



MALTA
TRIBUNAL TA' REVIZJONI AMMINISTRATTIVA
MAGISTRAT DR. CHARMAINE GALEA

Illum 02 ta' Ottubru 2024

Rikors Numru 123/2022

HLB CA Falzon

Vs

Bord tal-Accountancy

It-Tribunal,

Ra r-rikors ta' **HLB CA Falzon** ipprezentat fl-14 ta' Dicembru 2022 li permezz tiegħu ppremettiet u talbet is-segwenti:-

1. *ILLI permezz ta' ittra datata 24 ta' Novembru 2022 (kopja annessa u immarkata **Dok A**), il-Bord tal-Accountancy appellat ('il-Bord appellat') ikkomunika lid-ditta esponenti is-segwenti:*

"The Accountancy Board ("the Board") acknowledges receipt of the firm's reply dated 29 September 2022 in which you replied to the Board's letter dated 15 September 2022 subsequent to the conclusion of the Quality Assurance Visit.

We note the contents of your letter, however the Board would like to provide its feedback in regard to the following:

1. External cold file reviews

We accept the external cold file review carried out by Renzo Farrugia provided with your letter dated 29 September 2022. The Board awaits the firm's submission of the external cold file review of a Public Interest Entity to be carried out by Mr Arthur Douglas Turner by not later than June 2023.

2. Declaration

As indicated to the firm in the Board's previous letter, on file (b) the firm did not observe the counting of the physical inventories at year end in view of the firm's appointment after year end. The audit report was not qualified on this basis as required by ISA 705.

In addition on file (b), although the audit report was qualified due to the fact that the company's total assets and profit and loss statement were not fully tested, the firm did not issue a disclaimer of opinion.

Furthermore, although the comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report.

The Accountancy Board had indicated in its letter to the firm on 15 September 2022, that it was minded to issue a declaration on the Board's website, as per Article 14(2)(d) of the Accountancy Profession Act, as follows:

"The Accountancy Board is making a declaration in terms of Article 14(2)(d) of the Accountancy Profession Act, in respect of an audit of MBC Investments Ltd for the year ended 31 December 2019 by the audit firm HLB CA Falzon with registration number AB/26/84/106. Despite the audit report including a qualified opinion, the audit report relating to this audit should have included a disclaimer of opinion in line with ISA 705 requirements. Also, although comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report. As a result of these matters, the audit report did not meet the requirements of Article 179A of the Companies Act. "

The Board noted the representations made by the firm in this regard, however it is of the view that such representations, except for that provided in regard to the nonattendance of the stock take, do not provide justification for the Board not to issue the above-mentioned declaration. On this basis, the declaration will be published on the Board's website.

3. Warning

The Board notes your representations in this regard and are satisfied that such requirements are now being addressed by the firm.

4. Confirmations

In regard to the confirmations provided, these have been reviewed. The Board refers you to your comments regarding the firm's professional indemnity insurance run off cover being 2 years rather than 5 years.

As per Article 11(2)(a) of the Accountancy Profession Act makes reference to a five year run off cover rather than 2 years as included in the firm's professional indemnity insurance policy. The firm is kindly requested to provide a revised professional indemnity insurance policy addressing this within 3 weeks from the date of this letter. "

2. *Illi l-esponenti iħossuhom ferm aggravati bid-deċiżjoni tal-Bord appellat speċjalment dik kontenuta fil-paragrafu numru 2 tal-ittra sufferita ('id-deċiżjoni impunjata') stante li d-dikjarazzjoni li l-Bord appellat beħsiebu jagħmel fuq il-webside tal-istess Bord appellat hija waħda li fil-fehma tal-esponenti hija waħda infondata fil-fatt u fid-dritt u, inoltre, sejra tarreka ħsara reputazzjonali lill-istess ditta u dan mingħajr ebda bażi;*
3. *Illi kif ser jiġi ppruvat, id-ditta appellanti debitament tat l-ispeġġi kollha mitluba in rigward tal-audit tal-kumpanija MBC Investments Ltd u assolutament mħuwieħ minnu illi hija b'xi mod naqset fl-obbligi tagħha regolatorji tagħha la fil-mod illi hija mexxiet l-audit tas-sena li ntemmet 31 ta' Diċembru 2019 u wisq anqas fid-dikjarazzjonijiet kontenuti fl-istess audit;*
4. *Illi dan kollu ġie ampjament spjegat lill-Bord appellat li iżda qed jipersisti li jippubblika d-dikjarazzjoni de quo, ossija "The Accountancy Board is making a declaration in terms of Article 14(2)(d) of the Accountancy Profession Act, in respect of an audit of MBC Investments Ltd for the year ended 31 December 2019 by the audit firm HLB CA Falzon with registration number AB/26/84/106. Despite the audit report including a qualified opinion, the audit report relating to this audit should have included a disclaimer of opinion in line with ISA 705 requirements. Also, although comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report. As a result of these matters, the audit report did not meet the requirements of Article 179A of the Companies Act. "*
5. *Illi l-artikolu 14(2)(d) tal-Kap. 281 (ATT DWAR IL-PROFESSJONI TA' L-ACCOUNTANCY) jgħid hekk:*

"(2) Il-Bord għandu jkollu s-setgħa li jieħu u, jew jimponi tal-inqas il-miżuri u s-sanzjonijiet amministrattivi li ġejjin għall-ksur tad-dispożizzjonijiet tar-regoli taħt dan l-Att kif ukoll, fejn applikabbli, ir-Regolament dwar l-Awditjar:

... (d) dikjarazzjoni li r-rapport tal-awditjar ma jilhaqx ir-rekwiżiti tal-artikolu 179A tal-Att dwar il-Kumpanniji jew, fejn applikabbli, l-artikolu 179B ta' dak l-Att".

6. Illi l-Artikolu 179A tal-Kap. 386 (ATT DWAR IL-KUMPANII) jgħid hekk:

“(1) Ir-rapport tal-awditjar għandu jsir bil-miktub u għandu:

(a) jidentifika l-entità li d-dikjarazzjonijiet annwali jew konsolidati tagħha huma soġġetti għall-awditjar statutorju; jispeċifika d-dikjarazzjonijiet finanzjarji annwali jew konsolidati u d-data u l-perijodu li huma jkopru; u jidentifika l-qafas ta' rappurtar finanzjarju liġie applikat fit-tnejn tagħhom;

(b) jinkludi deskrizzjoni tal-ambitu tal-awditjar statutorju li għandu, bħala minimu, jidentifika l-istandards tal-awditjar li f'konformità magħhom twettaq l-awditjar statutorju;

(c) jinkludi opinjoni tal-awditjar, li għandha tkun mhux kwalifikata, jew kwalifikata jew opinjoni negattiva u li għandu jindika b'mod ċar l-opinjoni tal-awditur(i) jew tad-ditta/i tal-awditjar dwar:

(i) jekk id-dikjarazzjonijiet finanzjarji annwali jagħtux stampa veritiera u ġusta f'konformità mal-qafas rilevanti għar-rappurtar finanzjarju; u

(ii) fejn ikun il-każ, jekk id-dikjarazzjonijietfinanzjarji annwali jkunux konformi mar-rekwiżiti statutorji. Jekk l-awditur/i statutorju/i jew id-ditta/i tal-awditjar ma jkunux kapaċi jesprimu opinjoni tal-awditjar, ir-rapport għandu jkollu ċaħda tal-opinjoni;

(d) jirreferi għal kwalunkwe kwistjoni oħra li fuqha l-awditur/i jew id-ditta/i tal-awditjar xeh̄tu xi dawlpermezz ta' enfasi mingħajr ma kkwalikaw l-opinjoni tal-awditjar;

(e) jinkludi opinjoni u dikjarazzjoni, li t-tnejn li huma għandhom ikunu bbażati fuq il-ħidma li twettqet matull-awditjar, imsemmija fl-artikolu 179(3);

(f) jipprovdi dikjarazzjoni dwar kwalunkwe incertezza materjali marbuta ma' avvenimenti jew kondizzjonijietli jistgħu jitfegħu dubju sinifikanti dwar il-kapaċità tal-entità li tkompli bħala negozju avvjat;

(g) jidentifika l-post fejn ikunu stabbiliti l-awditur/i jew id-ditta/i tal-awditjar.

(2) Fejn l-awditjar statutorju jkun twettaq minn aktar minn awditur wieħed jew aktar minn ditta tal-awditjar waħda, l-awditur/ijew id-ditta/i tal-awditjar għandhom jaqblu dwar ir-riżultati tal-awditjar statutorju u jipprezentaw rapport u opinjoni kongunti. Fil-każ ta' nuqqas ta' qbil, kull awditur statutorju jew ditta tal-awditjar għandhom jipprezentaw l-opinjoni tagħhom f'paragrafu separat tar-rapport tal-awditjar u jagħtu r-raguni tan-nuqqas ta' qbil.

