



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

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum it-Tlieta 26 ta` Frar 2019

**Kawza Nru. 1
Rikors Nru. 2/2018JZM**

**Malaysia Debt Ventures Berhad
(Reg. No. 578113 – A)
socjeta` registrata l-Malaysia**

kontra

**Picisel International Limited
(C 40554)**

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fis-17 ta` April 2018 li jaqra hekk :-

*Illi b`rikors pprezentat quddiem il-Qorti Civili fl-11 ta`
Settembru 2013 l-esponenti ppremettiet :*

Illi a tenur u bis-sahha ta` ftehim datat 8 ta` Gunju, 2012 imsejjah "2012 Composite Agreement" (Dok A) bejn fost ohrajn is-socjeta` rikorrenti u is-socjetajiet Picsel Holdings Limited, Picsel UK Limited, Picsel Group Holdings Limited, is-socjeta` intimata, Imran Khand u Majid Anwar, u bis-sahha ta` ftehim iehor datat 8 ta` Gunju, 2012 imsejjah "Debenture" (Dok B) bejn il-kontendenti, is-socjeta` intimata hija debitrice tas-socjeta` rikorrenti fis-somma ta` MYR 4,428,156.72 (Ringgits Malasiani) ekwivalenti ghal circa Euro 1,021,963.07 oltre l-imghax, liema somma hija dovuta u esigibbli fl-intier taghha.

Illi is-socjeta` intimata ma hallsitx u mhijjex fi stat li thallas id-dejn u d-debiti dovuti minnha lis-socjeta` rikorrenti u lil kredituri ohra u ghalhekk hija fi stat ta` insolvenza.

Illi s-socjeta` rikorrenti ghandha suspett fondat illi s-socjeta` intimata sejra tiddisponi mill-beni taghha u b`hekk jigu eluzi l-krediti tal-kredituri taghha in general, fosthom ukoll il-kreditu tas-socjeta` rikorrenti. Dawn il-beni jinkludu shares fis-socjeta` Smartoffice Technologies Limited, socjeta` sussidjarja tas-socjeta` ntinata registrata fl-Iskozja, proprjeta` intellettuali u licenzji ghal propjeta` intellettuali.

Illi s-socjeta` Smartoffice Technologies Limited hija ukoll fi stat ta` insolvenza u fuq talba tas-socjeta` rikorrenti gie nominat Amministratur taghha taht id-disposizzjonijiet tal-Insolvency Act 1986 Skocciza, is-sur Brian William Milne, partner fis-socjeta` ta` Accountants maghrufa bl-isem "French Duncan", li ghandhom l-ufficcji taghhom f` 375 West George Street, Glasgow, G2 4LW (Tel 0141 221 2984, Fax 0141 221 2980).

Illi pendente lite huwa opportun illi jigi nominat amministratur provizorju, u ghal dan il-ghan qed jigi pprezentat rikors iehor kontestwalment ma` dana l-att.

Illi s-socjeta` rikorrenti qed taghmel uzu minn dawn il-proceduri a tenur tal-artiklu 214(2)(a)(ii) tal-Kap. 386 u tal-artikli 218 et sequitur tal-Kap. 386, u dan minghajr pregudizzju ghal kull dritt iehor spettanti lilha.

U talbet illi l-Onorabbli Qorti :-

- 1. Tiddikjara illi s-socjeta` intimata mhiex fi stat li thallas u ma tistax thallas id-djun taghha;*
- 2. Tordna x-xoljiment u l-istralc tas-socjeta` intimata;*
- 3. Tinnomina stralcalju tas-socjeta` intimata; u*
- 4. Taghti kull provvedimenti u direttivi li jidhrulha xierqa u opportuni.*

Illi b`digriet tat-3 ta` Ottubru, 2013 l-Onorabbli Qorti Civili nnominat bhala amministratur provizorju tas-socjeta` intimata lill-Avukat Dr. Richard Galea Debono bis-setghat hemm indikati.

Illi wara li nbdew dawn il-proceduri, ir-rikorrenti bdiet proceduri fl-Iskozja bhala "secondary proceedings" li sussegwentement gew konvertiti fi proceduri principali (Dok C) minhabba li s-socjeta` intimata kellha "centre of its main interests" fl-Iskozja.

Illi sussegwentement b`decizjoni tal-25 ta` Novembru, 2013 il-Qorti Skocciza ordnat illi s-socjeta` intimata tigi "wound up" mill-Qorti taht id-disposizzjonijiet tal-Insolvency act 1986 tar-Renju Unit u gie nominat Brian William Milne bhala stralcarju tas-socjeta` intimata (Dok D);

Illi li jonqos hu illi jigu likwidat il-patrimonju tas-socjeta` intimata f`Malta.

