



MALTA

**QORTI TAL-APPELL**  
**(Sede Inferjuri)**

**ONOR. IMĦALLEF**  
**LAWRENCE MINTOFF**

Seduta tas-16 ta' Marzu, 2022

Appell Inferjuri Numru 59/2021 LM

**Ante Kelava (K.I. 163900A)**  
*(l-appellant')*

**vs.**

**Coinspace Limited (C 70466)**  
*(is-soċjetà appellata')*

**Il-Qorti,**

**Preliminari**

1. Dan huwa appell magħmul mir-rikorrent **Ante Kelava (K.I. 163900A)**, [minn issa 'l quddiem 'l-appellant'], minn deċiżjoni tat-Tribunal tal-Arbitraġġ fi ħdan iċ-Ċentru dwar l-Arbitraġġ ta' Malta [minn issa 'l quddiem 'it-Tribunal'], tat-12 ta' April, 2021 [minn issa 'l quddiem 'il-lodo arbitrali appellat'] li permezz tiegħu t-Tribunal laqa' l-ewwel talba tar-rikorrent fil-konfront tas-soċjetà

intimata **Coinspace Limited (C 70466)** [minn issa 'l quddiem 'is-soċjetà appellata'] billi ordna lis-soċjetà intimata tagħtih aċċess għall-*portal* tagħha fi żmien erbatax-il jum mill-għoti tal-*lodo* arbitrali; ċaħad l-ewwel eċċezzjoni tas-soċjetà intimata; laqa' t-tieni talba tar-rikorrent u ordna lis-soċjetà intimata tħallas lir-rikorrent is-somma ta' €1,094,858.42 b'żieda mas-somma ta' €220,000, bl-imgħaxijiet fuq din is-somma fit-totalità tagħha; ċaħad it-tieni eċċezzjoni tas-soċjetà intimata; ċaħad it-tielet talba tar-rikorrent; laqa' t-tielet eċċezzjoni tas-soċjetà intimata; laqa' r-raba' talba tar-rikorrent, u ordna lis-soċjetà intimata tagħmel tajjeb għall-ispejjeż kollha tal-proċeduri tal-arbitraġġ; kif ukoll ċaħad ir-raba' eċċezzjoni tas-soċjetà intimata u l-ħames talba tar-rikorrent.

## **Fatti**

2. Is-soċjetà intimata topera fis-settur tal-*cryptocurrency*, b'mod partikolari billi tipprovdi servizzi ta' *optimised hashing* lill-klijenti tagħha. Ir-rikorrent kien *affiliate* tas-soċjetà intimata, u kien fdat bil-bejgħ ta' pakketti ta' *cloud mining* tal-*cryptocurrency* offruta minnha. Minn dan il-bejgħ ir-rikorrent kien jaqla' kummissjoni diretta mħallsa lilu fi flejjes kontanti, filwaqt li parti mill-bilanċ tal-kummissjonijiet dovuti lilu (25%) kienu jitħallsu lilu fil-forma ta' *coins* tal-*cryptocurrency*. Jirriżulta li s-soċjetà intimata għamlet għadd ta' investigazzjonijiet dwar l-operat tagħha, minn fejn allegatament irriżultatli li r-rikorrent kien kiser it-termini u l-kundizzjonijiet tas-soċjetà intimata bħala *affiliate*, u huwa kellu jirrifondi ammont sostanzjali ta' kummissjonijiet li tħallsu lilu, għaliex lis-soċjetà intimata allegatament rriżultatli li l-bejgħ ma kienx sar

u/jew ma ġiex irregjistrat mir-rikorrent. Sussegwenti għal dawn l-investigazzjonijiet, is-soċjetà intimata kienet iddeċidiet li tittermina r-relazzjoni li kellha mar-rikorrent, issospendiet il-ħlas ta' kummissjonijiet allegatament dovuti lilu, u komplet tinvestiga aktar dwar il-possibilità li seta' kien hemm frodi da parti tar-rikorrent. Permezz tal-proċeduri arbitrali istitwiti minnu, ir-rikorrent ipproċeda sabiex isiru pagamenti li allegatament għadhom dovuti lilu fil-forma ta' kummissjonijiet li baqgħu ma tħallsux lilu, u *rewards* għal *coins* miġbura minnu, li s-soċjetà intimata wkoll qiegħda tirrifjuta li tħallas.

### **Mertu**

3. Ir-rikorrent spjega li fil-15 ta' Ġunju, 2015 huwa kien irregjistra lilu nnifsu bħala *affiliate* mas-soċjetà appellata permezz tan-*network* fuq is-sit [www.coinspace.eu](http://www.coinspace.eu), u kien anki xtara xi pakketti ta' *crypto coins* mill-imsemmi sit. Spjega li fuq dan in-*network*, huwa kien irregjistrat bl-isem *Diamond Team*, liema isem kien jikklassifikah fi grad partikolari fin-*network* tas-soċjetà intimata, u r-relazzjoni tiegħu mas-soċjetà intimata kienet regolata permezz ta' *Product, Service and Business Plan Overview and Policies and Procedures*, li r-rikorrent jgħid li ġew emendati unilateralment mis-soċjetà intimata mingħajr ma huwa kien notifikat b'dan. Ir-rikorrent qal li fil-pożizzjoni tiegħu ta' *affiliate* u *marketer* tan-*network* tas-soċjetà intimata, huwa kien qala' diversi punti u kummissjonijiet skont it-termini u kundizzjonijiet li kienu jirregolaw ir-relazzjoni bejn il-partijiet, u s-soċjetà intimata irrikonoxxiet ukoll li dawn il-kummissjonijiet huma dovuti lilu anki skont l-informazzjoni li tidher fuq l-*eWallet* disponibbli fuq il-*portal* tas-soċjetà intimata. Ir-rikorrent qal li bejn il-15 ta' Ġunju, 2015 u l-

aħħar ta' Ġunju 2017, huwa kien qiegħed jirċievi kummissjonijiet b' mod regolari minn għand is-soċjetà intimata, li kienet qiegħda tonora t-talbiet li kienu qiegħdin isiru minnu għall-ħlas. Ir-rikorrent spjega li s-soċjetà intimata kellha zona protetta minn *password* għall-utenti tas-sit tagħha, liema zona kienet tikkwantifika l-kummissjonijiet pagabbli lill-*affiliates* u tattribwihom lil kull utent rispettiv. Ir-rikorrent spjega li fil-fatt l-utent m'għandux kontroll fuq il-bilanċ li jidher fl-*eWallet*, għaliex l-utent irid jagħmel talba għall-ħlas tal-flus dovuti lilu. Qal ukoll li matul Ġunju tal-2017, is-soċjetà intimata waqfet tonora it-talbiet tiegħu għall-ħlas, u waqfet tħallas il-kummissjonijiet dovuti, u minflok dawn il-ħlasijiet bdew jidhru fuq is-sistema li għadhom 'pendenti'. Qal li l-ammont totali ta' kummissjonijiet pendenti fis-17 t'Awwissu, 2017 kien ta' €1,094,858.42, flimkien mal-ammont ta' €220,000, liema ammont tnaqqas mill-*eWallet* tar-rikorrent, iżda qatt ma tħallas lilu. Ir-rikorrent qal li hemm ammont ulterjuri ta' €18,883 f'*bonus* li originarjament kellu jithallas lilu fit-13 t'Awwissu, 2017, li qatt ma kien inkluz fil-bilanċ li jidher fl-*eWallet* tiegħu, liema ammont ir-rikorrent qal li ma jistax jipprova li huwa dovut lilu għaliex huwa m'għadx għandu aċċess għall-profil tiegħu. Ir-rikorrent allega li hu dovut lilu wkoll il-bilanċ ta' 3,802,445.96 f'*reward coins* li għandhom jiġu kkalkulati bil-prezz garantit ta' €0.50, u li għandhom jirriżultaw fl-ammont ta' €1,901,222.93 u total ta' 340,000 f'*coins* li kellhom jithallsu lilu wara li kklassifika fil-grad ta' '*Crown Diamond*' fin-*network* tas-soċjetà intimata, u dan skont il-*Product, Service and Business Plan Overview*, liema kummissjonijiet u *rewards* qatt ma tħallsu lilu. Ir-rikorrent qal li fis-26 ta' Settembru, 2016 huwa kien xtara pakkett mingħand is-soċjetà intimata bl-isem ta' '*Double Mine*' għall-prezz ta' €12,000, liema pakkett kellu jħallas 100 *coin* kuljum, u li l-bilanċ ta' *coins* minn dan il-pakkett kellu jiġi

akkreditat fil-kont tar-rikorrent, bl-għażla li dawn jiġu kkonvertiti f'valuta Euro bil-prezz garantit ta' €0.50 għal kull munita. Ir-rikorrent qal li huwa xtara pakkett ta' *'Double Mine'* ieħor fis-6 t'April, 2017, u dan il-pakkett ukoll kellu jrendi 100 *coin* kuljum, li kellhom jiġu akkreditati fil-kont tiegħu, bl-għażla li dawn jiġu kkonvertiti f'Euro. Ir-rikorrent qal li fid-19 ta' Ġunju, 2017 huwa bagħat ittra legali lis-soċjetà intimata fejn staqsa għal liema raġuni din kienet qiegħda tonqos milli tonora l-obbligi tagħha. Qal li huwa kellu jibda proċeduri quddiem it-Tribunal għaliex is-soċjetà intimata qiegħda tonqos milli tonora l-obbligi tagħha fil-konfront tiegħu.

4. Ir-rikorrent qal li huwa nżamm milli jaċċedi għall-*user account* tiegħu, u għalhekk dan il-kont issa qiegħed taħt il-kontroll assolut tas-soċjetà intimata, li tista' għalhekk temenda d-dettalji u d-*data* li fih bi ksur tal-obbligi tagħha fil-konfront tar-rikorrent. Qal li għad hemm dovuti ħlasijiet ta' kummissjonijiet għas-servizzi pprestati minnu, hekk kif jirriżulta mill-kont tal-*eWallet* tiegħu, u minkejja li l-bilanċ tal-ħlasijiet dovuti lillu jidhru bħala li ġew iddepożitati fl-*eWallet* tiegħu, fil-fatt dan il-bilanċ ma jistax jintuża minnu. Permezz ta' dawn il-proċeduri, ir-rikorrent qiegħed jitlob ukoll il-ħlas tar-*rewards* dovuti lillu bil-prezz ta' €0.50 għal kull *reward*. In vista ta' dan, ir-rikorrent talab lit-Tribunal jagħti deċiżjoni provviżorja biex jingħata aċċess sabiex ikun jista' jikseb *data* u informazzjoni oħra li tinsab maħżuna fil-kont tiegħu, kif ukoll talab lit-Tribunal jordna lis-soċjetà intimata tirrestawra d-*data* fil-kont bl-istess mod kif kienet dakinhar li ġie revokat l-aċċess tar-rikorrent, minħabba s-suspett tar-rikorrent li kien hemm tbaġħbis fl-informazzjoni go dan il-kont. Ir-rikorrent talab lit-Tribunal jiddeċiedi wkoll li huwa għandu jithallas is-somma ta' €1,094,858.42,

flimkien mas-somma ta' €220,000 li huma pendenti, liema somom jirrapreżentaw kummissjonijiet dovuti lilu. Ir-rikorrent talab ukoll lit-Tribunal jordna lis-soċjetà intimata tħallas ir-rewards f'valuta monetarja ekwivalenti għall-prezz ikkalkolat skont il-*Policies and Procedures*, liema rewards ir-rikorrent jgħid li huma dovuti lilu għax-xiri ta' prodotti mibjugħa mis-soċjetà intimata, kif ukoll bħala ħlas ta' kull kummissjoni li s-soċjetà intimata naqset milli tħallas lir-rikorrent, fl-ammont ta' €2,090,105.93, kif jirriżulta mill-*eWallet* tar-rikorrent. Ir-rikorrent talab lit-Tribunal jiddikjara wkoll li s-soċjetà intimata għandha tħallas l-ispejjeż tal-proċeduri arbitrali.

