



THE CIVIL COURT
COMMERCIAL SECTION

HON. JUDGE
IAN SPITERI BAILEY LL.M. LL.D.

Today, Monday 22nd January, 2024

Case Number 1

Application No 13/2021 ISB

Av. Jonathan Abela Fiorentino (k.i. 555482M) bħala mandatarju speċjali ta' East-West Logistics LLP, soċjetà b'responsabbiltà limitata inkorporata u reġistrata fir-Renju Unit bin-numru ta' reġistrazzjoni OC316957 u b'indirizz reġistrat ta' 24 International House Holborn Viaduct, Londra, EC1A 2BN fir-Renju Unit

vs

Melars Group Limited (C73465)

The Court,

Having seen the **application** filed by **Avukat Jonathan Abela Fiorentino noe**, on the 16th February 2021, whereby this Court was requested to:

1. *Tordna l-ftuħ ta' proċedimenti sekondarji ta' falliment f'Malta ai termini tar-Regolament;*
2. *Tinnomina u taħtar stralċjarju sabiex isir l-istralċ tas-soċjeta` Melars Group Limited bis-setgħat u d-dmirijiet kif huma definiti u previsti fl-Att Dwar il-Kumpanniji, Kapitolu 386 tal-Liġijiet ta' Malta flimkien ma' kwalsiasi poter u/jew fakolta' kompetenti lilu taħt ir-Regolament;*
3. *Tagħti kull provvediment li jidhrilha xieraq u opportun.*

And this after the plaintiff having declared that:

1. *Illi r-rikorrent nomine jinsab debitament awtorizzat li jirrapreżenta lil East-West Logistics u dan skont il-prokura li tinsab hawn annessa (**Dok A**);*
2. *Illi dan ir-rikors qiegħed isir a tenur tar-Regolament tal-Kunsill (KE) Nru 1346/2000 tad-29 ta' Mejju 2000 dwar proċedimenti ta' falliment (minn issa l-quddiem "**ir-Regolament**");*
3. *Illi fid-19 ta' Lulju 2016, is-soċjeta' rikorrenti bħala kreditriċi tas-soċjeta' intimata intavolat winding up petition quddiem il-Companies Court tal-Ingilterra u Wales bin-numru CR-2016-004115 kontra s-soċjeta' intimata;*
4. *Illi l-Companies Court iddeċidiet li r-Regolament tapplika u li l-proċeduri quddiemha fl-Ingilterra jammontaw għal proċedimenti prinċipali ta' falliment ai termini tar-Regolament stante li ċ-ċentru tal-interessi prinċipali tad-debitur jinsabu fit-territorju tagħha u għalhekk fl-4 t'Awwissu 2020 l-istess Qorti ordnat li "Melars Group Limited C73465 be wound up by this court under the provisions of the Insolvency Act 1986" (minn issa l-quddiem "**is-Sentenza**") (Sentenza hawn annessa u immarkata bħala **Dok B**);*

5. *Illi din id-deċiżjoni hija finali, u dan hekk kif spjegat f'izjed dettall fl-opinjoni legali hawn annessa u immarkata bħala **Dok Ċ**;*
6. *Illi ai termini tal-artikolu 16(1) tar-Regolament, “Ġudizzju li jiftaħ il-proċedimenti ta’ falliment mogħti minn qorti ta’ Stat Membru li jkollu l-ġurisdizzjoni bis-saħħa ta’ l-Artikolu 3 għandu jkun magħruf fl-Istati Membri kollha mill-waqt li jsir effettiv fl-Istat li jiftaħ il-proċedimenti.”;*
7. *Illi għalhekk, is-Sentenza ilha rikonoxxuta f’Malta mill-4 t’Awwissu 2020;*
8. *Illi fl-Ingilterra, Michael Goldstein u Avner Radomsky ġew appuntati bħala stralcjarji tas-soċjeta’ intimata, li l-indirizz tagħhom huwa ta’ Devonshire House, Manor Way, Borehamwood, Hertfordshire, WD6 1QQ, fl-Ingilterra;*
9. *Illi ai termini tal-artikolu 16(2) tar-Regolament, “Għarfien tal-proċedimenti msemmija fl-Artikolu 3(1) ma għandux ifixkel il-ftuħ tal-proċedimenti msemmija fl-Artikolu 3(2) minn qorti fi Stat Membru ieħor. Dawn il-proċedimenti tal-aħħar għandhom ikunu sekondarji.....” u ċioe illi l-effetti ta’ dawn il-proċedimenti sekondarji jkunu ristretti għall-assi tad-debitur li jkunu fit-territorju tal-Istat Membru li fih ikunu ntfetħu dawn il-proċedimenti sekondarji;*
10. *Illi ai termini tal-artikolu 3(2) u 3(3) tar-Regolament:*
 - “2. Meta ċ-ċentru ta’ l-interessi prinċipali ta’ debitur ikun jinstab fit-territorju ta’ Stat Membru, il-qrati ta’ Stati Membri oħra għandhom ikollhom il-ġurisdizzjoni li jiftħu proċedimenti ta’ falliment kontra dak id-debitur fil-każ biss li dak ikollu stabbiliment fit-territorju ta’ dak l-Istat Membru l-ieħor. L-effetti ta’ dawk il-proċedimenti għandu jkun ristrett għall-assi tad-debitur li jkunu jinstabu fit-territorju ta’ l-Istat Membru l-ieħor.
 3. Meta proċediment ta’ falliment jinfetħu permezz ta’ paragrafu 1, xi proċedimenti miftuħa sussegwentament permezz ta’ paragrafu 2

