



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

**ONOR. IMHALLEF  
JOSEPH ZAMMIT McKEON**

**Illum it-Tlieta 30 ta` Gunju 2020**

**Kawza Nru. 3  
Rikors Nru. 2/2020 JZM**

**Stainless Steel Products  
Limited (C 2029)**

***kontra***

**X**

**Il-Qorti :**

**I. Preliminari**

Rat ir-rikors prezentat fl-20 ta` Jannar 2020 li jaqra hekk :-

1. *Illi Stainless Steel Products Limited, socjeta` b`responsabbilita` limitata registrata Malta bin-numru tar-registrazzjoni C 2029 u bl-indirizz registrat taghha BLB 038, Bulebel Industrial Estate, Zejtun ZTN3000, Malta (is-"Socjeta`"), qed tipprezenta dan ir-rikors ghax-xoljiment u konsegwenti stralc taghha wara decizjoni tal-bord tad-diretturi taghha (annessa hawn taht u mmarkata bhala Dok SSPL 1) ai termini tal-Artikoli 214(2)(a)(ii), u 218(1)(b) tal-Att dwar il-Kumpanniji (Kap. 386 tal-Ligijiet ta' Malta) (l-"Att").*

2. *Illi s-socjeta` mittenti mhijiex f`pozizzjoni li thallas id-djun taghha, kif ser jigi muri lill-Onorabbli Qorti fil-mori tal-kawza, u ghalhekk skont Artikolu 214(2)(a)(ii) tal-Att, hemm bzonn li tigi stralcjata.*

*Ghaldaqstant ir-rikorrenti titlob bir-rispett illi din l-Onorabbli Qorti joghgobha prevja kwalsiasi dikjarazzjoni necessarja u opportuna:*

*(i) Tiddikjara u tiddeciedi li s-socjeta` rikorrenti mhijiex f`qaghda li thallas id-djun taghha ai termini tal-Artikolu 214(2)(a)(ii) tal-Att.*

*(ii) Tordna x-xoljiment u l-istrali konsegwenzjali tas-socjeta` rikorrenti a tenur tal-Artikolu 214(2)(a)(ii) tal-Att.*

*(iii) Taghti kull provvediment iehor opportun sabiex jinhatar stralcarju u jigi kondott l-istralc konsegwenzjali tas-socjeta` rikorrenti ai termini tal-Att.*

Rat id-dokumenti pprezentati mar-rikors.

Rat ix-xiehda bl-affidavit ta` Darren Cooper u d-dokumenti li kienu annessi.

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

Rat l-atti l-oħra tal-kawza.

## **II. Provi**

### **1. L-M&A ta` Stainless Steel Products Limited**

Is-socjeta` rikorrenti hija registrata fir-Registru ta` Malta bin-nru. C2029. Ir-registrazzjoni tal-*memorandum* u tal-*articles of association* ("**M&A**") tagħha saret skont l-Art 79(2) tal-Kap 386. Matul iz-zmien kien hemm bdil fl-azzjonisti. Fid-data meta saret ir-risoluzzjoni tal-bord tad-diretturi sabiex is-socjeta` tigi xjolta u stralcjata mill-qorti l-azzjonisti kienu :-

*Home Products Group Ltd* :

bi 244,999 Class A Ordinary Shares of €2.329373 each fully paid up, u 75,000 Class B Ordinary Shares of €2.329373 each fully paid up.

*Astracast Ltd* :

1 Class A Ordinary Shares of €2.329373 each fully paid up.

### **2. Ix-xiehda ta` Darren Cooper**

Jirrizulta li Darren Cooper ilu direttur ta` Stainless Steel Products Ltd ("**SSPL**") mill-15 ta` Settembru 2017. Il-kumpannija kienet registrata Malta fil-15 ta` Jannar 1970. SSPL hija sussidjarja ta`

Astracast Ltd li hija kumpannija registrata l-Ingilterra. Huwa beda jahdem ma' Astracast Ltd f'Jannar 2017, sar direttur taghha f`Mejju 2017, u wara sar direttur ta` SSPL.