5. Is-soċjetà intimata wiegħbet li r-rikorrent kien fdat bil-bejgħ ta' pakketti tal-*cloud mining* tal-*cryptocurrency* lil individwi oħra li jkunu jistgħu joffru dawn il-pakketti għall-bejgħ mill-gdid lil terzi. Qalet li bħala *affiliate*, ir-rikorrent kien jirċievi ħlas ta' kummissjonijiet b'mod dirett fil-forma ta' flus kontanti permezz tan-*network* amministrat minnha, kif ukoll fil-forma ta' *coins* iġġenerati permezz tal-istess *network*. Is-soċjetà intimata kkonfermat li r-rikorrent kien tħallas somom kbar ta' kummissjonijiet, iżda li fis-sena 2016 hija kellha suspetti ta' frodi fuq volum għoli li allegatament kienet qiegħda sseħħ f'diversi pajjiżi, partikolarment fit-Turkija, u għalhekk is-soċjetà intimata bdiet tinvestiga numru ta' transazzjonijiet li saru bejn id-distributuri u l-utenti f'diversi pajjiżi. Żiedet tgħid li eventwalment gie allegatament stabbilit li saret frodi b'volum qawwi ta' bejgħ li sar minn ċertu *affiliates*, inkluż bejgħ li sar mir-rikorrent. Qalet li dan irriżulta f'kummissjonijiet li ntefħu b'mod artifiċjali, mingħajr ma kien fil-fatt sar bejgħ. Qalet li dan il-bejgħ artifiċjali wassal biex ir-rikorrent u membri tat-tim tiegħu ħadu ammont ta' kummissjonijiet li kien ogħla minn dak li kellhom

jirċievu, u b'dan il-mod huma akkwistaw klassifika ogħla fin-*network* operata mis-soċjetà intimata. L-soċjetà intimata spjegat li l-klassifika taħdem permezz ta' kuncett ta' *multi-level-marketing*, fejn ir-*rewards* li jirċievi l-*affiliate* jiddependu direttament fuq il-bejgħ irreġistrat minnu, kif ukoll mill-bejgħ li jsir mix-xerrejja u mill-aġenti li jaqgħu taħt dak l-*affiliate* partikolari, fi hdan l-istess *network* tagħha. Żiedet tgħid li hija nfurmat lir-rikorrent li l-kummissjonijiet li kienu diġà tħallsu lilu kellhom jiġu riveduti, għaliex kien hemm perċentwali ta' bejgħ li ġie iġġenerat b'mod frawdolenti, bil-konsegwenza li s-soċjetà intimata tħallset flus li ma kinux dovuti. Is-soċjetà intimata qalet li mill-investigazzjonijiet preliminari li saru minnha, jirriżulta allegatament li kien hemm volum ta' bejgħ sostanzjali li kien frawdolenti għaliex il-kontijiet abbinati magħhom inħolqu għal individwi li ma jeżistux, jew inkella għaliex il-flus iġġenerati mill-bejgħ tal-pakketti tal-*crypto coins* allegatament mibjugħa mir-rikorrent ma ġewx trasferiti lis-soċjetà intimata. Żiedet tgħid li t-termini u l-kundizzjonijiet li jirregolaw ir-relazzjoni bejn il-partijiet jgħidu li s-soċjetà intimata għandha l-jedd li taggusta l-kummissjonijiet li jithallsu, ibbażati fuq is-somom attwali li jkun għamel l-*affiliate* partikolari. Qalet ukoll li l-*eWallet* tar-rikorrent allegatament jikkonferma numru ta' transazzjonijiet suspettużi, u li komplew iżidu s-suspetti tas-soċjetà intimata li r-rikorrent ipprova jiffrodaha. Qalet li numru ta' persuni li akkwistaw pakketti mingħand ir-rikorrent ikkonfermaw magħha li huma tħallsu lir-rikorrent direttament bi flus kontanti, b'*wire transfers* jew bil-Bitcoin. Is-soċjetà intimata żiedet tgħid li minn investigazzjonijiet ulterjuri li għamlet, skopriet li r-rikorrent kien kiser termini u kundizzjonijiet oħra li jirregolaw il-kuntratt tiegħu, inkluż permezz ta' reklami qarrieqa, in-nuqqas tiegħu li jirreġistra u jħallas miżati tal-abbonament annwali mas-soċjetà intimata, iż-

żamma minnu ta' flus iġġenerati mill-bejgħ, u l-aċċess mhux awtorizzat minnu ta' *data* u dettalji dwar il-klijenti, kif ukoll għamel bejgħ mhux awtorizzat f'ċerti ġurisdizzjonijiet. Qalet li kien in vista ta' dan l-allegat ksur tal-obbligi tar-rikorrent, li hija kienet imblukkatlu l-aċċess għall-pjattaforma tagħha.

6. Is-soċjetà intimata eċċepiet ukoll li r-rikorrent kien allegatament ammetta li kien aċċessa informazzjoni dwar il-klijenti meta ma kellu l-ebda awtorizzazzjoni li jagħmel dan, u ftit wara hija kienet ġiet mgħarrfa li diversi kontijiet kienu ġew kompromessi (*hacked*). Qalet li in vista ta' din l-informazzjoni, fit-22 ta' Frar, 2017 hija kienet issospendiet l-aċċess tar-rikorrent, liema aċċess reġa' ngħatalu fis-26 ta' Frar, 2017. Komplet tgħid li wara li għamlet verifiki dwar l-abbonamenti f'Lulju tal-2017, kien irrizulta li r-rikorrent kien naqas milli jgħedded l-abbonament annwali tiegħu, bi ksur tat-termini u l-kundizzjonijiet miftiehma bejn il-partijiet. Qalet ukoll li kien irrizulta li r-rikorrent kien qiegħed jgħbor flus kontanti mingħand l-*affiliates* il-ġodda, bi ksur ukoll tat-termini u l-kundizzjonijiet tal-ftehim. F'din is-sitwazzjoni, spjegat s-soċjetà intimata, hija ddeċidiet li l-aċċess tar-rikorrent kellu jiġi sospiż, u li kellhom isiru aktar indaġni dwar it-transazzjonijiet li kien involut fihom ir-rikorrent. Is-soċjetà intimata qalet li r-rikorrent ippubblika wkoll materjal u kummenti fuq il-*website* tiegħu, bl-iskop li jikkawżalha l-ħsara. Is-soċjetà intimata ċaħdet li hija bidlet b'mod unilaterali it-termini u l-kundizzjonijiet tal-ftehim li kellha mar-rikorrent, u qalet li r-rikorrent innifsu kien preżenti għal għadd ta' laqgħat fejn ġew diskussi l-emendi għal dawn it-termini u kundizzjonijiet. B'riferiment għat-tieni talba tar-rikorrent, is-soċjetà intimata wiegħbet li t-talbiet tar-rikorrent għall-ħlas ġew rifjutati wara li ġie stabbilit l-aġir frawdolenti tiegħu, u wara li ġie skopert li



r-rikorrent żamm għalih flus iġġenerati mill-bejgħ ta' pakketti tas-soċjetà intimata. Is-soċjetà intimata spjegat li l-volum ta' frodi fit-Turkija biss kien jammonta għal 51 miljun Euro. Qalet ukoll li l-flus mitluba mir-rikorrent mhumiex dovuti għaliex il-bejgħ li suppost iġġenera dawn il-kummissjonijiet kien iġġenerat b'mod frawdolenti u ma giex irregistrat b'mod korrett fis-sistema tagħha. Qalet ukoll li għalhekk il-pretensjoni tar-rikorrent li titħallas lilu s-somma ta' €1,094,858.42 b'żieda mas-somma €220,000, m'għandhiex tigi milqugħa. B'riferiment għar-raba' talba tar-rikorrent, is-soċjetà intimata qalet li l-prezz tar-rewards qatt ma kien iffissat fl-ammont ta' €0.50, u l-prezz tagħhom ikun determinat fis-suq meta dawn ir-rewards jitpoġġew għall-bejgħ fis-suq. Finalment is-soċjetà intimata qalet li l-coins li r-rikorrent jippretendi li huma dovuti lilu, allegatament ingabru minnu b'mod illeċitu minħabba l-volum frawdolenti ta' bejgħ u kummissjonijiet iġġenerat minnu. Is-soċjetà intimata qalet li d-deċiżjoni tat-Tribunal trid tkun li l-ebda kummissjonijiet u l-ebda rewards m'huma dovuti lir-rikorrent.

7. Quddiem it-Tribunal ġew ippreżentati diversi dokumenti li jispjegaw ir-relazzjoni bejn il-partijiet, u dak li gie pattwit bejniethom.

8. Ir-rikorrent **Ante Kelava**, fl-*affidavit* tiegħu spjega li kien ċertu Jernej Plesko li introduċieh għan-*network* tas-soċjetà intimata f'Ġunju tal-2015, u li kien talbu jinvolvi ruħhu bħala *multi-level marketing member*. Ir-rikorrent qal li huwa kien abbona man-*network* permezz tas-sit [www.coinspace.eu](http://www.coinspace.eu), amministrata mis-soċjetà intimata, u hekk kif iffirma, sab li kien hemm xi termini u kundizzjonijiet li kienu japplikaw għalih. Qal li tul iż-żmien li fih hu kien membru ta' Coinspace, il-persuni li kellu kuntatt dirett magħhom kienu Jernej

Plesko u s-sieħba tiegħu Maja Rejec, u qal li fil-fehma tiegħu dawn it-tnejn min-nies kienu l-imħuħ wara s-soċjetà intimata, għaliex huwa dejjem magħhom iddiskuta. Qal ukoll li meta għamel ir-riċerki tiegħu fir-Registru tal-Kumpanniji kien sab li l-unika direttur tas-soċjetà intimata kienet ċerta Mocja Plut, persuna li sussegwentement huwa ltaqa' magħha darbtejn b'kollox fis-Slovenja. Ir-rikorrent qal li minkejja s-suċċess u l-volum ta' xogħol li huwa kien qiegħed iressaq lejn il-kumpannija, Plut lilu qatt ma awguratlu għas-suċċess tiegħu. Qal li fi Frar 2017 huwa sar jaf mingħand Jernej Plesko li s-soċjetà intimata kienet qiegħda tiffaccja problemi f'għadd ta' ġurisdizzjonijiet, u kien hemm sospetti ta' frodi u problemi sabiex isiru l-verifiki ħalli jkunu jistgħu jithallsu l-kummissjonijiet dovuti. Qal li huwa qatt ma kien infurmat b'dawn is-suspetti bil-miktub, u lilu ħadd ma kien qallu li huwa kien qiegħed ikun suspettat. Ir-rikorrent qal li l-ewwel darba li huwa sar jaf li allegatament kien hemm transazzjonijiet frawdolenti, kien fl-10 t'April, 2018 minn Pat Berry, persuna li tressaq biex jixhed quddiem it-Tribunal mis-soċjetà intimata. Ir-rikorrent qal li Jernej Plesko lilu kien infurmah li l-problemi interni li kienet qiegħda tiffaccja s-soċjetà intimata, kienu rizultat tal-imġiba tal-*General Manager* ta' Coinspace Turkey, u dan ma kellux x'jaqsam mal-operat tas-soċjetà intimata f'Malta. B'riferiment għal Selcuz Ozkan, li kien indikat mis-soċjetà intimata bħala *Customer Service Manager*, ir-rikorrent qal li huwa qatt ma kellu aċċess dirett jew indirett għall-kontijiet ta' din il-persuna. Qal li xi żmien qabel Ġunju tal-2017, flimkien ma' membri oħra fil-livell '*diamond*' tal-kumpannija, huwa rċieva invit sabiex imur fuq *cruise* bħala premju (*Coinspace Cruise Trip*), li però tħassret ftit granet qabel ma kellu jsir it-tluq. Qal ukoll li fil- frattemp, il-kumpannija waqfet tħallas il-kummissjonijiet dovuti, u huwa kien inkariga ditta legali

Ġermaniża sabiex tirrappreżentah f'din il-kwistjoni partikolari li huwa kellu mas-soċjetà intimata. Ir-rikorrent kompli jgħid li Plesko kien infurmah li r-rappreżentanti legali tiegħu ma kienu ser jirċievu l-ebda risposta għall-ittra mibgħuta minnu, u li aktar tard kellha tiġi organizzata laqgħa mal-membri l-oħra fil-kategorija '*Diamond*' tal-pjattaforma, sabiex jiġu spjegati l-problemi kollha li kienet qiegħda tiffaċċja s-soċjetà intimata. Ir-rikorrent qal li però din il-laqgħa baqgħet ma mmaterjalizzatx. Komplu jgħid li kuntrarjament għal dak li qalet is-soċjetà intimata fir-risposta tagħha, l-aċċess tiegħu għall-pjattaforma tagħha kien ġie sospiż fil-bidu t'Awwissu tal-2017 u mhux fit-18 t'Awwissu ta' dik is-sena. Qal ukoll li fl-istess ġurnata huwa kien ġie infurmat li d-dettalji li permezz tagħhom huwa kien jaċċessa din il-pjattaforma, kien ġew mibdula. Qal li s-soċjetà intimata qatt ma ressqet prova ta' xi aġir frawdolenti, u qal li kien hemm istanzi fejn is-soċjetà intimata allegat li huwa kien żamm għalih ħlasijiet għal pakketti mixtrija, imma huwa kien sab prova tal-ħlas li sar lis-soċjetà intimata permezz ta' trasferimenti bankarji. Qal li s-soċjetà intimata dejjem aċċettat l-għoti ta' pakketti bħala forma ta' ħlas li għandu jitnaqqas mill-*eWallet* tal-membri, u huwa dejjem qies li dawn il-fondi kienu jappartjenu lilu. Qal li huwa ħallas għall-abbonament annwali tiegħu għas-sena 2017 permezz ta' *email* mibgħuta minnu. Ir-rikorrent elenka l-ammonti li huwa qiegħed jippretendi fi ħlas mingħand is-soċjetà intimata, u semma is-somma ta' €1,329,020.67 miżmuma f'*eWallet* bil-kummissjonijiet dovuti lilu, €1,919,989.18 ikkwantifikat bħala €0.50 għal kull munita minn bilanċ ta' 3,839,978.36 *coins*, u €170,000 li huwa l-ammont ta' *coins* li kellhom jithallsu lilu wara li huwa segwa l-*Award Program* skont il-*Product, Service and Business Plan Overview*, u għalhekk għadda minn diversi klassifiki skont il-programmi mħaddma mis-soċjetà

intimata fuq in-*network* tagħha. Qal li l-valur ta' kull waħda minn dawn il-*coins* huwa ta' €0.50, u qal li ladarba dawn il-*coins* qatt ma ssarrfu fis-suq, huwa intitolat għall-prezz li kien jithallas bħala *legitimate marketer* u *affiliate* tal-kumpannija, u għall-prezz li huwa ħallas biex akkwistahom, jiġifieri €0.50.