*għandhom ikunu proċedimenti sekondarji. **Dawn il-proċedimenti ta' l-aħħar għandhom ikun proċedimenti ta' l-egħluq***" (enfazi miżjuda);

11. *Illi ai termini tal-artikolu 27 tar-Regolament, "Il-ftuħ tal-proċedimenti msemmija fl-Artikolu 3(1) minn qorti ta' Stat Membru u li jkun rikonoxxut fi Stat Membru ieħor (proċedimenti prinċipali) għandu jippermetti l-ftuħ f'dak l-Istat Membru l-ieħor, li qorti tiegħu jkollu ġurisdizzjoni bis-saħħa ta' l-Artikolu 3(2), ta' proċedimenti sekondarji ta' falliment **mingħajr ma l-falliment tad-debitur ikun eżaminat fl-Istat l-ieħor**. Dawn il-proċedimenti ta' l-aħħar għandhom ikunu fost il-proċedimenti mnizzla f'L-Anness B. L-effetti tagħhom għandhom ikunu ristretti għall-assi tad-debitur li jkun jinstab fit-territorju ta' dak l-Istat Membru l-ieħor."* (enfazi mizjuda);

12. *Illi għalhekk, in vista tal-fatt li proċedimenti prinċipali ta' falliment diġa infetħu għewwa l-Ingilterra u in vista tal-fatt li ai termini tar-Regolament stess is-Sentenza diġa hija rikonoxxuta f'Malta u tenut kont ukoll tal-fatt li s-soċjeta' intimata hija kumpannija reġistrata taħt il-liġi Maltija b'indirizz reġistrat f'Malta għandhom jinfetħu f'Malta proċedimenti sekondarji ta' falliment skont ir-rikwiżiti taħt Kapitolu III et sequitur tar-Regolament u taħt kwalunkwe ordinijiet hekk kif dina l-Onorabbli Qorti jidhrilha xierqa, fejn il-falliment tas-soċjeta' intimata m'għandux ikun eżaminat;*

Having seen the **documents** presented with the said application (fol 6 to fol 88).

Having seen its **decree** of the 5th of March 2021, whereby the application was appointed for hearing for the Court's audience of the 1st of June 2021 at 10:15a.m.

Having seen that on the 5th of May 2021, the defendant company **Melars Group Limited (C73465)** filed its **reply** (fol 96) with documents therein attached, and by virtue of which it pleaded:

Illi dawn il-proċeduri deskritti bħala proċeduri sekondarji ta' falliment għat-tenur tar-Regolament 1346/2000 tad-29 ta' Mejju 2000 huma nfondati fil-fatt u fid-dritt u għandhom jiġu miċħuda bl-ispejjeż kontra s-soċjetà rikorrenti għas-segwenti raġunijiet:

