QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tnejn 31 ta` Ottubru 2016

Kawza Nru. 11
Rik. Nru. 1221/10 JZM

Lonavi Properties Limited, kumpannija registrata f`Cipru permezz tan-numru tar-registrazzjoni 184713, rapprezentata mill-Avukat Dr. Adrian Delia LL.D, bhala l-mandatarju lokali tal-istess socjeta`

kontra

Balkan Power Invest Holding Limited (C-40732), 189/1 The Strand, Gzira, GZR 1024 ;

u

b`digriet tat-13 ta` Jannar 2011 inhatru Dr Henry Antoncich u l-PL Katrina Zammit Cuomo bhala Kuraturi Deputati ghall-

kumpannija intimata Balkan Power Invest Holding Limited (C-40732) ;

u

b`digriet tal-11 ta` April 2011, l-Avukat Dr Paul Micallef Grimaud assuma l-atti tal-kawza fl-isem tas-socjeta` ntimata, liema Avukat Dr Paul Micallef Grimaud, fl-udjenza tal-20 ta` Marzu 2012, iddikjara li l-mandat tieghu kien revokat u ma kellux aktar ir-rapprezentanza tas-socjeta` ntimata ;

u

b`digriet tat-3 ta` Frar 2011 l-kumpannija Cementir Holdings Limited (C-88019) intervjeniet fil-kawza *in statu et terminis*

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors prezentat fil-<u>25 ta` Novembru 2010</u> li jaqra hekk :–

1. Illi s-socjeta` attrici tiddjeni 784 sehem minn total ta` 1600 ishma fi hdan il-kumpannija intimata (vide kopja Memorandum and Articles of Association vigenti li qed jigi hawn anness u mmarkat bhala "Dok.A");

2. Illi l-kumplament tal-ishma, u senjatament 816- il sehem, huma registrati f`isem Cementir Holdings Limited (minn issa `l quddiem maghrufa bhala "Cementir") li wkoll hija kumpannija registrata f`Cipru;

3. Illi ghaldaqstant is-socjeta` esponenti hija azzjonista minoritarja fi hdan il-kumpannija intimata;

4. Illi, anke tramite l-agir ta` Cementir u rapprezentanti u beneficjarji tal-istess, l-agir tas-socjeta` intimata (jew ahjar, in-nuqqas ta` agir taghha) huwa pregudizzjali ghall-interessi tal-esponenti u dan kif ser jigi ampjament spjegat aktar il-quddiem;

5. Illi nfatti, f`dana il-mument, is-socjeta` intimata la ghandha direttur u lanqas rapprezentanti legali u gudizzjarji u dana stante illi d-direttur Alexander Frendo rrizenja in segwitu ta` digriet li laqa` provvizorjament it-talba tal-esponenti ghall-hrug ta` mandat ta` inibizzjoni (vide kopji tal-ittra ta` rizenja u tal-form K relattiva li qed jigu hawn annessi u mmarkata bhala "Dok. B" u "Dok. C" rispettivament);

6. Illi l-fatti in breve huma s-segwenti:

i) Illi l-kumpannija intimata twaqqfet nhar is-6 ta` Frar 2007 u giet originarjament registrata taht l-isem Rallye Limited (vide kopja tal-Memorandum and Articles of Association originali li qed jigu hawn annessi u mmarkati bhala "Dok. D";

ii) Illi l-ewwel azzjonisti ta` din il-kumpannija intimata kienu l-kumpanniji Ciprijotti Sentono Limited u Paramac Limited bi tminn mitt (800) sehem kull wahda ;

iii) Illi permezz ta` tliet trasferimenti datati 30 ta` Marzu 2007, Paramac Limited ttrasferiet 800 sehem lil Cementir (vide kopja tal-Form T relattiva li qed tigi hawn annessa u mmarkata bhala "Dok. E"), Sentono Limited ttrasferiet 16-il sehem lil Cementir (u senjatament l-azzjonist maggoritarju prezenti) (vide kopja tal-Form T relattiva li qed tigi hawn annessa u mmarkata bhala "Dok. F") u l-istess Sentono Limited ttrasferiet ir-rimanenti 784 sehem lis-socjeta` esponenti (vide kopja tal-Form T relattiva li qed tigi hawn annessa u mmarkata bhala "Dok. G");

iv) Illi dan sar in segwitu ghall-ftehim raggunt bejn is-socjeta` esponenti u s-socjeta` azzjonista l-ohra fi hdan is-socjeta` intimata u

senjatament Cementir, u dana meta l-beneficcjarji ta` Cementir u senjatament is-Sur Bjorn Ahlman u s-Sur Kristian Melnyk, it-tnejn Svedizi, issuggerew lill-beneficjarju tas-socjeta` esponenti, u senjatament is-Sur Erik Andren, sabiex is-socjeta` esponenti tinvesti 49% ta` progett ghall-bini ta` impjant ta` generazzjoni tal-energija elettrika mir-rih (wind power plant), b`dan illi s-socjeta` esponenti jkollha 49% tal-ishma tas-socjeta` intimata li kienet ser tkun ultimament responsabbli ghall-progett de quo;

v) Illi mbaghad, b`effett mill-20 ta` Mejju 2008 irrizenjaw id-diretturi tal-kumpannija li dak iz-zmien kienu Giannoula Markantoni u Marianna Toumazou (it-tnejn detenturi ta` passaporti Ciprijotti) u minflokhom inhatar Alexander Frendo ta` Consulco International Ltd (minn issa `l quddiem maghrufa bhala "Consulco") (vide kopja tal-Form K relattiva li qed tigi hawn annessa u mmarkat bhala "Dok. H");

vi) Illi Alexander Frendo nhatar in segwitu ta` ftehim iffirmat bejn is-socjeta` esponenti u Consulco, liema ftehim jistabbilixxi illi d-direttur mahtur minn din tal-ahhar ghandu jsegwi l-istruzzjonijiet taz-zewg azzjonisti tas-socjeta` intimata (vide kopja tal-ftehim li qed jigi hawn anness u mmarkat bhala "Dok. I");

vii) Illi s-socjeta` intimata waqqfet daughter company gewwa l-Bulgarija, bl-isem ta` Bulgarian Power EOOD (minn issa `l quddiem maghrufa bhala "BP") (vide kopja tal-`Act of Incorporation` li qed tigi hawn annessa u mmarkata bhala "Dok. J");

viii) Illi sussegwentement, fuq inizzjattiva tal-fuq imsemmi Bjorn Ahlman, BP a sua volta, waqqfet daughter company gewwa l-Bulgaria, bl-isem ta` Terra Bulgaria 1 (minn issa `l quddiem maghrufa bhala "Terra 1") (vide kopja tal-`Constitution Instrument` li qed jigi hawn anness u mmarkat bhala "Dok. K");

ix) Illi jidher illi permezz ta` rizoluzzjoni datata d-29 ta` Mejju 2009, Alexander Frendo bhala direttur uniku tas-socjeta` intimata, hatar lil Bjorn Ahlman bhala manager ta` BP u dana b`setghat ferm wiesgha (vide kopja tar-rizoluzzjoni li qed tigi hawn annessa u mmarkata bhala "Dok. L");

x) Illi l-istess Bjorn Ahlman deher fuq kuntratt intitolat bhala Assignment of Management Contract, fuq liema kuntratt huwa deher ghan-nom tas-socjeta` intimata skont hu in forza tar-rizoluzzjoni tad-29 ta` Mejju 2009 appena citata u kif ukoll ghan-nom ta` BP u ttrasferixxa d-drittijiet ta` amministrazzjoni li kellha s-socjeta` intimata f`BP lilu nnifsu! (vide kopja tal-`Assignment of Management Contract` li qed jigi hawn anness u mmarkat bhala "Dok.M");

xi) Illi huwa car illi dan Bjorn Ahlman qatt ma kellu d-drittijiet rapprezentattivi tas-socjeta` intimata u ghaldaqstant qatt ma seta` deher fuq kuntratt fejn prattikament is-socjeta` intimata giet zvestita mid-drittijiet taghha ta` amministrazzjoni fil-progett ;