### **Il-lodo arbitrali appellat**

9. Permezz tal-lodo arbitrali mogħti fit-12 ta' April, 2021, it-Tribunal iddeċieda l-vertenza li kellu quddiemu billi laqa' l-ewwel talba tar-rikorrent u ordna li dan għandu jingħata aċċess għan-*network* tas-soċjetà intimata fi żmien erbatax-il gurnata mid-data tad-deċiżjoni; ċaħad l-ewwel eċċezzjoni tas-soċjetà intimata; laqa' t-tieni talba tar-rikorrent u ordna lis-soċjetà intimata tħallsu s-somma ta' €1,094,858.42 b'żieda mal-ammont ta' €220,000, u l-imgħaxijiet fuq it-totalità ta' dawn l-ammonti b'effett mid-data tan-notifika tal-ittra ġudizzjarja għall-ħlas ta' dan l-ammont, sad-data tal-eventwali pagament; ċaħad it-tieni eċċezzjoni tas-soċjetà intimata; ċaħad it-tielet talba tar-rikorrent; laqa' r-raba' talba tar-rikorrent, u ordna lis-soċjetà intimata tagħmel tajjeb għall-ispejjeż tal-proċeduri arbitrali; u ċaħad ir-raba' eċċezzjoni tas-soċjetà intimata, filwaqt li ċaħad ukoll il-ħames talba tar-rikorrent wara li għamel il-konsiderazzjonijiet li ġejjin:

#### **"Facts**

*The claimant Ante Kelava was an affiliate of the respondent company Coinspace Ltd., ("Coinspace") which company deals with the sale of crypto currency cloud mining packages ("packages") and which, in the period after June 2015, proposed the launch of a new crypto currency ("**S COIN**").*

*On the 15th June, 2015, the claimant signed up as an affiliate of the network administered by the respondent company and purchased packages available (Annex 1 Doc. A);*

*The claimant used the public name “DiamondTeam” on the network, together with the username “antekelava”, under the email address designation [powerteam.eu@gmail.com](mailto:powerteam.eu@gmail.com) (Annex 1 Doc. C1, C2, C3).*

*Through his activities as an affiliate and marketer of Coinspace, the claimant gained points and commissions found in his eWallet held on the Coinspace portal. On this basis, the claimant asserts that he is entitled to:-*

- *Direct commission payments effected in FIAT money through the network;*
- *Rewards in the form of coins gained through the same network which would then be quantified and converted into Euro;*

*These payments were deposited in the claimant’s eWallet and cashed out pursuant to transfer-out requests made by the claimant.*

*This procedure was adopted between July, 2015 and June, 2017. As from June 2017, the transfer out requests submitted by the claimant ceased to be honoured by the respondent company and in August 2017 the respondent company blocked the claimant’s access to his Coinspace account (Annex 5 Doc. O). The respondent company never brought any evidence to rebut the closing of the said account, and the Tribunal understands that the account was never re-activated despite a decree of the 22<sup>nd</sup> October, 2018 ordering the respondent company to grant access within 14 days to the claimant.*

*Annex 3 shows the money transfer request within the Coinspace Platform. The transactions being processed by third party electronic payment gateways sometimes refer to “Coinspace Ltd” and other times to “Koinostar” which is registered in Slovenia and is the sole shareholder of Coinspace Ltd.*

*The claimant alleges that his account balance with the respondent company as at August 2017 was of €3,404,964.35, and which breaks down as follows:*

- *€1,094,858.42 in addition to €220,000 pending to be transferred by the respondent to the claimant representing commissions earned through his work as an affiliate. The amount of €200,000 was deducted from the claimant’s eWallet balance and never actually transferred to the claimants third-party held eWallet and therefore never effectively paid (Annex 5 Doc. O);*

- €2,090,105.93 representing rewards (converted into monetary value according to the Policies and Procedures) that the claimant had gained through the purchase of products ordered by Coinspace Limited and any missing commissions (these rewards are evident in the claimant's e-Wallet);
- Damages caused by the respondent's actions acting in dolo and negatively affecting the claimant's business, the breach of fiduciary duties owed by the respondent company to the claimant and the respondent's failure to honour its obligations;
- €18,883 missing bonus calculation due on 13 August, 2017, which was never reflected in the eWallet balance and which the claimant cannot sufficiently prove as his access has been revoked unilaterally by the respondent company;
- €12,000 representing Double Mine packages purchased on 26<sup>th</sup> September, 2016, which balance of coins should be credited to the claimant's account;

*With interest payable till the effective date of the decision.*

*During the proceedings, on 21<sup>st</sup> May, 2018, the claimant filed a detailed account of the full amount due to him.*

*Further to the above, on the 19<sup>th</sup> June, 2017, the claimant sent a legal letter to the respondent company questioning why it had failed to honour its obligations and, to the best of the Tribunal's knowledge the said letter remained unanswered. (Annex 6). Following this, on the 18<sup>th</sup> August, 2017, the claimant sent a mediation request, however, this also remained unanswered (Annex 6).*

*The respondent company has requested the Tribunal to reject all claims (commissions and rewards) put forward by the claimant on the basis of fraud.*

*The respondent company alleges that there was a substantial volume of fraudulent sales found under a number of affiliates, including the claimant, which resulted in artificially inflated commissions based on package sales ostensibly secured by the applicant but which were actually registered with the respondent company in a proper fashion. The respondent company alleges that such artificially inflated sales and related commissions resulted in the claimant and members of his team (under his affiliate line), attaining a higher ranking within the system, which affects the amount of commission payable, since it is also related to the ranking.*

*The respondent company asserts that the claimant had been warned that the commissions which had already been paid to him would have to be re-visited because it emerged that a percentage of the alleged sales, had not been registered and that*

*monies corresponding to the sales, had been fraudulently generated. On this basis, the respondent company claims that a substantial volume of sales/activity registered under the claimant is essentially fraudulent, due to the following:-*

- A. The accounts created for the individuals do not really exist and/or;*
- B. Fraudulent sales and/or;*
- C. The proceeds of the sale of the package/s were never transferred to the respondent by the claimant;*
- D. Suspicious transactions made to alleged account holders and which raised founded suspicions that the claimant aided and abetted in defrauding the respondent company. (In this regard, after having contact with a number of members who purchased packages, the company confirmed that they have either paid the claimant directly in cash, wire transfers or Bitcoin).*
- E. Other breaches which provide adequate grounds to block access of the platform of the claimant – malicious and false advertising, failure to register and pay annual subscription fees, holding on to monies from alleged sales, unauthorised access to data and client details, unauthorised sales in certain jurisdictions.*

*The respondent company alleges that, in view of the above, they maintain the right to adjust any commissions paid to the claimant, for the sales made.*

*On 8<sup>th</sup> August, 2017, the respondent company decided that there was no other option but to indefinitely suspend the claimant's access and to continue with a thorough review of the transactions involving the claimant.*

**Policies and Procedures, Terms and Conditions revised 30 May, 2017 (Annex 2 Document E)**

➤ ***Unilateral changes to the terms and conditions***

*The claimant insists that the terms available and which regulate the relationship between the parties are those made available to him on the 26<sup>th</sup> June, 2015, which were still available on the website up till 11 December, 2018 (fn. 1 affidavit of Ante Kelava 27.12.18 – signed up to the network on 15 June 2015 and that upon signing the terms and conditions were still available on the website (**Dok. AK1**). These terms and conditions make no reference to any alleged restrictions imposed by the company pertaining to e-wallet credits), and any changes that were carried out beyond that date were done unilaterally by the respondent company. To the contrary the respondent company insists that there have been interim changes to the same Policies and Procedures, Terms and Conditions, which were announced to the affiliates by*

*means of newsletters and other means of communication (fn. 2 statement of defence 15.11.17 – the claimant was present at a number of meetings which discussed the amendment of the terms and conditions. Moreover, due notification, in terms of the same terms was always provided to all affiliates. Moreover, the respondent company published regular newsletters wherein such updates and amendments had been released), with the latest version being that issued in May 2017.*

*It is apparent that the Policies and Procedures, Terms and Conditions made available have never been signed by any of the parties but represent standard terms which must be adhered to by both parties, without the possibility of negotiation or amendment by counter-parties.*

*The revised version of the Policies and Procedures, Terms and Conditions provides in Section 1.1 and 1.2 “These policies and procedures, in their present form and as amended from time to time at the sole discretion of COINSPACE and its affiliate companies ... discretion. By executing this Agreement, an Affiliate agrees to abide by all amendments or modification that COINSPACE makes. Amendments shall become effective immediately after publication of, and posting, the amended provisions on the corporate website and or posting on the Affiliate Back Office. Amended policies may apply retroactively to conduct that occurred prior to the effective date of the amendment. The continuation of an Independent Affiliate Member’s COINSPACE business or an Independent Affiliate Member’s acceptance of bonuses or commissions constitutes an acceptance of all amendments.”*

*The Tribunal’s understanding is that the revised Policies and Procedures, Terms and Conditions are valid and had been duly accepted by the claimant. Therefore, the tribunal will not entertain the merit as to whether or not the previous version of the same document (the one provided to the claimant upon enrolment) included this clause or otherwise.*

*The latest version of Policies and Procedures, Terms and Conditions and therefore deemed to be accepted by the claimant on the basis of acquiescence resulting from the fact that the claimant continued to act as an affiliate for Coinspace after the introduction of the revised version, thereby creating a contractual basis to regulate the affairs between the parties.*

*Moreover, claimant has adhered to, and applied, the provisions contained in the said Policies and Procedures, Terms and Conditions, particularly clause 7 when instituting the current proceedings and also Section 5 for the quantification and conversion of the monetary claim.*



*Therefore, the Tribunal deems valid all changes that have been made by the respondent company and this on the basis that all changes have occurred prior to the issue that is currently being dealt with. Furthermore, the changes can in no way be considered invalid or unenforceable. Consequently, the Policies and Procedures, Terms and Conditions as amended on 30<sup>th</sup> May, 2017, will be taken into consideration during the analysis of the current case.*

### **Fraud**

*Fraud is the main objection brought forward by the respondent company. Throughout the current proceedings, the respondent company argued that any commissions, rewards, etc., claimed by client (even though they have been made available in his eWallet) are not due, since they have been obtained fraudulently, per 5.2 Adjustment to Bonuses and Commissions (Policies and Procedures, Terms and Conditions, May 2017).*

Coinspace reserves the right to adjust commissions and to claw back any overpayment of commissions that may have incorrectly paid or which may have been paid as a result of fraudulent activities committed by Independent Affiliate Members within your downline until the overpaid commission is recovered, from the up line Independent Affiliate Members who received bonuses and commissions as a result of the said fraudulent activity.

*Since the evidence in support of the existence of fraud is central to the current case, the Tribunal will first undertake an analysis of the legal considerations in connection with fraud under Maltese Law, considering the interpretation given by Maltese Courts, on the matter.*

#### ➤ **Maltese law – legal principles**

*To begin with, it is important to consider the basic legal principles of Fraud under Maltese Law.*

*The Maltese civil courts, when faced with allegations of fraud take into account the applicable law and jurisprudence, and give due regard to the consideration as to whether or not the evidence submitted is consistent, convincing and corroborative.*

**“Il-Ġudikant għandu jeżamina bir-reqqa l-provi rilevanti li jkollu quddiemu u imbagħad jiddeċiedi l-kawża abbażi tal-ligi applikabbli, tal-ġurisprudenza u tal-provi li fl-opinjoni tiegħu huma konsistenti, konvinċenti u korroborati”** (fn. 3 **Norbert Agius vs Anthony Vella** – 25th April, 2008 – Court of Appeal (140/1991/2)

*In addition, our courts also take into consideration the demeanour of the witnesses, since it is deemed to be an important factor to establish credibility of the witness and truthfulness of testimony.*

➤ **Applicable Law**

*Our law follows the legal maxim Fraus Omnia Corruptit, meaning that no one can benefit from fraud, as stated in the case **Edward Enriquez et vs Avukat Dr Anthony Farrugia Senior et nomine** (1476/2001/1)*

“Il-Qorti tifhem li fejn jirriżulta aġir skorrett li juri ‘mala fides’ ma għandhiex tħalli lil min jaħti għal dan l-aġir jieħu vantaġġ mill-‘mala fides’ tiegħu. Il-liġi tagħna hija mibnija fuq il-‘bona fides’. L-ebda negozju ġuridiku m’għandu immunità mill-prinċipju ‘fraus omnia corruptit’.”

