MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON

Seduta tal-11 ta' Lulju, 2013

Rikors Numru. 313/2013

Fl-atti tar-rikors ta` V.J. Salomone Limited (C712) u ta` S.G. Solutions Limited (C5521) bin-numru 313/2013 JZM

Il-Qorti :

Rat ir-rikors tat-3 ta` April 2013 fejn V.J. Salomone Limited u S.G. Solutions Limited ippremettew hekk –

1. Illi s-socjetajiet rikorrenti huma azzjonisti fis-socjeta` Frigoserv Limited (C24440) u ghandhom l-azzjonijiet murija kontra isimhom fid-Dokument A.

2. Illi fl-istess Dokument A jidher l-isem t`azzjonista iehor Andrew Bugeja.

3. Illi Andrew Bugeja gie nieqes madwar tlett (3) snin ilu u l-eredi tieghu (ignoti ghall-esponenti) ma hadux il-passi necessarji biex jigu registrati bhala azzjonisti u jinnominaw direttur iehor floku.

4. Illi s-socjeta` Frigoserv Limited waqfet tinnegozja xi sitt (6) snin ilu tul liema l-ispejjez necessarji (bhal hlas lill-uditur, flus pagabbli lill-MFSA u spejjez ohra affini) gew inkorsi mis-socjetajiet rikorrenti.

5. Illi s-socjetajiet rikorrenti, azzjonisti kif diga nghad fl-imsemmija socjeta` Frigoserv Limited jixtiequ jipprocedu ghax-xoljiment taghha peress illi ma hemmx skop illi tibqa` registrata.

6. Illi sabiex isir dan hemm bzonn illi tissejjah Laqgha Generali Straordinarja ta` Frigoserv Limited kif rikjest mill-Artikolu 5.I.(c) iii pagna disgha (9) tal-Articles of Association – Dokument B.

7. Illi kull laqgha generali ta` kwalsiasi socjeta` kemm ordinarja jew straordinarja tissejjah mill-Bord tad-Diretturi taghha.

8. Illi kull direttur ghandu dritt illi jsejjah jew jitlob illi tissejjah laqgha tal-Bord tad-Diretturi sabiex imbaghad il-Bord jipprocedi biex isejjah Laqgha Generali Straordinarja. Fil-kaz ta` Frigoserv ikun inutili li jsir dan peress illi l-Artikolu 6.E. tal-Articles of Association pagna 10 tad-Dokument B jistipula espressament illi sabiex ikun hemm quorum iridu jkunu prezenti direttur mahtur mill-azzjonisti A u iehor mill-azzjonisti B u bil-mewt ta` Andrew Bugeja peress illi ma giex nominat direttur iehor biex jirrapprezenta l-azzjonisti B il-laqgha ma tistax issir.

9. Illi ghar-ragunijiet fuq esposti r-rikorrenti ma ghandhomx triq ohra hlief illi jadixxu dina l-Qorti a tenur tal-Artikolu 132(1) tal-Ligi dwar il-Kumpanniji.

10. Ghaldaqstant ir-rikorrenti jitolbu bir-rispett kollha illi dina l-Qorti joghgobha tordna illi ssir Laqgha Generali Straordinarja tas-socjeta` Frigoserv Limited b`item wiehed fuq l-agenda cioe` "the dissolution of the company and the appointment of a liquidator", tiffissa l-jum, hin u lok ghal dan l-iskop, tordna illi tali laqgha ssir indipendentement minn numru ta` membri presenti u jekk ikun il-kaz tipprovdi ulterjorment fl-isfond tal-precitat artikolu 132(1) salv kull provvediment illi joghgobha taghti.

Rat id-dokumenti li kienu esebiti mar-rikors.

Rat id-digriet taghha tat-18 ta` April 2013 (fol 17) fejn *inter alia* r-rikors kien appuntat ghas-smigh ghall-udjenza tal-Hamis 30 ta` Mejju 2013 fin-12.30 p.m.