xii) Illi huwa car illi l-agir ta` Bjorn Ahlman, li huwa l-beneficjarju tal-azzjonista maggoritarju (i.e. Cementir) fi hdan is-socjeta` intimata, huwa biss illi jeskludi lill-esponenti mill-gestjoni tal-progett u partecipazzjoni fl-istess, u dan kif jirrizulta mill-affidavit ta` Erik Andren, beneficjarju tas-socjeta` esponenti (vide kopja tal-affidavit li qed jgi anness u mmarkat bhala "Dok. N");

xiii) Illi infatti, u peress illi Cementir bdiet abbuzivament tipprova titlob lis-socjeta` esponenti sabiex tittrasferilha l-ishma taghha u kif ukoll qeghda, anke tramite terzi, iddahhal lis-socjeta` intimata u lill-filjali taghha f`obbligi finanzjarji simulati semplicement biss sabiex eventwalment l-ishma jitqeghdu bhala sigurta` ghal dawn l-istess obbligi (pledging of shares) u jkunu jistghu jigu approprijati mill-beneficjarji ta` Cementir (jew ta` terzi li ghandhom l-istess interessi) (vide kopji tal-`Going Concern Special Pledge`, tad-`Decision of the Sole Owner of the Capital of Terra Bulgaria 1 EOOD u tan-`Notification` li qed jigu hawn annessi u mmarkati bhala "Dok. O", "Dok. P" u "Dok. Q" rispettivament) l-esponenti ntavolat mandat ta` inibizzjoni numru 1742/2010, fejn tablet illi :

(1) Li s-socjeta` intimata Balkan Power Invest Holding Limited tinzamm milli hi jew tramite terzi, inkluz tramite is-socjetajiet Bulgari `Bulgarian Power` EOOD u Terra Bulgaria li twettaq xi azzjoni, tidhol f`obbligi legali/kuntrattwali versu terzi, tassumi oneri finanzjarji u/jew twettaq investimenti ta` kwalsiasi natura, u dana sakemm ma jkollhiex l-approvazzjoni bil-miktub minn qabel tal-esponenti qua azzjonista;

(2) Lis-socjeta` Cementir Holdings Limited milli 1) Tinvoka klawzola numru 14.2 tax-shareholders Agreement, iffirmat bejn Chagos Limited (qua beneficjarja prospettiva tas-socjeta` esponenti) u Cementir is-17 ta` Gunju 2009; u 2) per conseguenza, izda wkoll in ogni kaz, qieghed jintalab ukoll li s-socjeta` intimata tinzamm milli titlob lill-esponenti sabiex din titrasferixxi l-azzjonijiet taghha u d-dokumentazzjoni relatata mal-istess, inkluz ix-share certificates, lil Cementir;

(3) Lil Alexander Frendo milli, bhala direttur uniku tas-socjeta` Balkan Power Invest Holding Limited (C-40732), 1) Jagixxi fuq struzzjonijiet unilaterali moghtija lilu mis-socjeta` Cementir Holdings Limited, u/jew diretturi, azzjonisti, beneficcjarji tal-istess socjeta` intimata; 2) jaghmel kwalsiasi azzjoni fil-kariga tieghu ta` direttur tas-socjeta` intimata sakemm ma jottjenix l-awtorizzazzjoni bil-miktub, minn qabel, tal-esponenti; u 3) Jippermetti jew ikompli jippermetti lill-managing director ta` `Bulgarian Power` EOOD ikompli jizvesti lill-istess socjeta` mill-assi taghha;

xiv) Illi l-ghada li dan il-mandat intlaqa` provvizorjament, id-direttur Alexander Frendo rrizenja minn direttur tas-socjeta` intimata (vide kopji tal-Mandat ta` Inibizzjoni u tad-digriet relattiv li qed jigu hawn annessi u mmarkati bhala "Dok. R" u "Dok. S" rispettivament);

xv) Illi ghaldaqstant, f`dan il-mument is-socjeta` intimata m`ghandhiex rapprezentant guridiku u li jista` jhares l-interessi taghha, u per conseguenza dawk tas-socjeta` esponenti mill-agir illegali u rregolari tal-beneficcjarji tal-azzjonijiet maggoritarju taghha;

xvi) Illi di piu` l-esponenti giet a konoxxenza tal-fatt illi Bjorn Ahlman sahansitra deher fil-kwalita` tieghu ta` rapprezentant ta` manging director ta` BP li a sua volta hija l-unika azzjonista ta` Terra 1 fuq "decizjoni" ta` Terra 1 datata 21 ta` Ottubru 2010 u permezz taghha stabbiliet sigurta` specjali (special pledge) fuq il-going concern kollu taghha a favur ta` Oskoulier Holding Ltd u dana in segwitu ta` kuntratt ta` self datat l-1 ta` Mejju 2010, versu l-ammont ta` mitejn elf Ewro (vide l-ezibit "Dok. O");

xvii) Illi, inter alia, dana l-kuntratt ta` self jistabbilixxi illi s-sigurta` specjali fuq il-going concern ta` Terra 1 hija marbuta mal-obbligu tar-ripagament tas-self entru l-1 ta` Dicembru 2010;

xviii) Illi di piu` jirrizulta illi Bjorn Ahlman huwa intenzjonat illi unilateralment jittrasferixxi s-socjeta` Terra 1 lil terzi u dan fi zmien ta` ftit granet;

xix) Illi ghalhekk jidher car illi l-intenzjoni hija dik li tigi svestita l-kumpannija min-negozju kollu taghha u dana a skapitu u bi pregudizzju car u manifest tad-drittijiet tal-esponenti;

Ghaldaqstant, l-esponenti filwaqt illi tirriserva illi tressaq dawk il-provi u sottomissjonijiet ohra kollha necessarji, qeghda titlob lil dina l-Onorabbli Qorti joghgobha ai termini tal-Artikolu 402 tal-Kap. 386 tal-Ligijiet ta` Malta, sabiex b`mod urgenti u imminenti:

(a) Tirregola t-tmexxija tal-kumpannija intimata, ai termini tal-Art. 402(3)(a) tal-Kap. 386, billi tahtar minnufih amministratur/direttur u taghtih dawk il-poteri kollha necessarji sabiex ikun jista` jiehu azzjoni immedjata u pro-attiva sabiex jizgura li l-interessi tal-kumpannija intimata, anke bhala azzjonista unika fil-Bulgarian Power EOOD, Terra Bulgaria u Terra Bulgaria 2, jigu salvagwardjati u mharsa;

(b) Tirregola t-tmexxija tal-kumpannija, ai termini tal-Art. 402(3)(a) tal-Kap. 386, fis-sens li tiddikjara u tiddeciedi illi Bjorn Ahlman qatt ma` seta` jirraprezenta lill-kumpannija intimata u, in ogni kaz, tirrevoka kwalsiasi decizjoni li Bjorn Ahlman seta` ha ghan-nom tal-kumpannija intimata, anke bhala azzjonista unika fi hdan kumpanniji ohra, li jinkludu lil Bulgarian Power EODD u Terra Bulgaria 1;

(c) Tordna, ai termini tal-Art. 402(3)(e) tal-Kap. 386, lill-kumpannija intimata sabiex tibda procedimenti gudizzjarji kontra Bjorn Ahlman proprio et nomine ghad-danni subiti minnha minhabba l-agir tal-istess Ahlman kif fuq deskritt u kif ukoll sabiex l-istess Bjorn Ahlman jidher fuq kwalunkwe att rexissorju necessarju, u f`dan is-sens tawtorizza lill-esponenti sabiex iwettqu dawk il-proceduri gudizzjarji necessarji f`isem u ghan-nom tal-kumpannija intimata.

Bl-ispejjez, inkluz dawk tal-mandat ta` inibizzjoni 1724/2010, u b`riserva ghal kull dritt iehor talvolta spettanti lill-esponenti.

Rat id-dokumenti li kienu esebiti mar-rikors promotur.

Rat ir-risposta tal-kuraturi Av. Dr. Henry Antoncich u PL Katrina Zammit Cuomo li kienet prezentata fl-1 ta` Frar 2011 li taqra hekk :–

1. Illi f`dan l-istadju l-esponenti mhumiex edotti mill-fatti li taw lok ghal dina l-kawza u ghalhekk qed jirrizervaw li jipprezentaw risposta ulterjuri meta u jekk jirnexxielhom jikkomunikaw ma` rapprezentant jew azzjonista tas-Socjeta` patrocinata taghhom.