*Furthermore, under Maltese Law (article 562 of Chapter 12 of the Laws of Malta) whoever is alleging the commission of fraud must prove it (respondent company in this particular case):*

“Saving any other provision of the law, the burden of proving a fact shall, in all cases, rest on the party alleging it.”

*This has been enunciated in several local judgments, including:-*

“Dan għas-sempliċi raġuni illi jekk hi kkontraponiet tali allegazzjoni, kif artikolata minnha, hi kienet fl-obbligu li tforni dimostrazzjoni sodisfaċenti, fis-sens tal-artikolu 562 tal-Kap. 12, tal-fatt hekk allegat minnha. In-nuqqas ta’ prova simili jagħmel l-allegazzjoni tagħha tibqa’ waħda insuffiċjenti u effimera.” (57/2003/1 – **Gaby Schanzlin vs Vella Joe et** – Qorti tal-Appell Sede Inferjuri)

*It is therefore entirely up to the respondent company to prove the actual commission of fraud and most importantly that this has been committed by the claimant.*

➤ **Evidence**

*As is to be expected in cases of this nature, the evidence brought forward by both parties is contradictory. It is therefore the Tribunal’s duty to seek the most credible version presented by the parties during the proceedings. This approach is outlined in the court case (1564/2004/1) **Interior Finishes Supplies Limited vs Tabone** – 8 June, 2005, Qorti tal-Appell Sede Inferjuri:*

“Irid jingħad ukoll illi mhuwiex insolitu li tribunal jew qorti jsibu ruħhom rinfaccjati b’żewġ verżjonijiet, anke dijametrikament opposti, però kif jinsab osservat “mhux kwalunkwe tip ta’ konflitt għandu jħalli lill-Qorti f’dak l-istat ta’ perplessità li minħabba fih ma tkunx tista’ tiddeċiedi b’kuxjenza kwieta u jkollha taqa’ fuq ir-

regola ta' *'in dubio pro reo'* (Vol. LP II pg. 440), ossia, l-applikazzjoni tal-massima *'actore non probante reus absolvitur'*. Dik il-Qorti jew tribunal għandhom ifittxu, jeżaminaw u jisiltu mill-provi dak is-sostenn u dik iċ-ċertezza morali li tagħmel il-verżjoni l-aktar waħda kredibbli u attendibbli mill-oħra. Dan anke fuq bilanċ tal-probabilitajiet u tal-preponderanza tal-provi hekk generalment meqjus bħala suffiċjenti għall-konvinċiment tal-ġudikant. Huwa biss fejn l-assjem tal-provi hu tali li l-verżjonijiet huma hekk bilanċjati li kull waħda tita' tirrizulta plawsibbli illi allura ma jibqax leċitu li l-ġudikant jiffirma opinjoni motivata fuq probabilitajiet u l-preponderanza. Ara **"Joseph Vincent Rausi vs Joseph Muscat, Prim'Awla Ċivili 5 ta' Ottubru, 1987"**.

➤ **Standard of Proof**

*At this stage, the Tribunal also makes reference to the standard of evidence requested in similar cases, which is entirely in the hands of the respondent company as the party alleging the fraud. It is evident that the law requires the relevant party to bring forward concrete evidence and excludes any presumptions, except in cases where the presumptions are serious, concrete and corroborated by other matters which give them the strength required at law. This argument was further examined in the court case, (153/1994/2) Emanuel Ciantar vs David Curmi noe Prim'Awla Qorti Ċivili:*

**"Tajjeb illi qabel xejn jiġi puntwalizzat il-prinċipju illi l-piż tal-prova huwa mixtut fuq min jafferma fatt u mhux fuq min jinnegah. Dan l-istess prinċipju jgħodd ukoll għas-soċjetà konvenuta assiguratrici in kwantu din tiddefendi l-pożizzjoni tagħha bl-allegazzjoni illi s-sinistru ma kienx wieħed aċċidentali iżda r-rizultat ta' kuncert frawdolenti u ta' pjan qarrieqi biex tiġi defrodada. Prova bħal din tinkombi di rigore fuqha bħala l-parti illi qed tavvanza allegazzjoni simili. Dan jipprovdi għalih espressament l-Artikolu 981 (2) tal-Kodiċi Ċivili fejn testwalment jgħid illi 'l-għemil doluż ma jistax jiġi preżunt, imma għandu jiġi provat"**

**"b'dana kollu f'kawża ċivili d-dolo jista' jiġi stabbilit anke permezz ta' preżunzjonijiet u indizji purché s'intendi jkunu serji, preċiżi u konkordati b'tali mod illi ma jhallu l-ebda dubju f'min huwa msejjaħ sabiex jiġġudika."**

*In the end, it is up to the adjudicating body that possesses the discretional power to analyse and decide which evidence and version of events is considered most credible and truthful while adopting the above-mentioned principles.*

*In this case, the Tribunal considers it releant to mention that the witnesses brought forward by the respondent company lacked co-operation, courtesy and credibility,*

*with company representatives demonstrating hesitancy and occasionally hostility in their behaviour.*

### **The Current Case**

*The Tribunal will now analyse the evidence brought forward by the parties, particularly by the respondent company, in connection with fraud, so as to establish and determine whether the claimant is entitled to the money he is claiming, or not.*

#### ➤ **Detecting Fraud**

*All witnesses produced by the respondent company were knowledgeable about the fraud within the company (mainly related to the company in Turkey which is a separate entity from the respondent company in Malta) and also about the plaintiff's alleged involvement.*

*Pat Berry, a consultant for Coinspace, provided the following insight in his testimony:*

*"I began to notice the Ranks achieved and the requirements did not match the sales volumes ... When I began to look at where the volumes did not match it was where they were primarily in the Team of Mr Ante Kelava ... We also found out that Mr Kelava and others were collecting money and not turning it into the company. They would transfer coin credits some fraudulently generated to others as a way to fence the bad coins (fn. 4 affidavit 9.11.18)."*

*"we started seeing rank advancements that required amount of volumes that could not be met by the amount of the sales report. That's how the anomaly was found. We realised that the volume in Mr Kelava's wallet was not equal to the volume that was reported in sales (fn. 5 cross-examination 24.10.18)."*

*Jernej Plesko, ostensibly an advisor to Coinspace, said, "the company started to block internal transactions which were the cause of the fraud and after it blocked them the ones who gained most benefit from the fraud started attacking and accusing the company of fraud for changing the system. (fn. 6 affidavit 19.9.18)"*

*Tanja Simoncic, Head of Customer Support "I was immediately informed that the company had fell victim of a major fraud in Turkey which directly affected the Turkish sister company and indirectly effected the sales registered on Coinspace Ltd., in Malta. At the time, I was informed some affiliates, including Ante Kelava had artificially inflated the sales volumes and defrauded the company in claiming commissions on those fake sales (fn. 7 affidavit 6.9.18)."*

*Mojca Plut, sole director of Coinspace, said "Carlo who is in charge in Turkey informed them there are sales going and we got information that there were mismatches in*

January, 2017. Carlos informed us via email and even Multisoft over the phone (something was wrong with figures in accounts). Mismatches between the back system and the opened packages but Multisoft was the final source of information (fn. 8 sitting 8.1.19).”

*This information was also relayed to the claimant (fn. 9 affidavit of Jernej Plesco – 19.9.18 – “I informed Ante that there was a major fraud and that he was in agreement to return as much as need”) who maintained that he was never presented with any evidence to support these allegations:*

“That in the month of February 2017, and in the months following it, Jernej Plesko informed me over a number of calls via Skype, that Coinspace was having a number of problems in various jurisdictions. Turkish fraud was mentioned, then Italian fraud, then regulatory problems as well as problems with payment verifications. For me these were always excuses to hide the real facts as to why I was not being paid for my commissions and I always replied by asking for proof to substantiate these allegations. (fn. 10 affidavit of Ante Kelava – 27.12.18).”

➤ **Source of Information – Hearsay**

*However, notwithstanding, that the director and the advisers and consultants of Coinspace tendered evidence in connection with the fraud allegations, neither of them was in a position to give any direct information or explanation of the alleged fraud – all evidence brought forward by the mentioned witnesses was not first-hand but depended on what they have been told. None of them was involved in the investigation and therefore none of them could give any insight on the alleged fraudulent activities, much less so on the claimant’s involvement in such fraud. All of the evidence consisted of a series of repetitive statements relayed to them by third parties without proper corroboration.*

*Pat Berry stated that “the company asked Multisoft to do an investigation when the anomalies were found and that is in the reports they provided (fn. 11 cross-examination – 24.10.18)”.*

*Jernej Plesco added “I didn’t spend time in investigating the specific fraud as I was busy developing the blockchain infrastructure for the company” (fn. 12 affidavit 19.9.18).*

*Tanja Simoncic too declared that “I have no information about the conclusions made by Multisoft because I never communicated directly with them” ... “My role in the investigation was to help find and gather data from the back office and the e-Wallet.”*

*Admittedly, Ms Simoncic also states that “I specifically analysed Ms. Kelava’s eWallet activity. At the time, I recall to have concluded that from the details of Mr Kelava’s e-Wallet that a large amount of transactions took place (received and sent to other Coinspace members involving huge number of funds (fn. 13 affidavit 6.9.18)”. However this, of itself, provides insufficient information as a basis to conclude that fraudulent activity acutally took place as a result of Mr Kelava’s behaviour.*

*Therefore, one can only conclude that much of the evidence tendered by the witnesses brought forward by the respondent company can be treated largely as hearsay. None of the witnesses were actually directly involved in the investigation of the fraud itself and were solely aware of the fact that the company had instructed Multisoft to investigate the alleged fraud and subsequently that the company allegedly filed a police report in Turkey.*

*This kind of evidence, even in civil proceedings, gives rise to hearsay (detto del detto) and is not admissible, especially if the adjudicating body is convinced that a higher level of evidence can be produced, as required by law, in order to substantiate the fraudulent allegations (fn. 14 article 598(1) – Chapter 12 of the Laws of Malta);*

As a rule, the court shall not consider any testimony respecting facts the knowledge of which the witness states to have obtained from the relation or information of third persons who can be produced to give evidence of such facts.

*Article 598 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).*

*The evidence of hearsay, per article 599 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta), is admissible only in very particular situations none of which appear to have subsisted vis-à-vis the respondent company.*

The court may, according to circumstances, allow and take into consideration any testimony on the relation of third persons, where such relation has of itself a material bearing on the subject-matter in issue or forms part thereof; or where such third persons cannot be produced to give evidence and the facts are such as cannot otherwise be fully proved, especially in cases relating to births, marriages, deaths, absence, easements, boundaries, possession, usage, public historical facts, reputation or character, words or deeds of persons who are dead or absent and who had no interest to say or write a falsehood, and to other facts of general or public interest or of public notoriety.

➤ ***Other evidence including documentary evidence***

*The plan of action, following the discovery of fraudulent activities, was described by the sole director of Coinspace Malta, Mojca Plut and included the following:-*

*“We started the crime investigation with Turkey. Then we involved companies who carry out KYC Procedures. Then we started the procedure for verifying user account and account activities. Then Multisoft started an internal investigation. And then we hired law firms and lawyers who helps us with the investigation at an internal level.”*

*Notwithstanding that they had engaged various companies and entities to handle the investigations, the respondent company brought no evidence regarding the investigations they commissioned, save for the following, which yielded no tangible conclusion;*

- *Multisoft – All or most of the witnesses brought forward by the respondent company relied heavily on the investigations carried out by Multisoft itself and therefore excluded any material information which could not be verified by Multisoft. This is clearly discernible from the evidence of Robert Proctor (president and executive work member of Multisoft Corporation) (fn. 15 Sitting of 24 September, 2018)*

*“We act on the instructions of Coinspace ... we do not have access to that kind of information (to check whether the payments were actually paid or not). So the request for deleting data came from Coinspace management (in the executive level)”.*

*The same witness also confirmed that he had received orders to delete a number of transactions relating to claimant and followed the respondent company’s orders without any thorough investigation into the matter as per the directions given by the client. He also confirmed that they received this kind of information solely regarding the claimant.*

*In view of the above, the documents submitted in the records of the case which include the values in the claimant’s eWallet – inflated due to the alleged fraudulent activities – together with the alleged realistic values which were computed by Multisoft, cannot be considered as satisfactory evidence seeing that they were generated by Multisoft, on the basis of information provided by Coinspace which could not have been independently verified.*

- *Police report and investigations – Mojca Plut during the sitting of 22nd January, 2019, stated that – “in early 2017 the company communicated with its lawyer in Turkey about the fraud and they started criminal proceedings”. However, the witness was not in a position to confirm whether a formal*

*complaint had been filed on the matter but rather exhibited a letter from the law firm "KAVALIC" referring to the investigation bearing number 2018/8043, which was carried out in Turkey. The claimant clarified the situation during the sitting of the 14th May, 2019, when he exhibited Doc. AK 031902 confirming that the actual investigation file held at the "Istanbul Antolian Public Prosecution Office" numbered 201//8043 bears the following data, "Suspect; Mr Ugurcan Senol" and AK 031903 stating that the reason of the complaint are actions which were committed by a former Coinspace board member.*

