

Kopja Informali ta' Sentenza



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON**

Seduta tal-21 ta' Frar, 2012

Rikors Numru. 863/2011

MelitaGamingGroup Limited (C39772)

kontra

X

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fit-2 ta' Settembru 2011 li jaqra hekk –

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Illi dan ir-rikors qed isir a tenur ta` l-Artikolu 218(1)(a) tal-Att dwar il-Kumpanniji, Kapitolu 386 tal-Ligijiet ta` Malta ;

Illi l-kumpannija rikorrenti Melita Gaming Group Limited (C39772) giet kostitwita fis-19 ta` Ottubru, 2006 (Dokument "MGG1"). L-azzjonisti tal-kumpannija rikorrenti MelitaGamingGroup Limited (C39772) huma mnizzlin fid-Dokument MGG 2 (Dokument "MGG2") ;

Illi l-istatut tal-kumpannija rikorrenti qed jigi anness ma` dan ir-rikors u mmarkata Dok "MGG3";

Illi fit-2 ta` Mejju 2011 saret laqgha straordinarja ta` l-azzjonisti tal-kumpannija rikorrenti fejn ittiehdet risoluzzjoni straordinarja tax-shareholders (Dokument "MGG4"), fejn filwaqt illi gie nnutat illi s-sussidjarji tal-kumpannija rikorrenti ma jistghux ikomplu joperaw ghaliex m`humix f`qaghda finanzjarja li jippermettilhom li jhallsu d-djun taghhom kif ukoll ghaliex huma sprovvisi minn direttur u company secretary u ma tista` ssib lil hadd illi jaqdi dawn il-funzjonijiet, ghaldaqstant ma hemmx izjed skop li l-kumpannija rikorrenti tibqa` topera u gie deciz unanimament illi l-kumpannija ghandha tigi stralcjata u xolta minn din l-Onorabbli Qorti a tenur ta` l-Artikolu 214(1)(a) tal-Kap. 386;

Ghaldaqstant, u in vista tas-suespost, il-kumpannija rikorrenti titlob bir-rispett illi dina l-Onorabbli Qorti joghgobha tordna illi l-kumpannija MelitaGamingGroup Limited (C39772) tigi xolta u konsegwentement stralcjata minn dina l-Onorabbli Qorti stess u dan abbazi ta` l-Artikolu 214(1)(a) tal-Kapitolu 386 tal-Ligijiet ta` Malta.

Rat id-dokumenti li kienu esebiti mar-rikors.

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Rat id-digriet taghha tal-15 ta` Settembru 2011.

Rat in-nota b`dokumenti esebiti mill-kumpannija rikorrenti wara d-digriet taghha tal-15 ta` Settembru 2011.

Rat id-dikjarazzjoni solenni ta` Victor Martyn li kienet ipprezentata fl-atti tal-kawza fl-ismijiet *Melita Gaming Network Limited (C34432) vs X (Rikors Nru. 865/2011)* u fl-atti tal-kawza fl-ismijiet *TrueMoneyGames.netLimited (C41488) kontra X (Rikors Nru. 864/11 JZM)* li huma pendententi quddiem din il-Qorti kif presjeduta u li huma relatati mal-kawza tal-lum.

Rat id-digriet taghha tal-15 ta` Settembru 2011.

Rat in-nota li permezz taghha kienu prezentati dokumenti wara d-digriet ta` din il-Qorti tal-15 ta` Settembru 2011.

Rat il-verbal tal-udjenza tas-16 ta` Jannar 2012.

Rat id-digriet taghha moghti f`dik l-udjenza fejn halliet il-kawza ghal provvediment ghal-lum.

Ikkunsidrat :

II. Dritt

Bil-procedura tal-lum, il-kumpannija rikorrenti qeghda titlob lil din il-Qorti sabiex tordna x-xoljiment u l-stralc konsegwenzjali taghha skond l-**Art.214(1) (a) tal-Kap.386** tal-Ligijiet ta' Malta.

