

Kopja Informali ta' Sentenza



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON**

Seduta tas-6 ta' Gunju, 2013

Rikors Numru. 1070/2012

5050 Poker Limited (C41097)

kontra

X

II-Qorti :

I. Preliminari

Rat ir-rikors ta` l-kumpanija 5050 Poker Limited (C41097) [“ir-rikorrenti”] li kien ipprezentat fil-25 ta` Ottubru 2012 li jaqra hekk –

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Illi s-socjeta` rikorrenti giet kostitwita fl-4 ta` April 2007 taht il-Ligijiet ta` Malta u ghadha hekk ikkostitwita sal-gurnata tal-lum ;

Illi s-socjeta` rikorrenti otteniet licenzja mil-Lotteries and Gaming Authority sabiex tkun tista` tiggstixxi l-attivita` ekonomika taghha bhala operatur tal-loghob ta` online gaming u ggestiet din l-attivita` ghal dawn l-ahhar hames snin ;

Illi madanakollu, ghal tul ta` zmien, l-operational costs tas-socjeta` rikorrenti kienu akbar mill-qliegħ taghha bir-rizultat illi l-fondi allokatu għall-gokaturi kienu qegħdin jintuzaw biex ikopru l-operazzjonijiet tas-socjeta` rikorrenti ;

Illi flimkien ma` dawn id-diffikultajiet ekonomici, socjeta` ta` terzi li kienet tipprovdi servizzi lis-socjeta` rikorrenti zbankat l-ammont ta` €150,000 mill-kont bankarju tat-tip "players` account" tas-socjeta` rikorrenti liema ammont huwa rapprezentanti ta` danni li allegatament sofrew, liema zbank kompli jaggrava s-sitwazzjoni finanzjarja tas-socjeta` rikorrenti ;

Illi fid-dawl tas-suespost, is-socjeta` rikorrenti giet rinfaccjata b`sitwazzjoni fejn ma tistax tkompli topera l-attivita` ekonomika taghha stante li qeghda f`sitwazzjoni ta` insolvenza ;

Illi llum il-gurnata, is-socjeta` m`ghadhiex tiggstixxi l-operazzjonijiet taghha u l-licenza mogħtija mil-Lotteries and Gaming Authority giet revokata

Illi f`Lulju 2012, is-socjeta` rikorrenti ghaddiet rizoluzzjoni straordinarja fejn gie deciz illi ghandha xxolji u tkun stralcjata mill-Qorti a tenur ta` l-Artikolu 214(1)(a) tal-

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Kap 386 tal-Ligijiet ta` Malta, liema rizzoluzzjoni qed tigi hawn annessa u mmarkata bhala "Dok A";

Ghaldaqstant is-socjeta` rikorrenti ghar-ragunijiet sopra elenkati titlob lil dina l-Onorabbli Qorti joghghobha :

1) *Tiddikjara x-xoljiment tas-socjeta` 5050 Poker Limited ;*

2) *Tipprocedi bl-istralc tas-socjeta` 5050 Poker Limited ;*

3) *Tappunta stralcjarju jew amministratur provvizorju ai termini tal-Artikolu 237 tal-Kap 386 tal-Ligijiet ta` Malta sabiex jiehu l-amministrazzjoni tal-beni f`idejh ;*

4) *Taghti kull provvediment iehor xieraq u opportun.*

Rat id-dokument li kien esebit mar-rikors promotorju.

Rat id-digriet taghha tat-8 ta` Novembru 2012.

Rat in-nota b`dokumenti li r-rikorrenti pprezentat fil-5 ta` Marzu 2013.

Rat id-digriet taghha tal-14 ta` Marzu 2013 fejn appuntat ir-rikors ghas-smigh ghall-udjenza tas-26 ta` Marzu 2013.

Rat il-verbal tal-udjenza tas-26 ta` Marzu 2013.

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Rat in-nota b`dokumenti li l-kumpannija rikorrenti pprezentat fl-24 ta` April 2013.

Semghet ix-xiehda tal-Av. Dr. Leonard Caruana fl-udjenza tad-9 ta` Meju 2013.

Rat id-digriet taghha moghti f`din l-udjenza tal-ahhar fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti ta` dan il-procediment.

Ikkunsidrat :

II. Dritt

Bil-procediment tal-lum, ir-rikorrenti qeghda titlob lil din il-Qorti sabiex tordna x-xoljiment u l-istralc taghha. Iddikjarat illi ressqet l-istanza taghha abbazi tal-**Art.214(1)(a) tal-Kap 386.**

Din id-disposizzjoni trid tingara flimkien mal-**Art 218(1)(a) tal-Kap 386.**

L-**Art.218(1)(a) tal-Kap.386** ighid 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-laqgħa generali jew mill-bord tad-diretturi tagħha jew minn xi detentur ta' obligazzjoni,*

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kreditur jew kredituri, jew minn xi kontributorju jew kontributorji.