- *Accountant/Auditor Francis Buttigieg – Also aware of these allegations were the outsourced accountants engaged by Coinspace and Francis Buttigieg. The former tendered evidence on the 11th of February, 2019, and exhibited **Doc. FB1** consisting of a letter addressed to Coinspace dated 27th of September, 2017. His comments with regard to the allegations on fraud, once again, did not shed any light on the issue as he stated that, "No updates and/or documentation were submitted to us regarding the so called 'Turkish Fraud'."*

*It is evident to the Tribunal that, although all witnesses were aware of the fraud, none of the witnesses produced were personally handling the investigation and therefore none of them could elaborate on the matter in a formal manner required by law other than by repeating information obtained from others.*

#### **Alleged Fraudulent activities committed by the claimant**

*In the interest of completeness, the Tribunal has considered each fraudulent allegation brought forward by the respondent company in respect of the claimant.*

#### **➤ The allegation regarding the fictitious accounts created by the claimant**

*This allegation was mentioned by various witnesses including Pat Berry (fn. 16 cross-examination 24 October, 2018) who insists that Mr. Kelava was creating multiple accounts with the same password. Although in the note of final submissions, the respondent company states that this was detected through a vast and detailed KYC procedure implemented by the respondents in order to identify who the account holders were and whether they were real or not, none of this documentation was ever actually exhibited as evidence. The only related documents made available to the Tribunal are those which have already been referred to above, being the documents produced by Multisoft; **Doc CS2** Internal Audit Report confirming that claimant had been overpaid and **Doc CS3** which represents calculations of **Doc CS2**, upon instructions from the respondent company. So once again, the respondent company brought no evidence to corroborate this allegation.*



*On the other hand, even though the burden of proof lies on the respondent company, the claimant, in his affidavit, rebutted this allegation by producing documents showing the bank transfers; -*

Despite the fact that Coinspcae and their witness Mr. Pat Berry were supposed to present further details about Document SS5 which the respondent presented on 10th April, 2018 so as to enable me to ascertain its veracity, such details were never presented. However, I still managed to track and collect certain documentary proof of payment, made by members indicated in Document CS5. A detailed explanation of this is attached hereto and marked as Doc AK4 which shows that in actual fact, packages indicated as fraudulent in Doc CS5, were in actual fact paid to Coinspace via Bank transfers;

➤ ***Fraudulent sales***

*This allegation was mainly raised by Mojca Plut (22.1.19) who stated that after this investigation, they discovered that, despite of the high number of created packages entered into the system, only 267 were actually paid for out of approximately 20,000. The majority of the packages were fictitious – there were no users behind them – this happened in about 3 months. Once again, therefore, there appears to be no evidence to support this claim.*

*In addition, Robert Proctor testified that every new package that was sold had to be physically approved and activated by the Coinspace Customer Support team.*

*Unexpectedly, during the cross-examination both Berry and Plut seemed to point fingers towards the customer support agents who were meant to be handling these matters:*

*Pat Berry says: “100% manual procedure that someone would order a package on the system, the payment would go into like a holding den and then support staff would go through and verify payments and then activate the package. The package would then be activated by the customer service manager.”*

*Mojca Plut says: “Support department were opening packages based on provided payments. Without that they were not able to open package. First it was the support department who made checks whether the payment was provided and after that when fraud was discovered then also the accounting service ... We later discovered some discrepancies and we carried out investigation and we discovered that some packages were open by the support dept without the necessary underlying documentation. We search out that some data was falsified.*

*It is clear that mistakes had been carried out by the customer support agent, as results from Ms Plut's reply to claimant's legal advisor's questions relating to the central question as to how it was possible that no one within the respondent company noticed the discrepancy in payment for approximately 20,000 clients: "That is exactly the point of the fraud. Because they failed to do any checks and they failed to inform us about it (fn. 17 Mojca Plut \*\*\*)."*

*In the context of this statement, it becomes irreconcilable for the Tribunal to connect the fraud to the claimant when the cause of that same fraud results from wrong-doing on the part of Coinspace's own customer support agents, as supported by Ms Plut's statement.*

➤ ***Claimant's interference***

*The Tribunal has also considered the possibility of the claimant's interference. The claimant categorically denies that he ever had access or control over the figures represented in the Coinspace back-end system since payments were processed by third-party electronic payment gateways and the money was only transferred after filing a transfer out request (**Annex 5, Doc P**). The claimant also maintains that the respondent company administered a password-protected user, accessible only by registered users of the Coinspace network per **Annex 4**, who would automatically quantify the commissions and attribute them to the relevant user in the section labelled as eWallet Balances" (**Annex 5 Doc N**) emphasising how the user has no control over the eWallet balances.*

*The respondent's evidence on the matter seems to confirm what has been stated by the claimant all along. This has been confirmed by Mr Robert Proctor too, since he confirmed that only Coinspace had access to the system, "The system provided is hosted by a third-party provider. The system is extremely secure – we have never been hacked and never had data breached. Data never been retrieved outside the system. It is not possible for Multisoft to change the commissions as the only time commissions would be changed would be at the direction of Coinspace from any investigations or reports."*

➤ ***Suspicious transactions made to alleged account holders and which raised founded suspicions that the claimant added and abetted in defrauding the respondent company. In this regard, after having been contacted, a number of members who purchased packages, confirm to have either paid the claimant directly (breach of article 4.3) in cash, wire transfers or Bitcoin.***

*Firstly, there is no correspondence with any members regarding packages.*

*Secondly, the respondent company's witnesses mention the issue with transfer to third parties insisting that this was not permissible. Claimant's evidence shows that this procedure had been adopted and approved by the company and consequently certainly does not give rise to fraud.*

➤ ***Other breaches which provide adequate grounds to block access of the platform of the claimant – malicious and false advertising, failure to register and pay annual subscription fees, holding on to monies from alleged sales, unauthorised access to data and client details, unauthorised sales in certain jurisdictions.***

*None of these allegations constitute to fraud properly so called. Consequently, the Tribunal will refrain from considering the matter further.*

*By way of conclusion, the Tribunal deems once again that insufficient evidence has been brought forward on this matter. The respondent company alleging fraud exhibited no substantial proof of fraud neither through its witnesses nor through the documents exhibited. Instead, as can be seen from above, all allegations were unfounded or rebutted by the claimant who corroborated his counter arguments with clear and substantiated evidence instead.*

### **Monetary claim**

*The monies claimed by claimant and held in his eWallet have been blocked by the respondent company on the basis of fraudulent activities per revised Policies and Procedures which were operative as from May, 2017, which state:*

Coinspace reserves their right to adjust commissions and to claw back any overpayment of commissions that may have incorrectly paid or which may have been paid as a result of fraudulent activities committed by Independent Affiliate Members within your downline until the overpaid commission is recovered, from the up line Independent Affiliate members who received bonuses and commission as a result of said fraudulent activity.

*However, there is an agreement between the parties regulating the manner in which affiliates / independent associated members are compensated:-*

As an affiliate, the claimant would receive direct commission payments delivered in FIAT money through the network itself as well as rewards in the form of coins gained through the same network. The coins attributed to the affiliate would then be converted to the blockchain in terms of the policies set forth by the respondent and then deposited in the e-wallet of each affiliate accordingly (*fn. 18 statement of defence – 15<sup>th</sup> November, 2017*)."

*The figures quoted by the claimant were never contested by the respondent company and cannot be re-calculated since there is no evidence on the amounts paid by the end purchasers of the packages, in order to reconcile the monetary claim. However, the Tribunal is able to rely on the balance indicated in the claimant's eWallet held with Coinspace since both Mojca Plut and Pat Berry testified that the eWallet belongs to claimant;*

*Pat Berry: "So if the person was in good standing and abiding by the rules and those were not fraudulent numbers then that commission would be owed, yes (fn. 19 cross-examination 24.10.18)".*

*Mojca Plut – "If there is no fraud, and there is a balance in the account that balance is payable to the customer – this is also written in the general terms and conditions (fn. 20 cross-examination 8.1.19)."*

**Quantification and Liquidation of the amounts claimed by claimant**

*The figures below have been provided by the claimant (fn. 21 note of 21<sup>st</sup> May, 2018), when he last accessed the Coinspace platform:-*

- 1. €1,094,858.42 – **Annex 5 Doc. N** – amount of commissions pending as at the date when the access was revoked 15th August, 2017: this available commission was quantified and available in Euro and there was a declaration by the system and by the company that the money was the claimant's so could be cashed out and paid to his 3rd party e-Wallet.*
- 2. €220,000 (commission) – **Annex 5 Doc O** – cash out request as at 18th July, 2017, (since he had already requested cash-out they would have been automatically deducted from the system).*
- 3. €1,901,222.93 – **Annex 5 Doc N and Annex 2 Doc D**: coins which the company itself used to attribute to the claimant (rewards system within the company) – the business plan of the company guaranteed that the rate would be delivered to the claimant once the actual S-coin is introduced to the public, to the block chain and once people start to trade in it at the rate of 50c (per business plan).*
- 4. €18,883 Point 1 – amount equivalent to the last commission received by claimant but not yet deposited to his e-Wallet balance at the date when his account was blocked.*
- 5. €170,000 – **Annex 2 Doc D (Annex 1 Doc A)** – same as point 3 and again calculated at 50c each: these do not show in the eWallet but rewards incentive scheme and can be inferred from the fact that he was a crown diamond member per **Annex 1 Doc A**;*

6. **Annex 2 Doc D** – rewards in kind which include the delivery of two luxury vehicles per **Annex 2 Doc D**;
7. Pending value of commissions and coins following date of access revocation 18th August, 2017, which claimant cannot properly assess or quantify;
8. Liquidation and quantification of the damages consisting in loss of commissions due to claimant following access revocation on the 18th August, 2017 which can be assessed and quantified on the basis of the 3 months prior to his access revocation, estimated at €1,030,764.15.

### **Decision**

For the foregoing reasons, the Arbitral Tribunal renders the following decisions:

1. Upholding the request of the Claimant ordering the Respondent company to grant access to the Claimant within 14 days of notification of this award to Respondent Company.
2. Rejecting the first plea of the Respondent Company.
3. Upholding the second request of the Claimant and orders the Respondent company Coinspace Limited to pay the amount of €1,094,858.42 in addition to the amount of €220,000 and interest on this sum in its totality from the date of notification of judicial intimation for the payment of such sum until the date of effective payment.
4. Rejecting the second plea of the Respondent Company.
5. Rejecting the third request of the Claimant.
6. Upholding the third plea of the Respondent Company.
7. Upholding the fourth request of the Claimant and orders the respondent company Coinspace Limited to fully bear the costs of arbitration as per Taxed Bill of Costs issued by the Malta Arbitration Centre, which is being attached hereto and marked Document Letter X.
8. Rejecting the fourth plea of the Respondent Company.
9. Rejecting the fifth and final request of the Claimant.
10. All other claims are dismissed.”

### **L-Appell**

10. L-appellant spjega li huwa ħass ruħhu aggravat bil-*lodo* arbitrali limitatament fir-rigward tal-parti tad-deċiżjoni fejn ġew miċħuda t-tielet u l-

ħames talba tiegħu, u għaldaqstant ressaq l-appell tiegħu fit-28 ta' Mejju, 2021, fejn talab lil din il-Qorti sabiex,

*“i. Tirrevoka dik il-parti tal-Lodo Arbitrali li ma tilqax it-tielet talba u l-ħames talba tal-Appellanti u tilqa' l-eċċezzjonijiet tas-Socjetà appellata għal dawn it-talbiet, u tirrifirma l-Lodo Arbitrali b'mod illi tiddeċiedi illi t-tielet talba u l-ħames talba tal-Appellanti għandhom ikunu milqugħa u l-eċċezzjonijiet tas-Socjetà Appellata għal dawn it-talbiet miċħuda, u b'hekk issib lis-Socjetà Appellata responsabbli għall-ħlas tad-danni u kumpens għal telf, kif ukoll telf ta' qligħ li soffra l-Appellanti peress li s-Socjetà Appellata naqqset milli teżegwixxi xi obbligazzjoni li hija kienet ikkuntrattat kif fuq spjegat;*

*ii. In vista tat-tielet u l-ħames talbiet originali, tillikwida u sussegwentement tordna lis-Socjetà Appellata tħallas lill-Appellanti s-segwentni danni kuntrattwali u extra kuntrattwali, jew liem minnhom, bl-interessi fejn applikabbli u dovuti:*