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Id-disposizzjoni li fuqha qeghda tistrieħ il-kumpannija rikorrenti taqra hekk –

Kumpannija xxolji u konsegwentement tigi stralcjata fil-kazijiet li gejjin –

...
(a) *il-kumpannija tirisolvi b`rizoluzzjoni straordinarja li l-kumpannija ghandha xxolji u tkun stralcjata mill-qorti ;*

Il-kumpannija rikorrenti qeghda tghid li ghandha *locus standi* f`dan il-procediment abbazi tal-**Art.218(1)(a)** tal-**Kap.386** li jaqra hekk –

Talba lill-qorti (aktar `il quddiem imsejha "rikors ghal stralc") ghal –

(a) *stralc ta` kumpannija mill-qorti skond l-artikolu 214(1)(a)*

...
ghandha ssir b`rikors li jista` jsir jew mill-kumpannija wara decizjoni tal-laqgha generali jew mill-bord tad-diretturi taghha jew minn xi detentur ta` obligazzjoni, kreditur jew kredituri, jew minn xi kontributorju jew kontributorji ...

Fil-kaz tal-lum, hija l-kumpannija **stess** illi qeghda tipprezenta r-rikors wara risoluzzjoni straordinarja illi ghaddiet f`laqgha generali straordinarja tal-azzjonisti tal-kumpannija li saret fit-2 ta` Mejju 2011 (Dok MGG4)..

Kif jirrizulta mir-referta a tergo ta` fol 41 tal-process, ir-Registratur tal-Kumpanniji kien notifikat b`kopja tar-rikors promotur skond l-**Art.218(8)** tal-Kap.386.

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L-**Art.214** tal-Kap.386 jirregola x-xoljiment u l-istralc ta' kumpanniji.

Issa hemm kazi specifiki fil-ligi stess fejn xoljiment u stralc **ghandhom (shall)** jigu ordnati, u ohrajn fejn xoljiment u stralc **jistghu (may)** jigu ordnati.

Il-kazi fejn topera s-**shall** huma dawk indikati fil-paragrafi (a) u (b) tas-subinciz (1) tal-Art.214.

Fil-kaz tal-lum, il-kumpannija rikorrenti qeghda tistrieħ fuq dak li jipprospetta l-paragrafu (a) u cioe' x-xoljiment u stralc mill-qorti.

Dan qieghed jinghad ghaliex l-unika differenza bejn l-(a) u (b) tas-subinciz (1) tal-Art.214 hija li filwaqt li fl-(a) ir-risoluzzjoni straordinarja tghid li x-xoljiment u stralc ghandu jsir mill-qorti, fil-kaz tal-(b) ir-risoluzzjoni straordinarja tghid li x-xoljiment u stralc ghandu jsir volontarjament.

Issa l-kazi fejn topera il-**may** huma dawk indikati fis-subparagrafi (i) u (ii) tal-paragrafu (a) tas-subinciz (2) tal-Art.214. Ir-rikorrenti mhix taghmel talba skond dawn id-disposizzjonijiet.

Is-**shall** topera wkoll (din il-Qorti tghid **b`riserva**) fil-kazi indikati fil-paragrafi (i) sa (iv) tal-paragrafu (b) tas-subinciz (2) tal-istess Art.214. Din il-Qorti taghmel riserva ghar-raguni li l-Art.214(2)(b) jitellem **biss** dwar xoljiment mhux ukoll dwar l-stralc fl-erba' kazi hemm specifiki. Dan huwa hekk ghax b`effett tal-Art.214(3) **l-istralc** huwa diskrezzjoni tal-qorti f`dawk l-erba' kazi.

Ilkunsidrat :

III. Risultanzi

Mill-provi akkwiziti, jirrizulta l-kumpannija rikorrenti giet registrata bin-Nru.C39772 b`dak l-isem fid-19 ta` Ottubru 2006 (Dok MGG1).