Fil-kaz tal-lum, il-procediment kien inizjat mill-**kumpanija stess**.

L-**Art.214(1)(a) tal-Kap.386** jaqra hekk –

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

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

Mela b`riferenza ghat-talba tar-rikorrenti kif dedotta, fil-kaz illi din il-Qorti tiddeciedi illi tordna l-istralc, dik l-ordni tkun **preceduta** mill-ordni ta` xoljiment.

*Mar-rikors promotorju kienu esebiti bhala Dok A l-
minutes of the General Meeting of the Company held on
the 10th September 2012 ... wherein the present
Extraordinary Resolution was passed in terms of Article
135 of the Companies Act.*

Ir-risoluzzjoni taqra hekk –

*Whereas the Company has an issued share capital
of 40,000 shares, having a nominal value of €1.00 per
share and which are 100% fully paid up ;*

*Whereas 5050 Poker Holding AB, a limited liability
company registered in Sweden, registration number
556723-2573, having its registered address BOX 2155,
Goteborg 40313, Sweden, holds in aggregate 39,999
shares out of the issued share capital, thus establishing*

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the quórum required in terms of Article 19 of the Articles of Association of the said company ;

Whereas the Company has been facing financial difficulties over a prolonged period of time and does not have enough assets to cover its liabilities ;

Whereas there is no foreseeable prospect of improvement in the financial situation of the Company ;

The Company has resolved as follows :-

That the Company be immediately dissolved and consequently wound up by the Courts of Malta in accordance with Chap 386 of the Laws of Malta ;

To appoint Dr. Leonard Caruana, holder of Maltese Identity Card No. 429680M of 29, Clarence Street, Msida, to assist and represent the Company in the initiation of the judicial procedure in connection with the winding up by the Courts of Malta.

Ir-risoluzzjoni ggib il-firma ta` erba` diretturi li jirraprezentaw lill-kumpannija estera Poker Holding AB.

Fit-13 ta` Novembru 2012, ir-Registratur tal-Kumpanniji kien notifikat b`kopja tar-rikors promotur skond l-**Art.218(8)** tal-Kap.386 (ara tergo ta` fol 5).

Intbaghat ukoll lir-Registratur tal-Kumpanniji l-avviz tar-risoluzzjoni fuq referita kif rikjest mill-**Art 265(1)** tal-Kap 386 (ara fol 41).

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

Issa hemm kazi specifickati 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, it-talba qeghda ssir 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 qeghda taghmel talba skond dawn id-disposizzjonijiet.

Ghalkemm mhuwix il-kaz tal-lum, 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) jittellem **biss** dwar xoljiment mhux ukoll dwar l-stralc fl-erba` kazi hemm specifickati. Dan huwa hekk ghax b`effett tal-Art.214(3) **l-istralc** huwa diskrezzjoni tal-qorti f`dawk l-erba` kazi.

Ikkunsidrat :

III. Risultanzi

Skond Dok A a fol 4, ir-risoluzzjoni straordinarja tal-10 ta' Settembru 2012 għaddiet bil-vot tal-kumpannija 5050 Poker Holding AB. Skond l-istess risoluzzjoni, huwa dikjarat illi din il-kumpannija tippossjedi 39,999 –il sehem tal-*issued share capital* ta' 5050 Poker Limited.

Kien ipprezentat l-istatut ta' 5050 Poker Limited (fol 15 et seq). Jirrizulta mill-*Memorandum of Association* (fol 29) illi mill-*issued share capital* (li huwa l-istess bhall-*authorised share capital*) ta' 40,000 *ordinary share* ta' €1 kull sehem, *fully paid up*, l-għadd ta' 39,999 –il sehem jappartjeni lis-socjeta' estera Goldcup D2689 AB. Fil-paragrafu 19 ta' l-*Articles of Association* (fol 34) jinghad imbagħad illi *an extraordinary resolution of the company shall be deemed to have been validly adopted if consented to by a member or members holding in aggregate not less than seventy five per cent (75%) of the issued shares having votiong rights.*

Limitatament fuq l-iskorta ta' dawn l-atti, jidher *prima facie* illi r-risoluzzjoni straordinarja de qua għaddiet bil-vot ta' kumpannija bl-isem ta' 5050 Poker Holding AB bhala l-azzjonista ta' maggoranza filwaqt illi l-*Memorandum* prezentat man-nota tar-rikorrenti tal-5 ta' Marzu 2013 juri li l-azzjonista ta' maggoranza hija Goldcup D2689 AB.