Rat il-lista tax-xhieda.

Rat ir-risposta guramentata ta` Cementir Holdings Limited li kienet prezentata fit-23 ta` Frar 2011 wara li b`digriet taghha tat-3 ta` Frar 2011 din il-Qorti laqghet it-talba tal-istess socjeta` sabiex tintervjeni fil-kawza *in statu et terminis.* Taqra hekk :–

1. Illi qabel xejn l-Avukat Dr Adrian Delia ghandu jipprovdi minnufih il-prova ta` mandat lilu moghti minn Lonavi Properties Limited sabiex jistitwixxi l-odjerni proceduri.

2. Illi s-socjeta` esponenti hija azzjonista maggoritarja fis-socjeta` intimata Balkan Power Invest Holdings Limited (C-40732) filwaqt illi s-socjeta` rikorrenti Lonavi Properties Limited hija azzjonista minoritarja fi hdan l-istess socjeta` kummercjali intimata Balkan Power Invest Holdings Limited.

3. Illi mill-fatti kif ser jirrizultaw lil din l-Onorabbli Qorti, ser jirrizulta illi mhux minnu dak allegat mis-socjeta` rikorrenti, ossia illi l-agir tas-socjeta` esponenti jew in-nuqqas tieghu, qieghed jew jista` jikkawza pregudizzju ghall-interessi tas-socjeta` rikorrenti. Anzi- huwa proprju bil-kontra, illi l-azzjonijiet jew in-nuqqas taghhom, maghmula mis-socjeta` rikorrenti Lonavi Properties Limited qed jikkawzaw danni serji mhux biss lis-socjeta` intimata imma wkoll is-socjeta` esponenti.

4. Illi l-fatti, fil-qasir, huma s-segwenti :

Meta fis-sena 2006 kien car illi l-Bulgaria kienet ser tissieheb fl-Unjoni Ewropeja, immedjatament kien hemm il-potenzjal ta` investiment f`wind farms fil-Bulgaria. Saru studji serji minn SEK Financial Advisors – li huma konsulenti finanzjarji serji fl-Isvezja bi Triple A rating fis-swieq Internazzjonali Finanzjarji.

Peress illi tali studji kienu juru potenzjal tajjeb, allura gara illi s-socjeta` intimata Balkan Power Invest Holdings Limited fformulat venture capital opportunity fejn b`partecipazzjoni ta` miljun u nofs Euro, investitur potenzjali seta` jakkwista 49% tal-ishma tas-socjeta` intimata. Kien hemm tlett investituri potenzjali u finalment intaghzlu Andren permezz ta` Lonavi Holdings Limited.

Intlahaq il-ftehim bil-hsieb ikun illi l-input originali jkun dak ta` €205,000 da parti tas-socji originali fis-socjeta` Balkan u €1,350,000 da parti tas-socjeta` Lonavi li kienet b`hekk qed tikseb is-sehem taghha ta` 49%. Dan il-ftehim sar bejn is-socjeta` esponenti Cementir Holdings Limited ghan-nom tal-fundaturi tas-socjeta` intimata u Lonavi Holdings Limited ghall-investituri Andren.

In effetti saret laqgha f`April tas-sena 2007 fejn kien gie deciz illi Erik Andren kellu jassumi r-rwol ta` Accounting and Cost Controller biex jaghti struzzjonijiet cari ghall-ahjar andament tal-kumpannija – struzzjonijiet li sal-lum ghadhom ma waslux.

F`Lulju 2007, ossia tlett xhur wara, is-socjeta` Cementir Holdings Limited harget parti mis-somma originali ta` €205,000.

F`Dicembru 2007, sar inkontru iehor fejn kien gie deciz illi l-bini ta` pjanti zghar kellu jigi abbandunat – u kellu jsir iffukar fuq is-sit f`Sakar b`kobor ta` 200MW.

Illi kuntrarju ghal dak li qed tallega s-socjeta` rikorrenti, il-formazzjoni ta` Terra Bulgaria 1 ma kinitx decizjoni ta` Bjorn Ahlman

wahdu, izda decizjoni kongunta bejn Lonavi u Cementir mehuda f`laqgha tal-20 ta` Dicembru 2007 kif ser jirrizulta fil-kawza.

Fil-bidu tas-sena 2008, is-socjeta` esponenti Cementir hallset il-kumplament ta` dak li kellha thallas – ossia tas-somma ta` €205,000, u ghal sena u nofs sar sforz u hafna xoghol fuq diversi fronti, fosthom wind measuring, plant layout together with a specialized company, permit documentation, geodetically documentation, land acquisition and land securing of municipal and states forest, environmental impact assessments u class A certification.

Biex sar dan ix-xoghol kollu kien hemm hafna hlasijiet amministrattivi li kellhom isiru u kif ukoll spejjez relatati mal-akkwist ta` art ghall-progett u f`daqqa u l-hin s-sit immirat ghall-progett kien gie klassifikat Natura 2000 – decizjoni li kellna b`sahha nikkontestaw.

F`dan il-kuntest u f`dawn l-intoppi li konna qeghdin naraw, kien jidher evidenti illi Lonavi kienet qeghda timxi b`mod stramb u di fatti kien gie mument meta anke kien gie propost minn Lonavi illi jidhol investitur iehor – offerta illi s-socjeta` esponenti rrifjutat. L-investitur addizjonali, is-socjeta` Chagos, insistiet ukoll li jkun hemm non-compete agreement, talba li s-socjeta` esponenti wkoll irrifjutat.

Lejn in-nofs tas-sena 2008, fuq decizjoni li saret bejn Lonavi u Cementir, tnehha il-Manager Bulgaru, Chavdar Tsankov peress illi r-rendiment tieghu ma kienx tajjeb. Illum dan l-istess persuna huwa wzat minn Lonavi / Chagos bhala agent taghhom biex jara kif jista` jimmina il-progett.

Fid-dawl ta` dawn l-izviluppi, gie ffirmat shareholder`s agreement bejn is-socjeta` esponenti u Chagos Limited, kumpannija Maltija u fil-perjodu lejn tmiem is-sena 2008 u l-bidu tas-sena 2009, il-kumpannija Balkan otteniet is-segwenti: Class A certification, private lots acquired, preliminary exclusion agreement with State Forest Agency for 70 lots, environmental impact assessment started including notification to the Ministry for Environment and Water, letter from the Bulgarian Grid company supporting the project and allowing Balkan to start planning matters.

Sa dan iz-zmien, meta kien sar dan ix-xoghol kollu, Lonavi u Chagos kienu kkontribwew biss madwar €700,000 mis-somma ta` €1,350,000 miftehma, anke jekk Lonavi / Chagos kienu baqghu jippretendu illi jibqghu jikkontrollaw is-sehem originarjament miftiehem ta` 49% tal-ishma fis-socjeta` intimata. Irid jinghad illi minkejja illi kkontribwew ftit biss aktar min-nofs dak li kien minnhom dovut, ir-rapporti finanzjarji dettaljati tal-kumpannija Balkan baqa` jintbghat lill-Lonavi / Chagos kull xahar.

Fil-bidu tas-sena 2010, is-socjetajiet Lonavi / Chagos regghu talbu illi jirrinegozjaw il-ftehim taghhom ma` Cementir. Dan sar f`mument meta il-progett kien miexi `l quddiem imma l-finanzi a disposizzjoni kienu xotti u kien jidher evidenti illi jekk mhux ser ikun hemm il-commitment illi l-partijiet johorgu sehmhom kif miftiehem, allura l-progett seta` facilment jikkrolla.

F`dan il-kuntest, Cementir kienet lesta illi tara x`tista` tikkontribwixxi izjed biex issalva l-progett, sakemm ukoll is-socjetajiet Lonavi/Chagos jaghmlu l-parti taghhom. Lonavi / Chagos ma hargux bi proposti konkreti, imma s-socjeta` esponenti Cementir irnexxielha tpoggi €200,000 ghad-disposizzjoni tal-kumpannija intimata. U kienu dawn il-flus illi sa issa zammew il-progett haj. Dan is-self li ttiehed fis-sena 2010, kien jidher car fuq ir-rapporti finanzjarji li nbaghtu lil Lonavi / Chagos. Minghajr dawn il-flus, il-progett kollu kien jisfaxxa fix-xejn.