1. *Illi fl-ewwel lok, l-azzjoni hija intempestiva u prematura, stante illi s-sentenza tal-4 ta' Awwissu 2020 tal-Companies Court tal-Ingilterra u Wales bin-numru CR-2016-004115, li abbaži tagħha qegħdin isiru dawn il-proċeduri, hija soġġetta għall-appell u għaldaqstant għadha sub judice u mhijiex finali u definittiva, u dana kif jidher minn-kopja ta' digriet tat-13 ta' April 2021 hawn anness u mmarkat Dokument "A";*
2. *Illi fit-tieni lok u mingħajr preġudizzju għas-suespost, u kif jiddisponi l-Artiklu 266, 277 et sequitur tal-Kap 12 tal-Liġijiet ta' Malta, is-sentenza tal-4 ta' Awwissu 2020 mhijiex res iudicata u għalhekk mhijiex eżegwibbli skond il-liġijiet ta' Malta, u dana irrispettivament mill-applikazzjoni o meno tar-Regolament 1346/2000;*
3. *Illi fit-tielet lok u mingħajr preġudizzju għas-suespost u fi kwalunkwe każ, in-nuqqas ta' ġurisdizzjoni tal-Companies Court tal-Ingilterra sabiex tiddikjara l-"winding-up order", stante illi s-sentenza tal-4 ta' Awwissu 2020 u ma tinkwadrax ruħha bħala sentenza li tista' tiġi rikonoxxuta mill-Istati Membri tal-Unjoni Ewropea skond ir-Regolament 1346/2000, kif ser jiġi ppruvat waqt it-trattazzjoni ta' dawn il-proċeduri;*
4. *Illi fir-raba lok u mingħajr preġudizzju għas-suespost, dina l-Onorabbli Qorti m'għandhiex tirrikonoxxi l-proċedimenti ta' falliment jew li tippermetti l-eżekuzzjoni tas-sentenza tal-4 ta' Awwissu 2020 in kwantu l-effetti tar-rikonoxximent jew eżekuzzjoni ta' din is-sentenza, huwa manifestament kontra l-politika pubblika ta' Malta, billi s-sentenza mhijiex res iudicata;*
5. *Illi fil-ħames lok u konsegwentement, anke n-notifiki tal-istralċjarji Michael Goldstein u Avner Radomsky b'din il-kawża bħala stralċjarji tal-istess soċjetà esponenti hija imtepestiva u illegali, stante illi, kif ġja nggad, is-sentenza tal-4 ta' Awwissu 2020 mhijiex res iudicata u l-ħatra tagħhom m'għandhiex tiġi rikonoxxuta hawn Malta fejn id-diretturi għad għandhom rappreżentanza tal-kumpannija;*
6. *Illi mhux talli n-notifika tal-istess stralċjarji hija nulla, talli anke l-ħatra tal-istess istralċjarji fl-Ingilterra m'għandhiex tiġi rikonoxxuta mill-qrati Maltin għall-istess raġunijiet u ċioe' illi s-sentenza mhijiex res iudicata u konsegwentement mhijiex enforzabbli f'Malta;*
7. *Illi fil-ħames lok u mingħajr preġudizzju għas-suespost, għandu jiġi ppruvat illi r-Regolament 1346/2000 għadu vigenti u fis-seħħ bejn l-Ingilterra u Malta bħala Membru tal-Unjoni Ewropea, wara illi ntlafhaq il-Ftehim bejn l-Unjoni Ewropea u l-Ingilterra dwar l-irtirar tal-Ingilterra mit-Trattat tal-Unjoni Ewropea u ġie mgħoddi l-"European Union (Withdrawal) Act 2018" mil-leġiżlatur Inġliż.*
8. *Illi s-soċjetà esponenti teżebixxi bħala Dokument "B" affidavit datat 25 ta' Marzu 2021 tal-avukat lafaev, rappreżentant tas-soċjetà esponenti fil-proċeduri kriminali kontra Integral u Murat Seitnepesov fejn jiġi spjegat il-pożizzjoni tas-soċjetà esponenti fir-rigward tal-proċeduri istitwiti mis-soċjetà rikorrenti kif ukoll serje ta' korrisondenza li qed jiġu mmarkati Dokument "C" bejn l-avukati tal-partijiet fejn qed isiru allegazzjonijiet serji*

fil-konfront tad-ditta Fortior billi din qed tirrappreżenta kemm is-soċjetà rikorrenti kif ukoll iż-żewġ likwidaturi appuntati mill-qrati Ingliżi sabiex jirrappreżentaw lis-soċjetà esponenti.

9. *Salvi eċċezzjonijiet ulterjuri, u b'riżerva għal kwalsiasi azzjoni oħra spettanti kontra s-soċjetà rikorrenti;*

Having seen the note filed by **Avukat Umberto Borg Cardona bħala mandatarju speċjali ta' Michael Goldstein u Avner Radomsky bħala stralċjarji tas-soċjeta' intimata Melars Group Limited** on the 13th May 2021 (fol 133) by virtue of which he assumed representation of the defendant company in these proceedings.

Having seen that during the Court's audience of the 1st of June 2021 there appeared lawyers Dr Jonathan Abela Fiorentino and Dr Nicole Fenech for the plaintiff company, lawyers Dr Tanya Sciberras Camiller and Dr Darren Carabott for the defendant company and Dr Umberto Borg Cardona.

Having also seen that during the Court's audience of the 1st of June 2021, Dr Tanya Sciberras Camilleri had declared her opposition for the presence of Dr Borg Cardona in these proceedings.

Having also seen that during the Court's audience of the 1st of June 2021, the Court was informed that the proceedings in question before the British Courts were still pending appeal.

Having seen that during the Court's audience of the 13th of July 2021, Dr Tanya Sciberras Camilleri on behalf of the defendant company had filed a note (fol 148 to fol 150) with a copy of the decision revoking the winding up order and revoking the appointment of the liquidators of the defendant company.