Rat illi wara talba tar-rikorrenti, is-smigh tar-rikors kien differit ghall-Hamis 13 ta` Gunju 2013 fis-1.00 p.m.

Rat illi r-rikorrenti ottemperaw ruhhom mad-digriet tat-18 ta` April 2013 u d-digriet taghha tat-30 ta` Mejju 2013 (fol 21) billi ppubblikaw id-digriet innifsu u data tas-smigh tal-Hamis 13 ta` Gunju 2013 fis-01.00 p.m. f`zewg gazzetti li johorgu kuljum : wiehed bil-Malti u l-iehor bl-Ingliz.

Semghet ix-xiehda tal-Av. Albert Grech fl-udjenza tat-13 ta` Gunju 2013.

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

Rat l-atti.

Ikkunsidrat :

<u>L-Av. Albert Grech</u> xehed illi huwa direttur u chairperson ta` V. J. Salomone Limited. Din is-socjeta` hija *a holding company* u hija s-sid ta' diversi mmobbli fejn takkomoda is-sussidjarji taghha : fosthom V. J. Salomone Pharma Limited, V. J. Salomone Consumer Lines Limited, V. J. Salomone Marketing Limited. Ghandha wkoll interessi f' diversi socjetajiet, fosthom il-kumpannija Frigoserv Limited. L-azzjonisti ta` din tal-ahhar huma V. J. Salomone Limited u Andrew Bugeja. Madwar hames snin ilu, ghalkemm ghal xi zmien is-socjeta` kienet sejra tajjeb, kien deciz, minhabba diversi cirkostanzi, illi ma kienx hemm skop ghaliha u allura kien deciz illi jieqfu bl-operazzjonijiet.

Dr Grech kompla jixhed illi kien sar inkontru ma` Andrew Bugeja fejn kien hemm qbil illi huwa jittrasferixxi l-ishma li kellu bil-kondizzjoni illi l-azzjonista l-ohra V. J. Salomone Limited tiehu fuqha l-obbligu illi taghmel il-financial statements tal-kumpannija, u r-returns tal-income tax, sakemm jasal iz-zmien illi ttiehed id-decizjoni biex il-kumpannija tigi likwidata. Bejn Andrew Bugeja u l-mara tieghu, kien hemm proceduri ta` separazzjoni personali. Huwa kiteb lill-avukat tal-mara dwar l-opportunita` tal-ftehim dwar it-trasferiment tal-ishma. Ghalkemm kien hemm skambju ta` korrispondenza, l-esitu ma kienx posittiv.

Dr Grech stqarr illi wara li miet Andrew Bugeja, kien hemm skambju ta` ittri mal-avukat li kien qed jidher ghall-

eredi tieghu. Ighid illi baghat lil dan l-avukat kull dokument li kien jehtieg, inkluzi `accounts` u l-korrispondenza. Eppure ma kienx hemm koperazzjoni ghall-unika triq li kienet taghmel sens ghall-kumpannija u cioe` li tkun xjolta u stralcjata. Kien propju ghalhekk illi wara li kiseb l-approvazzjoni tal-bordijiet ta` diretturi tal-kumpanniji rikorrenti illi sar il-procediment tal-lum.

Dr Grech ikkonferma illi skond il-*good standing certificate* rilaxxjat mir-Registru tal-Kumpanniji, Andrew Bugeja kien registrat bhala azzjonista tal-kumpannija in kwistjoni.

Mistoqsi mill-qorti x`ghamlu l-eredi ta` Andrew Bugeja wara l-mewt tieghu, ix-xhud wiegeb illi ma ghamlu propju xejn fejn jirrigwarda l-kumpannija in kwistjoni u cioe` la vis-à-vis d-dipartiment tat-Taxxi Interni, lanqas fir-rigward tar-Registratur tal-Kumpanniji.