- a. Miljun disa' mitt elf, mitejn u tnejn u għoxrin euro u ħamsa u disgħin ċenteżmu (€1,901,222.95) konsistenti f'valur monetarju ta' tliet miljuni, tmien mitt elf u elfejn, erba' mija u ħamsa u erbgħin punt sitta u tmenin (3,802,445.86) coin kripto-munita, ikkalkulati bil-valur ta' ħamsin ċenteżmu (50ċ) kull coin, liema valur monetarju akkumula favour l-Appellanti, meta s-socjetà Appellata xtrat u assenjat favour l-Appellant il-coins kripto-munita bil-ħamsa u għoxrin fil-mija (25%) kummissjonijiet dovuti lill-Appellanti li kienu jitnaqqsu mis-Socjetà Appellata sabiex jinxtraw il-coins u jiġu assenjati lill-Appellanti;*
- b. Mija u sebgħin elf euro (€170,000) konsistenti f'valur ta' tliet mija u erbgħin elf (340,000) coin (bil-valur ta' 50ċ kull coin) li qatt ma ngħataw lill-Appellanti minkejja illi huwa kien laħaq ir-rank ta' "Crown Diamond";*
- c. Tmintax-il elf, tmien mija u tlieta u tmenin euro (€18,883) konsistenti fil-valur ekwivalenti għall-aħħar kummissjoni riċevuta mill-Appellanti qabel ir-revoka tal-aċċess mill-kont tiegħu u t-terminazzjoni unilateralment mis-Socjetà Appellata, liema kummissjoni kienet għadha ma ġietx riflessa fil-bilanċ totali ta' kummissjonijiet fl-eWallet tal-Appellanti meta l-aċċess ġie revokat;*
- d. Valur ta' u/jew rewards in kind inklużi żewġ karożzi li kellhom jingħataw lill-Appellanti ukoll għax kien laħaq ir-rank ta' "Crown Diamond" u li dawn baqgħu ma ngħatawx lilu bi ksur tat-Terms and Conditions u tal-Product, Service and Business Plan Overview;*

e. *Danni konsistenti f'qligh li ġie mtellef peress illi b'effett dirett u immedjat tat-terminazzjoni unilaterali mis-Socjetà Appellata tar-relazzjoni bejn il-partijiet, l-Appellanti waqaf milli jirċievi kummissjonijiet u coins li kien ikompli jirċievi fin-nuqqas ta' dik it-terminazzjoni, u ċioe kummissjonijiet fuq il-bejgħ ta' servizzi lil persuni introdotti minn persuni li huwa stess kien introduċa lis-Socjetà Appellata fil-passat, liema kummissjonijiet kienu jkomplu jakkumulaw li kieku s-Socjetà Appellata ma tterminatx ir-relazzjoni unikament.*

iii. *Fin-nuqqas illi din l-Onorabbli Qorti jogħġobha tillikwida u tordna l-ħlas ta' xi waħda jew iktar mill-irjus ta' danni taħt is-surriferiti paragrafi ii (a) sa ii (e), ai termini tal-artikolu 71(2)(ċ) tal-Att, tiddikjara u tordna illi l-Lodo Arbitrali għandha tintbagħat mill-ġdid quddiem it-Tribunal tal-Arbitraġġ limitatament sabiex it-Tribunal tal-Arbitraġġ jillikwida u jordna l-ħlas tad-danni kuntrattwali u extra-kuntrattwali mitluba fit-tielet u l-ħames talbiet originali tal-Appellant, u ċioe, danni kuntrattwali u extra-kuntrattwali taħt xi waħda mill-irjus tad-danni taħt is-surriferiti paragrafi ii (a) sa ii (e).*

*Bl-ispejjeż kontra l-konvenut."*

11. Fir-rikors tal-appell tiegħu, l-appellant spjega li t-Tribunal iddecieda b'mod ċar fil-lodo appellat li mhuwix jilqa' t-tielet u l-ħames talbiet tal-appellant, u għalhekk, skont ġurisprudenza fil-kamp tal-arbitraġġ, m'hemmx lok għal tifsir, tiswija jew decizjoni addizzjonali skont l-Att tal-Arbitraġġ (Kap. 387), stante li d-*decide* tat-Tribunal huwa espress u ma jeħtieġ l-ebda tifsir jew tiswija ulterjuri. L-appellant qal ukoll li l-appell tiegħu jista' jsir fuq punt ta' liġi li jitnissel minn decizjoni finali *ai termini* tal-artikolu 70A tal-Kap. 387. L-appellant qal li l-aggravji tiegħu huma tnejn – fl-ewwel lok għaliex il-lodo arbitrali ma llikwidax danni u ma vvalutax l-eżistenza o meno ta' danni kuntrattwali u/jew extra-kuntrattwali skont l-artikoli 1125 u 1135 tal-Kodiċi Ċivili, li jipprovdu li min jonqos li jeżegwixxi obligazzjoni li huwa jkun ikkuntratta, huwa obligat li jħallas id-danni u d-danni għandhom jithallsu lill-kreditur għat-telf li jkun bata u għall-qligh li jkun tilef. It-tieni aggravju tal-appellant jgħid li anki jekk għall-

grazzja tal-argument, din il-Qorti kellha tqis li fil-fatt saret xi tip ta' likwidazzjoni ta' danni fil-*lodo* arbitrali fejn gie konkluz li ma kien hemm l-ebda danni dovuti, li m'hemmx danni likwidabbli kif mitlub fit-tielet u l-ħames talba, il-*lodo* arbitrali xorta waħda fir-rigward ta' dawn it-talbiet ma jipprovdux motivazzjoni loġika tal-kriterji tal-apprezzament prudenti adottati, li turi kif it-Tribunal wasal għad-deċiżjoni li ma jakkordax il-quantum mitlub, skont il-ġurisprudenza tal-Qrati tagħna, skont il-prinċipji ta' ġustizzja naturali, u b'mod aktar speċifiku, skont l-artikolu 44(3) tal-Kap. 387, li jipprovdi li t-Tribunal tal-Arbitraġġ għandu jagħti r-raġunijiet li d-deċiżjoni tiegħu tkun imsejsa fuqhom.

12. L-appellant isostni li l-*lodo* arbitrali jirrikonoxxi li wara Ġunju 2017, kull talba għall-ħlas da parti tiegħu ma gietx onorata mis-soċjetà appellata, u dan gie ammess anki mis-soċjetà appellata fil-protest ġudizzjarju intavolat minnha, fejn din iddikjarat li hija ddecidiet li tittermina r-relazzjoni tagħha mal-appellant u tissospendi l-ħlas ta' kwalunkwe tip ta' kummissjonijiet dovuta lillu. L-appellant qal li għalhekk huwa ċar li s-soċjetà appellata, kemm espressament u kif ukoll mill-aġir tagħha stess, itterminat unilateralment ir-relazzjoni jew il-kuntratt li kien hemm bejn il-partijiet. Kompla jgħid li l-*lodo* kkonkluda li ma kien hemm l-ebda evidenza tal-allegata frodi min-naħa tal-appellant, u / jew li l-appellant kiser xi waħda mit-termini u kundizzjonijiet tal-ftehim. Kompla jgħid li t-terminazzjoni unilaterali tal-kuntratt, kif ukoll ir-revoka tal-aċċess għall-kont tal-appellant fil-*portal* tal-klijenti, kien jikkostitwixxi ksur tat-Termini u Kundizzjonijiet bejn il-partijiet. Żied jgħid li dan tant hu minnu, li t-Tribunal aċċetta t-talbiet tiegħu li jitħallsu l-kummissjonijiet li kienu dovuti lillu sat-terminazzjoni, jġififieri daww il-kummissjonijiet dovuta lillu talli introduċa klijenti



godda lis-soċjetà appellata. Qal li għal xi raġuni, il-*lodo* arbitrali naqas milli jillikwida d-danni kuntrattwali u extra-kuntrattwali li kienu jikkonsistu fit-telf li bata l-appellant wara li ttieħdulu u ma tħallasx il-valur montetarju ta' 3,802,445.86 *coin cryptocurrency* u xi kummissjonijiet dovuti, u danni oħra fi qligħ li l-appellant tilef fir-rigward ta' kummissjonijiet u *coins* oħra li huwa kien sejjer jirċievi, li kieku r-relazzjoni bejn il-partijiet ma gietx itterminata u l-aċċess għall-kont tiegħu fuq il-*portal* tal-klijenti tas-soċjetà appellata ma giex miżmum.

13. L-appellant għamel riferiment għall-artikoli 1125 u 1135 tal-Kodiċi Ċivili, fejn hemm ipprovdut illi min jonqos li jeżegwixxi obligazzjoni li huwa jkun ikkuntratta, huwa obligat li jħallas id-danni, u d-danni għandhom jitħallsu lill-kreditur għat-telf li jkun bata u għall-qligħ li jkun gie mtellef. Qal li l-aggravju tiegħu huwa fis-sens li l-*lodo* arbitrali mhux biss ma llikwidax dawn id-danni kuntrattwali u extra-kuntrattwali skont dawn l-artikoli, iżda lanqas evalwa jew ippruva jagħti valutazzjoni ta' dawn id-danni. Qal li l-*lodo* naqas kompletament milli jikkonsidra t-tielet u l-ħames talbiet tiegħu, bħallikieku dawn it-talbiet ma kienx għamilhom, u sempliċement ipproċeda għad-deċiżjoni li biha ċaħad it-tielet u l-ħames talbiet mingħajr ebda konsiderazzjoni jew evalwazzjoni tad-danni mitluba mill-appellant. L-appellant kompla jgħid li dan huwa aktar sorprendenti fil-kuntest tal-fatt li l-*lodo* arbitrali xejjen għal kollox l-allegazzjoni tas-soċjetà appellata li f'dan il-każ seta' kien hemm xi frodi.

14. L-appellant qal ukoll li din il-Qorti drabi oħra ddeċidiet li f'każ fejn t-Tribunal iddeċida li ma jagħti ebda danni extra-kuntrattwali, din kienet kwistjoni ta' punt ta' liġi u mhux punt ta' fatt. L-appellant qal li wara li l-*lodo* ddetermina li s-soċjetà appellata naqset milli teżegwixxi obligazzjoni li hija kienet

ikkuntrattat, dan kellu jipproċedi skont l-artikoli 1125 u 1135 tal-Kodiċi Ċivili sabiex jevalwa u jillikwida d-danni u t-telf li bata l-appellant u l-qliġ li ġie mtellef. L-appellant żied jgħid li f'dan is-sens huwa mhux qed jikkontesta l-*quantum* tad-danni likwidati, iżda l-fatt li t-Tribunal m'għamilx eżerċizzju ta' likwidazzjoni *ab initio*, u għalhekk l-argument tiegħu mhuwiex li l-*lodo* ma kkonsidrax il-provi fl-intier tagħhom, iżda li ma kien hemm l-ebda konsiderazzjoni ta' danni kuntrattwali u extra-kuntrattwali.

15. L-appellant għamel riferiment għall-parti tal-*lodo* arbitrali li tgħid li l-ammonti pretiżi minnu qatt ma kienu kkontestati mis-soċjetà appellata, u li dawn ma setgħux jiġu kkalkolati mill-ġdid għaliex ma ngabet l-ebda evidenza dwar l-ammonti li tħallsu lix-xerrejja aħħarija tal-pakketti mibjugħa mis-soċjetà appellata. Iżda t-Tribunal qies li kien hemm prova tal-bilanċ indikat fl-*eWallet* tal-appellant, li kemm Mojca Plut kif ukoll Pat Berry qablu li jappartjeni lill-appellant. L-appellant qal li l-*lodo* arbitrali jirrikonoxxi mhux biss l-eżistenza tal-*coins* fil-kont tiegħu sal-mument li l-aċċess tiegħu għall-kont ġie rrevokat, iżda saħansitra jirrikonoxxi wkoll il-bilanċ tal-*coins* proprjetà tal-appellant. Qal li l-bilanċ fl-*eWallet* tal-appellant li jagħmel riferiment għalih il-*lodo* arbitrali, jinsab f'dokument anness mat-talba tal-appellant lit-Tribunal, u huwa *screenshot* tal-*portal* tal-klijenti fuq is-sit stess tal-appellata. L-appellant qal li dan id-dokument juri biċ-ċar li kien dovut ammont ta' €1,094,858.42 f'*cash account*, kif ukoll *Held Coin Account – HCA* ta' 3,802,445.86 f'ammont ta' *coins cryptocurrency*. Qal li għalhekk, meta r-relazzjoni bejn il-partijiet ġiet itterminata unilateralment mis-soċjetà appellata, u meta din irrevokat l-aċċess tiegħu għall-*portal* tagħha tal-klijenti, l-appellant soffra danni peress li tilef mhux biss il-kummissjonijiet, iżda

anki il-*coins*, u cioè l-valur monetarju ekwivalenti għal 3,802,445.86 *coins cryptocurrency*. Qal ukoll li dawn l-ammonti qatt ma ġew ikkontestati mis-soċjetà appellata. Żied jgħid li likwidazzjoni korretta fil-*lodo* arbitrali ta' danni u telf, kellha tevalwa l-valur ta' dawn il-*coins* li ntilfu b'effett dirett u immedjat, meta s-soċjetà appellata naqset li teżegwixxi obbligazzjoni li hija kienet ikkuntrattat u meta tterminat ir-relazzjoni bejn il-partijiet b'mod unilaterali.