(3) Ir-rapport tal-awditjar għandu jiġi ffirmat u datat mill-awditur. Fejn ditta tal-awditjar twettaq l-awditjar statutorju, ir-rapport tal-awditjar għandu jiġi ffirmat minn tal-inqas l-awditur/i li wettqu l-awditjar statutorju f'isem id-ditta tal-awditjar. Fejn ikunu tqabdu aktar minn awditur wieħed

jew ditta tal-awditjar waħda r-rapport tal-awditjar għandu jiġi ffirmat mill-awdituri kollha jew għall-inqas mill-awdituri li jwettqu l-awditjar statutorju f'isem kull ditta tal-awditjar: Iżda r-rapport tal-awditjar jiġi wkoll ko-ffirmat minnawditur awtorizzat fi Stat Membru ieħor, sakemm hu/hi humamembri tal-istess netwerk u kisbu l-kunsens bil-miktub minn qabel tal-Bord.

(4) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikoli (1) sa (3), u l-artikoli 179 u 179B, l-ambitu tal-awditjar statutorjuma jinkludix assigurazzjoni dwar il-vijabilità fil-gejjieni tal-entità awditjata jew dwar l-effiċjenza jew l-effikaċja li biha l-korp manigerjali jew dak amministrattiv jamministra jew ser jamministra l-affarijiet tal-entità.”

- 7. Illi kif ser jiġi ampjament dimostrat u spjegat, id-ditta esponenti wettqet l-inkarigu tagħha bl-aħjar mod possibbli u skont id-dettami legali u skont l-istandards tal-accountancy viġenti;*
- 8. Illi d-ditta esponenti tirribadixxi li hija bl-ebda mod ma tat xi stampa inveritiera (u/jew li tista' b'xi mod tiżgwi) fix-xogħol ta' awditjar tagħha;*
- 9. Illi l-interess ġuridiku tal-esponenti li tottjeni t-tħassir tad-deċiżjoni impunjata huwa wieħed manifest in kwantu l-esponenti għandhom kull interess illi jottjenu t-tħassir ta' deċiżjoni li qegħda tixlihom li ma wettqux l-inkarigu tagħhom skont il-liġi u, inoltre, stante li tali dikjarazzjoni li beħsiebu jipubblika / ippubblika l-Bord appellat tirreka dannu irreparabbli għar-reputazzjoni tad-ditta appellanti li hija kommissa li twettaq xogħolha skont l-aqwa standards u leġislazzjoni applikabbli;*
- 10. Illi għaldaqstant l-esponenti qegħda wkoll titlob is-sospensjoni tad-deċiżjoni impunjata pendent d-deċiżjoni finali;*

GHALDAQSTANT, in vista tal-konsiderazzjonijiet suesposti, kif ukoll dawk ir-raġunijiet kollha li se jirriżultaw waqt it-trattazzjoni ta' dan ir-Rikors, id-ditta esponenti titlob bir-rispett lil dan l-Onorabbli Tribunal:

- i) Jissospendi, ai termini tal-Artikolu 15Ċ tal-Kap 281, **b'mod immedjat** id-deċiżjoni impunjata, u senjatament dik kontenuta fil-paragrafu 2 tal-ittra tal-24 ta' Novembru 2022 mibgħuta mill-Bord appellat, sakemm dan l-appell jiġi finalment deċiż;*
- ii) Jhassar u jirrevoka id-deċiżjoni impunjata surreferita, u dan prevja kwalunkwe ordni u/jew provvediment meqjus opportun, bl-ispejjeż kontra l-Bord appellat.*

B'riżerva għal kull azzjoni oħra riżervata lill-esponenti skond il-Liġi.

Ra r-risposta ta' **Martin Spiteri fil-kwalita' tieghu ta' Segretarju għan-nom u in rappreżentanza tal-Bord tal-Accountancy** ippreżentata fid-29 ta' Diċembru 2022 li permezz tagħha eċċepixxa s-segwentanti:-

1. *Illi preliminarjament in-nullita' tar-rikors promotur stante li d-ditta appellanti mhijiex persuna guridika iżda soċjeta' ċivili u tali rikors kellu jiġi ppreżentat mis-soċji rappreżentanti ġudizzjarji tagħha;*
2. *Illi mingħajr pregudizzju għal fuq espost u preliminarjament ukoll, il-Bord intimat mhuwiex persuna guridika u għalhekk għandha ssir korrezzjoni fl-okkju tal-appell ai termini tal-artikolu 175 tal-Kap.12;*
3. *Illi mingħajr pregudizzju għal fuq espost, preliminarjament u proċeduralment, id-ditta appellanti m'għandhiex locus standi f'dawn il-proċeduri tal-appell peress li fit-twegiba tagħha tad-29 ta' Settembru 2022 (Dok. HLB) lill-Bord appellat id-ditta appellanti ammettiet li żbaljat u aċċettat il-pubblikazzjoni tad-dikjarazzjoni meta wiegħbet inter alia li:*

*“Our firm also reiterates that, **although we reckon that the technical wording used in the independent Auditor’s Report issued in October 2020 requires improvement**, we have not misled users of the financial statements in any way whatsoever. Instead, we have highlighted the issue related to our limitation on audit scope imposed by management when carrying out audit procedures - mainly as we were unable to obtain sufficient and appropriate audit evidence.*

*Additionally, **we agree that the “Other Matter” paragraph should have been included in the independent Auditor’s Report**, clearly identifying that the prior year’s audit was carried out by another auditor for the first-year audit carried out for the year ending 31 December 2019. This has been immediately taken on board by our Firm and can confirm that this is now being invariably issued on first year audits....”* (Emfasi tal-Bord esponenti).

- i. *Illi fil-ġurisprudenza nostrali hemm il-prinċipju legali ta' electa una via, non datur recursus ad alteram. Id-ditta appellanti aċċettat li żbaljat u qablet li “the “Other Matter” paragraph should have been included in the independent Auditor’s Report”. La aċċettat li żbaljat u aċċettat dak li ddikjara l-Bord esponenti, qieghed jiġi umilment sottomess li d-ditta appellata tilfet il-locus standi li tappella f'dawn in-proċeduri.*

- ii. *F'Garbriel Parnis et (vs) Joseph Cucciardi et, 16 ta' April 2004¹, il-Qorti tal-Appell (Superjuri) spjegat il-prinċipju electa una via, non datum recursus ad alteram hekk:*

*“prinċipju li għalkemm mhux miktub f'termini generali u pożittivi f'ebda liġi, sew antika sew ġdida, ġie mill-interpreti tad-Dritt Ruman affermat bħala konsegwenza ta' ħafna testi partikolari, li kienu assumewh bħala regola ta' dak li kien ġie dispost minnhom. Skond dawn l-istess testi differenti, dawk li nterpretaw l-istess Dritt Ruman ħolqu prinċipju **li fil-konkors aternattiv ta' ħafna azzjonijiet u eċċezzjonijiet, l-eżerċizzju ta' wahda minnhom tolgot u testngwi l-oħrajn.**” (Emfasi tal-esponenti)*

- iii. *Ukoll f'Joseph Cassar (vs) Awtorita` ta' l-Ippjanar, 30 ta' Mejju 2003 il-Qorti tal-Appell (Superjuri) stabbiliet li:*

“Meta jiġu sottomessi pjanti godda għall-approvazzjoni ta' l-Awtorita' ta' l-Ippjanar huwa implċitu li l-Awtorita' tkun tista' tiegħu deċiżjoni fuq il-pjanti hekk kif sottomessi. Applikant ma jistax l-ewwel jissottometti pjanti godda u wara li jinħariġlu permess għall-iżvilupp jappella quddiem il-Bord ta' l-Appell dwar l-Ippjanar fuq il-bażi tal-pjanti originali tiegħu”.

- iv. *A bażi tal-istess prinċipju, bil-konkors tal-aggravji fir-rikors tal-appellanti u dak aċċettat fl-ittra Dok. HLB, il-fatt li d-ditta appellanti aċċettat li żbaljat u aċċettat dak li ddikjara l-Bord esponenti, dan estingwa l-aggravji l-oħra tal-appellanti, u konsegwentement id-dritt ta' appell fuqhom.*

4. *Illi mingħajr pregudizzju għal fuq espost u fil-mertu, it-talbiet tal-appellanti huma infondati fil-fatt u fid-dritt u għandhom jiġu respinti bl-ispejjeż kontra tagħhom stante li d-dikjarazzjoni li sejjer jippubblika l-Bord hija ġusta u legali u timmerita li tiġi konfermata minn dan l-Onorabbli Bord;*

5. *Illi l-bażi legali għal-ħruġ tad-dikjarazzjoni li d-ditta appellanti qed tittenta timpunja huwa l-paragrafu (d) tas-subartikolu (2) tal-artikolu 14 tal-Att dwar il-Professjoni tal-Accountancy li jipprovdi li:*

“Il-Bord għandu jkollu s-setgħa li jiegħu u, jew jimponi tal-inqas il-miżuri u s-sanzjonijiet amministrattivi li ġejjin għall-ksur tad-dispożizzjonijiet tar-regoli taht dan l-Att kif ukoll, fejn applikabbli, ir-Regolament dwar l-Awditjar: ... (d) dikjarazzjoni li r-rapport tal-awditjar ma jilhaqx ir-rekwiżiti tal-artikolu 179A tal-Att dwar il-Kumpanniji jew, fejn applikabbli, l-artikolu 179B ta' dak l-Att;”

¹ App. Nru. 934/2001/1

Illi din id-disposizzjoni giet trasposta mil-Artikolu 30a(1)(d) tad-Direttiva 2014/56/UE tal-Parlament Ewropew u tal-Kunsill tas-16 ta' April 2014 li temenda d-Direttiva 2006/43/KE dwar il-verifiki statutorji tal-kontijiet annwali u tal-kontijiet konsolidati.

