ghall-valur ta' €750,000 - *working capital requirements in connection with the Group's trading operations*²⁶.

Skond l-istess Sanction Letter is-socjetà Rikorrenti kellha taghmel tajjeb ghal dawn il-facilitajiet permezz ta' diversi pledges, ipoteki u privileggi fosthom: *Guarantee for €750,000 on the Bank's standard form G1 by E.G. Property Holdings Ltd.*²⁷; *First General and First Special Hypothec Guarantee (Overdraft basis) for €750,000 by E.G. Property Holdings Ltd. to be registered over the company's assets present and future and over block of apartments nos. 80, 81, 82 and 83 Spinola Road, St. Julians*²⁸; u *First General and First Special Hypothecary Guarantee (Loan basis) for €930,000 by E.G. Property Holdings Ltd. to be registered over the company's assets present and future and over block of apartments nos. 80, 81, 82 and 83, Spinola Road, St. Julians*²⁹.

Ghalkemm is-socjetà E.G. Property Holdings Limited jidher li giet mitluba taghmel tajjeb ghal dawn id-djun tas-socjetà Rikorrenti bil-proprjetà taghha gewwa San Giljan, li, jigi ribadit, hija l-proprjetà rilevanti ghall-finijiet tal-valutazzjoni ta' l-ishma akkwistati mis-socjetà Rikorrenti fl-istess E.G. Property Holdings Limited, ma jirrizultax b'mod sodisfacenti però li dawn id-djun jistghu jitqiesu li jaqghu taht id-disposizzjoni ta' l-Artikolu 42(2)(c)(ii) tal-Kap.364 tal-Ligijiet ta' Malta, u dana billi filwaqt li a tenur ta' l-imsemmi Artikolu tal-Ligi d-dejn hemm kontemplat irid ikun dejn marbut ma' l-ispiza tal-proprjetà immobbli in kwistjoni, id-djun in kwistjoni huma: (i) dak ta' €750,000 li huwa *overdraft* tas-socjetà Rikorrenti; u (ii) dak ta' €930,000 li huwa self da parte tas-socjetà Rikorrenti biex takkwista l-ishma fis-socjetà E.G. Property Holdings Limited. Apparte minn hekk ghalkemm jidher li il-proprjetà giet akkwistata fl-1998 u z-zvilupp fuqha sar bejn id-data ta' l-akkwist u l-2007³⁰, u dana huwa presumibilmment il-perijodu meta s-socjetà Rikorrenti ghamlet is-self minnha allegat lis-socjetà E.G. Property Holdings Limited ghall-

²⁵ *Ibid.*

²⁶ Fol. 88 tal-process.

²⁷ Para. 8 tas-Sanction Letter, fol. 91 tal-process.

²⁸ Para. 9 tas-Sanction Letter, fol. 92 tal-process.

²⁹ Para. 17 tas-Sanction Letter, fol. 92 tal-process.

³⁰ Fol. 84 tal-process.

akkwist ta' u zvilupp fuq il-proprjetà in kwistjoni, l-Ipoteka u l-Privilegg fuq il-proprjetà f'San Giljan intalbu biss fl-2008³¹ u dana mill-APS Bank għall-facilità ta' overdraft u self koncessi lis-socjetà Rikorrenti.

Il-fatt li s-socjetà E.G. Property Holdings Limited intalbet tagixxi ta' garanti għas-socjetà Rikorrenti bil-proprjetà tagħha f'San Giljan ma jwassalx għall-konkluzzjoni awtomatika pretiza mis-socjetà Rikorrenti li l-ammont ta' €750,000 u possibilment anke l-ammont ta' €930,000 għandhom jitqiesu bhala djun a tenur ta' l-Artikolu 42(2)(c)(ii) tal-Kap.364 tal-Ligijiet ta' Malta u b'hekk jitnaqqsu għall-finijiet ta' valutazzjoni ta' l-ishma akkwistati mis-socjetà Rikorrenti fis-socjetà E.G. Property Holdings Limited.