Mistoqsi dwar l-effett negattiv illi l-mewt ta` Andrew Bugeja gabet ghall-kumpannija in kwistjoni, ix-xhud wiegeb hekk –

L-effett negattiv huwa semplici, peress illi kif jidhru l-affarijiet illum, ghandi azzjonista li llum mejjet, jien m'iniex f' posizzjoni illi nsejjah laqgha generali ghax ma jkunx hemm il-quorum, allura jien qieghed b'dahri mal- hajt, mela jien qed nitlob lil Qorti li peress li jien ma nafx x' ha naghmel u mhux sew li nibqa' f' din ic-cirkostanza ilni hames snin, jien allura qed nitlob lil Qorti, jien mhux ha naghmel xejn ultravires jien kull ma rrid illi din is-socjeta' tigi likwidata.

Dr Grech kompla jixhed illi kien sar inkontru ma` Andrew Bugeja fejn kien hemm qbil illi huwa jittrasferixxi l-ishma li kellu bil-kondizzjoni illi l-azzjonista l-ohra V. J. Salomone Limited tiehu fuqha l-obbligu illi taghmel il-financial statements tal-kumpannija, u r-returns tal-income

tax, sakemm jasal iz-zmien illi ttiehed id-decizjoni biex il-kumpannija tigi likwidata.

Lejn l-ahhar tad-deposizzjoni tieghu, Dr Grech ikkonferma li l-kumpannija de qua kien ilha dawn l-ahhar hames snin ma taghmel negozju, izda fl-istess waqt kienet kostretta kull sena tinkorri l-ispiza ta` d-drittijiet dovuti lir-Registratur tal-Kumpanniji, oltre l-ispejjez tal-audit.

Ikkunsidrat :

<u>**L-Art 132(1) tal-Kap 386**</u> – citat mir-rikorrenti – jaqra hekk :

Jekk ghal xi raguni ma jkunxrattikabbli li tissejjah laqgha ta` kumpannija bil-mod li bih jistghu jissejhu laqghat tal-kumpannija, jew li jitmexxew il-laqghat ta' dik il-kumpannija bil-mod stabbilit bl-istatut jew b'dan l-Att, il-qorti tista', jew minn rajha jew fuq it-talba ta' xi wahda mill-partijiet fil-procedimenti waqt dawk il-procedimenti jew, fin-nuqqas ta' xi procedimenti, fuq rikors ta' xi direttur tal-kumpannija jew ta' xi membru tal-kumpannija li jkollu dritt jivvota fil-laqgha, tordna li laqgha tal-kumpannija tissejjah, tinzamm u titmexxa b'dak il-mod li l-qorti jidhrilha xieraq, u meta jinghata xi ordni bhal dan, tista' taghti dawk id-direttivi ancillari jew konsegwenzjali li jidhrilha xieraq, inkluza d-direttiva illi membru wiehed tal-kumpannija prezenti personalment jew bi prokura jitqies li jikkostitwixxi laqgha.

Fil-Pag 1045 ta` ***Principles of Maltese Company Law*** (MUP – 2007) Prof Andrew Muscat ighid hekk b`riferenza ghall-Art 132(1) tal-Kap 386 –

General meetings may also, in particular circumstances, be convened, held and conducted as directed by the Civil Court. The court may exercise this power if, for any reason, it is impracticable (i) to call a

meeting of a company in any manner in which meetings of the company may be called or (ii) to conduct the meeting in the manner prescribed by the articles or the Companies Act. ***The court should be entitled to direct that a meeting be held when it is <u>impossible</u> to hold a general meeting because of the persistent absence of a quorum at general meetings*** (enfasi u sottolinear tal-qorti) …

Indeed the legislative provision is designed to empower the court to ensure that meetings are held but not to alter the result that is likely to follow from that meeting.

