



**QORTI CIVILI
PRIM'AWLA
ONOR IMHALLEF ANNA FELICE**

Illum 26 ta' Novembru, 2020

Rikors Guramentat Nru: 903/2019 AF

Nuovi Cantieri Apuania Spa, socjetà estera bin-numru tar-registrazzjoni LEI 8156007833AB49068789 u bl-indirizz ufficjali taghha sitwat fi Viale C. Colombo 4/BIS, Carrara (MS), CAP 54036, Region: Marina, Italy kif debitament rapprezentata mill-mandatarju specjali taghha l-Avukat Clement Mifsud Bonnici (ID 371689M)

VS

Featherstar Limited, socjetà estera inkorporata gewwa l-Ingilterra bin-numru tar-registrazzjoni taghha 08732976 u bl-indirizz ufficjali sitwat fi Devonshire House, 60 Goswell Road, London EC1M 7AD, Renju Unit

Il-Qorti:

Rat ir-rikors ta' Nuovi Cantieri Apuania Spa kif rapprezentata mill-mandatarju specjali taghha l-Avukat Clement Mifsud Bonnici li permezz tieghu din il-Qorti ntalbet tiddeciedi illi rigward id-*decreto ingiuntivo* tat-*Tribunale di Massa* tal-11 ta' April 2017 ma hemmx ragunijiet ghal rifjut ta' rikonoxximent tal-istess *decreto* kif imsemmija fl-Art. 45 tar-Regolament (UE) Nru. 1215/2012 tal-Parlament Ewropew u tal-Kunsill tat-12 ta' Dicembru 2012, dan ai termini tal-Art. 36(2) tal-istess regolament.

Rat id-dokumenti annessi.

Rat ir-risposta ta' Featherstar Limited kif debitament rapprezentata mill-mandatarja specjali taghha l-Avukat Alison Vassallo li, ghar-ragunijiet moghtija, talbet lil din il-Qorti tichad it-talba jew tissospendi l-proceduri ai termini tal-artikolu 38(a) tar-Regolament 1215/2012.

Rat id-dokumenti, inkluz affidavit u pariri legali *ex-parte*.

Semghet lid-difensuri jittrattaw.

Rat li l-proceduri thallew ghal-lum ghad-decizjoni.

Ikkunsidrat illi s-socjetà rikorrenti, permezz ta' din il-procedura, qeghda tfittex dikjarazzjoni minn din il-Qorti li ma hemm ebda raguni ghal rifjut ta' rikonoxximent ta' *decreto ingiuntivo* mahrug mit-*Tribunale di Massa*, fl-Italja.

It-talba tar-rikorrent hija bbazata fuq l-Art. 36(2) jipprovdi testwalment illi:

"Any interested party, may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45."

L-Art. 45 imbaghad jipprovdi li rikonoxximent ta' sentenza jista' jigi michud:

"1. On the application of any interested party, the recognition of a judgement shall be refused:

(a) If such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) Where the judgement was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgement when it was possible for him to do so;

(c) If the judgement is irreconcilable with a judgement given between the same parties in the Member State addressed;

(d) If the judgement is irreconcilable with an earlier judgement given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgement fulfils the conditions necessary for its recognition in the Member State addressed."

Fuq kollox l-Art. 37 tar-Regolament jipprovdi kif gej:

"1. A party who wishes to invoke in a Member State a judgement given in another Member State shall produce:

(a) A copy of the judgement which satisfies the conditions necessary to establish its authenticity; and

(b) The certificate issued pursuant to Article 53."

Is-socjetà Featherstar issejjes l-opposizzjoni taghha essenzjalment fuq zewg ragunijiet u cioè,

1. Li c-certifikat mahrug skond Anness 1 tar-Regolament mhuwiex tajjeb u wkoll,
2. Li s-sentenza qeghda tigi kontestata fl-Istat Membru ta' origini.

Dwar ic-certifikat mahrug mit-*Tribunale di Massa*, din il-Qorti tinnota nuqqasijiet. L-aktar nuqqas sinjifikanti huwa dak li jinsab fil-paragrafu 4.3 fejn l-istess certifikat jonqos milli jindika jekk id-decizjoni nghatatx fil-kontumacja tal-intimat jew le. B'dan in-nuqqas din il-Qorti hija ghalhekk prekluzza milli effettivament tissokta bl-ezercizzju taghha dwar in-notifika effettiva tal-proceduri esteri.

Fic-certifikat *de quo* jezistu nuqqasijiet ohra. Tonqos is-senzjalazzjoni dettaljata dwar interessi mehtiega, kif thallew barra wkoll id-dettalji rikjesti fil-paragrafu 4.6.2.1 li jehtieg deskrizzjoni tal-vertenza u l-provvediment moghti.

Nuovi Cantieri Apuania, tirrikonoxxi dan in-nuqqas, però targumenta addirittura li c-certifikat mhuwiex fil-fatt mehtieg sabiex it-talba taghha tkun tista' tirnexxi. Din il-Qorti ma taqbilx. Il-Qorti tqis li l-Art. 37 huwa car u tassattiv. Jesigi zewg elementi ghall-prova ta' decizjoni estera – cioè s-sentenza u c-certifikat. Wahda minghajr l-ohra timpedixxi lill-parti milli tinvoka s-sentenza miksuba. Inoltre, certifikat mahrug skorrettement ghaliex mankanti ma jistax jitqies li jissodisfa d-dettami tal-fuq citat Art. 37.

Maghdud ma dan, madanakollu, it-talba tar-rikorrenti ssib raguni ohra li timpediha milli tirnexxi. Jirrizulta inkontestat illi d-*decreto ingiuntivo* pronunzjat mit-*Tribunale di Massa* ghadu infatti qieghed jigi kontestat.

L-Art. 38(a) tar-Regolament jipprovdi illi:

"The court or authority before which a judgement given in another Member state is invoked may suspend the proceedings, in whole or in part, if:

(a) The judgement is challenged in the Member State of origin."

Fil-kaz in ezami, l-proceduri bejn il-partijiet (dokument a fol. 63) ghadhom pendentu quddiem it-*Tribunale di Massa*. Fl-affidavit tieghu id-difensur Av. Tommaso Bertuccelli (fol. 133) jikkonferma illi l-kaz ser jinstema' fl-14 ta' Jannar 2021 u b'hekk probabbli li s-sentenza tal-ewwel istanza tigi pronunzjata lejn Mejju/Gunju 2021.

La Corte di Appello di Genova waqt il-konsiderazzjonijiet taghha dwar il-*lodo arbitrale* pronunzjat f'Londra fil-kwistjoni bejn il-partijiet tikkonferma:

"Quanto al fatto, poi, che le pronunce arbitrali colliderebbero con il giudicato formatosi sul decreto ingiuntivo ottenuto da Nuovi Cantieri Apuania, si osserva che l'opposizione a quel decreto ingiuntivo non si è conclusa neppure in primo grado, sicchè non sussiste affatto un giudicato sul punto."

F'dawn ic-cirkostanzi wkoll, ghalhekk, it-talba tar-rikorrenti ma tistax tirnexxi.

Ghaldaqstant il-Qorti taqta' u tiddeciedi billi tichad it-talba ta' Nuovi Cantieri Apuania Spa kontenuta fir-rikors taghha tal-20 ta' Settembru 2019.

L-ispejjez jithallsu mill-istess Nuovi Cantieri Apuania Spa.

IMHALLEF

DEP/REG