Ikkonferma dak li jirrizulta mid-dokumenti ufficjali li huma registrati mar-Registru tal-Kumpannija ta` Malta u cioe` li l-azzjonisti ta` SSPL huma Home Products Group Limited u Astracast Ltd. Tal-ewwel hija registrata l-Ingilterra ; l-azzjonista taghha hija Astracast International Holdings Ltd li hija registrata wkoll l-Ingilterra. Fis-16 ta` Lulju 2019 Home Products Group Limited kienet xjolta u stralcjata. Anke Astracast International Holdings Limited tinsab ghaddejja mill-process ta` xoljiment u stralc.

Xehed illi fuq l-iskorta ta` pariri legali mill-avukati taghhom fl-Ingilterra, bhala parti mill-process ta` xoljiment ta` Home Products Group Limited l-ishma li din kellha fis-socjeta` registrata Malta ghaddew bhala *bona vacantia* favur il-Kuruna Ingliza. Ghalhekk l-azzjonisti prezenti m`ghandhomx setghat skont l-M&A.

Kompla jixhed li anke Astracast Ltd tinsab ghaddejja minn process ta` xoljiment u stralc.

Stqarr li Stainless Steel Products Limited kienet ilha topera b`success minn Malta ghal dawn l-ahhar erbghin (40) sena. Kienet timmanifattura *stainless-steel sinks*. Gara pero` li s-sit minn fejn topera kien skedat ghad-demolizzjoni minhabba l-progett tal-flyovers tal-Marsa. Ghalhekk ma` Malta Enterprise, fil-bidu tal-2018, il-kumpannija kienet rilokata ghal sit iehor fil-Qasam Industrijali ta` Bulebel. Din ir-rilokazzjoni kienet tinvolvi wkoll ic-caqlieq tal-makkinjarju u tal-impjant. Kien stabbilit zmien sabiex kollox imur lejn Bulebel izda gara li minhabba l-komplessita` tat-trasferiment tal-impjant u ta` l-makkinjarju r-rilokazzjoni ma setghetx issir fiz-zmien stabbilit. Kien ghalhekk deciz li tinbena fabbrika gdida li kienet ser tahdem fuq produzzjoni ta' *sink* gdid. Kien maqbul ukoll illi s-sit il-gdid tal-fabbrika gewwa Malta kellu jintuza ghall-produzzjoni ta` *composite-moulded sinks* li qabel kienu jinhadmu l-Ingilterra.

Fisser li kien diffiċli hafna illi ssir ir-rilokazzjoni anke għaliex beda jirrizulta li l-ispejjeż kienu ferm oghla minn dawk previsti. Ix-xogħol mis-sit il-gdid beda bil-mod f` Marzu 2018. Kien biss f` Gunju 2018 illi l-fabbrika giet kompletament operattiva. Il-manifattura tal-*composite moulded sink* kienet diffiċli hafna u sa Settembru 2018 intlaħaq *product yield* ta` 50% biss.

Kompla fisser li l-konsegwenza ta` dan kienet illi s-socjeta` rikorrenti bdiet issofri telf finanzjarju kull xahar sakemm impjegati fil-fabbrika l-Ingilterra kienu qeghdin jagħtu taħrig lill-impjegati tal-fabbrika ta` Malta. Fl-istess waqt Astracast International Holdings Ltd ma setgħetx izzomm zewg fabriki li kienu qeghdin jipproduċu l-istess prodott izda li kienu qeghdin joperaw minn zewg pajjizi differenti. Għalhekk kien deciz li l-produzzjoni tal-*composite-moulded sinks* kellha ssir biss mill-fabbrika ta` Malta.

Xehed illi Astracast International Holdings Ltd kienet responsabbli mill-bejgħ ta` l-prodott manifatturat. Kellha klijentela tajba madwar l-Ewropa kollha. Generalment kienet tqassam il-prodotti ordnati fi zmien tlieta (3) jew erba` (4) gimghat. Sa Gunju 2018 kellha *overdue orders* li kienu jammontaw għal madwar €10,000 biss. Gara pero` li x-xenarju ha xejra negattiva għaliex il-fabbrika ma bdietx tlaħhaq mal-ordnijiet. Għad illi kienu mpjegati 30% aktar haddiema, il-fabbrika xorta ma bdietx tipproduci aktar minn 50% tal-ordnijiet bil-konsegwenza li sa Novembru 2018 l-*overdue* tal-ordnijiet tela` għal €1,800,000.