6. Illi d-ditta appellanti naqset fl-obbligi regolatorji tagħha meta fuq il-file spezzjonat mil-Bord esponenti:

“On file (b) the firm did not observe the counting of the physical inventories at year end in view of the firm’s appointment after year end. The audit report was not qualified on this basis as required by ISA 705.

In addition on file (b), although the audit report was qualified due to the fact that the company’s total assets and profit and loss statement were not fully tested, the firm did not issue a disclaimer of opinion.

Furthermore, although the comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the ‘Other Matter’ paragraph in the audit report.” (vide Ittra tal-Bord esponenti lid-ditta appellanti datata 15 ta’ Settembru 2022 – Dok. HLB 1).

7. Illi tant naqset fl-obbligi regolatorji tagħha li fit-tweġiba tagħha tad-29 ta’ Settembru 2022 (Dok. HLB) wara li ntabet mil-Bord esponenti tagħmel ir-rappreżentazzjonijiet tagħha fuq il-findings tal-Bord, id-ditta appellanti ammettiet li żbaljat meta wiegħbet inter alia li:

*“Our firm also reiterates that, **although we reckon that the technical wording used in the independent Auditor’s Report issued in October 2020 requires improvement**, we have not misled users of the financial statements in any way whatsoever. Instead, we have highlighted the issue related to our limitation on audit scope imposed by management when carrying out audit procedures - mainly as we were unable to obtain sufficient and appropriate audit evidence.*

*Additionally, **we agree that the “Other Matter” paragraph should have been included in the independent Auditor’s Report**, clearly identifying that the prior year’s audit was carried out by another auditor for the first-year audit carried out for the year ending 31 December 2019. This has been immediately taken on board by our Firm and can confirm that this is now being invariably issued on first year audits....”* (Emfasi tal-Bord esponenti).

8. Illi fl-ittra tiegħu tal-24 ta’ Novembru 2022 (Dok. A anness mar-rikors promotur) il-Bord wiegħeb l-d-ditta appellanti li “The Board noted the representations made by the firm in this regard, however it is of the view that such representations, except for that provided in regard to the non-attendance of the stock take, do not provide justification for the Board not to

issue the above-mentioned declaration. On this basis, the declaration will be published on the Board's website.”

9. Illi l-Bord appellanti ddecieda li jippubblika d-dikjarazzjoni li d-ditta appellanti qed ttipprova timpunja għal żewġ raġunijiet prinċipali:

A. Disclaimer of Opinion (Ċaħda ta' Opinjoni)

i. Illi fl-Independent Auditor's Report fuq il-Financial Statements ta' MBC Investments Limited (Dok. HLB 2) id-ditta appellanti stqarret li:

“Basis for Qualified Opinion

The company's total assets and profit and loss statement were not fully tested and subjected to substantive audit procedures as we were unable to obtain sufficient appropriate audit evidence about the carrying amount for the year ended 31 December 2019. The auditors are handed over with financial information however, it was not sufficient to substantiate the amounts recorded. Consequently, we were unable to determine whether any adjustments to these amounts were necessary.” (vide paġna 3 ta' Dok. HLB 2 – Emfasi tal-Bord).

ii. Illi għalhekk id-ditta appellanti kkwalifikat ir-rapport tagħha minħabba li hija ma setgħetx tottjeni evidenza t'awditjar suffiċjenti fuq l-assi totali u l-profit and loss statement tad-ditta awditjata li ma ġewx ittestjati kollha.

iii. Illi paragrafi 9 u 10 tal-International Standard on Auditing 705 (hawn isfel imsejja “ISA 705”) on Modifications to the Opinion in the Independent Auditor's Report jistabilixxi meta trid tintuża Disclaimer of Opinion:

“Disclaimer of Opinion

9. The auditor shall disclaim an opinion when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.

10. The auditor should disclaim an opinion when, in extremely rare circumstances involving multiple uncertainties, the auditor concludes that, notwithstanding having obtained sufficient appropriate audit evidence regarding each of the individual uncertainties, it is not possible to form an opinion on the financial statements due to the potential interaction of the uncertainties and their possible cumulative effect on the financial statements.” (Emfasi tal-Bord).

- iv. Illi ISA 705 jiddefinixxi il-kelma “**pervasive**” bħala “A term used, in the context of misstatements, to describe the **effects** on the financial statements of misstatements or the **possible effects** on the financial statements of **misstatements**, if any, that are **undetected due to an inability to obtain sufficient appropriate audit evidence**. Pervasive effects on the financial statements are those that, in the auditor’s judgement:
- (i) Are not confined to specific elements, accounts or items of the financial statements;
 - (ii) If so confined, represent or could represent a substantial proportion of the financial statements; or
 - (iii) In relation to disclosures are fundamental to users’ understanding of the financial statements.” (Emfasi tal-Bord).

v. ISA 705 tindika meta trid tintuża Opinijoni Kwalifikata bħala:

“Qualified Opinion

7. The auditor shall express a qualified opinion when:

- (a) The auditor, **having obtained sufficient appropriate audit evidence**, concludes that misstatements, individually or in the aggregate, are material, but not pervasive, to the financial statements; or
- (b) The auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but **not pervasive**.” (Emfasi tal-Bord).

vi. Illi peress li id-ditta appellata stess ammettiet fl-Independent Auditor’s Report fuq il-Financial Statements ta’ MBC Investments Limited (Dok. HLB 3) fuq riferut li ma setgħetx tottjeni evidenza suffiċjenti biżżejjed fuq l-assi totali u l-profit and loss statement tad-ditta awditjata, tali limitazzjoni tal-iskop tista’ tkun materjali minħabba li l-ammonti affetwati huma sostanzjali. Barra min hekk, tali limitazzjoni hija pervasiva peress li l-inabbilta’ tad-ditta appellata li tottjeni evidenza suffiċjenti effetwat numru ta’ line items fil-balance sheet u l-profit and loss statement. Dawn il-bilanċi kienu jinkludu Property Held for Resale, Revenue, Cost of Sales u Administrative Expenses (Sales Commissions).

vii. Għal dawn ir-raġunijiet, il-Bord sewwa ddecieda li d-ditta appellata kellha tagħmel Disclaimer of opinion ai termini ta’ ISA 705.

B. Comparative Figures (Figuri komparattivi)

- i. Il-Bord iddeċieda li jippubblika dikjarazzjoni ukoll minhabba l-fatt li għalkemm il-figuri komparattivi kienu awditjati minn awditur ieħor, id-disclosures rikjesti mil-ISA 710 ma kienux inlużi fil-paragrafu “Other Matter” tar-Rapport tal-Awditjar ta’ MBC Investments Limited.
- ii. Paragrafu 17 ta’ International Standard on Auditing 710 on Comparative Information (hawn isfel imsejġha “ISA 710”) jipprovdi li:
- “Prior Period Financial Statements Audited by a Predecessor Auditor*
 17. If the financial statements of the prior period were audited by a predecessor auditor, in addition to expressing an opinion on the current period’s financial statements, the auditor shall state in an Other Matter paragraph:
- (a) that the financial statements of the prior period were audited by a predecessor auditor;
- (b) the type of opinion expressed by the predecessor auditor and, if the opinion was modified, the reasons therefore; and
- (c) the date of that report,
- unless the predecessor auditor’s report on the prior period’s financial statements is reissued with the financial statements.”
- iii. Id-ditta appellata ma inkludietx dak rikjest f’paragrafu 17 ta’ ISA 710 fl-Audit Report imsemmi.
- iv. Illi fit-tweġiba tagħha tad-29 ta’ Settembru 2022 (Dok. HLB 2) id-ditta appellata ammettiet u aċċettat li **“Additionally, we agree that the “Other Matter” paragraph should have been included in the independent Auditor’s Report, clearly identifying that the prior year’s audit was carried out by another auditor for the first-year audit carried out for the year ending 31 December 2019. This has been immediately taken on board by our Firm and can confirm that this is now being invariably issued on first year audits....”** (Emfasi tal-Bord esponenti).
- v. Ibbażat fuq it-tweġiba tad-ditta appellanti stess, il-Bord esponenti ddeċieda li jippubblika d-dikjarazzjoni stante li dan il-fatt gie aċċettat mill-appellanti.
10. Illi b’dawn in-nuqqasijiet tad-ditta appellanti r-rapport tal-awditjar awditjat mid-ditta appellanti ma jilhaqx ir-rekwiżiti tal-artikolu 179A tal-Att dwar il-Kumpanniji (Kapitolu 386 tal-Liġijiet ta’ Malta) u ċioe’ li r-rapport tal-awditjar għandu:

(b) jinkludi deskrizzjoni tal-ambitu tal-awditjar statutorju li għandu, bħala minimu, **jidentifika l-istandards tal-awditjar li f'konformità magħhom twettaq l-awditjar statutorju;**