Is-socjetajiet Lonavi / Chagos baqghu ma ressqu qatt bi ftehim u proposti accettabli u wisq anqas ressqu bil-fondi li kienu weghdu fil-bidu li ser jigu bihom.

Fid-dawl ta` dawn ic-cirkostanzi, fit-2 ta` Settembru 2010, is-socjeta` esponenti baghtet avviz lis-socjeta` Lonavi / Chagos ai termini tal-Artiklu 4.2 tas-Shareholders` Agreement tinvoka material breach tal-ftehim da parti ta` dawn tal-ahhar. Konsegwentament, ai termini tal-istess ftehim, kienu mitluba sabiex jittrasferixxu l-ishma taghhom ammontanti ghal 49% lis-socjeta` esponenti, bil-prezz li jrid jigi stabbilit ai termini tal-istess ftehim.

Irid jinghad illi bil-ghan illi jkunu evitati proceduri legali, s-socjeta` esponenti kienet offriet illi ssir rifuzjoni tal-flus illi hargu, ammontanti ghal madwar €700,000 – fi zmien ragjonevoli wara l-bejgh tal-progett u b`imghax ragjonevoli. Proposta illi s-socjeta` rikorrenti ma laqghetx.

Illi s-socjeta` rikorrenti anke ttentat Mandat ta` Inibizzjoni kontra fost ohrajn is-socjeta` intimata u dik esponenti – Mandat ta` Inibizzjoni Nru 1724/10 FS – liema Mandat gie michud b`mod definittiv b`digriet tas-7 ta` Dicembru 2010, wara illi kien milqugh provvizorjament fit-8 ta` Novembru 2010.

Illi in segwitu ghal tali Mandat – l-uniku direttur tal-kumpannija Alex Frendo kien irrizenja – u llum hemm process ghaddej ai termini tal-istatut tal-kumpannija sabiex tkun tista` tkompli bil-hidma u l-progett taghha.

5. Illi dawn il-fatti ser jigu kkonfermati u elaborati fil-mument opportun fil-kors ta` din il-kawza.

6. Illi a bazi ta` dawn il-fatti, qed jigi umilment eccepit in-nuqqas ta` interess giuridiku tas-socjeta` rikorrenti Lonavi Properties Limited, hekk kif is-shareholders` Agreement datat 20 ta` Frar 2007 [DOK CEM 1] jidher illi gie superfluwu meta sar Shareholders` Agreement iehor bejn is-socjeta` esponenti u Chagos Ltd datat 17 ta` Gunju 2009 [DOK CEM 2].

7. Illi in kwantu illi l-kumpannija ser ikollha direttur u allura ufficjal gdid fiz-zmien li gej, huwa superfluwu u insostenibbli illi jsiru t-talbiet maghmula mis-socjeta` rikorrenti, hekk kif inhu superfluwu illi jsiru tali talbiet meta evidentament hija s-socjeta` rikorrenti Lonavi Properties limitedly naqset mill-obbligi kontrattwali taghha kif stipulat fil-ftehim imsejjah Financial Agreement tal-20 ta` Frar 2007 [DOK CEM 3].

8. Insostenibbli wkoll it-talbiet tas-socjeta` rikorrenti meta jirrizulta illi qed jigu segwiti proceduri skont il-ftehim bejn il-partijiet, sabiex meta u fl-eventwalita` illi jkun hemm substantial material breach bhalma huwa l-kaz illi s-socjeta` rikorrenti ma tonorax l-obbligi taghha finanzjarji mal-kumpannija qua azzjonista, allura s-socjeta` azzjonista l-ohra tkun tista` takkwista u tixtri l-ishma tal-parti in default, f`dan il-kaz, is-socjeta` rikorrenti [vide klawsola 14.2 ta` DOK CEM 2].

9. Illi ghalhekk ma jikkonkorrux l-elementi rikjesti mil-ligi ghall-applikabilita` tal-Artiklu 402 kif mitlub mis-socjeta` rikorrenti, fl-ewwel lok

peress illi l-ilmenti u l-premessi u l-allegazzjonijiet tas-socjeta` rikorrenti huma nfondati, fit-tieni lok peress illi ma jistax jirrizulta mill-fatti li ser jigu mressqa, illi s-socjeta` intimata tahti ghal xi nuqqas allegat u di piu` illi hemm pendenti process legittimu sabiex l-ishma tas-socjeta` rikorrenti jinbieghu lis-socjeta` esponenti.

10. Finalment, ma jista` qatt jirrizulta azzjoni jew ommissjoni da parti tas-socjeta` intimata li hija unfair and prejudicial kontra s-socjeta` rikorrenti, kif trid il-ligi kif kemm gurisprudenza u kif ukoll awturi lokali u Inglizi jistabbilixxu illi huwa rikjest biex tirnexxi azzjoni bhal din ai termini tal-Artiklu 402 tal-Kap. 386 tal-Ligijiet ta` Malta.

11. Gja la darba jigu akkolti dawn l-osservazzjonijiet / eccezzjonijiet / punti ta` risposta, allura mbaghad l-ispejjez kollha relatati mal-procedura odjerna ghandhom jigu sopportati interament mis-socjeta` rikorrenti.

12. Salv risposta ulterjuri fil-fatt u fid-dritt.

Rat il-lista tax-xhieda u l-elenku tad-dokumenti.

Rat ir-risposta tal-Av. Dr. Paul Micallef Grimaud noe pprezentata fit-28 ta` Gunju 2011 li taqra hekk :-

…

2. Illi fl-ewwel lok jigi rilevat illi llum l-ewwel talba tas-socjeta` rikorrenti sabiex jigi appuntat direttur ghas-socjeta` esponenti ma ghadx ghandha rilevanza stante illi fil-mori tal-proceduri gie mahtur b`mod regolari direttur ghas-socjeta` esponenti. Ghaldaqstant ma ghadx hemm lok li din l-Onorabbli Qorti tindirizza l-ewwel talba tas-socjeta` rikorrenti ;

3. Illi fit-tieni lok l-allegazzjonijiet tas-socjeta` rikorrenti u t-talbiet taghha huma nfondati fil-fatt u fid-dritt u jimmeritaw illi jigu michuda minn din l-Onorabbli Qorti. Is-socjeta` esponenti dejjem agixxiet skont l-istatut taghha u l-ligi u fl-ahjar interess taghha u tal-azzjonisti kollha taghha ;

4. Illi semmai hija s-socjetya` rikorrenti li naqset fl-obbligi taghha bhala azzjonista tas-socjeta` esponenti u dan billi fost ohrajn naqset milli tinvesti dawk is-somom li kienet obbligat ruhha li tinvesti fis-socjeta` esponenti. Dan wassal ghal sitwazzjoni fejn is-socjeta` esponenti ma setghetx tesegwixxi l-progetti li ghalihom kienet giet mahluqa u llum is-socjeta` esponenti ma tistax tkompli topera. L-assi tal-istess socjeta` llum jikkonsistu biss f`kontijiet bankarji li jammontaw ghal circa sebgha u erbghin elf Ewro (€47,000.00). Fid-dawl ta` dan u tan-nuqqas ta` qbil bejn il-partijiet dwar l-operat tas-socjeta` esponenti huwa umilment sotomess illi l-unika triq li fadlilha din is-socjetya` hija li tigi likwidata u l-assi taghha jitqassmu bejn l-azzjonisti taghha.

5. Illi l-kawza odjerna ma kienet xejn ghajr tentative iehor sabiex is-socjeta` rikorrenti tipprova twaqqaf lis-socjeta` milli tigi operata b`mod regolari u biex tilhaq l-ghanijiet li ghalihom giet mahluqa. Kif diga` nghad, il-komportament tas-socjeta` rikorrenti wasslet lis-socjeta` esponenti fi stat prattikament ta` falliment. Il-kawza odjerna hija vessatorja u ghaldaqstant is-socjeta` rikorrenti ghandha rinzamm responsabbli ghad-danni kagunati lis-socjeta` esponenti.

Ghadaqstant is-socjeta` esponenti tissotometti bir-rispett illi t-talbiet tas-socjeta` rikorrenti ghandhom jigu michuda bl-ispejjez kontra l-istess socjeta` rikorrenti.