Kompla jixhed illi d-diffikulta` li l-produzzjoni tlaħhaq mal-ordnijiet flimkien mal-ispejjeż tal-operat għamluha diffiċli għas-socjeta` rikorrenti li tkompli għaddejja bin-negożju tagħha. Għalhekk f` Lulju 2018 kien deciz li sabiex ikun imħares l-operat tal-kumpannija kemm Malta u kif ukoll l-Ingilterra, kien hemm bzonn ta` strategija gdida li tagħti nifs lin-negożju. Għalhekk tfassal pjan ta` rigenerazzjoni billi l-kumpannija rikorrenti kellha tibda topera fuq bazi ta` zewg xiftijiet għal gurnata ta` 24 siegħa flok bi tliet xiftijiet sabiex b`hekk fost l-ohrajn tnaqqas spejjeż ta` saħra. L-ispejjeż tnaqqsu b` mod sostanzjali.

Stqarr li sar sforz sabiex ikun attirat investment gdid. Ghalhekk kienu avvicinati diversi nvestituri kemm mis-settur privat kif ukoll minn dak pubbliku. Sar ftehim ma` kumpannija Germaniza sabiex din timmanifattura prodott bl-isem tal-kumpannija rikorrenti u vice-versa. Ghal dan l-iskop il-kumpannija rikorrenti kellha tibghat ghodod lill-kumpannija Germaniza sabiex dawn jigu addattati ghall-makkinarju tad-ditta Germaniza. B`dan il-ftehim, il-kumpannija rikorrenti kienet ser izzid il-produttivita` taghha. Billi l-kumpannija Germaniza kienet ser tforni lis-socjeta` rikorrenti bil-materja prima, is-socjeta` rikorrenti kienet ser tiffranka madwar €500,000 fis-sena. Gara pero` li sakemm kienu ghaddejjin il-preparamenti sabiex l-ghodod minn Malta jmorru l-Germanja, xi haddiema ta` l-kumpannija rikorrenti ghamlu rapport lill-union taghhom, li fit-12 ta` Novembru 2018 tat ordni sabiex il-kumpannija rikorrenti tieqaf milli tibghat ghodda u materjal barra mill-fabbrika. Il-konsegwenza ta` dan kienet illi l-kumpannija rikorrenti ma setghetx tibghat ordnijiet li kienu tlestew ghal zewg klijenti kbar taghha li bejniethom kienu jiggeneraw madwar 60% tal-profitti. Minhabba dan iz-zewg klijenti principali tal-kumpannija rikorrenti hassru l-ordnijiet taghhom u waqqfu r-relazzjonijiet kummercjali li kellhom ma` l-kumpannija rikorrenti. Konsegwenza tal-fatt li l-kumpannija rikorrenti twaqqfet milli tesporta, kellhom jieqfu d-diskussjonijiet kollha ma` investitur Amerikan li kien inklinat jakkwista lil Astracast International Holdings Ltd u lill-kumpannija rikorrenti. Dan kien f` Dicembru 2018.

Kompla stqarr illi l-process sabiex Astracast International Holdings Ltd tigi xjolta u stralcjata beda fil-5 ta` Jannar 2019. Fl-istess data nghataw is-sensja l-haddiema kollha li kienu mpjegati l-Ingilterra. Fis-17 ta` Jannar 2019 kienu ssensjati l-impjegati ta` s-socjeta` rikorrenti. Kien hemm tentattivi sabiex jinstab akkwirent ghall-fabbrika ta` Malta.

Kompla jghid illi billi s-socjeta` rikorrenti waqfet topera ma kellhiex aktar revenue.

Stqarr illi s-socjeta` rikorrenti m` ghandhiex flus sabiex thallas l-awdituri taghha u ghalhekk l-accounts taghha ma jistghux jinghalqu

sabiex isir l-*audit*. Lanqas tinsab f'qaghda li mqar tigbor lura VAT. Lanqas ma tista` thallas il-kredituri taghha. F`Awwissu 2019 Roc-A-Go Crane Services Limited kisbet il-hrug ta` mandat li bih inqabdu l-makkinarju, l-ghodod u kull ma kien hemm fil-fabbrika.