(ċ) jinkludi opinjoni tal-awditjar, li għandha tkun mhux kwalifikata, jew kwalifikata jew **opinjoni negattiva** u li għandu jindika b'mod ċar l-opinjoni tal-awditur(i) jew tad-ditta/i tal-awditjar dwar:

- (i) jekk id-dikjarazzjonijiet finanzjarji annwali jagħtux stampa veritiera u ġusta f'konformità mal-qafas rilevanti għar-rappurtar finanzjarju; u
- (ii) fejn ikun il-każ, jekk id-dikjarazzjonijiet finanzjarji annwali **jkunux konformi mar-rekwiżiti statutorji.**

Jekk l-awditur/i statutorju/i jew id-ditta/i tal-awditjar ma jkunux kapaċi jesprimu opinjoni tal-awditjar, ir-rapport għandu jkollu **ċaħda tal-opinjoni;**

(e) jinkludi opinjoni u dikjarazzjoni, li t-tnejn li huma għandhom ikunu bbażati fuq il-ħidma li twettqet matull-awditjar, imsemmija fl-artikolu 179(3);

L-artikolu 179(3) tal-Kap. 386 inter alia jipprovdi li:

“... L-awdituri għandhom ukoll:

(a) jesprimu opinjoni dwar jekk ir-rapport tad-diretturi ġiex ippreparat bl-applikazzjoni tar-rekwiżiti legali;

(b) fid-dawl tat-tagħrif u l-fehim tal-impriza u l-ambjent tagħha miksuba matul l-eżerċizzju tal-awditjar, **jiddikjaraw jekk identifikawx dikjarazzjonijiet hżiena (misstatements) fir-rapport tad-diretturi, u għandhom jagħtu indikazzjoni tan-natura ta' kull waħda minn dawn id-dikjarazzjonijiet hżiena (misstatements)...**”

11. Illi l-artikolu 20A tal-Att dwar l-Accountancy (Kap. 281) jipprovdi inter alia li “Il-Bord għandu jippubblika fil-websajt uffiċjali tiegħu għall-inqas kwalunkwe sanzjoni amministrattiva imposta għall-ksur tad-dispożizzjonijiet ta' dan l-Att, ir-regolamenti magħmula taħtu u Direttivi, jew tar-Regolament dwar l-Awditjar ...”.

12. Illi sakemm jiġi determinat finalment l-appell odjern, il-Bord esponenti jiddikjara li mhux se jippubblika d-dikjarazzjoni li qed tiġi attakata. Illi għaldaqstant l-ewwel talba tal-appellanti hija superata.

13. Illi huwa ċar mil-fuq espost li ma huwa minnu xejn li d-ditta appellata wettqet l-inkarigu tagħha bl-aħjar mod possibbli u skont id-dettami legali tal-accountancy viġenti iżda jirriżulta b'mod lampanti, anki bl-ammissjoni tagħha stess, li d-ditta appellanti ma mxiex mal-International Standards on Auditing kif aħjar spejegat aktar 'il fuq u b'hekk r-rapport tal-awditjar awditjat mid-ditta appellanti ma leħaqx ir-rekwiżiti tal-artikolu 179A tal-Att dwar il-Kumpanniji (Kapitolu 386 tal-Liġijiet ta' Malta).

14. Illi għal dawn ir-ragunijiet kollha, l-appell ta' HLB CA Falzon għandu jiġi respint bl-ispejjez kontra tagħha;

15. Salve risposti ulterjuri.

Ra l-provi kollha mressqa mill-partijiet;

Sema' s-sottomissjonijiet orali tad-difensuri tal-partijiet;

Ra l-atti l-oħra kollha tal-kawża;

Ra li r-rikors thalla għal-lum għas-sentenza.

Ikkunsidra:

Illi d-ditta rikorrenti ħassitha aggravata b'deċiżjoni tal-Bord tal-Accountancy (aktar 'l isfel "il-Bord") komunikata lilha permezz ta' ittra datata 24 ta' Novembru 2022 li permezz tagħha giet mgharrfa bis-segwenti:

2. Declaration

As indicated to the firm in the Board's previous letter, on file (b) the firm did not observe the counting of the physical inventories at year end in view of the firm's appointment after year end. The audit report was not qualified on this basis as required by ISA 705.

In addition on file (b) although the audit report was qualified due to the fact that the company's total assets and profit and loss statement were not fully tested, the firm did not issue a disclaimer of opinion.

Furthermore, although the comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report.

The Accountancy Board had indicated in its letter to the firm on 15 September 2022, that it was minded to issue a declaration on the Board's website, as per Article 14(2)(d) of the Accountancy Profession Act, as follows:

"The Accountancy Board is making a declaration- in terms of Article 14(2)(d) of the Accountancy Profession Act, in respect of an audit of MBC Investments Ltd for the year ended 31 December 2019 by the audit firm HLB CA Falzon with registration number AB/26/84/106. Despite the audit report including a qualified opinion, the audit report relating to this audit should have included a disclaimer of opinion in line with ISA 705 requirements. Also, although comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report. As a result of these matters, the audit report did not meet the requirements of Article 179A of the Companies Act."

The Board noted the representation made by the firm in this regard, however it is of the view that such representations, except for that provided in regard to the non-attendance of the stock take, do not provide justification for the Board not to issue the above mentioned declaration. On this basis, the declaration will be published on the Board's website.²

Illi d-ditta rikorrenti ħassitha partikolarment aggravata bis-sanzjoni li kienet se tiġi mposta fuqha mill-Bord intimat, u ċioe` l-pubblikazzjoni tad-dikjarazzjoni msemmija fl-istess ittra fuq il-paġna elettronika tal-Bord u dan stante li, skont hi, kienet se tikkagunalha ħsara fir-reputazzjoni tagħha mingħajr ebda bażi.

Illi din il-kwistjoni għandha l-għeruq tagħha wara spezzjoni li għamel il-*Quality Assurance Unit* fi ħdan il-Bord intimat fir-rigward ta' awditjar ta' kontijiet li d-ditta rikorrenti għamlet għad-ditta MBC Investments Ltd. għas-sena li ntemmet f'Diċembru 2019.

Karen Sultana, Kap tal-*Quality Assurance Unit* fi ħdan il-Bord intimat, xehdet dwar il-proċedura meta tkun se ssir *review* ta' xi *audit firm* jew ta' *sole practitioner*. Spjegat li l-awditur konċernat jiġi notifikat bid-data taż-żjara permezz ta' ittra u jkun hemm meeting tal-bidu u sussegwentement issir *review*. Fil-kaz in eżami ttieħdu żewġ *samples* ta' awditjar li sar mid-ditta rikorrenti. Wara li jitlesta x-xogħol tar-*review*, il-Unit tgħaddi r-

² A fol. 6 u 7

riżultanzi tagħha lill-awditur jew ditta konċernata u jingħata żmien għal twegiba bil-miktub. Wara li l-Unit jirċievi r-risposta, jirredigu *a closing meeting agenda* fejn jigu nklużi dawk il-punti li fl-opinjoni tagħhom ma jkunux għadhom ġew indirizzati, u eventwalment issir laqgħa tal-aħħar. Spjegat li r-rapport finali u r-rakkomandazzjonijiet jgħaddu għand il-Quality Assurance Oversight Sub-Committee u eventalment għand l-Accountancy Board.

Ix-xhud spjegat illi fajl minn dawk li ġew eżaminati kien jitratta *audit* ta' Kumpanija li d-ditta appellanti kienet se tagħmel l-*audit* tagħha għall-ewwel darba. Spjegat illi f'kaz ta' dan l-*audit*, id-ditta rikorrenti għamlet kwalifika fl-*audit report* mentri fl-opinjoni tagħha kellha ssir *disclaimer of opinion*. Hija spjegat id-differenza bejn *a qualified opinion* u *disclaimer of opinion* hekk:

Id-differenza bejn a qualified opinion and a disclaimer of opinion is the concept of pervasiveness. Issa fil-qualified audit opinion tkun materjali imma ma tkunx pervasive mentri f' disclaimer of opinion tkun material and pervasive. Okay? Kemm naqralkom fit forsi paragraph 5. fejn hemm id-definition ta' pervasive. "Pervasive is a term used, in the context of misstatements, to describe the effects on the financial statements of misstatements or the possible effects on the financial statements of misstatements, if any, that are undetected due to an inability to obtain sufficient appropriate audit evidence. Pervasive effects on the financial statements are those that, in the auditor's judgment: (i) Are not confined to specific elements, accounts or items of the financial statements; (ii) If so confined, represent or could represent a substantial proportion of the financial statements; or (iii) In relation to disclosures, are fundamental to users' understanding of the financial statements." Okay? So ahna rajna l-audit report ta' dan il-klijent. Issa, l-audit report tghid "The company's total assets and profit and loss statements were not fully tested and subjective to substantive audit procedures as we were unable to obtain sufficient appropriate audit evidence about the carrying amount for the year ended 31st December '19. The auditors are handed over with financial information however it was not sufficient to substantiate the amount recorded. Consequently we were unable to determine whether any adjustments to these amounts were necessary. Issa, xtaqt intikom il-financial statements biex taraw.

...