Salvi eccezzjonijiet ulterjuri.

Bl-ispejjez kontra s-socjeta` rikorrenti li minn issa hija ngunta ghas-subizzjoni.

Semghet ix-xhieda u rat il-provi kollha l-ohra li tressqu fil-kors tal-kawza.

Rat in-noti ta` osservazzjonijiet.

Rat id-digriet li tat fl-udjenza tas-26 ta` Novembru 2015 l-fejn halliet il-kawza ghall-provvediment.

Rat l-atti l-ohra tal-kawza.

II. Xiehda

Erik Andren ipprezenta affidavit fejn spjega li huwa l-*ultimate beneficial owner* ta` Lonavi Properties Limited (minn hawn `il quddiem imsejha Lonavi), li hija kumpanija registrata Cipru u liema kumpanija hija proprjetarja ta` 49% mis-socjeta` Balkan Power Invest Holding Ltd (minn hawn `il quddiem imsejha BPI). Huwa qal li fl-ahhar tas-sena 2006, huwa gie introdott ghal progett ta` bini ta` wind power plant fil-Bulgarija. Huwa spjega li huwa gie introdott ghal dan il-progett minn Bjorn Ahlman u Kristian Melnyk li huma cittadini Svedizi. Spjega li l-offerta kienet li jkollu 49% tal-progett billi jiffinanzja ammont ta` massimu ta` EUR 1,350,000 mentri l-parti l-ohra tiffinanzja EUR 205,000. Spjega li huwa ghamel dan l-investiment tramite l-kumpanija Lonavi mentri Ahlman u Melnyk ghamlu l-investiment taghhom tramite Cementir Holdings Ltd (minn hawn `il quddiem imsejha bhala Cementir). Spjega li l-hlasijiet ta` dawn l-investimenti kellhom isiru skont l-issodisfar ta` *defined milestones.* Spjega li l-investiment ossija l-progett giet pogguta fil-kumpanija BPI fejn Cementir kellha 51% ta` BPI u Lonavi kellha 49%. Spjega li minkejja din l-istruttura, kull decizjonijiet mehuda f`*shareholders meetings* kellhom jsiru b`approvazzjoni unanima u dana skont l-artikolu 7.5 tas-*shareholders` agreement* datat 20 ta` Frar 2007 kif ukoll is-*shareholders` agreement* datat 17 ta` Gunju 2009. Spjega li decizjonijiet mehuda fuq *operational level* kellhom jittiehdu mill-Manager ta` BPI li kien Alexander Frendo ta` Consulco International Ltd, li spjega li kellu jsegwei dak miftiehem bejn Consulco u BPI fis-sens li hu ghandu jimxi fuq decizjonijiet unanimi mehuda mill-azzjonisti ta` BPI, ossija Cementir u Lonavi.

Andren spjega li BPI ffurmata *a 100% Bulgarian daughter company,* bl-isem ta` Bulgarian Power EOOD (minn hawn `il quddiem msejha BP) u fuq inizzjattiva ta` Ahlman iffurmat *a 100% Bulgarian daughter company* bl-isem ta` Terra Bulgaria 1 (minn hawn `il quddiem msejha Terra 1). Spjega li l-progett kien ser jigi mmexxi f`Terra 1 mentri BP kienet ser isservi bhala *holdings company* ta` Terra 1. Spjega li l-immaniggjar ta` BP kien regolat b`*letter of agreement* datat 20 ta` Frar 2007 hekk kif imbaghad emendat fis-17 ta` Gunju 2009. Spjega li fl-artikolu 8 ta` dan il-ftehim, hemm imnizzel li l-firem iridu jsir b`mod kongunt u li l-*managing director* ghandu dritt biss jiffirma wahdu ghal dak dak li ghandu x`jaqsam ma` *day to day management.* Spjega li qatt ma kien hemm xi intenzjoni li Ahlman jkun jista` jiehu

decizjonijiet hu wahdu. Spjega li l-progett kien maghruf bhala *Sakar Project* u l-ideja kienet li jsiru *wind measurements* kif ukoll studji ohra relatati man-natura biex jinstabu postijiet addattati ghal *wind power plant* b`kapacita ta` 40MW. Spjega li meta gie ffirmat l-ewwel ftehim fl-20 ta` Frar 2007, il-kondizzjoni imposta kienet li tkun sodisfatta l-pjan ta` termini u progress.

Andren xehed li Ahlman li kien il-manager f`Terra 1 kellu r-responsabilita` li jissodisfa l-*milestones* fil-hin stipulat. Spjega li l-progett ma mexiex mat-termini u mal-*milestones* miftehma. Per ezempju, id-data li fiha kellha ssir il-*grid agreement* giet postposta diversi drabi mid-data originali li kienet il-15 ta` Awissu 2009 u sa anke kien intqal li din ser tkun lesta sa l-1 ta` Lulju 2011. Huwa sostna li kien insista li t-termini tal-*milestones* kellhom jigu sodisfatti. Huwa spjega illi l-ftehim tat-23 ta` Dicembru 2007 ta` Terra 1jistipola fl-artikolu numru 12 illi l-*manager* huwa projbit milli jaghmel negozji f`attivitajiet kummercjali li jikkompetu ma` din il-kumpanija kif ukoll milli jippartecipa f`kumpaniji ta` negozju iehor. Madanakollu, Ahlman iffirma ftehim f`isem il-kumpanija *Romanian Power* li hija kumpanija li qed tikkompeti ma` Terra 1 u dan fis-27 ta` Novembru 2008.

Andren spjega illi sabiex isir jaf ir-raguni ghal dan id-dewmien kollu u anke minhabba l-preokkupazzjoni illi Ahlman kien involuta ma` din il-kumpanija kompetitrici, huwa u ic-CFO tieghu Ulf Gabrielson kienu talbu li jinghataw access ghal kotba tal-kumpanija peress li r-rapporti ta` kull xahar li kienu jintbaghtu lilhom kienu neqsin minn informazzjoni necessarja ghal evalwazzjoni tas-sitwazzjoni finanzjarja tal-kumpanija. Din it-talba intbaghatet lil Hristina Pavola li kienet tagixxi bhala *book keeper* ta` BP u ta` Terra 1 u kienet tahdem f`*company book keeping firm* bl-isem ta` V & M Company Limited f`Sofia, Bulgarija. Spjega li din il-kumpanija infurmathom li kellhom struzzjonijiet minn Ahlman li din l-informazzjoni ma tinghatax lilhom, izda kellha tinghata tramite Ahlman . Huwa kompla jghid li f`dan iz-zmien, sar jaf li kien hemm spejjez personali li kienu gew mhallsa mill-kumpanija u dan kif jirrizulta mill-kotba ta` l-istess kumpaniji. Melnyk kien iggustifika dan bili qal li dawn kienu flus taghhom.

Andren spjega li f`17 ta` Gunju 2009, giet mghajjta laqgha ta` l-azzjonisti biex jevalwaw l-opportunitajiet u possibiltajiet li l-progett jimxi `il quddiem. Madanakollu, Cementir rapprezentata minn Ahlman u Melnyk irrifjutaw li jippartecipaw. Spjega li meta huwa pprova jsolvi s-sitwazzjoni, Cementir ippropona illi huma riedu jiehdu l-ishma ta` Lonavis f`BPI u jhallsu ta` dawn l-ishma f`kaz li l-affarijiet jirnexxu. Huwa spjega li kien gie

mhedded li jekk ma jaccettax din il-proposta, huma kienu ser ikomplu sejrin biex jassiguraw l-investiment taghhom.