Xehed illi billi l-ishma ghaddew lill-Kuruna Ingliza ma setghetx issir *voluntary winding up* tal-kumpannija. Ghalhekk giet adottata l-procedura prezenti li qieghed ihallas ihallas ghalih minn flus tieghu.

### **3. Ir-risoluzzjoni tal-bord tad-diretturi**

Fid-9 ta` Jannar 2020, il-bord tad-diretturi tas-socjeta` rikorrenti ghadda risoluzzjoni sabiex jigi ntavolat il-procediment odjern.

### **III. Locus standi**

Qabel tghaddi biex tqis il-mertu tal-istanza odjerna, il-Qorti tghid illi min jrid jitlob ix-xoljiment u l-istralc ta` kumpannija, irid joqghod ghal dak li jipprovdi l-**Art 218(1) tal-Kap 386** li jaqra hekk -

*Talba lill-qorti (aktar 'il quddiem imsejha "rikors ghal stralc") ghal -*

*(a) stralc ta` kumpannija mill-qorti skont l-artikolu 214(1)(a) ;*

*(b) xoljiment u stralc ta` kumpannija 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-laqgha generali jew mill-bord tad-diretturi taghha jew minn xi detentur ta' obligazzjoni, 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.*

Ix-xoljiment u l-istralc ta` Stainless Steel Products Limited qed jintalab abbazi tal-**Art. 214(2)(a)(ii) tal-Kap 386.**

Fil-kaz odjern, il-procediment kien inizjat mill-kumpannija wara rizzoluzzjoni tal-bord tad-diretturi taghha, li huwa kompost minn sole director. Ir-rizzoluzzjoni ttiehdet fid-9 ta` Jannar 2020 (Dok. SSPL 1).

**Ir-rikorrenti ghandha *locus standi* sabiex tippromwovi l-istanza tal-lum.**

#### **IV. L-Art 214(2)(a)(ii) tal-Kap 386**

Id-disposizzjoni tghid illi kumpannija **tista`** xxolji u tkun stralcjata mill-qorti "... jekk il-kumpannija ma tkunx tista` thallas id-djun taghha."

Id-disposizzjoni trid tingara flimkien ma` l-**Art 214(5)** li jistabilixxi meta skont il-ligi taghna, kumpannija ghandha titqies li ma tkunx tista` thallas id-djun taghha.

**Tnejn** huma c-cirkostanzi definiti fil-ligi :-

(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 ezeuttiv kontra l-kumpannija b`xi wiehed mill-atti ezeuttivi msemmijin fl-artikolu 273 tal-Kodici ta` Organizzazzjoni 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.*



**Ir-rikorrenti ma ndikatz fuq liema minn dawn ic-cirkostanzi qed tinkwadra t-talba taghha. Per konsegwenza, il-Qorti sejra tqis iz-zewg sitwazzjonijiet.**

Meta tfassal il-mudell ghal-ligi taghna l-gdida dwar il-kumpanniji, il-qafas maghzul kien dak tal-**Companies Act Ingliza 1985**.

Fil-ligi Ingliza, ix-xoljiment u l-istralc ta` kumpanniji kien trattat f`legislazzjoni *ad hoc* u cioe` l-**Insolvency Act 1986**.

Meta fl-1995 saret il-ligi taghna l-gdida dwar il-kumpanniji li hadet post il-Commercial Partnerships Ordinance 1962 (Kap 168 tal-Ligijiet ta` Malta), id-disposizzjonijiet li jolqtu x-xoljiment u l-istralc kienu ntegrati fl-Att tal-1995.

Dan premess, fil-ligi taghna, li kumpannija ma tkunx tista` thallas id-djun taghha, ghandu sinjifikat **preciz u definit** mil-ligi stess fl-Art 214(5).

Fil-ligi Ingliza, il-posizzjoni hija aktar wiesgha.

Il-koncett ta` insolvenza fil-ligi taghna huwa aktar ristrett minn dak tal-ligi Ingliza ghalkemm hemm *overlaps*.

Fit-Tmien Edizzjoni (2012) ta` l-ktieb **Boyle & Birds` Company Law** (pubblikat minn Jordans) pg 859 jinghad hekk –

*There are two principal, although not exclusive or exhaustive, tests of insolvency : a company is insolvent if it unable to pay its debts as they fall due ("cash flow insolvency") ; it is also insolvent if its liabilities exceed its assets ("balance sheet insolvency") ...*

## **1. L-Art 214(5)(a)**

Dwar din id-disposizzjoni, tajjeb jinghad illi titkellem *atti ezeuttivi*.