Mela, fl-audit report li hemm f'page 5 tal-financial statements qed tghid li total assets and the profit and loss statement were not fully tested so jekk naraw page 11 biex naraw it-total assets biex intikom idea tal-valuri u l-

ammonti li qeghdin nitkellmu fuqhom hemm it-total assets li jammontaw ghal 1.3 million li hu maghmul minn stock of property held for resale of 936,000 and other receivables the 400,000. 404,000. Jekk taraw ukoll il-profit and loss statement li jinsab fuq page 10 hu qed jghid li he couldn't obtain sufficient and appropriate audit evidence on the profit and loss statement. Jigifieri fuq il-profit and loss statement kollu. Fuq ir-revenue ghandha 1.9 million. Cost of sales ghandna 2.2 kwazi million. Admin expenses 218,000. Financial costs another 13 u ghandek loss ta' 618 dik is-sena. Fl-audit file bhala procedura l-awditur suppost jikkalkula l-materiality level u f'dan il-kaz f'dan l-audit in particular l-audit materiality level kienet stabbilita 26,000. Jigifieri biex tiehu idea ta' kemm il-valuri tat-total assets u kemm tal-profit and loss u kemm kienet ilmateriality, kienet ta' 26,000. So ahna speci l-conclusion tagħna kif tista' toħrog qualified audit opinion u ma tkunx pervasive fuq dawn l-ammonti kollha fejn inti hu stess, il-firm stess qed tghid li it couldn't obtain sufficient and appropriate audit evidence għallfinijiet ta' total assets and the profit and loss statement kollu. U b'hekk l-opinjoni kellha tinhareg differenti, b'mod differenti. Apparti hekk jigifieri ahna rajna l-qualified audit opinion li kellu u kien hemm xi nuqqasijiet fih jigifieri anke jekk qbilna mal-firm li kellha tinhareg qualified audit opinion xorta a dik il-qualified audit opinion ma kinitx hundred percent in line with the requirements. Issa huma fil-kaz ta' MBC huma li provdejtikom il-financial statements dak hu l-full set under il-financial reporting framework GAPSME they are not obliged to submit to the MBR il-profit and loss statement so ghamlu declaration u l-financial set li ssabmitjaw lill-MBR kien iqsar, more condensed, in line with the requirements imma l-audit report il-verzjoni tal-full set u dak li ntbagħat lill-MBR ma kinux ezatt l-istess nsew paragrafu jigifieri mill-audit report ukoll.

...

Ukoll fid-disclaimer it-tielet punt kien fuq comparatives. Issa dan kien first-year audit for the firm u tiskatta r-requirements ta' ISA 710. Li ghandi wkoll.

...

Issa, meta jkun first-year audit suppost tinkludi ċertu disclosures fl-audit report biex tidentifika x'tip ta' audit report inharget u dawk it-tip ta' affarijiet imma it was completely omitted jigifieri from the financial statements. Suppost inkludew fih the financial statements of prior period by a predecessor auditor, the type of opinion and the date of the report. Jigifieri dawk l-affarijiet ma kinux fl-audit report ta' MBC Investments.³

³ A fol. 137 sa 139

In kontro-eżami s-Sinjura Sultana spjegat li l-Kumpanija in kwistjoni kellha *stock balance* materjali. Fissret li “materjali” t’fisser li d-ditta rikorrenti tkun għamlet il-kalkoli tagħha u sabet li l-valur tal-istock ikun iktar minn ċertu ammont. Spjegat li l-*standards* tal-*audit* jirrikjedu li jekk il-bilanċ tal-istock ikun materjali suppost wiehed jattendi fiżikament għall-*stock take* sakemm ma ma jkunx prattiku li jsir hekk. Hija kompliet tispjega li d-ditta rikorrenti fl-*audit report* qalet li ma setgħetx iġġib biżżejjed evidenza fuq l-assi totali kollha. Madanakollu l-Bord aċċetta r-rappreżentazzjonijiet li għamlet id-ditta rikorrenti bl-ispejja kif waslet għall-awditjar tagħha, però stqarret li xorta waħda pereżempju ma kienx hemm riċerka fir-Registru Pubbliku dwar il-proprjetajiet li kellha l-Kumpanija.

Edgar Borg, Cermen tal-Bord intimat, xehed illi r-rapport fir-rigward tad-ditta rikorrenti ġie diskuss mill-Bord f’żewġ okkazzjonijiet, u ċioe` fil-laqgħa tal-25 ta’ Awwissu 2022 u fil-laqgħa tal-11 ta’ Novembru 2022 fejn ġew deliberati il-konkluzzjonijiet tal-Bord li eventwalment ġew komunikati lid-ditta rikorrenti.

Id-deliberazzjonijiet li saru fil-laqgħa tal-25 ta’ Awwissu 2022 kienu s-segwenti u ċioe`:

“The following are the main findings of this visit:

A number of independence and ethical matters were raised during the visit including provision of non-assurance services to audit clients, close business relationships, serving in a key management position as well as independence declarations.

A number of issues were also raised on the two files reviewed. Of particular concern is the matters identified in relation to the public interest entity. Furthermore, some of the findings raised were repeat findings which were also identified in the prior visit to the firm. In addition, both the engagement partner review as well as the engagement quality control reviewer on file (a) did not show evidence that these reviews were carried out at appropriate stages of the audit.

Furthermore, there were a number of audit report matters identified, including some of which found on file (b) that resulted in the audit report being issued with inappropriate opinions.

The firm’s ISQC 1 manual was mainly in line with ISQC 1 requirements. The transparency report requirements had not all been adequately addressed. Furthermore, the firm did not fully comply with professional indemnity insurance requirements.

In view of the above findings the Board agreed with the following recommendations:

1. External cold file reviews

The firm shall obtain two external cold file reviews including one PIE audit client. The cold file reviews are to be conducted by an unconnected practising certificate warrant

holder who is to be selected from the Accountancy Board's list of approved external reviewers posted on the Accountancy Board website.

The results of the cold file reviews are to be submitted to the Board by not later than 30 June 2023.

2. Declaration on Accountancy Board website – Article 14(2)(d) of the Accountancy Profession Act

On file (b) the firm did not observe the counting of the physical inventories at year end in view of the firm's appointment after year end. The audit report was not qualified on this basis as required by ISA 705.

In addition, on file (b), although the audit report was qualified due to the fact that the company's total assets and profit and loss statement were not fully tested, the firm did not issue a disclaimer of opinion.

Furthermore, although the comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report.

The Accountancy Board is to publish the following declaration on the Board's website, as per Article 14(2)(d) of the Accountancy Profession Act, as follows:

*"The Accountancy Board is making a declaration in terms of Article 14(2)(d) of the Accountancy Profession Act, in respect of an audit of MBC Investments Ltd for the year ended 31 December 2019 by the audit firm HLB CA Falzon with registration number AB/26/84/106. Despite the audit report including a qualified opinion, the audit report relating to this audit should have included a disclaimer of opinion in line with ISA 705 requirements. Also, although comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report. As a result of these matters, the audit report did not meet the requirements of Article 179A of the Companies Act."*⁴

Mentri fil-laqgħa tal-11 ta' Novembru 2022 saru s-segweni deliberazzjonijiet, u cioè`:

The closing down letter was sent to HLB CA Falzon on 21st September 2022. The firm had a number of actions being taken against it namely 2 external cold file reviews, a declaration, a warning and a confirmation.

HLB CA Falzon replied to the closing down letter on 15th September 2022.

1. External Cold File reviews

With regards to the 2 external cold file reviews requested, HLB CA Falzon submitted one cold file review which carried out by Mr Renzo Farrugia and will be submitting the second cold file review which will be carried out by Mr Arthur Douglas in due course.

⁴ A fol. 215-216

2. Declaration

As indicated to the firm in the Board's closing down letter of 15 September 2022, on file (b) the firm did not observe the counting of the physical inventories at year end in view of the firm's appointment after year end. The audit report was not qualified on this basis as required by ISA 705.

In addition on file (b), although the audit report was qualified due to the fact that the company's total assets and profit and loss statement were not fully tested, the firm did not issue a disclaimer of opinion.

Furthermore, although the comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report.

The Accountancy Board had indicated in its closing down letter to the firm, that it was minded to issue a declaration on the Board's website, as per Article 14(2)(d) of the Accountancy Profession Act, as follows:

"The Accountancy Board is making a declaration in terms of Article 14(2)(d) of the Accountancy Profession Act, in respect of an audit of MBC Investments Ltd for the year ended 31 December 2019 by the audit firm HLB CA Falzon with registration number AB/26/84/106. Despite the audit report including a qualified opinion, the audit report relating to this audit should have included a disclaimer of opinion in line with ISA 705 requirements. Also, although comparative figures were audited by another auditor the disclosures required by ISA 710 were not included in the 'Other Matter' paragraph in the audit report. As a result of these matters, the audit report did not meet the requirements of Article 179A of the Companies Act."

The Board noted the representations made by the firm in this regard, however it is of the view that such representations, except for that provided in regard to the non-attendance of the stock take, do not provide justification for the Board not to issue the above-mentioned declaration. On this basis, the Board agreed that this declaration will still be published on the Board's website.