Mill-atti socjetarji ufficjali (Dok MGG3) jirrizulta li *the main object for which the Company is established is : (1) to own, acquire, transfer, assign, grant rights over, hold, develop, manage and administer in the most ample manner, moveable and immoveable propert situated outside Malta, inclusind shares, stock, debentures, monies and other assets.*

Skond Dok MGG2, id-diretturi tal-kumpannija kienu Victor-Alexander Michael Martyn u Oliver Tschunke.

Skond l-istess dokument, hemm tlieta u ghoxrin (23) azzjonista. *Is-share capital huwa divided into Ordinary Shares, Special Ordinary Shares and Preference A Shares, Preference B Shares, Preference C Shares, Preference D Shares and Preference E Shares.*

Fil-memorandum tal-kumpannija, hemm lista shiha u dettaljata tal-azzjonisti u possessuri tal-*issued share capital* tal-kumpannija.

Jirrizulta li fit-2 ta` Mejju 2011 saret laqgha generali straordinarja ta` l-kumpannija. Kif jider mill-minuti esebiti (Dok MGG4) Victor Martyn deher ghal 81.88% tal-azzjonisti.

Kien deciz hekk –

It was **resolved** by 81.88% of the shareholders voting in favour and no shareholders voting against that the Company's subsidiaries, namely TruemoneyGames.net Limited, Melita Gaming Network Limited and Playmaker AG (hereinafter referred to as the « Subsidiaries ») cannot continue their business, and that it is accordingly in the best interest thereof to dissolve and consequently wind up the Subsidiaries by means of a court winding up.

Resolved that after the Subsidiaries have been put into dissolution, the Company itself will be put, and it is hereby resolved that it will be put into dissolution and consequent winding up in terms of Article 214(1)(a) of the Companies Act.

Resolved to nominate the Company to sit as Corporate Director of TruemoneyGames.net Limited (C-41488) and Melita Gaming Network Limited (C-34432) (hereinafter referred to as 'the Maltese Subsidiaries') for the purposes of filing the necessary judicial proceedings in relation to the dissolution and consequential winding up of the Maltese Subsidiaries in terms of Article 214(1)(a) of the Companies Act (Chapter 386 of the Laws of Malta).

Fir-risoluzzjoni kienet indikata r-raguni ghala kien deciz li l-kumpannija rikorrenti tkun xjolta u stralcjata mill-qorti –

... once the Subsidiaries of the Company have been wound up there is no further scope for the existence of the Company and effectively it would have no further business to conduct and accordingly it was in the best interest of all concerned that this Company also be wound up by the Court.

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Skond Klawsola 38A tal-Articles of Association tal-kumpannija *the following decisions shall only be taken by the Company by extraordinary resolution (i) the liquidation, dissolution or winding up of the Company.*

Extraordinary Resolutions huma regolati bil-klawsola 18 tal-Articles of Association li taqra hekk -

A resolution shall be an extraordinary resolution where –

(a) it has been taken at a general meeting of which notice specifying the intention to propose the text of the resolution as an Extraordinary Resolution and the principal purpose thereof has been duly given ; and

(b) it has been passed by a number of shareholders having the right to attend and vote at any such meeting holding in the aggregate not less than 77% in the nominal value of the shares represented and entitled to vote at the meeting.

Abbazi ta` l-atti akkwiziti jirrizulta li r-risoluzzjoni li ttiehdet fil-laqgha generali straordinarja tat-2 ta` Mejju 2011 kienet skond l-istatut tal-kumpannija.