Kumpanija ma tistax titqies illi mhijiex f`qaghda li thallas id-djun taghha abbazi ta` mandat kawtelatorju, anke jekk dak il-mandat ikun gie ezegwit kontra d-debitur.

Tajjeb jinghad ukoll illi l-fattur rilevanti sabiex jiskattaw l-erbgha u ghoxrin (24) gimgha huwa **l-ezekuzzjoni tal-Mandat**.

Fil-kaz ta` mandat ta` sekwestru, l-ezekuzzjoni tal-mandat tiskatta bin-notifika tal-att lis-sekwestratarji minghajr il-htiega tan-notifika tad-debitur.

B`mod aktar strett, fil-ligi taghna dak previst mill-Art 214(5)(a) jixbah il-koncett ta` *cash flow insolvency* fil-ligi Ingliza.

Fil-kaz ta` *cash flow insolvency* din il-Qorti tghid illi filwaqt illi fil-ligi taghna huwa specifikat bil-preciz x`m`ghandhiex taghmel kumpanija debitrici sabiex ma tkunx meqjusa li ma tistax thallas id-djun taghha, fil-ligi Ingliza il-kriterju huwa aktar generiku ghax ikun hemm dik it-tip ta` insolvenza *if it is unable to pay its debts as they fall due*.

Fil-**Boyle & Birds` Company Law** (op. cit.) ikompli jinghad hekk –

*Failure to pay a debt which is due and not disputed amounts to evidence of cash flow insolvency. Thus a company which has a policy of late payment of bills could find itself the subject of a petition for a winding-up order or administration order. Such a petition will not be struck out at an early stage as a form of improper pressure and an abuse of the process of the court, because, as Staughton LJ explained in Taylor`s Industrial Flooring (1990. BBC 44 at 51) creditors, not late payers, are more worthy of insolvency law`s protection :*

*"Many people today seem to think that they are lawfully entitled to delay paying their debts when they fall due or beyond the agreed period of credit, if there is one ... This can cause great hardship to honest traders, particularly those engaged in small businesses recently started. Anything which the law can do to discourage such behaviour in my view should be done."*

Fil-pag 17 tal-ktieb **Insolvency Law – Corporate and Personal** ta' **Andrew Keay u Peter Walton** (ippubblikat minn Pearson Longman – 2003) jinghad hekk dwar *cash flow insolvency* kif mifhuma fil-kuntest tal-Insolvency Act 1986 –

*The court, in examining whether a company is suffering cash flow insolvency, will consider whether the company is actually paying its debtors. Courts must take into account what current revenue the company has as well as what the company can procure by realising assets within a relatively short time ... A company can rely upon money which might be obtained from the sale of assets or upon money which might be obtained on the strength of its assets ... It is possible that sometimes a debtor might be able to establish solvency by demonstrating that funds can be obtained through an unsecured loan. In considering whether a person or a company is insolvent, the debtor's whole financial position must be studied ... and a temporary lack of liquidity does not necessarily mean that the company is insolvent ... At one time courts were rather strict on what they required to be established before they were willing to deem a person or a company insolvent, but in more recent times they have become more liberal as far as creditors are concerned and have held that a debtor is insolvent if a creditor is able to prove that he or she has not paid an undisputed debt after a demand has been made ... and this is the case even if there is other evidence which suggests that the value of the assets outweighs liabilities ... Whether a company is cash flow insolvent is principally a question of fact and one which may be established in any number of ways, such as the existence of a large number of outstanding debts and unsatisfied judgments ... or there is lack of assets on which execution can be levied ... It has been said that a debtor is not regarded as solvent just because if sufficient time were granted the debts could be paid off ...*

## 2. **L-Art 214(5)(b)**

Fit-test bl-Ingliz id-disposizzjoni tal-ligi taghna taqra hekk :-

*For the purposes of subarticle (2)(a)(ii), a company shall be deemed to be unable to pay its debts ... if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.*

Fl-Insolvency Act 1986, insibu disposizzjoni li tixbah dik tal-ligi taghna, ghalkemm mhijiex l-istess.