Ladarba d-disposizzjonijiet fil-paragrafi (i) u (ii) ta' l-Artikolu 42(2)(c) tal-Kap.364 tal-Ligijiet ta' Malta - kif applikabbli fiz-zmien pertinenti għal dawn il-proceduri - huma l-eccezzjoni għar-regola stipulata f'dak l-artikolu tal-Ligi, u ladarbda s-socjetà Rikorrenti tikkontendi li tali eccezzjoni/eccezzjonijiet japplikaw għall-kaz tagħha, hija għandha l-oneru ta' tali prova in kwantu huwa principju generali stabbilit fis-sistema guridika nostrali *li l-obbligu tal-prova ta' fatt imiss dejjem lil min jallegah*³². Fil-fehma tat-Tribunal però din il-prova ma saritx b'mod sodisfacenti mis-socjetà Rikorrenti anzi, kif gustament interpreta l-fattispecie tal-kaz in kwistjoni l-Kummissarju tat-Taxxi, is-socjetà Rikorrenti effettivament ma tibbenefika bl-ebda mod mill-provvedimenti ta' l-Artikolu 42(2)(c)(i) u/jew (ii) tal-Kap.364 tal-Ligijiet ta' Malta fir-rigward ta' l-ishma minnha akkwistati fis-socjetà E.G. Property Holdings Limited, senjatament fir-rigward tal-mod kif daww l-istess ishma kellhom u fil-fatt għandhom jigu vvalutati.

Għal kull buon fini jigi osservat li fir-Rikors promotur is-socjetà Rikorrenti tibbaza l-appell tagħha mill-Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 fuq l-aggravju li r-rapport taxxa perikolata/multi amministrattivi w imghax punittiv jippekkaw serjament f'dak li huwa proporzjonalità. Fir-rigward it-Tribunal josserva li mill-istess imsemmija Likwidazzjoni ta' Taxxa jirrizulta b'mod car li l-Kummissarju tat-Taxxi ma huwiex qed jimponi taxxa addizzjonali/penali fuq is-socjetà Rikorrenti u in kwantu rigwarda l-imghax li qual' volta jista' jigi impost mill-Kummissarju, dan huwa specifikatament regolat bil-Ligi u allura jekk is-socjetà Rikorrenti qed tikkontendi li l-provvediment tal-Ligi relattiv kif promulgat jikser il-principju ta' proporzjonalità, allura t-Tribunal ma huwiex il-forum idoneju fejn tigi trattata tali kwistjoni.

Jigi in fine osservat, u dana wkoll għal kull buon fini, li s-socjetà Rikorrenti istitwiet dawn il-proceduri fil-konfront tal-Kummissarju tat-Taxxi Interni u tal-Kummissarju tat-Taxxi. Illum però bis-sahha ta' dak provdut fl-Artikolu 3(3) tal-Kap.517 tal-Ligijiet ta' Malta, il-funzjonijiet originarjament vestiti fil-Kummissarju tat-Taxxi Interni taht l-Att dwar it-Taxxa fuq Dokumenti u Trasferimenti jinsabu vestiti fil-Kummissarju tat-Taxxi. Għaldaqstant għall-finijiet u effetti kollha tal-Ligi, illum l-intimat proprio f'dawn il-proceduri huwa l-Kummissarju tat-Taxxi.

³¹ Fis-Sanction Letter indikati bhala Security Outstanding u Additional Security Required.

³² Artikolu 562 tal-Kap.12 tal-Ligijiet ta' Malta.

Fid-dawl ta' dan kollu osservat ghalhekk jirrizulta li l-appell tas-socjeta' Rikorrenti mill-Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 mahruga fil-konfront taghha mill-Kummissarju tat-Taxxi ma huwiex gustifikat u b'hekk ma jisthoq qx li jigi milqugh.

Ghal dawn ir-ragunijiet it-Tribunal jaqta' u jiddeciedi billi jichad l-appell tas-socjeta' Rikorrenti mill-Likwidazzjoni ta' Taxxa bil-Kont Nru. SV050020 u minflok jikkonferma l-istess imsemmija Likwidazzjoni ta' Taxxa.

L-ispejjez ta' dawn il-proceduri jibqghu a karigu tas-socjeta' Rikorrenti.

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