Illi ghalhekk jehtieg illi l-proceduri f`Malta jkun fin-natura ta` "secondary proceedings" skont ir-Regolament tal-Kunsill (EC) Nru 1346/2000 (kif emendata minn zmien ghal zmien) sabiex jigi likwidat il-patrimonju tas-socjeta` intimata li jinsab f`Malta.

Ghaldaqstant, l-esponenti titlob bir-rispett illi dina l-Onorabbli Qorti joghghobha :-

1. Tordna l-likwidazzjonii tal-beni u patrimonju tas-socjeta` intimata li jinsabu f` Malta ;

2. Tinnomina lil Dr Richard Galea Debono, jew persuna ohra li dina l-Onorabbli jidhrilha xieraq u opportun, bhala likwidatur tas-socjeta` intimata sabiex dan jillikwida l-patrimonju tas-socjeta` intimata li jinsabu f` Malta u dan a tenur tar-Regolament tal-Kunsill tal-Unjoni Ewropea fuq imsemmi ;

3. Taghti kull provvedimenti u direttivi li jidhrulha xierqa u opportuni.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat il-verbal tal-udjenza tal-4 ta` Gunju 2018.

Rat in-nota ta` Brian Milne prezentata fil-11 ta` Lulju 2018.

Semghet ix-xiehda tal-Av. Dr. Richard Galea Debono fl-udjenza tas-6 ta` Novembru 2018 u rat id-dokument li kien prezentat fil-kors ta` din ix-xiehda.

Rat id-digriet li tat fit-22 ta` Jannar 2019 fejn ordnat l-allegazzjoni tal-atti tal-kawza bejn l-istess partijiet bin-nru. 873/13 JZM (PA) ghall-fini ta` prova fil-kawza tal-lum.

Semghet ix-xiehda tal-Av. Dr. Robert Tufigno fl-udjenza tat-22 ta` Jannar 2019.

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

Rat l-atti l-ohra ta` din il-kawza kif ukoll dawk tal-kawza bejn l-istess partijiet bin-nru. 873/13 JZM (PA).

II. Provi

Fil-kawza tal-lum, il-provi kienu jikkonsistu : a) mix-xiehda tal-Av. Dr. Richard Galea Debono u tal-Av. Dr. Robert Tufigno ; b) mid-dokument li pprezenta Dr Galea Debono fil-kors tax-xiehda tieghu ; c) mid-dokumenti li kienu prezentati mar-rikors promotur ; u d) mill-atti tal-kawza bejn l-istess partijiet nru. 878/13 JZM (PA).

a) Xiehda

Av. Dr. Richard Galea Debono xehed illi fil-kors tal-kawza fl-istess ismijiet (bhal din tal-lum) bin-nru 878/13 JZM huwa kien inhatar bhala amministratur provvizorju tal-kumpannija ntimata. Waqt l-ezekuzzjoni tal-inkariku tieghu, sab li s-socjeta` ntimata kellha depozitu ma` l-Bank of Valletta ta` €74,569.63 li kienu zbankati. Minnhom imbaghad thallsu l-ispejjez u d-drittijiet tieghu bhala amministratur provvizorju. In segwitu, ipprezenta fil-qorti cedola ta` depozitu nru 6/2018 (**Dok RGD1**) ghall-ammont ta` €69,750.72c. Wara li tnaqqas id-dritt tieghu tad-depozi, fadal depozitata fil-qorti s-somma ta` €68,608.26.

Av. Dr. Robert Tufigno kkonferma l-veracita` tad-dokumenti li kienu prezentati mar-rikors promotur, kif ukoll illi l-kreditu tar-rikorrenti baqa` ma thallasx mill-intimata. Fisser illi sas-26 ta` Settembru 2013, l-intimata kienet ghadha topera minn Malta wkoll, ghalkemm ic-centru ewlieni tan-negozju taghha kien fl-Iskozja.

Xehed illi l-persuni li kienu jirrapprezentaw lill-intimata f` Malta bhala diretturi kienu John Farrugia u Geraldine Schembri. L-ahhar li tkellem mad-diretturi dwar il-kreditu tar-rikorrenti kien ftit wara t-18 ta` Settembru 2013. Dawn kienu qalulu li kienu qeghdin jistennew struzzjonijiet. Jidher pero` li dawn l-istruzzjonijiet baqghu ma waslux ghaliex Farrugia u Schembri rrizenjaw minn diretturi.