Il-Qorti qieghda tirreferi ghall-**Art 123(2) tal-Insolvency Act 1986** li jaqra 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 Maltija hija li filwaqt li fil-kaz ta` l-Maltija, 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 hija ta` sostanza mhux ta` *drafting* ; fl-istess waqt, hija tal-fehma li xorta ghandha tfittex sintesi bejn id-disposizzjoni tal-ligi taghna u dik tal-ligi Ingliza. Din is-sintesi hija mehtiega sabiex tinghata tifsira aktar preciza ghal dawk li huma *contingent and prospective liabilities* li jsibu l-fonti taghhom fil-qasam tal-kontabilita` .

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 tal-ktieb **Insolvency Law – Corporate and Personal** (op. cit.) jinghad hekk :-

*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 broadened 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 :-

*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 l-contingent liability billi 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 l-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.*

Dwar l-Art 214(5)(b) il-Prim`Awla tal-Qorti Civili fis-sentenza taghha tat-28 ta` Mejju 2003 fil-kawza "**Axel John International AB vs Aluminium Extrusions Limited**" qalet hekk -

*Din il-kondizzjoni tista` tigi verifikata permezz tal-balance sheets wara li jigi kunsidrat jekk l-assets are less than its liabilities. Izda ... 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 over a lengthy period (Re : European Life Assurance Society 1869 LR 9 Eq 122).*

*Ghalhekk ma hemmx raguni ghaliex il-kredituri ghandhom joqghodu jistennew sakemm il-kumpannija tbiegh l-assets taghha biex forsi xi darba jithallsu.*

### **3. Konsiderazzjonijiet tal-Qorti**

#### **a) L-Art 214(5)(a) tal-Kap 386**

**Ghalkemm Darren Cooper xehed li kontra l-kumpannija rikorrenti, kien sar mandat minn Roc-a-Go Crane Services Limited, ma saritx il-prova li si trattava ta` mandat ezekuttiv.**

**Apparti dan, ma tressqet l-ebda prova dwar eżekuzzjoni ta` xi atti eżekuttivi kontra l-kumpannija.**

**Mhuwiex ippruvat li l-kumpannija ma tistax thallas id-djun tagħha abbazi ta` din id-disposizzjoni.**

**Għalhekk qieghda tirrespingi t-talba tar-rikorrenti abbazi tal-Art 214(5(a)) tal-Kap 386.**

**b) L-Art 214(5)(b) tal-Kap 386**

Meta l-bord tad-diretturi tal-kumpannija rikorrenti kompost minn direttur wiehed u cioe` Darren Cooper adotta r-risoluzzjoni tad-9 ta' Jannar 2020, l-azzjonisti kienu Home Products Group Limited u Astracast Ltd.

Il-qagħda tal-azzjonisti kienet hekk :-

- Kif jirrizulta minn Dok DC2 u DC3, Home Products Group Limited kienet xjolta f`effett mis-16 ta` Lulju 2019.
- Kif jirrizulta minn Dok DC4, Astracast International Holdings Ltd kienet tinsab fil-process ta` xoljiment u stralc li beda fl-2019.
- Kif jirrizulta minn Dok DC5, Astracast Limited ukoll tinsab għaddejja minn process ta' xoljiment u stralc li beda fl-2018.

Ix-xieghda ta` Darren Cooper tagħti stampa cara tal-fatti. Jirrizulta minn din id-deposizzjoni x`għara fin-negozju tal-kumpannija rikorrenti fl-aħħar sentejn li pprecipitaha lejn in-negattiv. Il-Qorti ma



tarax il-htiega assoluta li tkun konvinta bil-presentata ta' *financial statements* tal-kumpanija ghaliex il-fatti tan-negozju jirkellmu wahedhom, apparti l-fatt li l-awdituri mhux lesti jirrilaxxjaw l-*audit* bla ma jkunu thallsu. U mnejn jithallsu ma jirrizultax li hemm fil-kumpanija. Hareg ukoll mix-xiehda ta' Darren Cooper illi l-ispejjez sabiex seta' jkun intavolat dan il-procediment hallashom hu minn flus tieghu.

