



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

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum il-Hamis 25 ta` Frar 2021

**Kawza Nru. 6
Rik. Nru. 1/19 JZM**

HSBC Bank Malta p.l.c. [C3177]

kontra

**Steel Structures Company
Limited [C4192]**

Dan huwa provvediment dwar rikors li pprezentat l-intimata fit-12 ta` Dicembru 2020 (a fol 553 et seq) fejn talbet l-applikazzjoni minn din il-qorti tal-Art 220 tal-Kap 386 fir-rigward ta` kawza pendenti quddiem il-Prim`Awla tal-Qorti Civili.

Il-Qorti :

Rat ir-rikors fejn l-intimata talbet lil din il-qorti sabiex a tenur tal-Art 220 tal-Kap 386 tordna li jkun soprasessjoni tal-kawza Rik. Gur. Nru. 802/19 MCH li hija pendenti quddiem il-Prim`Awla tal-Qorti Civili.

Rat id-dokument li kien anness mar-rikors.

Rat id-digriet taghha tas-26 ta` Dicembru 2019.

Rat ir-risposta li pprezenta l-bank fit-18 ta` Frar 2020.

Rat id-digriet taghha tal-24 ta` Frar 2020.

Semghet is-sottomissjonijiet li saru fl-udjenza tal-21 ta` Jannar 2021.

Rat illi r-rikors thalla ghall-provvediment ghal-lum.

II. L-Art 220 tal-Kap 386

Id-disposizzjoni taqra hekk :-

F`kull zmien wara li jkun ipprezentat rikors ghal stralc, u qabel ma jinghata ordni ghal stralc, il-kumpannija, jew kull kreditur jew kontributorju, jistghu jaghmlu rikors lill-qorti biex twaqqaf il-procedimenti gudizzjali tal-qorti pendenti kontra l-kumpannija, u l-qorti tista' twaqqaf dawk il-procedimenti b`dawk il-kondizzjonijiet li jidhrilha xierqa.

Fit-test bl-Ingiliz id-disposizzjoni taqra hekk :-

At any time after the filing of a winding up application, and before a winding up order has been made, the company, or any creditor or contributory, may apply to the court for a stay of judicial

proceedings pending against the company, and the court may stay those proceedings accordingly on such terms as it thinks fit.

III. L-Art 126(1) tal-Insolvency Act 1986 tal-Ingilterra

Il-mudell ta` l-Art 220 tal-Kap 386 huwa l-**Art 126(1) tal-Insolvency Act 1986** tal-Ingilterra li jghid :-

(1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may

(a) Where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and

(b) Where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding ;

and the court to which application is so made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit.

IV. Konsiderazzjonijiet

Minn qari attent tal-Art 220 tal-Kap 386, jirrizulta li d-disposizzjoni hija mahsuba ghal sitwazzjoni fejn wara li tkun saret kawza ghax-xoljiment u stralc ta` kumpannija quddiem din il-qorti, u qabel jinghata provvedimenti fejn ikun dikjarat ix-xoljiment tal-kumpannija u jsir l-ordni ta` stralc, il-qorti jkollha diskrezzjoni li twaqqaf procedimenti gudizzjali ohra pendenti kontra l-kumpannija. Il-hsieb ghad-disposizzjoni huwa minhabba n-natura kollettiva tal-procediment ta` xoljiment u stralc ta` kumpannija.

Fil-pag 501 tal-ktieb "**The Law of Insolvency**" (Sweet & Maxwell - 1998) **Ian Fletcher** jghid :-

"The fundamental principle upon which winding up is based is the collective nature of proceedings. The objective underlying the relevant legal provisions is to ensure that an orderly regime is imposed upon all interested parties, so that none of them individually may contrive to enhance his position by exploiting some fortuitous circumstance which may yield some personal advantage, in the form of a larger proportional return on debts which are due, or a direct and more rapid recovery of payment, than would result from participation in the processes of the winding up, and receiving dividend in common with all other creditors whose debts carry an equal ranking in order of priority ...

In order to ensure that the above objective is achieved the law establishes a series of barriers to the exercise by a company of its normal rights and remedies when it is prospectively or actually in litigation. By this means, the remaining assets of the company are maintained intact so that they may be administered in accordance with the principles of insolvency law".

Issir ukoll riferenza ghal Pg 913-914 ta' **Boyle & Birds` Company Law** – 8th Edition – 2011 fejn jinghad illi :

Unpaid creditors of a company may consider commencing winding-up proceedings against the company as an alternative to suing for payment. As a debt collection mechanism, winding up proceedings may be swifter and, for the individual creditor, less expensive than a claim that may come to trial for some time ; on the other hand, winding up is a collective procedure for the benefit of creditors generally and it does not benefit specific creditors individually (F. Oditah "Winding Up Recalcitrant Debtors" 1995 LMCLQ 107) ...

Proprju ghaliex il-qorti ghandha diskrezzjoni, l-ezercizzju ta` din id-diskrezzjoni ghandu jsir b`kawtela fil-parametri delineati mid-disposizzjoni stess. Wara li rat id-dokument prezentat mar-rikors, il-qorti tghid li l-Art 220 tal-Kap 386 ma jistax jigi nvokat mill-kumpanija ntimata, ghaliex ghalkemm sal-lum il-kawza prezenti ghadha pendent, u ghalkemm ir-rikors odjern kien prezentat mill-kumpanija li taghha qieghed jintalab ix-xoljiment u stralc fil-kawza prezenti, fil-kawza Rik. Gur. Nru. 802/19 MCH li taghha qeghda tintalab is-soprasessjoni bir-rikors odjern, il-kumpanija intimata mhijiex

parti. Ghalhekk it-talba kif dedotta ma tistax tinghata konsiderazzjoni.

Provvediment

Ghar-ragunijiet kollha premissi, il-qorti qeghda tichad it-talba ta` Steel Structures Company Limited kif dedotta fir-rikors taghha tat-12 ta` Dicembru 2019, spejjez ghal Steel Structures Company Limited.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**