Andren spjega li Ahlman allega li kien silef lil Terra 1 EUR 200,000, izda l-ebda decizjoni ma ttiehdet biex il-kumpanija tissellef tali flus. Spjega li ma nghatax informazzjoni dwar is-self. Huwa spjega li peress li ma thalliex jara l-kotba tal-kumpanija, huwa ma jistax jivverifika jekk dan is-self sarx fil-verita` a beneficcju ta` Terra 1. Huwa spjega li l-investiment inizjali kellu joghla l-valur meta certu *milestones* jigu sodisfatti. Spjega li Chavdar tnehha u gie rimpjazzat bi Bjorn Ahlman. Huwa spjega li Chavdar kienu nfurmah li l-attivitajiet irregolari kienu f`kunflitt ma` l-istatuti partikolarment rigwardanti *competing businesses* fir-Rumanija. Huwa spjega li ghandu dubbji li l-flus ta` Lonavi ntuzaw minn Ahlman u Melnyk fil-progett Rumen u mhux fil-progett ta` Sakar. Spjega li f`dan ix-xenarju, huwa rrifjuta li jghaddi aktar pagamenti tramite Lonavi sakemm ikun jista` jivverifika l-kotba. Huwa spjega li gialadarba Ahlman cahdu l-access ghal dawn il-kotba, l-azzjonijiet ta` Ahlman jindikaw li ghandu xi haga x`jahbi u li jekk jigi revokat il-mandat ta` inibizzjoni, huwa sejjer jiddisponi mill-assi kollha ta` Terra.

Erik Andren xehed fil-21 ta` Marzu 2011 fejn spjega li huwa flimkien ma` missieru ghandu kumpaniji ta` investiment li permezz taghhom huma jinvestu fi progetti differenti. F`dan il-kaz, huma kienu nvestew fi progett ta` *wind power* flimkien ma` Kristian Melynk. Spjega li lkoll flimkien investew fil-kumpanija Maltija ghal habta tas-sena 2007. Spjega li meta l-ftehim rega` rivedut, kienu ghadhom lura fis-sens li lanqas il-permess tal-bini ghal dan il-progett. Huwa xehed li kienu gia` investew EUR 700,000 sa dan l-istadju u dan mill1.3 miljuni ta` Ewro illi kellhom originarjament jinvestu. Spjega illi l-operazzjoni kienet l-izvilpp ta` *wind power* fil-Bulgarija. Mistoqsi mill-qorti r-raguni ghalfejn giet ffurmata kumpanija Maltija u mhux kumpanija fil-Bulgarija sabiex tiehu hsieb dan in-negozju, Andren spjega li Malta kienet l-ahjar in vista ta` ragunijiet ta` taxxa. Spjega li l-partijiet l-ohra kienu investew EUR 205,000 . Spjega li f`April 2010, huma ntalbu li johorgu aktar flus. Spjega li f`dak iz-zmien, huwa kien preokkupat minhabba li l-progett kien qieghed lura hafna. Kompla jghid li f`dak l-istess zmien, ircieva email minghand *former product manager* fil –Bulgarija li kien inkwetat bil-metodu ta` kif kien qed jigi mmaniggjat il-prodott. Spjega li huwa kien talab sabiex jara l-kotba tal-kumpaniji izda min kien izomm il-kotba nfurmatu illi din l-informazzjoni ma tistax tigi moghtija minghajr il-kunsens ta` Bjorn Ahlman.

Erik Andren spjega li l-kumpanija Maltija kienet mmexxija minn Alex Frendo li kien gie nkarigat mill-*majority* u *minority shareholders*. Andren

spjega li huwa kien talab il-kotba tal-kumpaniji izda dawn ma nghatawx lilu u minkejja dan, Cementir baqghet tinsisti li huwa johrog aktar flus. Spjega li kienu gew diskussi xi kuntratti ohra dwar il-fatt li kien hemm bzonn aktar flus izda dawn qatt ma gew iffirmati. Huwa spjega li ma kienx accetta li jaghti aktar flus. Dan gara ghall-habta tas-sena 2010 u Frendo kien ghadu fil-kariga tieghu ta` direttur. Huwa spjega li kienu waslu f`sitwazzjoni fejn huwa ma riedx johrog aktar flejjes peress li l-progett ma kienx miexi u ma` kien qed isir l-ebda progress mentri huma kienu qed jghidu li Andren kien qed jivvjola l-ftehim minhabba li kien qed jirrifjuta li johrog il-flus. Huwa spjega li kien intalab li jaghti lura l-kontroll tal-kumpanija Maltija in vista ta` din l-allegata vjolazzjoni.

Erik Andren spjega li l-partijiet l-ohra hadu passi fl-istruttura li kien hemm fil-Bulgarija. Spjega li dawn hadu self minghand kumpanija Ciprijotta bl-isem ta` Oskoulier li kienet ikkontrollata minn Christensen. Spjega li l-kumpanija Terra 1 ma ghandhiex *cash flow* peress li tiddependi mill-investimenti stante li l-prodott kien ghadu mhux lest. Spjega li Terra 1 ffirmat mhux biss ftehim ta` self li dwar meta sar, Andren ghandu riservi kbar in vista ta` diskrepanza bejn id-data tal-ftehim indikata bhala l-1 ta` Mejju 2010 u l-kontenut ta` email ta` Melnyk azzjonist ta` Cementir bid-data tal-25 ta` Mejju 2010, izda ffirmat ukoll *pledge agreement* f`kaz li ma tithallasx il-*loan*.Spjega li skond dan il-*pledge agreement*, il-kumpanija titlef l-assi kollha taghha. Spjega li din il-*loan* kien mizmuma sigrieta u huwa ma kienx jaf biha, izda imbaghad skopra dwarha tramite ricerki li ghamlu l-avukati tieghu fil-Bulgarija. Spjega li din il-*pledge* giet registrata fil-Bulgarija f`11 ta` Novembru ossija fi zmien meta kienet saret l-inibizzjoni f`Malta. Spjega li Bjorn Ahlman inghata prokura minghand Alex Frendo li kienet tispicca fl-1 ta` Gunju 2010 u li kienet wahda specjali biex jagixxi bhala *manager*. Kompla jghid li Alex Frendo kellu *managerial role.* Spjega li din il-prokura ntuzat minn Ahlman biex ghamel kuntratt fejn ghamel lilu nnifsu *manager*.

Andren spjega li Frendo rrizenja ghaliex kienu qed jitolbuh informazzjon dwar x`kien qed jigri u huwa ma riedx jaghmel dak li xtaq parti wahda biss. Spjega li Frendo rrizenja f`Settembru 2010 u kien Ahlman li beda l-process biex jittiehed dak il-*loan* _u jsir il-*pledge agreement.* Huwa spjega li bejn Gunju u Settembru 2010, huwa ma jafx b`xi atti li setghu jippregudikaw l-interessi tieghu. Huwa sostna li kien oggezzjona li ssir dik il-prokura a favur ta` Ahlman. Huwa sostna li l-inkarigu ta` Frendo kien ikopri xi negozju fil-Bulgaria izda mhux li jiehu self. Huwa xehed illi r-raguni ghalfejn ittiehed dan is-self, kien biex l-kumpanija tispicca b`passiv li ma tkunx tista` thallsu lura bil-konsegwenza li Oskoulier tiehu l-assi kollha.

Huwa spjega li bil-*pledge agreement*, f`kaz li s-self ma jithallasx, Oskoulier kienet tippleggja l-ishma u tiehu l-assi tal-kumpanija fil-Bulgarija. Sostna li Osculier hija wkoll kumpanija kontrollata mill-istess nies. Spjega li s-self kienet tidher li qed issir biex tiffinanzja n-negozju tal-*wind farms* fil-Bulgarija. Huwa spjega li dan kollu sar fil-verita` biex jittiehidlu l-ishma li ghandu f`din il-kumpanija.

Andren spjega li meta huwa kien intalab li jinvesti aktar flus, huwa tkellem ma` Alexander Attanasov sabiex jara jekk hux verament kien hemm bzonn ta` aktar flus, izda Attanasov kien qal li ma kien hemm xejn urgenti u li kulma kien hemm xi ftit kontijiet zghar. Spjega li in vista ta` dan, huwa beda l-procedura f`Malta. Huwa spjega li safrattant il-kumpaniji fil-Bulgarija ma ghamlu l-ebda negozju. Huwa spjega li bdew jinsistu li Ahlman u Melnyk kellhom jinvestu aktar flus minn taghhom biex b`hekk ikollhom certezza li l-progett ser ikompli. Spjega li huwa ghandu dubji jekk effettivament gewx depozitatai EUR 205,000 mill-partijiet l-ohra. Huwa qal li nsista sabiex jara l-kotba tal-kumpanija u l-*invoices* wara dawn il-figuri.