Where however the provisions of the articles are cynically exploited by some shareholders to block an effective meeting, the court should be able to exercise its powers. The court may exercise its power …on the application of any director of the company or of any member of the company who would be entitled tovote at the meeting. The court may order that the meeting be called, held and conducted in such manner as it thinks fit, and it may, whenever any such order is made, give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy is to be deemed to constitute a meeting.

Din il-Qorti trid tghid illi disposizzjoni simili kienet dik tal-Ordinanza (Art 117). L-iskop ghandu jkun l-ahjar interess tal-kumpannija.

Mid-dokumenti esebiti jirrizulta illi l-kumpannija de qua kellha tliet diretturi : Antoine Galea, Jeremy Salomone u Andrew Bugeja.

L-azzjonisti huma : *V. J. Salomone Ltd : 3749 Ordinary A shares – fully paid up ; Andrew Bugeja : 1250 – Ordinary B shares – fully paid up ; u*

S.G. Solutions Limited – 1 Ordinary A share – fully paid up.

Skond l-istatut tal-kumpannija, jirrizulta li :-

Unless and until otherwise determined by an Extraordinary Resolution of the Company in General Meeting, the affairs of the Company shall be managed and aministered by a Board of Directors to be composed of not less than two and not more than four …

All general meetings other than annual general meetings shall be extraordinary general meetings.

A resolution shall be an extraordinary resolution where :

A it has been taken at a general meeting at which notice specifying the intention to propose the text of the resolution as an extraordinary resolution an dthe principal purpoose thereof has been duly give ; and
B. it has been passed by a member or by a number of members having the right to attend and vote at any such meeting holding alone or, as the case may be in aggregate not less than seventy five per cent in nominal value of the issued paid up ordinary shares conferring that right.

Fil-kaz tal-lum, irrizulta bhala fatt mhux kontradett illi s-socjeta` Frigoserv Limited waqfet tinnegozja ghal madwar sitt snin, bl-ispejjez rikjesti mil-ligi jigu nkorsi mir-rikorrenti (fatt mhux kontradett).

Pruvat huwa l-fatt li wara l-mewt ta` Andrew Bugeja ha ma ha l-post li kellu fil-kumpannija kemm bhala direttur kif ukoll bhala azzjonista.

Il-ligi ma tistax tippremja lil min ma jiehux hsieb ta` hwejgu jew addirittura joqghod inattiv dment li jhallas haddiehor. Ghal din il-Qorti dan mhuwiex accettabbli.

<u>Decide</u>

Wara li hadet kont ta` kollox, din il-Qorti hija tal-fehma li t-talba tar-rikorrenti hija gustifikata u timmerita l-piena konsiderazzjoni taghha.

Din il-qorti qeghda ghalhekk taqta` u tiddeciedi dan il-procediment billi tilqa` t-talba tar-rikorrenti, fil-kwalita` taghhom it-tnejn membri tal-kumpannija Frigoserv Limited, u bl-applikazzjoni tal-Art 132(1) tal-Kap 386, qeghda –

Fl-ewwel lok, tordna illi ssir Laqgha Generali Straordinarja tal-kumpannija Frigoserv Limited b`item wiehed biss fuq l-agenda cioe` "*the dissolution of the company and the appointment of a liquidator*" ;

Fit-tieni lok, tordna illi l-Laqgha Generali Straordinarja ssir nhar il-Hamis 25 ta` Lulju 2013 fid-09.00a.m. fl-ufficcju registrat tal-kumpannija.

Fit-tielet lok, tordna li fil-laqgha li din il-Qorti trid li ssir fid-data u l-hin fuq riferiti, tittiehed decizjoni finali dwar l-*item* tal-agenda tal-laqgha fuq riferita minn dawk il-membri li se jkunu prezenti ghal dik il-laqgha, kemm direttament inkella *by proxy,* u dan bla hsara jew minkejja kull disposizzjoni li hemm inserita fl-istatut tal-kumpannija Frigoserv Limited.

< Sentenza Finali >

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