Having also seen that during the Court's audience of the 13th of July 2021, Dr Abela Fiorentino filed a note (fol 151 to fol 164) with the relative documentation showing that the plaintiff company had asked permission to the English Court to file an appeal from their decision and declared that this request was still pending.

Having seen that during the Court's audience of the 24th January 2022, the parties informed the court that the Appellate proceedings before the High Court in the UK were still pending.

Having seen the note filed by Dr Jonathan Abela Fiorentino and Dr Nicole Fenech on the 17th August 2022 (fol 168) whereby it was declared that they themselves as well

as the law firm Mamo TCV were renouncing the representation of the plaintiff company East-West Logistics LLP and any other mandate given to them to represent the company as special mandatories.

Having seen that during the Court's audience of the 9th October 2023, the defendant's company legal representative submitted that the basis of the secondary bankruptcy proceedings was a judgment of the UK Court of the 4th of August 2020, wherein that court had ordered the winding up of the defendant company, which judgment had been since reversed and the reversal had been confirmed by the judgment presented to the court (fol 174 to fol 188) and thus submitted that there was no longer any basis for this secondary bankruptcy proceeding.

Having also seen that during the Court's audience of the 9th of October 2023, the case was put off for today for the Court's decision.

Having seen all the related acts.

Considers:

That this is an action brought by the plaintiff company in virtue of Council Regulation (CR) No 1346/2000 of the 29th May 2000 regarding winding up proceedings.

That the plaintiff company as a creditor of the defendant company, had on the 19th of July 2016, filed a winding up petition before the Companies Court of England and Wales (Ref: CR-2016-004115), which Court decided that the Regulation applies and that the proceedings brought before it constituted the primary proceedings of bankruptcy in terms of the said regulation - and on the 4th of August 2020 the same Court ordered the winding up of the defendant company in terms of the Insolvency Act of 1986, whereby Michael Goldstein and Avner Radomsky were appointed liquidators of the defendant company.

That in terms of Article 16(1) and 16(2) of the same regulation it is made known in all Member States and hence the judgement had been recognised in Malta since the 4th of August 2020. Furthermore, this recognition should not act as an obstacle to proceedings filed in the other Member State which are deemed to be secondary proceedings.

That in terms of Article 3(2) and 3(3) of the same regulation, winding up proceedings against the same debtor can be filed before another Member State where the said

debtor has assets but these are to be regarded as secondary proceedings and are limited to the assets found within that Member State.

That in terms of Article 27 of the same Regulations, the said winding of proceedings shall be opened in the second member state without the Court of the said Member State examining the bankruptcy of the debtor.

That therefore since the bankruptcy proceedings have already been filed in England and have already been recognised in Malta in terms of the Regulation and in view of the fact that the defendant company is registered in Malta, secondary bankruptcy proceedings were to be opened in Malta.

The Court observes that the plaintiff company has submitted to the court a number of documents to substantiate its claims, which the Court has taken cognisance of.

Considers further:

That the defendant, on the other hand, declares that these proceedings are premature since the judgement of the 4th of August 2020 of the Companies Court of England and Wales (Ref: CR-2016-004115) was still subject to an appeal and hence is not final and therefore not enforceable in Malta. That the decision was hence not executable in terms of Articles 266, 277 et seq of Chapter 12 of the Laws of Malta.

That consequently, the notification to the liquidators Michael Goldstein and Avner Radomsky was also premature as the judgement of the 4th of August 2020 was not yet a *res judicata*.

That, it needs to be proven that Regulation 1346/2000 still applies between the United Kingdom and Malta as a Member State of the European Union following the withdrawal of the United Kingdom from the said Union.

The Court observes that the defendant company submitted to the court a number of documents to substantiate its claims, which the Court has taken cognisance of.

Considers further:

Through the declarations made by the parties' lawyers as well as the documentation presented to the Court, the Court observes that the judgement of the 4th of August 2020 was indeed subject to an appeal and was definitively concluded by virtue of the

judgement of the Court of Appeal (Civil Division) on the 28th October 2022 (fol 176 to fol 188) whereby the decision to wind up the defendant company was reversed and revoked in its entirety.

Therefore, in view of the fact that the plaintiff company's request was for this Court to order secondary winding up proceedings, this necessarily requires the presence of the primary winding up proceedings which in this case is lacking given the decision of the UK Court of Appeal of the 28th October 2022.

Decision

THEREFORE, in view of all the considerations made above, the Court dismisses the plaintiff company's requests and orders that all costs relative to these proceedings be borne by the plaintiff company.

**Hon. Ian Spiteri Bailey
Judge**

**Amanda Cassar
Deputy Registrar**