Andren spjega li huwa jrid li jkun hemm appuntat direttur li huwa newtrali fil-kumpanija u li jinvestiga f`kaz li jkun hemm xi *wrongdoings*. Spjega li huwa jippretendi li l-ewwel haga li ghandha ssir minn tali direttur huwa li jrendi invalida l-*pledge*. Spjega li huwa oppona ghal procedura li kienet ser tigi segwita biex jigi mahtur direttur. Huwa sostna li l-laqgha ma gietx mghajjta b`mod korrett u kif ukoll gie propost persuna li ma kienx imparzjali.

Fil-**<u>kontroezami</u>**, Andren stqarr li BP ottjeniet biss *first class investments certificate* fil-Bulgarija u ghandha 6 bicciet art li mhumiex daqstant tajbin ghal ghan li ghalih inxtrat l-art u dana in vista ta` certi *wind measurements*. Huwa kkonferma li l-awtorita` tal-gvern fil-Bulgarija approvaw il-kontinwazzjoni ta` dan il-progett. Huwa sostna illi kien involut fl-otteniment tal-*first class investments certificate*. Huwa kkonferma li kien parti mill-ftehim ta` 2007 li kien jitkellem dwar *an estimated period of time*. Ikkonferma wkoll illi saru dawn l-*estimated periods of time* peress li kien jaf li l-otteniment ta` certu *milestones* kienu jiddependu hafna mill-awtoritajiet barranin. Huwa cahad li l-*milestones* ma kinux qed jigu raggunti minhabba l-awtorita` u sostna li li dawn ma kinux qed jigu raggunti minhabba nuqqasijiet tal-kumpanija jew tal-persuni li jmexxuha. Huwa kkonferma li kien hemm perijodu fis-sena 2009 meta ried li l-obbligazzjonijiet li assumiet Lonavi tigi mghoddija lil Chagos u dan ghal ragunijiet ta` taxxa. Huwa cahad li Lonavi bdiet tikkaguna problemi lis-socjeta` intimata wara li kien gie deciz

li tibqa` nvoluta mas-socjeta` intimata. Huwa kkonferma li Cementir kellha tinvesti EUR 205,000 skont il-ftehim mentri Lonavi kellha tikkontribwixxi EUR 700,000. Huwa kkonferma li Cementir kienet ikkontribwiet 100% ta` dak li weghdet li tinvesti mentri Lonavi kienet ikkontribwiet 50% minn dak li weghdet. Huwa spjega li gew iffirmati diversi ftehim u l-ahhar wiehed applikabbli huwa dak li gie ffirmat fis-17 ta` Gunju 2009. Huwa kkonferma li meta sar dan il-ftehim, il-kontribut ta` EUR 700,000 kien gia` sar. Huwa kkonferma li dan il-ftehim ta` Gunju 2009 kien intiz sabiex ir-rimanenti 50% jigu investiti fil-kumpanija. Huwa spjega li skont dan il-ftehim, sabiex isir il-hlas, kellhom jigu moghtija *invoices*, u ghalhekk, is-sistema ma baqghetx dependenti fuq *milestones*.

Andren stqarr li r-raguni ghal dan il-bdil kienet minhabba li huwa ried aktar kontroll fuq kif kien ser jonfoq il-flus tieghu. Huwa spjega li kien ilu precedentement ghal dan il-ftehim f`Gunju 2009, jaghmilha cara verbalment ma` Melnyk u Ahlman illi kien qed ikun hemm dewmien kbir biex il-progett isir. Huwa spjega li r-risposta li kien jinghata kienet li fil-Bulgarija, l-affarijiet iridu jiehdu z-zmien taghhom. Huwa kkonferma li kien ghamel verifiki tieghu u verament irrizulta li l-Bulgarija mhijiex pajjiz facli biex wiehed jahdem fih u li ghalhekk, it-*timeframes* ma kinux qed jigu sodisfatti. Huwa spjega li meta ffirma dan il-ftehim f`Gunju 2009 huwa kien jaf dwar dawn id-diffikultajiet fil-Bulgarija izda dan kien opportunita ohra biex forsi l-progett isehh. Huwa kkonferma li kien hemm *monthly accounts* li kienu qed jigu distribwiti lill-membri tal-kumpaniji. Huwa spjega li kien jaghmel id-domandi tieghu dwarhom mal-*book keepers*. Huwa spjega li dawn waqfu jaghtuh l-informazzjoni meta huwa beda jinsisti li jrid jara l-*invoices*.

Andren ikkonferma li l-loan saret f`April jew f`Mejju 2010 meta Alex Frendo kien ghadu direttur u meta l-prokura kienet ghadha *in vigore*. Huwa sostna li kien jaf f`Mejju li l-kumpanija nghatat EUR 200,000 minn Osculier u kien staqsa dwarhom. Huwa cahad li l-pozizzjoni ta` Cementir kienet li l-ewwel Lonavi kellha taghti l-100% miftiehem u imbaghad isehhu ftehim ghal aktar finanzjament. Huwa kkonferma li qabel ma` saret l-ewwel procedura fil-Qorti f`Novembru 2010, tlieta mill-erba` *milestones* li kien hemm fil-ftehim, kienu gew ottenuti. Huwa izda insista li dawn il-*milestones* huma *misleading* . Huwa cahad li l-loan agreement sar minhabba li kien hemm bzonn ta` aktar finanzi. Huwa kkonferma li hekk kienu qalulu izda huwa ma jaqbilx li l-kumpanija kellha bzonn ta` aktar finanzi. Huwa qabel li kien hemm ftehim li jigu ffurmati l-kumpaniji involuti. Huwa kien parti mill-ftehim sabiex tigi ffurmata dawn il-kumpaniji Bulgari. Spjega li kien hemm Shavdar li kellu jiehu hsieb l-immaniggjar ta` dawn il-kumpaniji izda dan kien tkecca bil-kunsens tieghu u gie rimpjazzat b`Bjorn Ahlman. Huwa

kkonferma li kien kuntent b`din id-decizjoni li ttiehdet f`nofs is-sena 2009. Huwa kkonferma li f`dak iz-zmien Alex Frendo kien ghadu direttur tas-socjeta` intimata. Huwa spjega li kien staqsa lil Frendo dwar dak li kien qed jaghmel bhala direttur tal-kumpanija.

Andren xehed illi l-kumpanija intimata ma ghandhiex assi izda ghandha ishma fil-kumpanija Bulgari. Izda huwa sostna li minn informazzjoni li ghandu, il-*pledge* giet ezegwita u l-assi ser jigu trasferiti lil Osculier. Huwa sostna li huwa jittama li l-valur ta` l-ishma ghadhom ta` l-inqas ta` l-istess valur ta` kemm kienu meta gew investiti, ossija EUR 700,000. Huwa sostna li kien lest li jikkonsidra li jithallas is-sehem li ghandu ta` 49% mill-valur ta` EUR 700,000 u EUR 205,000.

<u>Alexander Atanasov</u> xehed li huwa l-*project mangaer* ta` Bulgarian Power, li tiehu hsieb kollox hlief kwistjonijiet ta` finanzjar. Huwa spjega li l-progett jinvolvi kostruzzjoni ta` *wind park* fil-Bulgarija ta` madwar 70 u 90 *turbines*. Spjega li huwa gie impjegat minn Bjorn Ahlman fis-sena 2009. Huwa spjega li minn informazzjoni li ghandu, din il-kumpanija li mpjegatu tappartjeni lil Bjorn Ahlman, Kristian Melnyk u Erik Andren. Huwa spjega li huwa normalment jinnegozzja ma` Ahlma u Melnyk. Huwa kkonferma li ghalkemm ma ghandux x`jaqsam ma` flus tal-kumpanija, huwa jaf kemm jiswew il-proceduri li huma mehtiega biex il-progett ikun jista` jsehh. Huwa spjega li ghad-*development part* hemm bzonn EUR 600,000 izda biex il-kumpanija tixtri *wind generators*, hemm bzonn ta` aktar minn EUR 300,000,000. Huwa spjega li minn Mejju 2010 sad-data ta` llum, huwa ma talabx aktar flus peress li dak li kien hemm bzonn li jsir, ma kinux jiswew flus. Huwa spjega li fuq inizjattiva tieghu biss, huwa kien ghamel pjan ta` kif ix-xoghol kellu jimxi. Spjega li fil-fehma tieghu l-progett ma kienx miexi b`metodu tajjeb u anke ghamel *benchmark* dwar sakemm il-progett kellu jitlesta. Huwa spjega li kien ipprova jfiehem x`kienu l-intenzjonijiet tieghu, izda l-progress kien verament bil-mod.