16. L-appellant qal li min-naħa tiegħu huwa pprezenta għadd ta' dokumenti bħala prova li l-valur kien ta' 50ċ għal kull *coin*. Qal li meta s-soċjetà appellata kienet tnaqqas 25% mill-valur tal-kummissjonijiet dovuta lill-appellant, l-appellata kienet tixtri u tassenja lill-appellant ammont ta' *coins* bil-valur ta' 50ċ kull *coin*. L-appellant għamel riferiment għall-*affidavit* tiegħu, fejn spjega l-proċess kif isir dan il-ħlas, kif ukoll għall-*Product, Service and Business Plan Overview*, li jipprovdi li l-prezz għal kull *coin* huwa ta' 50ċ. L-appellant qal li sa dakinhar li ġie revokat l-aċċess tiegħu għas-sit, il-kummissjonijiet f'Euro dovuti lill-appellant kienu dejjem jitnaqqsu bir-rata ta' 25% mis-sistema tas-soċjetà appellata, sabiex jinxtraw numru ta' *coins* mis-soċjetà appellata bil-prezz fiss ta' 50ċ kull *coin*. L-appellant qal ukoll li s-soċjetà appellata imkien ma ressqet kontestazzjoni għal dan, jew xi prova li l-valur ta' kull *coin* kellu jvarja minn dan l-ammont. L-appellant qal li għalhekk fuq bilanċ ta' probabbilitajiet, huwa rnexxielu jipprova mhux biss l-eżistenza, iżda anki l-kwalità u l-kwantità tad-danni sofferti minnu, u n-ness bejn it-terminazzjoni tal-ftehim bejn il-partijiet u d-danni arrekatu lilu. L-appellant tenna li fil-mument li fih ġiet itterminata r-relazzjoni tiegħu mas-soċjetà appellata, u din irrevokat mingħajr raġuni valida l-aċċess tiegħu għall-*portal* tal-klijenti tagħha, huwa sofra danni u telf ta' 50ċ għal kull *coin* li huwa kellu fl-*eWallet* tiegħu. Qal li huwa kellu 3,802,445.86 *coin*, li l-

valur tagħhom huwa ta' €1,901,222.95, rappreżentanti l-25% tal-kummissjonijiet li kienu jitnaqqsu mis-soċjetà appellata sabiex jinxtraw *coins* u jiġu assenjati lilu bl-imgħaxijiet.

17. L-appellant qal li hemm differenza ta' mija u tmienja u tmenin elf, tmien mija u tnejn u tmenin Euro u tmienja u disgħin ċenteżmu (€188,882.98) bejn l-ammont mitlub minnu fit-tielet talba originali tiegħu (jiġifieri €2,090,105.93) u l-ammont indikat minnu fir-rigward ta' *coins (crypto currency)* assenjati lilu bil-valur ta' 50ċ għal kull *coin*, jiġifieri €1,901,222.95, liema punt l-appellant ittratta dwaru fit-tieni aggravju tiegħu.

18. L-appellant qal li fil-ħames talba tiegħu, jiġifieri sabiex issir il-likwidazzjoni tad-danni u t-telf li huwa bata fi qligħ li tilef, fin-nota tiegħu tal-21 ta' Mejju, 2018 huwa kien ipprova dettalji fir-rigward tad-danni u t-telf addizzjonali li sofra. Qal li d-danni rikjesti minnu jammontaw għal €170,000 għal 340,000 *coin* bil-valur ta' 50ċ kull waħda, li qatt ma ngħatawlu, minkejja li huwa kien ikklassifika fil-grad ta' *crown diamond*, u zied jgħid li dan jikkostitwixxi ksur tat-Termini u l-Kundizzjonijiet miftiehma bejn il-partijiet; il-valur ta' €18,883 li huwa ekwivalenti għall-añħar kummissjoni riċevuta mill-appellant qabel ir-revoka tal-aċċess mill-kont tiegħu u t-terminazzjoni unilaterali mis-soċjetà appellata, liema kummissjoni għadha ma gietx riflessa fil-bilanċ totali ta' kummissjonijiet fl-*eWallet* tal-appellant meta l-aċċess gie revokat; il-valur ta' *rewards in kind* inklużi żewġ vetturi li kellhom ukoll jingħataw lill-appellant talli kien laħaq il-grad ta' *crown diamond*, u li baqgħu ma ngħatawlux bi ksur tat-Termini u Kundizzjonijiet miftiehma bejn il-partijiet; u l-likwidazzjoni ta' danni konsistenti fi qligħ li gie mtellef peress li b'effett dirett u immedjat, meta s-soċjetà appellata

tterminat b'mod unilaterali r-relazzjoni bejn il-partijiet, l-appellant waqaf milli jirċievi kummissjonijiet u *coins* li kien ikompli jirċievi fin-nuqqas ta' dik it-terminazzjoni. L-appellant tenna li huwa kien jirċievi kummissjonijiet u *coins* mhux biss fuq il-bejgħ ta' servizzi mis-soċjetà appellata lil persuni introdotti minnu, iżda aktar minn hekk fuq il-bejgħ ukoll ta' servizzi lil persuni introdotti minn persuni li huwa stess kien introduċa lis-soċjetà appellata fil-passat. Qal li kieku mhux għar-revoka tal-aċċess u t-terminazzjoni tar-relazzjoni, huwa kien jibqa' jirċievi l-kummissjonijiet u *coins* f'ammonti simili għal dawk tax-xhur anteedenti. Qal ukoll li dan il-fatt qatt ma ġie kkontestat mis-soċjetà appellata.

19. Fit-tieni aggravju tiegħu, l-appellant spjega li, anke jekk għall-grazzja tal-argument, din il-Qorti kellha tqis li fil-fatt saret xi tip ta' likwidazzjoni ta' danni fil-*lodo* arbitrali fejn ġie konkluz li ma kien hemm l-ebda danni dovuti, skont il-ġurisprudenza tal-Qrati tagħna, u skont il-prinċipji ta' ġustizzja naturali u skont l-artikolu 44(3) tal-Kap. 387, il-*lodo* kellu jagħti r-raġunijiet li deċiżjoni tkun imsejsa fuqhom. Qal li t-Tribunal ma setax jasal għal deċiżjoni mingħajr ma qabel jkun għamel apprezzament tat-talbiet u l-eċċezzjonijiet fil-mertu, u jingħataw ir-raġunijiet li jkunu wasslu għal din id-deċiżjoni. L-appellant qal li d-danni kuntrattwali pretiżi minnu jeċċedu ż-żewġ miljun Euro u għalhekk iċ-ċaħda ta' din it-talba tiegħu kienet timmerita xi forma ta' apprezzament da parti tat-Tribunal. Qal li huwa ma jistax jifhem kif il-*lodo*, wara li għamel riferiment għall-kwantifikazzjoni u l-likwidazzjoni tal-ammonti rikjesti mill-appellant, u wara li xejjen għal kollox id-difiża tas-soċjetà appellata, ipproċeda biex ċaħad it-talbiet għad-danni u t-talbiet għal-likwidazzjoni, mingħajr ebda spjega jew motivazzjoni.

## **Ir-Risposta tal-Appell**

20. Is-soċjetà appellata fir-risposta tagħha qalet li l-appell intavolat mill-appellant m'għandu l-ebda bażi fil-liġi tagħna, u dan għaliex il-punti li l-appellant ibbaża l-appell tiegħu fuqhom huma punti ta' fatt u mhux punti ta' liġi. Qalet li f'termini sempliċi, l-appell tal-appellant mhuwiex għajr ilment li t-Tribunal ma laqax it-talbiet tiegħu għad-danni kollha li huwa ppretenda li kellu jirċievi, u l-appellant ipprova jlibbes dan l-ilment fattwali f'ilment ta' punt ta' dritt, meta dan ma kienx il-każ. Qalet li fil-każ odjern ma kien hemm l-ebda punt ta' liġi li għie injorat jew xi liġi li għiet applikata hażin.

21. Is-soċjetà appellata qalet li t-Tribunal għażel li jilqa' ċerti talbiet u jiċċhad oħrajn, għaliex fil-fehma tal-Arbitri kienu l-ewwel u t-tieni talbiet li għew ippruvati u mhux il-kumpliment. Kompliet tgħid li l-ilment ewlieni tal-appellant huwa li sar kalkolu hażin tad-danni sofferti minnu, u ċertament li dan ma jikkostitwixxix bażi valida għall-appell tiegħu, għaliex dan mhux punt ta' dritt. Żiedet tgħid li fi kwalunkwe każ, dan kollu huwa biss apprezzament ta' fatti u ta' provi, u ma jistax isir appell minn *lodo* arbitrali b'dan il-mod. Is-soċjetà appellata qalet li t-Tribunal fil-każ odjern ibbaża ruħhu fuq dak li kien ippruvat, minkejja li saru għadd ta' allegazzjonijiet da parti tal-appellant li ma għew ippruvati. Qalet li l-*Held Coin Account* mhux parti mill-*Cash Account* li sar riferiment għalih minn Monica Plut, u li m'hemm l-ebda prova li dak li qiegħed jippretendi l-appellant huwa dovut lilu. B'riferiment għall-pretensjonijiet l-oħra kollha tal-appellant, is-soċjetà appellata qalet li l-prezz tar-*rewards* qatt ma kien garantit fil-valur ta' 50ċ, iżda kien ser jiġi determinat skont il-valur tas-suq, u l-appellant naqas milli jipprova kemm kien il-valur fis-suq ta' dawn l-*awards*. Qalet ukoll li fi kwalunkwe

każ l-appellant ma ħaqqu l-ebda kumpens għaliex dak li qiegħed jippretendi huwa r-rizultat ta' frodi mwettqa minnu.

22. B'riferiment għat-tieni aggravju tal-appellant, is-soċjetà appellata qalet li dak li ddeċieda t-Tribunal huwa li appartu l-qbil bejn il-partijiet dwar il-kummissjoni pagabbli, m'hemmx prova dwar x'għandu jkun pagabbli, u għalhekk ma jistax issa l-appellant jilmenta li dik il-parti tad-deċiżjoni tat-Tribunal mhijiex motivata. Qalet li dan ukoll mhux punt ta' dritt, iżda huwa punt ta' apprezzament ta' provi li qiegħed jiġi kamuffat bħala punt ta' dritt, u għal din ir-raġuni dan l-aggravju għandu jiġi skartat ukoll.

### **Konsiderazzjonijiet ta' din il-Qorti**

23. Din il-Qorti ser tgħaddi sabiex tikkonsidra l-aggravji tal-appellant, u dan fid-dawl tal-konsiderazzjonijiet magħmula mit-Tribunal fil-*lodo* arbitrari appellat, u s-sottomissjonijiet magħmula mis-soċjetà appellata fit-twegiba tagħha. Il-Qorti tagħmilha ċara mill-bidunett li safejn l-appell tal-appellant huwa bbażat fuq l-aggravju li t-Tribunal naqas milli jieħu konsiderazzjoni tal-fatt li bil-proċeduri istitwiti minnu, huwa qiegħed ifittex lis-soċjetà appellata għal ksur ta' obbligi kuntrattwali u extra-kuntrattwali billi naqset milli tħallsu somom ta' flus li l-appellant jemmen li huma dovuti lilu, l-appell tal-appellant huwa arginat fuq punti ta' dritt, u għalhekk din il-Qorti sejra tikkonsidra l-aggravji mressqa minnu. Dan qiegħed jiġi ppreċiżat in vista tal-fatt li s-soċjetà appellata qajmet l-eċċezzjoni li l-appell tal-appellant mhuwiex ammissibbli għaliex huwa msejjes fuq punti ta' fatt aktar milli fuq punti ta' dritt. Essenzjalment l-appellant qiegħed

jilmenta għaliex bejn il-partijiet kien hemm kuntratt validu, li gie vvjolat mis-soċjetà appellata, meta din naqset milli tħallsu somom ta' flus rappreżentanti kummissjonijiet u flus oħra li l-appellant jemmen li huwa ntitolat għalihom.

*L-ewwel aggravju: [It-tielet u l-ħames talbiet tal-appellant; u l-likwidazzjoni tat-Tribunal]*

24. L-appellant ressaq pretensjonijiet dettaljati fir-rigward tas-somom ta' flus li huwa jemmen li huma dovuta lil mis-soċjetà appellata. Jgħid li minkejja li t-Tribunal ikkonkluda li huwa għandu jithallas is-somma ta' €1,094,858.42 f'kummissjonijiet u €220,000 f'kummissjonijiet ulterjuri, it-Tribunal naqas milli jillikwida somom oħrajn li jiffurmaw parti mill-pakkett finanzjarju nnegożjat minnu mas-soċjetà appellata. L-appellant spjega li minkejja li gie stabbilit li huwa għandu jirċievi €1,094,858.42 fi flus kontanti, dan l-ammont jirrappreżenta biss 75% tal-kummissjonijiet totali li huma dovuta lil, u dan għaliex is-soċjetà appellata kienet tħallsu 75% tal-kummissjoni fi flus kontanti, u r-rimanti fil-forma ta' *coins* li l-appellant jgħid li għandhom valur ta' €0.50 kull waħda. L-appellant jgħid li meta lilu ngħalaqlu l-aċċess għall-*portal* tas-soċjetà appellata, huwa ma setax jivverifika kemm huwa l-ammont ta' *coins* li akkumulaw fil-portafoll tiegħu. L-appellant qal li huwa kien bena *network* ta' *affiliates* li lilu kienu jiġġenerawlu qligħ fil-forma ta' ħlasijiet rikorrenti li huwa kien jirċievi minn żmien għal żmien mill-attività ta' dawn l-*affiliates*, iżda qal li meta lilu twaqqaflu l-aċċess għall-*portal* tas-soċjetà appellata, huwa tilef kont ta' dak li huwa dovut lilu. Qal ukoll li kien hemm premjijiet li kellhom jingħataw lilu fil-forma ta' vetturi lussużi talli kien iggradwa minn klassifika għal oħra fin-*network* tas-soċjetà appellata, liema premjijiet qatt ma ngħatawlu. Jirriżulta li t-



Tribunal wasal għad-deċiżjoni li dawn il-pretensjonijiet tal-appellant mhumiex kollha ġustifikati, u għalhekk filwaqt li llikwida ammont ta' danni li għandu jithallas lilu bbażat fuq l-ammont fi flus kontanti li jirriżulta mill-*eWallet* tal-appellant, naqas milli jillikwida wkoll id-danni ulterjuri li l-appellant qiegħed jippretendi li għandhom jithallsu lilu.