3. Warning

The Board noted the firm's representations that it has both in "appearance" and also "in fact" satisfied the derogation requirement stipulated in sub article 18(3) of the Accountancy Profession Act. The Board is satisfied that such requirements are now being addressed by the firm.

4. Confirmations

The Board noted HLB CA Falzon's comments regarding the firm's professional indemnity insurance run off cover being 2 years rather than 5 years. Sub article 11(2)(a) of the Accountancy Profession Act makes explicit reference to a five-year run off cover rather than 2 years as included in the firm's professional indemnity insurance policy. In this regard the Board agreed to request the firm to provide a revised professional

indemnity insurance policy addressing this issue within 3 weeks from the date of the Board's letter."⁵

Is-Sur Borg spjega li l-Bord osserva li d-ditta rikorrenti ma osservatx dak li jirrikjedu l-ISA 710 tant li r-rapport tal-awditjar in kwistjoni ma jilhaqx ir-rekwiziti tal-artikolu 179A tal-Att dwar il-Kumpaniji (Kapitolu 386 tal-Ligijiet ta' Malta).

In kontro-eżami x-xhud qal illi dak li kellha tagħmel id-ditta rikorrenti kienet li tagħmel *disclaimer of opinion* minflok *qualification fl-audited accounts*. Spjega wkoll illi f'dan il-kaz tant kienet kbira l-problema li kien hemm li d-ditta rikorrenti kienet żbaljata meta minflok għamlet *disclaimer of opinion*, għamlet *qualification*. In oltre spjega illi meta għandek proprjeta` immobbli hija Prattika *standard* li wiehed iġib ir-ricerki halli jara jekk hemmx ipoteki fuqhom u jara t-titolu. Pero` d-ditta rikorrenti m'għamlet xejn minn dan kollu pero` użat *alternative audit procedure* li giet aċċettata mill-Bord. Huwa kkjarifika wkoll illi f'kaz li fl-opinjoni tal-Bord, *audit report* ma jkunx korrett jew seta' jsir b'mod differenti huwa obbligu tagħhom li n-nies joqogħdu attendi qabel jieħdu deċiżjoni abbażi ta' dak ir-rapport, pero` bl-ebda mod is-sanzjoni ma titfa' dell fuq id-ditta jew l-individwu li jkun għamel ir-rapport.

Josef Galea, soċju tad-ditta rikorrenti, xehed illi d-ditta rikorrenti għandha *warrant* f'isimha għal xogħol ta' awditjar maħruġ mill-Bord intimat. Illi fl-14 ta' Settembru 2021 ġew infurmati li l-*Quality Review Unit* kienet se tagħmel *review tax-xogħol* tagħhom. Fil-fatt ir-*review* sar bejn Novembru 2021 u Jannar 2022 u sar *closing meeting* fil-21 ta' Marzu 2022. Sussegwentement fl-1 ta' April 2022 il-*Quality Assurance Unit* bagħtet ittra li kellha s-segwententi konkluzjonijiet, u cioè`:

11.1 A number of independence and ethical matters were raised during the visit including provision of non-assurance services to audit clients, close business relationships, serving in a key management position as well as independence declaration.

11.2 A number of issues were also raised on the two files reviewed. Of particular concern is the matters identified in relation to the public interest entity. Furthermore, some of the findings raised were repeat findings which were also identified in the prior visit to the firm. In addition, both the engagement partner review as well as the engagement quality control reviewer on file (a) did not show evidence that these reviews were carried out at appropriate stages of the audit.

⁵ A fol. 217-218

11.3 Furthermore, there were a number of audit report matters identified, including some of which found on file (b) that resulted in the audit report issued with inappropriate opinions.

11.4 The firm's ISQC 1 manual was mainly in line with ISQC 1 requirements. The transparency report requirements had not all been adequately addressed. Furthermore, the firm did not fully comply with professional indemnity insurance requirements.

11.5 The firm displayed a positive attitude during the visit, and its closing meeting responses addressed the majority of the issues raised. The QAU has no reason to doubt that the firm will address the findings noted in this report.⁶

Ix-xhud stqarr li għalihom, b'din l-ittra, il-kwistjoni kienet waqfet hemm. Pero` fid-29 ta' Setembru 2022 irċewew ittra oħra fejn reġghu ġew elenkati xi nuqqasijiet li kienu ġew riskontrati preċedentement fil-closing meeting. Huwa stqarr li kieku l-kwistjoni kienet daqshekk urgenti li timmerita d-dikjarazzjoni li kien beħsiebu jippubblika l-Bord, l-istess Bord ma kienx iħalli dawk ix-xhur kollha jgħaddu.

Is-Sur Galea xehed illi fil-fehma tiegħu id-ditta rikorrenti mxiet b'mod professjonali u skont dak li jirrekjedu l-istandards internazzjonali dwar l-awditjar. Spjega li l-ġudizzju tad-ditta rikorrenti kien li m'għandux ikun hemm disclaimer imma a qualified opinion, filwaqt li fuq il-kwistjoni tal-other matter jirrikonoxxi li kien żbaljat, u li pero` dan l-iżball ma kellux iwassal għad-deċiżjoni drakonjana li ha l-Bord intimat. Dan iktar u iktar meta, fl-opinjoni tiegħu, fil-passat kien hemm każijiet hafna aghar minn dak in kwistjoni li dwarhom il-Bord intimat ma ppubblika ebda dikjarazzjoni simili.

Ix-xhud spjega li l-ISA705 tirrikjedi li l-awditur jagħti ġudizzju u dan il-ġudizzju jista' jkun jew a clean audit report, jew a qualified report fejn ikun hemm xi affarijiet materjali. Xehed illi fil-każ tal-awditjar tal-MBC Investments Ltd., id-ditta rikorrenti issenjalat dak kollu li kien hemm x'tissenjala biex dak li jkun qed jara l-financial statements ikollu stampa ċara tas-sitwazzjoni finanzjarja tal-Kumpanija msemmija. Huwa sahaq illi l-fatt li d-ditta ma għamlitx disclaimer of opinion iżda għamlet qualified opinion ma rreka ebda danni lit-terzi għax dak li kien materjali għall-formazzjoni tal-ġudizzju tagħhom kien innizzel minnhom fl-istess awditjar. Għaldaqstant stqarr li s-sanzjoni imposta fuq id-ditta rikorrenti kienet waħda esaġerata.

⁶ Dokument BA3 a fol. 114

Martin Spiteri, Segretarju tal-Bord intimat, xehed illi f'dawn l-aħħar snin il-Bord intimat hareġ sitt (6) sanzjonijiet simili għal dik li kien se jimponi fuq id-ditta rikorrenti u fil-fatt esebixxa ħames (5) dikjarazzjonijiet li ġew pubblikati fuq is-sit elettroniku tal-Bord fil-konfront tal-persuni konċernati.⁷

Ikkunsidra:

Illi permezz tal-ewwel eċċezzjoni, l-Bord intimat eċċepixxa n-nullita` tar-rikors stante li d-ditta rikorrenti mhijiex persuna ġuridika iżda soċjeta` ċivili u li għalhekk dan ir-rikors kellu jiġi pprezentat mis-soċji rappreżentanti ġudizzjarji tagħha.

Illi fil-mori ta' dawn il-proċeduri jirriżulta li d-ditta rikorrenti hija rikonoxxuta bħala tali mill-Bord intimat tant li nħargilha *warrant*.⁸

Illi fis-sentenza *Is-soċjeta' KPMG et vs Antonius Glieden Detlef* (Qorti tal-Magistrati, Għawdex (Sede Superjuri) deċiża fit-22 ta' Mejju, 2007) ġie ritenut li 'persuna ġuridika' tinkludi wkoll soċjeta` ċivili u għaqdiet u assoċjazzjonijiet oħra tant li nġhad li:-

“Mill-provi rriżulta li KPMG hija soċjeta' ċivili. Għalhekk bhala tali, is-soċji għandhom kull dritt li jharrku lill-konvenut nomine għas-servizzi professjonali li nġhata. L-istess soċjeta' għandha l-istess, kull dritt li tharrek f'isimha għaliex għandha personalita' ġuridika (ara f'dan is-sens sentenza fl-ismijiet “Perit Patrick Camilleri proprio et nomine et vs Joseph Pace et” deċiża mill-Prim'Awla tal-Qorti Civili fl-1 ta' Marzu 2002). Skond il-ligi, mhux kumpaniji biss għandhom personalita' ġuridika, izda kull għaqda jew assoċjazzjoni ta' persuni hija “persuna” fis-sens legali (Artikolu 4 (d) tal-Att dwar Interpretazzjoni 1975 u Malta Dairy Products Ltd vs General Workers Union, deciza mill-Prim'Awla tal-Qorti Civili fit-3 ta' Novembru, 2000)”.