Kompla jixhed illi llum hemm biss *sole director* li huwa Muhammed Kashif Ali Khan. Hemm ukoll *company secretary* li hija Elaine McLardy. Dawn iz-zewg persuni huma t-tnejn residenti l-Iskozja.

Stqarr illi l-indirizz registrat tal-intimata ghadu l-istess wiehed minn fejn l-intimata kienet topera minn Malta. L-indirizz huwa ta' *service provider*.

b) Id-dokumenti prezentati mar-rikors promotur

Dawk markati **Dok A u B** huma d-dokumenti li jixhdu l-kreditu li ghandha r-rikorrenti kontra l-intimata, liema kreditu baqa' mhux imhallas.

Dok C huwa r-rikors li pprezentat ir-rikorrenti fil-Qrati tal-Iskozja *for an order for the winding up of Picxel International Limited and the appointment of a provisional liquidator*.

Ir-rikors ighid illi *this petition is a secondary proceeding under and in terms of Article 3(2) of Council Regulation (EC) 1346/2000*.

Fit-12 ta' Settembru 2013, inghata provvediment *inter alia* fejn *until the prayer of the petition for a winding up order has been granted or refused*, kien appuntat Brian William Milne bhala *provisional liquidator* tal-intimata.

Dok D hija l-provvediment li tat il-Court of Session ta' l-Iskozja fil-25 ta' Novembru 2013 fejn *inter alia* ordnat li l-intimata tkun *wound up by the Court under the provisions of the Insolvency Act 1986* kif ukoll kien appuntat Brian William Milne bhala *interim liquidator*.

c) L-atti tal-kawza nru. 878/13 JZM (PA)

Se ssir referenza ghall-atti saljenti b' mod kronologiku :-

Fil-11 ta` Settembru 2013, ir-rikorrenti pprezentat rikors fil-Prim`Awla tal-Qorti Civili fejn talbet ix-xoljiment u l-istralc tal-intimata abbazi tal-Art 214(2)(ii) u tal-Art 218 tal-Kap 386.

Pendenti s-smigh tar-rikors, il-Qorti hatret lill-Av. Dr. Richard Galea Debono bhala amministratur provvizzorju fit-3 ta` Ottubru 2013.

Fil-15 ta` Novembru 2013, l-amministratur provvizzorju pprezenta rikors fejn, waqt li ghamel referenza ghad-Dok C (*supra*), kif emendat fl-14 ta` Novembru 2013, u ghar-ragunijiet li ndika fir-rikors, talab lill-Qorti sabiex tawtorizzah ma jikkontestax it-talba kif dedotta fid-Dok C.

Fl-udjenza tal-21 ta` Novembru 2013, wara li semghet ix-xieghda tal-Av. Galea Debono, u wara li rat id-dokumenti li pprezenta, il-Prim`Awla tal-Qorti Civili laqghet it-talba tal-amministratur provvizzorju. Fil-kors tax-xieghda tieghu, Dr Galea Debono stqarr illi ghalkemm l-intimata kienet registrata Malta, dak li jirreferi ghalih ir-Reg tal-UE 1346/2000 bhala *the centre of main interests* taghha kien fl-Iskozja.

Anke ir-rikorrenti stess talbet lill-Prim`Awla tal-Qorti Civili sabiex tqis il-procediment tal-Iskozja bhala *primary proceedings* u dak ta` Malta bhala *secondary proceedings* sabiex jittratta beni tal-intimata li kienu jinsabu Malta.

Fl-udjenza tas-16 ta` Frar 2015, ir-rikorrenti pprezentat il-*financial statements* tal-intimata ghall-2009 u 2010.

Fit-18 ta` Frar 2015, l-amministratur provvizzorju pprezenta l-*financial statements* tal-intimata ghall-2013.

Fit-30 ta` Novembru 2015, kienet prezentata kopja tad-Dok D (*supra*).

Il-kawza thalliet *sine die* fit-13 ta` Ottubru 2016 u wara marret dezerta.

III. Ir-Regolamenti tal-UE dwar Proceduri ta` Insolvenza

Tnejn huma r-Regolamenti tal-UE vigenti li jirregolaw il-materja tal-insolvenza ta` kumpanniji :-

Il-Council Regulation (EC) No 1346/2000 tad-29 ta` Mejju 2000 on Insolvency Proceedings ; u

Ir-Regulation (EU) 2015/848 of the European Parliament and of the Council tal-20 ta` Mejju 2015 on Insolvency Proceedings (recast).