25. Is-soċjetà appellata ħadet il-pożizzjoni li fil-każ odjern it-Tribunal stess qal li dawn id-danni li qiegħed jippretendi l-appellant baqgħu ma ġewx ippruvati, u biex jiġu likwidati dawn id-danni, irid ikun hemm prova ta' ksur kuntrattwali da parti tas-soċjetà appellata, id-dannu jrid jiġi ppruvat, u jrid jiġi stabbilit in-ness bejn id-dannu li l-appellant qiegħed jgħid li sofra u l-azzjoni da parti tas-soċjetà appellata li kkaġunat id-dannu.

26. Il-Qorti fliet l-atti voluminużi esebiti quddiem it-Tribunal fit-tul, sabiex setgħet tistabbilixxi x'arranġament kien hemm bejn il-partijiet, u dan wara li t-Tribunal eskluda li f'dan il-każ kien hemm xi għemil qarrieqi jew aġir frawdolenti da parti tal-appellant. Dan ifisser li ġie eskluż li l-appellant tħallas somom ta' flus li ma kinux dovuti lilu, jew li addirittura dan għandu jirrifondi xi flus lis-soċjetà appellata. Fi kwalunkwe każ minkejja li s-soċjetà appellata eċċepiet li saru tħlasijiet lill-appellant li ma kinux dovuta lilu, dawn il-tħlasijiet allegatament żejda li saru baqgħu qatt ma ġew kwantifikati mis-soċjetà appellata. It-Tribunal wasal għall-konklużjoni li f'dan il-każ l-aġir frawdolenti li s-soċjetà appellata ppruvat timputa lill-appellant ma ġiex ippruvat, u li għalhekk il-kummissjonijiet miftiehma bejn il-partijiet u li jirriżultaw dovuti lill-appellant sal-ġurnata li r-relazzjoni tiegħu mas-soċjetà appellata ġiet itterminata, huma dovuta u għandhom jithallsu lilu. Mill-provi jirriżulta li l-ftehim li l-partijiet kellhom

bejniethom kien jipprovdi għall-ħlas ta' 75% tal-kummissjoni dovuta lill-appellant fi flus kontanti, u r-rimamenti 25% f'*coins* li jirrapprezentaw assi virtwali. Dan ifisser li ladarba t-Tribunal wasal għall-konklużjoni li l-ammont ta' €1,094,858.42 u €220,000 f'kummissjonijiet għandhom jitħallsu lill-appellant, stante li huma kummissjonijiet li jirrizultaw mill-ftehim li kellhom bejniethom il-partijiet, daqstant ieħor l-ammont ta' 3,802,445.96 f'*coins* virtwali li kienu ġġenerati fl-*eWallet* tal-appellant mill-ħidma tiegħu bħala *affiliate* mas-soċjetà appellata, kienu parti mill-pakkett finanzjarju maqbul bejn il-partijiet, u għalhekk kellhom jitħallsu lill-appellant. Li mhux ċar mill-provi huwa, kemm hu l-valur ta' dawn il-*coins* li kieku dawn kellhom jissarrfu fi flus FIAT. Dan għaliex filwaqt li l-appellant qiegħed jinsisti li kull waħda minn dawn il-*coins* għandha valur ta' €0.50ċ, mill-provi jirrizulta li l-valur ta' kull waħda minn dawn il-*coins* hija r-rata li tithallas għall-akkwist tagħhom hekk kif l-*S-coin* tkun introdotta għall-bejgħ lill-pubbliku fuq il-*blockchain*, u għalhekk il-valur tagħha huwa mistenni li jvarja skont il-*fluctuations* tas-suq. Mill-provi ma jirrizultax lanqas li dawn l-*S-coins* tpoġġew għall-bejgħ fis-suq, jew li attwalment dawn qegħdin jigu nnegożjati u kkumerċjalizzati fi flus FIAT, u għalhekk f'dan ir-rigward il-Qorti mhijiex f'pożizzjoni li tagħti valur lil dawn il-*coins* hi, jew li taċċetta li l-valur ta' dawn il-*coins* huwa ta' €0.50ċ, meta provi konklussivi dwar dan ma tressqux. Madanakollu, il-Qorti sejra tiddeċiedi li l-ammont ta' 3,802,445.96 f'*coins* jew assi virtwali li kienu parti mill-ħlas dovut lill-appellant għax-xogħol tiegħu, għandhom jitpoġġew mill-ġdid fl-*eWallet* tiegħu, ladarba t-Tribunal diġà stabbilixxa li l-appellant għandu jingħata aċċess għall-*portal* tas-soċjetà appellata, u għalhekk l-appellant għandu jitpoġġa f'sitwazzjoni fejn ikun jista' jivverifika li dawn il-*coins* ġew akkreditati lilu. Il-Qorti tqis li ladarba l-appellant

kien dispost li jaċċetta li huwa jitħallas b'dawn l-assi virtwali minflok fi flus FIAT bħala parti mill-ftehim li kellu mas-soċjetà appellata, u ladarba mill-provi ma jirrizultax kemm huwa l-valur fi flus FIAT ta' kull waħda minn dawn il-*coins*, f'dan l-istadju jkun ġust li l-*coins* li l-appellant kellu jirċievi bħala parti mill-kummissjoni għax-xogħol tiegħu mas-soċjetà appellata, jitħallsu lilu fil-forma ta' assi virtwali.

27. Il-Qorti qieset ukoll li l-appellant qiegħed jippretendi li jitħallas €18,883 f'kummissjonijiet, minħabba li dan huwa l-ammont ta' kummissjonijiet li kellhom jitħallsu lilu għal perijodu ta' żmien partikolari, qabel ma r-relazzjoni bejn il-partijiet giet itterminata. Jippretendi wkoll li huwa kellu jitħallas l-ammont ta' €170,000 bħala parti mir-*rewards incentive scheme* talli huwa beda jipprogressa minn klassifika għal oħra fin-network operat mis-soċjetà appellata, kif ukoll ippretenda kummissjonijiet *in kind* fil-forma ta' karozzi lussużi, li l-appellant jgħid li kellhom jingħatawlu bħala premju għax-xogħol tiegħu. Il-Qorti iżda hija tal-fehma li ma ngabux provi konkreti li dawn l-ammonti ta' flus jew li dawn il-premjijiet huma dovuta lill-appellant. Huwa minnu li l-ftehim oriġinarjament maqbul bejn il-partijiet jagħmel provvediment għall-ħlas ta' kummissjonijiet u għall-għoti ta' premjijiet kbar lill-*affiliates* li jirnexxilhom jiġġeneraw volum qawwi ta' bejgħ għas-soċjetà appellata. Imma l-Qorti ma sabitx prova li l-intrapriża tal-appellant kienet waħda li ġġenerat biżżejjed qligħ u introjtu li l-appellant kien jimmeritah l-għoti ta' dawn il-premjijiet u incentivi addizzjonali. Mill-provi lanqas ma jirrizulta b'liema mod jinħadem id-dħul passiv għall-*affiliates*, jiġifieri l-kummissjoni fuq il-bejgħ iġġenerata mill-*affiliates* li jaħdmu fin-network tal-appellant, u għalhekk mhux ġustifikat l-appellant

jippretendi ħlas ta' €18,883 semplicement għaliex dak kien l-ammont tal-aħħar kummissjoni li tħallset lilu, jew il-ħlas ta' €170,000 minħabba li huwa jippretendi li kklassifika bħala *crown diamond member*, meta ma ngabet l-ebda prova ta' dan. Mill-provi ma jirriżultax lanqas x'inhu l-istatus ta' *affiliate* li jitneħħa min-*network* tas-soċjetà appellata, u jekk dan jibqax eligibbli sabiex jirċievi dan id-dħul passiv jew le. In vista ta' dawn in-nuqqasijiet fil-provi, il-Qorti qiegħda tilqa' l-ewwel aggravju tal-appellant limitatament safejn qiegħda tiddeciedi li 3,802,445.96 *coin* għandhom jiġu akkreditati lura lill-appellant, mingħajr ma hija sejra tiddeciedi kemm huwa l-valur ta' dawn il-*coins* fi flus FIAT.

*It-tieni aggravju: [nuqqas ta' motivazzjoni tad-deċiżjoni tat-Tribunal]*

28. L-appellant jgħid li huwa ħassu aggravat għaliex fil-fehma tiegħu t-Tribunal kellu jagħti motivazzjonijiet aktar dettaljati u kellu jispjega fid-dettall ir-raġunijiet għalfejn it-tielet u l-ħames talbiet tal-appellant ġew miċħuda. Jgħid li dan in-nuqqas jammonta għal ksur tal-prinċipji ta' ġustizzja naturali u jikser ukoll id-disposizzjonijiet tal-Kap. 387, li jgħidu li kull deċiżjoni li tingħata mit-Tribunal trid tkun immotivata.

29. Il-Qorti kkunsidrat il-*lodo* arbitrali appellat, u għad illi meta wieħed iqis il-provi voluminużi miġjuba, dan mhuwiex twil, dan il-*lodo* jagħmel riferiment għall-provi l-aktar rilevanti miġjuba, jagħmel riferiment għall-partijiet rilevanti tal-liġi tagħna li tirregola relazzjoni kuntrattwali bħal dik bejn il-partijiet, u minn dan l-Arbitri siltu l-konklużjonijiet tagħhom applikabbli għall-provi li kellhom quddiemhom. Il-Qorti tqis li d-deċiżjoni mogħtija mit-Tribunal hija waħda ċara, li t-Tribunal ma rriżultatlux il-frodi allegata mis-soċjetà appellata, u t-Tribunal

qies li għalhekk l-appellant għandu jithallas il-kummissjonijiet fi flus kontanti kif miftiehem mill-partijiet. Il-Qorti diġà ddikjarat li l-*coins* virtwali li skont il-ftehim bejn il-partijiet kellhom jiġu akkreditati lill-appellant fl-*eWallet* tiegħu, għandhom jithallsu lill-appellant, u dan ladarba t-Tribunal kien diġà kkonkluda li €1,094,858.42 u €220,000 f'kummissjonijiet għandhom jithallsu lill-appellant. Dan ifisser li r-rimanenti 25% tal-kummissjonijiet dovuta lill-appellant f'*coins* virtwali, għadhom wkoll dovuta lilu, għaliex dawk l-assi virtwali kienu jiffurmaw parti mill-kumpens li kellu jingħata lill-appellant għax-xogħol tiegħu. Il-Qorti tqis li m'għandiex għalfejn telabora aktar dwar dan l-aggravju, 'il għaliex ibda biex l-għażla tal-Arbitri kienet interament f'idejn il-partijiet, u fi kwalunkwe każ jekk l-appellant deherlu li d-deċiżjoni tat-Tribunal ma kinitx immotivata biżżejjed, huwa kellu l-għażla li jitlob lit-Tribunal jagħti deċiżjoni addizzjonali *ai termini* tal-artikolu 49 tal-Kap. 387. Ma għandux ikun li wara li l-partijiet issottomettew il-kwistjoni ta' bejniethom għall-arbitraġġ, wara li ntefqu daqstant spejjeż fuq il-proċeduri arbitrali, kif jirriżulta anki mill-atti, il-partijiet jiġu quddiem din il-Qorti b'ilment bħal dan. L-appellant kellu għad-dispożizzjoni tiegħu rimedju ieħor li seta' juża f'każ li deherlu li l-Arbitri ma mmotivawx id-deċiżjoni tagħhom biżżejjed, xi ħaġa li huwa m'għamilx, u għalhekk il-Qorti qiegħda tiċċhad dan l-aggravju.

## **Decide**

**Għar-raġunijiet premissi, din il-Qorti qiegħda tiddeċiedi dwar l-appell tal-appellant, billi qiegħda tilqa' l-ewwel aggravju tal-appellant limitatament safejn qiegħda tiddeċiedi li 3,802,445.96 *coin* għandhom jiġu akkreditati lill-**

**appellant fl-*eWallet* tiegħu, filwaqt li qiegħda tiċhad il-kumplament tal-pretensjonijiet tal-appellant, bħal ma qiegħda tiċhad it-tieni aggravju tiegħu.**

**L-ispejjeż ta' dan l-appell għandhom jinqasmu bejn il-partijiet, nofs kull wieħed.**

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.  
Imħallef**

**Rosemarie Calleja  
Deputat Registratur**