**Il-Qorti tghid li ghandha l-prova sal-grad rikjest mil-ligi ta' dak li huwa rikjest bl-Art 214(5)(b).**

**c) Id-diskrezzjoni tal-Qorti**

Accertat illi jirrizultaw ippruvati r-rekwiziti tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b) tal-Kap 386, il-Qorti trid tara jekk fuq il-provi akkwiziti, ghandhiex tezercita d-diskrezzjoni taghha li tordna x-xoljiment u l-istralc ta' Stainless Steel Products Limited.

Fil-ktieb **Company Law** (Lexis Nexis - Butterworths - 2003), **Brenda Hannigan** 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 ... 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."*

**L-awtrici** taghmel referenza ghall-Cork Committee Report (Cmnd 8558, Ch 4) dwar l-ghanijiet ta' *good modern insolvency law*. Fost ohrajn, jinghad 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."*

Fil-kaz tal-lum, jidher illi l-uniku asset li kellha l-kumpannija kienet il-fabbrika. Jirrizulta li kull ma kien hemm gewwa l-fabbrika kien kolpit b' mandat li nkiseb minn kreditur. Jidher li f' xi zmien kien hemm tentattiv sabiex dan l-asset jigi akkwistat bhala *going concern*. Naturalment il-procediment odjern qieghed dan it-tentattiv in diskussjoni. Apparti dan anke *jekk* f' xi stadju dan l-asset ikun ghadu disponibbli sabiex minnu *forsi* jithallsu l-kredituri, il-kumpannija ttemm l-esistenza taghha.

Tghid hekk ghaliex in-negożju waqaf matul dawn l-ahhar sentejn, precizament f` Novembru 2018, u b` effett minn dakinhar tilfet il-klijenti taghha kollha. Hawn si tratta ta` negożju kompetittiv ferm fejn allura jekk kumpannija mhux biss issib ruhha f` diffikulta` izda sahsitra twaqqaf in-negożju, ikun bil-wisq diffiċli jekk mhux impossibbli li tirkupra l-klijenti taghha fi zmien utli. Ladarba waqfet topera, il-kumpannija mhijex tiggera dhul. Huwa bid-dhul li jista` jithallas id-dejn u *forsi* jsir investiment. Barra minn hekk mhuwiex il-kaz li ssir *an injection of fresh capital* mill-azzjonisti, ghaliex anke l-azzjonisti stess huma ghaddejjin mill-process ta` xoljiment u stralc. Is-sitwazzjoni tal-kumpannija ghalhekk hija ddisprata.

**Per konsegwenza, din il-Qorti sejra tezercita d-diskrezzjoni taghha billi tordna x-xoljiment u l-istralc ta` Stainless Steel Products Limited abbazi tal-Art. 214(2)(a)(ii) u tal-Art. 214(5)(b) tal-Kap. 386.**

### **Provvediment**

**Ghar-ragunijiet kollha premissi, il-Qorti qiegħda tipprovdi dwar it-talbiet tal-kumpannija rikorrenti billi :-**

**Riferibbilment għall-ewwel talba, tiddikjara li l-kumpannija Stainless Steel Products Limited (C-2029) 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.**

**Riferibbilment għat-tieni talba, tordna x-xoljiment tal-kumpannija Stainless Steel Products Limited (C-2029) b` effett mill-20 ta` Jannar 2020 skont l-Art. 223(1) tal-Kap. 386 tal-Ligijiet ta` Malta.**

**Riferibbilment ukoll għat-tieni talba, tordna l-istralc tal-kumpannija Stainless Steel Products Limited (C-2029).**

**Riferibbilment ghat-tielet talba, tahtar lir-Ricevitur Ufficjali bhala stralcjarju tal-kumpanija Stainless Steel Products Limited (C-2029) bis-setghat u bid-dmirijiet kollha 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, tordna lil Darren Cooper u lill-kumpanija Stainless Steel Products Limited (C-2029) sabiex *in solidum* bejniethom ihallsu l-ispejjez kollha ta` dan il-procediment, kif ukoll l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tal-istralcjarju.**

**Thalli l-istralc ghall-udjenza ta` nhar it-Tlieta 6 ta` Ottubru 2020 fid-9.00 a.m.**

**Onor. Joseph Zammit McKeon  
Imhalled**

**Amanda Cassar  
Deputat Registratur**