Kienu esebiti l-ahhar *report and financial statements* tal-kumpannija rikorrenti ghas-sena li ghalqet fil-31 ta` Dicembru 2009 (Dok MGG5)

Mid-*Directors` Report* (fol 48) jirrizulta li *the principal activity of the company is that of an Investment Holding Company. Kif ukoll illi during the year under review, the Company registered a loss after taxation amounting to €20,306. (fol 58). Fir-rapport tieghu l-awditur Stefan Bonello Ghio (fol 49) ighid illi the financial statements give a true and fair view of the financial position of MelitaGamingGroupLimited as at 31st December 2009.*

Fid-dikjarazzjoni tieghu fuq riferita, Victor Martyn jixhed illi fl-2009 huwa ghamel investiment fil-kumpannija rikorrenti li ghandha l-ishma kollha (hliet wahda) tal-kumpannija Melita Gaming Network Limited (C34432) u tal-kumpannija TrueMoneyGames.net Limited (C41488). Qieghed jintalab ix-xoljiment u stralc ta` dawn iz-zewg kumpanniji fi proceduri separati li huma pendenti wkoll quddiem din il-Qorti kif presjeduta. Qabel dak l-investiment tieghu, huwa la kien involut fil-kumpannija MelitaGamingGroupLimited u lanqas fil-kumpannija sussidjarji taghha. Meta huwa ghamel l-investiment tieghu, kien diga` qed isir telf ta` flus. Huwa kien gie konvint illi bl-investiment tieghu u ta` haddiehor fil-MelitaGamingGroupLimited in-negozju seta` jaqleb ghall-profitt fi zmien sentejn. Il-pjan pero` ma kienx success ghax it-telf kompli. Fil-bidu tal-2011, kien infurmat li l-operat tal-kumpannija u tas-sussidjarji taghha kien jehtieg injezzjoni ta` aktar flus. Fi Frar 2011 saret laqgħa tal-azzjonisti fejn qablu li ma jkunx hemm aktar investiment ta` fondi godda u l-Managing Director tal-Group, li kien Trevor Ellis, ingħata struzzjonijiet sabiex jiehu *the necessary steps towards the winding up and/or sale of part or all of the assets of the group companies or the sale of the companies themselves*. Baqa` pero` ma sar xejn ghaliex Trevor Ellis irrizenja minn direttur tal-kumpanniji kollha. Kien l-uniku direttur u kien imexxi kollox hu. Meta telaq, ma ta handover lil hadd. Bil-konsegwenza li n-negozju tal-kumpannija spicca bla tmexxija ghaliex hadd mill-azzjonisti ma ried jassumi t-tmexxija meqjus l-istat finanzjarju prekarju tal-kumpanniji. Huwa talab direzzjoni minghand is-Segretarju tal-kumpanniji li kien l-Av. Christian Farrugia li infurmah li anke hu ma kienx thallas tad-drittijiet għall-prestazzjonijiet tieghu. Fil-fatt Dr. Farrugia irrizenja minn Segretarju. fis-17 ta` Marzu 2011. Bl-istat tan-negozju tal-kumpanniji kif kien, u cioe` għaddej bit-telf, mingħajr tmexxija, mingħajr direttur, u mingħajr segretarju, il-parir li kellu kien li jipprocedi ghax-xoljiment u l-istralc tal-kumpanniji.

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In vista tal-premess, din il-Qorti qeghda ttiprovdi dwar it-talba tal-kumpanija rikorrenti kif gej

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1) Tiddikjara li l-kumpanija rikorrenti ottemperat ruhha ma` l-Art.214(1)(a) tal-Kap.386 tal-Ligijiet ta` Malta.

2) Tordna x-xoljiment u l-istralc tal-kumpanija MelitaGamingGroup Limited (C39772) b`effett mit-2 ta` Mejju 2011 kif ighid it-tieni proviso tal-Art.223(1) tal-Kap.386.

3) Tahtar lill-Avukat Dottor Peter Fenech bhala stralcjarju bis-setghat u d-dmirijiet kif huma definiti fil-Kap.386.

4) L-ispejjez jithallsu mill-kumpanija rikorrenti.

< Sentenza Finali >

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