Fl-affidavit tieghu tas-27 ta' Frar 2013 (fol 39) Patrick Sjogren jixhed hekk –

*The company 5050 Poker (hereinafter referred to as 'the company') was constituted on the 4th April 2007 by and between Goldcuip D2689 AB and 5050peker SA as shareholders, registered respectively in Sweden and Luxembourg. **Today Goldcup Holding AB is no longer***

a shareholder. *Instead there is 5050 Poker Holding AB of which I was for some time the Chief Executive Officer. Today I am no longer involved in 5050 Poker Holding AB. (enfasi u sottolinear ta` din il-qorti).*

Fl-udjenza tas-26 ta` Marzu 2013, din il-Qorti gabet dawn il-fatti ghall-attenzjoni ta` Dr Leonard Caruana, difensur tar-rikorrenti, sabiex jirregola ruhu.

Permezz ta` nota tal-24 ta` April 2013, ir-rikorrenti pprezentat dokumenti ntizi sabiex titwarrab kull diffikulta`.

Jirrizulta mid-dokument a fol 47 illi fis-26 ta` Gunju 2009, ir-rikorrenti kitbet lir-Registratur tal-Kumpanniji biex tinfurmah illi *the major shareholder of 5050 Poker Limited has changed its name from Goldcup D 2689 AB to 5050 Holding AB*. Mal-ittra, kienet annessa kopja ta` *the certificate of good standing*.

Fit-23 ta` April 2013 ir-Registratur tal-Kumpanniji (fol 53) iccertifika illi skond ir-records tieghu *the shareholders* ta` 5050 Poker Ltd huma 5050 Poker Holding AB (39,999 Ordinary Shares of Eur 1 each) u 5050 Poker SA (1 Ordinary Share).

Ghalkemm *jidher* illi dik ipprezentata a fol 14 et seq mhijiex kopja aggornata tal-*Memorandum* u tal-*Articles* tar-rikorrenti, din il-Qorti, fuq l-iskorta tad-dokument a fol 53, kif ukoll tal-konferma bil-gurament da parti ta` Dr Leonard Caruana, hija sodisfatta illi dan kien biss kaz ta` *change of name* tal-azzjonista ta` maggoranza tar-rikorrenti mhux trasferiment ta` ishma. L-azzjonista in kwistjoni baqa` l-istess wiehed bl-istess numru ta` ishma fil-pussess tieghi. Kwindi din il-Qorti hija sodisfatta bil-validita` ghall-finijiet u effetti kollha tal-ligi tar-rizoluzzjoni straordinarja tal-10 ta` Settembru 2012.

In kwantu ghar-ragunijiet illi wasslu lir-rikorrenti biex tadotta dik ir-risoluzzjoni straordinarja, dawn jirrizultaw fil-korp tar-rikors u huma mfissra b`mod preciz u f`aktar dettall fl-affidavits ta` Tamara Naudi (fol 38) u ta` Patrick Sjogren (fol 39). Ir-rikorrenti topera *online gaming* b`licenza mahruga mil-Lotteries and Gaming Authority. Irrizulta li r-rikorrenti kienet inkarikat lil kumpannija ohra bl-isem ta` Microgaming MG *to process payments that would have been effected by company`s clients in playing on the company`s website*. Effettivament din is-socjeta` terza kienet tikkontrolla d-dhul tal-flus. Gara li din is-socjeta` terza *shut down its services and consequently the company could not operate any longer because it was unable to pay the winnings that its clients had won*. Id-decizjoni tas-socjeta` terza gabet fix-xejn l-attivita` tar-rikorrenti. In segwitu l-licenza tar-rikorrenti kienet irtirata mill-Awtorita`. Abbazi ta` dan l-assjem ta` fatti u cirkostanzi, hekk kif migbur fil-qosor, huwa evidenti li l-attivita` ekonomika tar-rikorrenti hija wieqfa, mhijex f`qaghda li thallas id-djun taghha u kwindi x-xoljiment u l-istralc taghha abbazi tar-risoluzzjoni straordinarja fuq riferita huwa *un percorso obbligato*.

In vista tal-premess, din il-Qorti qeghda –

Fl-ewwel lok, tiddisponi mill-ewwel u mit-tieni talbiet tal-kumpannija rikorrenti, billi bl-applikazzjoni tal-Art.218(1)(a) u l-Art.214(1)(a) tal-Kap.386 tal-Ligijiet ta` Malta, tordna x-xoljiment u l-istralc tal-istess kumpannija rikorrenti 5050 Poker Limited (C41097), b`effett mill-10 ta` Settembru 2012, skond it-tieni proviso tal-Art.223(1) tal-Kap.386.

Fit-tieni lok, tilqa` t-tielet talba u tahtar lill-Avukat Dottor Peter Fenech bhala stralcjarju bis-setghat u bid-dmirijiet kollha kif huma definiti fil-Kap.386 tal-Ligijiet ta` Malta.

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Fit-tielet lok, tordna li l-ispejjez kollha jithallsu mir-rikorrenti.

< Sentenza Finali >

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