Ghall-fini ta` dan il-procediment, id-disposizzjonijiet rilevanti huma dawk li jaghmlu l-Council Regulation (EC) No. 1346/2000 **mhux** dawk tar-Regolament 2015/848 peress illi kif jirrizulta mill-Art 84 tar-Regolament tal-ahhar :

1. The provisions of this Regulation shall only apply to insolvency proceedings opened after 26 June 2017. Acts committed by a debtor before that date shall continue to be governed by the law which was applicable to them at the time they were committed.

2. Notwithstanding Article 91 of this Regulation, Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before 26 June 2017

IV. Council Regulation (EC) No. 1346/2000

Mill-Council Regulation (EC) No. 1346/2000, id-disposizzjonijiet li huma **rilevanti għall-kaz tal-lum** huma dawn :-

CHAPTER I

GENERAL PROVISIONS

...

Article 3

International Jurisdiction

1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.

2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State.

3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.

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CHAPTER III

SECONDARY INSOLVENCY PROCEEDINGS

Article 27

Opening of proceedings

The opening of proceedings referred to in Article 3(1) by a court of a Member State and which is recognised in another Member State (main proceedings) shall permit the opening in proof to the contrary, pursuant to Article 3(2), of **secondary insolvency proceedings without the debtor's insolvency being examined in that other State. These latter proceedings must be among the proceedings listed in Annex B. Their effects shall be restricted to the assets**

of the debtor situated within the territory of that other other Member State. (enfasi u sottolinear ta` din il-Qorti)

Article 28

Applicable law

Save as otherwise provided in this Regulation, the law applicable to secondary proceedings shall be that of the Member State within the territory of which the secondary proceedings are opened.

Article 29

Right to request the opening of proceedings

The opening of secondary proceedings may be requested by :

The liquidator in the main proceedings ;

Any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of the secondary proceedings is requested. (enfasi u sottolinear ta` din il-Qorti)

...

Article 32

Exercise of creditors` rights

1. Any creditor may lodge his claim in the main proceedings and in any secondary proceedings. (enfasi u sottolinear ta` din il-Qorti)

...

Article 35

Assets remaining in the secondary proceedings

If by the liquidation of assets in the secondary proceedings it is possible to meet all claims allowed under those proceedings, the liquidator appointed in those proceedings shall immediately transfer any assets remaining to the liquidator in the main proceedings. (enfasi u sottoilinear ta` din il-Qorti).

...

Article 47

Entry into force

This Regulation shall enter into force on 31 May 2002.

V. Risultanzi

Fit-taqsimha precedenti, saret referenza ghad-disposizzjonijiet **saljenti u rilevanti** tal-Council Regulation (EC) No 1346/2000.

Wara li kkunsidrat il-mod kif ir-rikorrenti, fil-vesti taghha ta` kreditrici, mxiet fil-procediment odjern u x` talbet, il-Qorti tqis illi ottemperat ruhha ma` d-disposizzjonijiet ta` Council Regulation (EC) No 1346/2000.

Illi abbazi ta` li xehed Av. Dr. Richard Galea Debono, u tad-dokumenti li pprezenta, il-Qorti hija sodisfatta illi f` dawn il-Gzejjer l-assi li jappartjenu lill-intimata jammontaw ghal €68,608.26. Dawn huma flus li jinsabu depozitati taht l-Awtorita` tal-Qorti.

Provvediment

Ghar-ragunijiet kollha premissi, il-Qorti qeghda tipprovdi dwar it-talbiet tar-rikorrenti billi :-

Riferibbilment ghall-ewwel talba, qeghda tillikwida l-assi tas-socjeta` intimata f` dawn il-Gzejjer fl-ammont ta` tmienja u sittin elf sitt mija u tmien Ewro sitta u ghoxrin centezmu (€68,608.26) li huma flus depozitati fir-Registru tal-Qrati Superjuri ta` Malta bis-sahha ta` Cedola ta` Depozitu Nru. 6/2018.

Riferibbilment ghat-tieni u ghat-tielet talbiet, tahtar lir-Ricevitur Ufficjali sabiex jaghmel kull ma huwa mehtieg skont id-disposizzjonijiet ta` Council Regulation (EC) No 1346/2000 sabiex l-assi li kienu accertati bhala appartenenti lis-socjeta` intimata u sitwati f` dawn il-Gzejjer jghaddu taht il-kontroll u r-responsabilita` tal-istralcjarju li kien inhatar fil-*"main proceedings"* li saru fl-Iskozja.

Tordna lir-rikorrenti sabiex thallas l-ispejjez kollha ta` dan il-procediment, inkluzi dawk tar-Ricevitur Ufficjali.

**Onor. Joseph Zammit McKeon
Imħallef**

**Amanda Cassar
Deputat Registratur**