Illi del resto, minn harsa lejn artikolu 10 tal-Kapitolu 281 tal-Ligijiet ta' Malta (Att dwar il-Professjoni tal-Accountancy) wieħed isib is-segwenti:

10.(1) Meta żewġ persuni jew aktar ikunu bi hsiebhom jaħdmu flimkien bħala accountants, huma jistgħu jiffurmaw ditta ta' accountancy li jkollha bħala wieħed mill-iskopijiet ewlenin tagħha l-prattika tal-accountancy:

Iżda biex ditta tal-accountancy teżerċita l-prattika ta' ditta tal-awditjar din tkun meħtieġa li jkollha bħala wieħed mill-iskopijiet ewlenin tagħha l-prattika tal-awditjar u għandha tadempixxi daww il-kondizzjonijiet l-oħra li

⁷ Dokument MS1 a fol. 122 sa 126

⁸ Dokument JG1 a fol. 88

jistgħu jiġu preskritti f'direttivi mahruġin mill-Bord taht dan l-Att minn żmien għal żmien:

Illi għaldaqstant hija l-liġi stess li tagħraf ditta ta' awditjar bħala korp li jista' jipprattika l-awditjar f'ismu, u huwa appuntu għalhekk li l-liġi tagħti s-setgħa lill-Bord intimat joħroġ *warrant* lill-istess ditta. Għaldaqstant it-Tribunal iqis li l-ewwel eċċezzjoni tal-Bord intimat hija nfondata.

Illi permezz tat-tieni eċċezzjoni, il-Bord intimat eċċepixxa illi huwa mhuwiex persuna ġuridika u għalhekk għandha ssir korrezzjoni fl-okkju tal-appell.

Illi t-Tribunal jirrileva illi l-appelli quddiemu huma ta' natura *sui generis* għaliex joħroġu minn għadd ta' liġijiet speċjali. It-Tribunal jirrileva illi in fatti, meta wieħed jappella, lanqas ma hemm bżonn li jipproċedi b'att ġudizzjarju ai termini tal-artikolu 460 tal-Kapitolu 12 tal-Liġijiet ta' Malta qabel jippreżenta l-appell tiegħu, għalkemm l-appell ikun intavolat kontra awtorita` pubblika.

Illi ai termini tal-Kapitolu 281 tal-Liġijiet ta' Malta (Att Dwar il-Professjoni tal-Accountancy), il-Bord intimat għandu setgħat u funzjonijiet wiesgħa hafna ta' supervizjoni u investigazzjoni, u dana fost oħrajn bil-għan li jithares l-interess pubbliku. Illi l-Bord intimat għandu wkoll poteri wiesgħa fejn jidhlu sanzjonijiet li jistgħu jiġu mposti minn awdituri jew ditti ta' awditjar meta fl-opinjoni tiegħu jonqsu mill-obbligi tagħhom. Illi fil-fehma tat-Tribunal, il-Bord intimat huwa l-unika awtorita' kompetenti biex jiddeċiedi dwar sanzjonijiet u mizuri ta' dixxiplina ai termini tal-Kapitolu 281 tal-Liġijiet ta' Malta, u allura huwa l-persuna li fil-konfront tiegħu għandu jiġi ndirizzat appell minn deċiżjoni tiegħu stess. Għaldaqstant iqis lit-tieni eċċezzjoni hija waħda infondanta.

Illi permezz tat-tielet eċċezzjoni, il-Bord intimat eċċepixxa li d-ditta rikorrenti m'għandhiex *locus standi* peress li fit-twegiba tad-29 ta' Settembru 2022 lill-Bord intimat ammettiet li żbaljat u aċċettat il-pubblikazzjoni tad-dikjarazzjoni. Illi minn qari tal-ittra tad-29 ta' Settembru 2022, filwaqt li huwa minnu li d-ditta rikorrenti rrikonoxxiet li żbaljat fir-rigward li fl-*Other Matter* kellha tinkludi l-fatt li r-rapport ta' awditjar għas-sena preċedenti kien sar minn awditur ieħor, minn imkien ma jirriżulta illi kienet qablet mas-sanzjoni li l-Bord intimat kellu hsieb jimponi fuqha. Illi t-Tribunal ma jaqbilx illi d-ditta rikorrenti m'għandhiex *locus standi* f'dawn il-proċeduri, u dana peress li s-sanzjoni li jrid jimponi fuqha l-Bord intimat jolqoĥa direttament. Għaldaqstant din l-eċċezzjoni qiegħda tiġi miċhuda.

It-Tribunal għalhekk se jdur issa fuq il-mertu tal-azzjoni tad-ditta rikorrenti.

Illi ai termini tal-artikolu 14 tal-Kapitolu 281 tal-Liġijiet ta' Malta, meta l-Bord intimat jirriżultawlu xi nuqqasijiet, huwa għandu s-segwenti setgħat, u cioè`:-

14.(1) Fil-każ ta' xi ksur ta' xi regoli taħt dan l-Att jew ta' xi regolamenti jew direttivi mahruġin taħtu, il-Bord ikollu s-setgħa li jimponi pieni amministrattivi u ċanfir, u li jieħu dawk il-miżura oħra kollha li jista' jqis li tkun adatti skont iċ-ċirkostanzi tal-każ.

(2) Il-Bord għandu jkollu s-setgħa li jieħu u, jew jimponi tal-inqas il-miżuri u s-sanzjonijiet amministrattivi li ġejjin għall-ksur tad-dispożizzjonijiet tar-regoli taħt dan l-Att kif ukoll, fejn applikabbli, ir-Regolament dwar l-Awditjar:

(a) notifika li teħtieġ lill-persuna fiżika jew guridika responsabbli għall-ksur li tieqaf mill-imgħiba u li tastjeni milli tirrepeti dik l-imgħiba;

(b) dikjarazzjoni pubblika li tindika li l-persuna responsabbli u n-natura tal-ksur, ippubblikata fuq is-sit elettroniku tal-awtoritajiet kompetenti;

(ċ) projbizzjoni temporanja ta' mhux aktar minn durata ta' tliet snin, li tillimita lill-awditur statutorju, id-ditta tal-awditjar jew is-sieħeb ewlieni tal-awditjar milli jwettqu awditjar statutorju u, jew jiffirmaw rapporti tal-awditjar;

(d) dikjarazzjoni li r-rapport tal-awditjar ma jilhaqx ir-rekwiżiti tal-artikolu 179A tal-Att dwar il-Kumpanniji jew, fejn applikabbli, l-artikolu 179B ta' dak l-Att;

(e) projbizzjoni temporanja, ta' mhux aktar minn durata ta' tliet snin, li tillimita lill-membru ta' ditta tal-awditjar milli jeżerċita funzjonijiet f'ditti ta' awditjar jew entitajiet ta' interess pubbliku;

(f) l-impożizzjoni ta' sanzjonijiet amministrattivi pekunjarji fuq persuni fiżiċi u ġuridiċi.

(3) Meta jiġu determinati t-tip u l-livell tas-sanzjonijiet u l-miżuri amministrattivi msemmija fis-subartikolu (1), fl-artikolu 7(17) u fl-artikolu 15, il-Bord u, jew il-kumitati dixxiplinarji maħtura skont it-termini tal-artikolu 7(16) għandhom jieħdu kont taċ-ċirkostanzi rilevanti kollha, inkluż, fejn ikun il-każ:

(a) il-gravità u t-tul ta' żmien tal-ksur;

- (b) il-grad ta' responsabbiltà tal-persuna responsabbli;
- (ċ) is-saħħa finanzjarja tal-persuna responsabbli, pereżempju kif indikat mill-fatturat totali tal-impriża responsabbli jew id-dħul annwali totali tal-persuna responsabbli, jekk dik il-persuna tkun persuna fiżika;
- (d) l-ammonti tal-qligh iggwadanjati jew tat-telf evitat mill-persuna responsabbli, sa fejn dawn jistgħu jiġu determinati;
- (e) il-livell ta' kooperazzjoni tal-persuna responsabbli mal-Bord;
- (f) ksur preċedenti mill-persuna fiżika jew ġuridikaresponsabbli.

Il-Bord u, jew il-kumitati dixxiplinarji maħtura jistgħu jieħdu kont ta' fatturi addizzjonali skont it-termini tal-artikolu 7(16) meta tali fatturi huma speċifikati f' dispożizzjoni legali, regolament jew Direttiva.

In oltre, ai termini tal-artikolu 15, il-Bord intimat jista' wkoll jissospendi, jirtira u jirrevoka *warrants* maħruġa skont il-Kapitlu 281 tal-ligijiet ta' Malta. Minn dawn id-deċiżjonijiet kollha hemm dritt ta' appell quddiem dan it-Tribunal.

Illi wara li t-Tribunal fela sew kemm id-deposizzjonijiet tax-xhieda mressqa mill-Bord intimat, u kif ukoll tar-rappreżentant tad-ditta rikorrenti, wasal għall-konklużjoni illi l-Bord intimat ħass li prinċipalment kien hemm is-segweni nuqqasijiet da parti tad-ditta rikorrenti:-

1. Id-ditta rikorrenti ma osservatx l-obbligi tagħha ai termini ta' ISA 705 u dana għaliex ma attendietx fiżikament għall-inventarju fl-aħħar tas-sena tal-*stock* tal-Kumpanija MBC Investments Ltd.;
2. Id-ditta rikorrenti ma ħarġitx *disclaimer of opinion* imma ħarġet *a qualified opinion* meta kienet konsapevoli li kien hemm ċerti nuqqasijiet fil-kwistjoni msemmija fil-paragrafu 1;
3. Id-ditta rikorrenti ma ssenjalatx li l-awditjar tas-sena preċedenti kien sar minn awditur ieħor u dana meta skont ISA 710 dan il-fatt ried jiġi senjalat fl-*Other Matters*.

Illi fil-kors tax-xhieda rriżulta illi dwar il-materja msemmija f'paragrafu 1, il-Bord intimat laqa' r-rappreżentazzjonijiet sottomessi mid-ditta rikorrenti u għaraf il-metodu alternattiv li ħadmet bih l-istess ditta u għalhekk ma kompliex jinsisti fuq dan in-nuqqas. Fir-rigward tat-tielet paragrafu t'hawn fuq, id-ditta rikorrenti irrikonoxxiet li kienet żbaljata meta ma niżżlitx il-fatt li kien hemm awditur ieħor fis-sena preċedenti.

Illi għalhekk jirriżulta illi l-iktar materja kontestata hija dik imsemmija f'paragrafu tnejn. Filwaqt li s-Sur Galea jishaq illi kull awditur għandu diskrezzjoni kif jinterpreta l-fatti li jkollu quddiemu u li f'dan il-kaz *a qualified opinion* kienet f'postha, min-naħa l-oħra is-Sinjura Sultana u s-

Sur Borg saħqu illi meta wiehed jara l-fatti kollha li kellha quddiemha d-ditta rikorrenti, ċertament kien hemm lok li ssir *disclaimer of opinion* u kwindi l-gudizzju tad-ditta rikorrenti kien wiehed żbaljat.

Illi għall-aħjar intendiment tal-kwistjoni kollha, it-Tribunal se jiċċita minn ISA 705 xi definizzjonijiet li saret riferenza għalihom fil-kors ta' dawn il-proċeduri, u ċioe`:

5. For purposes of the ISAs, the following terms have the meanings attributed below:

(a) Pervasive- A term used, in the context of misstatements, to describe the effects on the financial statements of misstatements or the possible effects on the financial statements of misstatements, if any, that are undetected due to an inability to obtain sufficient appropriate audit evidence. Pervasive effects on the financial statements are those that, in the auditor's judgment :

(i) Are not confined to specific elements, accounts or items of the financial statements;

(ii) If so confined, represent or could represent a substantial proportion of the financial statements; or

(iii) In relation to disclosures, are fundamental to users' understanding of the financial statements.

(b) Modified opinion – A qualified opinion, an adverse opinion or a disclaimer of opinion on the financial statements.

Illi mbagħad ISA710 tgħid hekk dwar il-kwistjoni ta' "Other Matter":

Prior Period Financial Statements Audited by a Predecessor Auditor

17. If the financial statements of the prior period were audited by a predecessor auditor, in addition to expressing an opinion on the current period's financial statements, the auditor shall state in an Other Matter paragraph:

(a) That the financial statements of the prior period were audited by a predecessor auditor;

(b) the type of opinion expressed by the predecessor auditor and, if the opinion was modified, the reasons therefore; and

(c) the date of that report.

Unless the predecessor auditor's report on the prior period's financial statements is reissued with the financial statements.

Illi wara li t-Tribunal ha konjizzjoni ta' dawn id-definizzjonijiet kollha u wkoll dak li gie mniżżel fil-paragrafu tal-*qualified opinion* tar-rapport ta' awditjar li sar mid-ditta rikorrenti, huwa tal-fehma illi l-Bord intimat għandu raġun fid-deċizzjoni tiegħu. Filwaqt li huwa fatt, bħalma xehed is-Sur Galea, illi fil-paragrafu tal-*Qualified Opinion* hemm imniżżel li l-assi tal-Kumpanija ma setgħux jiġu ttestjati b'mod sħiħ stante li d-ditta rikorrenti "*were unable to obtain sufficient appropriate audit evidence about the carrying amount for the year ended 31 December 2019*" u li għalhekk ma setgħetx tiddetermina jekk kienx hemm lok ta' xi aġġustamenti, min-naħa l-oħra huwa fatt ukoll illi bl-evidenza li d-ditta rikorrenti kellha quddiemha, ai termini ta' ISA705, ladarba rriżulta li l-*stock* kien wiehed materjali u l-financial statements tal-Kumpanija wiehed ma setax jistrieħ fuqhom biex jagħmel deċizzjoni, allura l-materja kellha tiġi kklassikata bħala *pervasive*. Illi t-Tribunal huwa tal-fehma illi d-dikjarazzjonijiet skorretti għad-dikjarazzjonijiet finanzjarji għandhom jiġu kkunsidrati *pervasive* jekk l-istess dikjarazzjonijiet skorretti jaffettwaw porzjon sostanzjali mid-dikjarazzjonijiet finanzjarji. Illi fil-fehma tat-Tribunal, il-fatt li d-ditta rikorrenti ma setgħetx tivverifika b'mod sħiħ l-assi tal-Kumpanija MBC Investments Ltd. affettwa b'mod sostanzjali d-dikjarazzjonijiet finanzjarji. Għalhekk, it-Tribunal jaqbel mal-konkluzzjonijiet tal-Bord intimat illi d-ditta rikorrenti kellha tagħmel *disclaimer of opinion* f'dan il-kaz u mhux tagħti biss opinjoni kwalifikata fuq id-dikjarazzjonijiet finanzjarji tal-Kumpanija MBC Investments Ltd.

Illi t-Tribunal se jdur issa fuq aggravju ieħor li ressqet id-ditta rikorrenti, u ċioe` dak dwar is-sanzjoni li l-Bord intimat beħsiebu jimponi. Illi kif gie rilevat iktar 'il fuq, is-sanzjonijiet li l-Bord intimat għandu a disposizzjoni tiegħu huma varji, u dana skont il-gravita` tal-kaz li jkollu quddiemu. Illi s-sanzjoni l-iktar miti hija dik ta' notifika li persuna tieqaf mill-imġiba hazina tagħha u li tastjeni milli tirrepeti dik l-imġiba, filwaqt li l-iktar gravi tkun li jiġi revokat il-*warrant* u li b'hekk persuna tiġi pprojbita milli teżerċita l-professjoni tagħha. Illi l-Bord intimat spjega li huwa hass li s-sanzjoni imposta kienet l-iktar waħda ġusta fiċ-ċirkostanzi sabiex jiġi kawtelat il-pubbliku milli jagħmel assunzjonijiet żbaljati abbażi dwar il-pożizzjoni finanzjarja tal-Kumpanija MBC Investments Ltd.

Illi t-Tribunal huwa tal-opinjoni illi filwaqt li d-ditta rikorrenti ċertament kienet żbaljata fil-fatt li ma għamlitx *disclaimer of opinion* meta kien evidenti li din kienet indikata fiċ-ċirkostanzi, madanakollu jirriżulta illi dak

kollu li kellha tattira l-attenzjoni tal-pubbliku dwaru, dan għamlitu u kienet trasparenti. Jirriżulta wkoll illi d-ditta rikorrenti ma komplietx bir-relazzjoni professjonali tagħha mal-Kumpanija MBC Investments Limited. Huwa fatt ukoll li d-ditta rikorrenti naqset milli ssemmi fil-paragrafu *Other Matters* illi kien hemm awditur precedenti li għamel l-awditjar għas-sena precedenti. Dawn ċertament huma kollha nuqqasijiet li ladarba ġew riskontrati, l-Bord intimat kellu s-setgħa li jieħu miżuri dwarhom. Illi għalkemm is-Sur Galea semma każijiet fejn fil-passat ġew riskontrati Prattiki ħżiena, liema każijiet kienu wkoll fil-*media*, u jista' jkun li dwar dawn il-Bord kif kien kompost dak iż-żmien ma ħa ebda azzjoni, dan it-Tribunal ma jhossx li għandu jidhol fil-mertu ta' dawn il-każijiet u dwar x'suppost forsi sar. Quddiemu t-Tribunal għandu fatti li dwarhom il-Bord intimat ħass li għandu jaġixxi billi jimponi s-sanzjoni indikata aktar 'il fuq.

Illi fl-opinjoni tat-Tribunal, il-ġudizzju żbaljat eżerċitat mid-ditta rikorrenti ai termini ta' ISA705 u l-ommissjoni ai termini ta' ISA710 kienu jimmeritaw li l-Bord intimat jimponi sanzjoni fuq l-istess ditta.

Illi għaldaqstant it-Tribunal huwa tal-fehma illi d-deċiżjoni appellata hija waħda ġusta u li timmerita konferma.

DECIDE

Għaldaqstant, it-Tribunal, għar-raġunijiet hawn fuq esposti, filwaqt li jiċċad l-ewwel tliet eċċezzjonijiet tal-Bord intimat, qiegħed jiċċad l-appell tad-ditta rikorrenti u jilqa' l-eċċezzjonijiet rimanenti tal-Bord intimat.

Bl-ispejjeż kontra d-ditta rikorrenti ħlief għal dawk relatati mal-ewwel tliet eċċezzjonijiet li għandhom ikunu a karigu tal-Bord intimat.

Dr. Charmaine Galea
President tat-Tribunal ta' Revizjoni Amministrattiva

Antonella Cassar
Deputat Registratur