Atanasov fisser illi huwa ilu ma jircievi salarju ghal dawn l-ahhar 3 xhur u ma ghadhux imur ghax-xoghol. Spjega li huwa kien imur ghax-xoghol kuljum u imbaghad darba rcieva telefonata minghand Melnyk fil-bidu tas-sena 2011 fejn dan qallu li huwa kien ser jiehu xi affarijiet mill-kumpanija gol-karozza tieghu. Spjega li huwa ma accettax peress li kienet haga stramba li jittiehdu partijiet minn kumpanija. Huwa spjega li Melnyk kien qed iccempillu sabiex l-ufficju jigi mehud x`imkien iehor u huwa ghalhekk beda jirrifjuta li jaqbad it-telefonati. Huwa spjega li sema li Ahlman gie il-Bulgarija u ha hsieb jnehhi l-ufficju hu. Huwa spjega li dan kollu ma kienx

ta` sorpriza ghalih peress li kien ilu jisma` li kien hemm l-inkwiet u li kienet ser tigi kumpanija gdida li ser tiehu hsieb hi. Huwa spjega li Ahlman u Melnyk kienu ser ikunu s-sidien ta` din il-kumpanija flimkien ma` Viktor Kristiansen li kien ser ikun investiture minflok Erik Andren.

Fil-**kontroezami**, Atansov ikkonferma li s-salarju tieghu kien ta` EUR 24,000 fis-sena u dan sabiex jottjeni *holding permits* ghal progett. Spjega li huwa ma ottjeniex il-permessi necessarji u dana ghaliex ma nghatax l-awtorita` li jiddeciedi dwar liema proceduri ghandhom jigu utilizzati, u meta jissottometti dokumenti. Huwa spjega li kien ghamel *professional plan* madwar 3 xhur wara li gie mpjegat. Huwa spjega li matul is-sena 2010, beda jsir il-*biological testing* li sar minn kumpanija esterna li giet imhallsa. L-istess kumpanija hadet hsieb l-*environmental impact assessment.* Spjega li ghal *biological monitoring*, din il-kumpanija thallset madwar EUR 40,000 . Spjega li huwa beda jipprepara l-applikazzjonijiet necessarji u dokumenti biex tinbeda l-procedura f`awtoritajiet differenti. Spjega li l-ufficju tal-kumpanija kien mikri ghal EUR 800 fix-xahar. Ikkonferma li din kienet kriet dan l-ufficju sa mill-bidu li giet iffurmata fil-Bulgarija. Huwa kkonferma li din il-kera kienet tittermina f`Jannar jew Frar. Huwa spjega li Melnyk kien qallu biex jitlaq l-ufficju minghajr ma jhallas kera ta` l-ahhar xahrejn jew tlett xhur u li dan kien qallu li kien hemm problema ta` storbju u li din taghtih id-dritt li jivvaka minghajr ma` jhallas il-kera dovuta. Huwa spjega li fil-fehma tieghu, il-kumpanija ghaddejja minn problemi finanzjarji ghaliex mhux qed isir finanzjament.

Bjorn Andren xehed fit-22 ta` Marzu 2011 fejn spjega li huwa cittadin Svediz u jopera ammont ta` negozji differenti. Spjega li huwa sar jaf lil Kristian Melnk tramite habib komuni. Spjega li huwa gie kkuntatjat biex jara jekk kellux interess li jinvesti fi progett ta` kostruzzjoni ta` *wind farm* fil-Bulgarija. Spjega li huwa ma kellux esperjenza f`dan in-negozju, izda gie avvicinat peress li kellu l-kapital u dawn kellhom bzonn kumpanija li kellha tali kapital. Spjega li huwa ma tantx jaf dettalji izda jaf li fir-rigward ta` Balkan Power Invest Holding Limited, kellhom 49% mentri l-parti l-ohra kellha 515 izda d-decizjonijiet kellhom ikunu unanimi ossija 50%. Huwa spjega li kien hemm ftehim li jekk jsehhu certu *achievements*, kien ser ikun aktar investiment ta` flus sa massimu ta` miljun Ewro. Huwa spjega li beda jara hafna affarijiet strambi. Fost ohrajn, huwa jispjega li kienu rcivew ittra min nil-kumpanija Gaeu li kienet giet avvicinata minn Melnyk, li qaltilhom biex ma jikkuntattjawhiex aktar u li ma riditx ikollha x`taqsam xejn maghhom. Spjega li kienu imbaghad saru verifiki dwar Ahlman u Melnyk ma` persuni li kienu hadmu maghhom, u dawn tawhom kummenti negattivi hafna dwarhom. Spjega li nduna li dawn ma setghux izommu mat-termini

imposti ghall-issodisfar tal-*milestones*. Spjega li ra stramb ukoll li wara li saret it-tieni kumpanija Bulgara, Ahlman kien infurmah li l-habib tieghu Chavda Stankov kien ser jigi mkecci. Spjega li Chavda Stankov kien infurmahom bil-miktub li Ahlman kien talbu biex ma jghidx lil Erik Andren bis-sitwazzjoni fil-Bulgarija peress li jekk dan isir jaf, ma kienx ser jaghti aktar flus.

Xehed li safrattant huma kienu qed jintalbu aktar flus. Spjega li Ahlman kien mar kontra l-istatur li jghid li ma jistax jopera kumpanija ohra li tkun f`kompetizzjoni mal-kumpanija Bulgara. Spjega li huma talbu li jaraw il-kotba tal-kumpanija izda dawn kienu mcahhdin milli jarawhom. Huwa spjega li jissusspetta li l-flus li kienu qed ihallsu kienu marru ghal xi progett iehor. Spjega li meta ndunaw b`dan kollu, ibnu Erik kien mar il-bulgarija u tkellem ma` diversi persuni fejn skopra li kienet inghatat *loan* lil kumpanija u li sar *pledge* ta` l-assi ta` Terra. Spjega li huma ma gewx infurmati b`din il-*loan* u *pledge*. Huwa spjega li dan kollu kellu effett fuq il-kumpanija Maltija intimata. Spjega li jekk il-valur ta` l-ishma fil-kumpaniji Bulgari jkunu bla valur, allura il-valur ta` l-ishma fil-kumpanija Maltija ma jkollhomx valur.

Fil-**kontroezami**, Bjorn Andren stqarr li qabel ma` dahal ghal dan in-negozju, huwa ma ghamilx verifiki peress li normalment jekk jahseb li huwa investiment tajjeb, huwa jipprocedi. Huwa haseb li dan kien negozju tajjeb fis-sena 2007. Spjega li huwa ma kellux esperjenza f`*wind farms* izda l-hsieb ma kienx li tinbena *wind farm*. Huwa spjega li l-ftehim kien li ser jinvestu fi progett li kien ser iwassal ghal sitwazzjoni fejn kienu jottjenu l-approvazzjoni li jbieghu l-progett lil terzi u dan it-terz jibni l-*wind farm*.Spjega li dak li kien hemm kien *business proposal*. Spjega li jekk jintlahqu certu *milestones* il-valur tal-progett kien jawmenta drastikament. Spjega li l-progett kien li jigi ottenut permess li tinbena *wind power* f`art partikolari. Spjega li kien hemm htiega li tigi identifikata l-area, jigi ottenuti l-permessi u tinxtara l-art. Huwa kkonferma li huwa Svediz. Huwa spjega li mill-esperjenza li kellu fin-negozju, huwa ra li l-progett offrut kien wiehed tajjeb. Ighid illi huwa qatt ma affaccja lil Ahlman b`dawn il-verifiki li ghamel dwaru minn fejn irrizulta li dan kellu reputazzjoni hazina. Huwa spjega li ma jafx x`kienu l-milestones izda jaf li dawn ma sarux. Huwa spjega li ma jafx jekk sarux tlett pagamenti in konnessjoni mat-tlett *milestones* .

Ulf Gabrielson ta x-xhieda tieghu fil-11 ta` April 2011, fejn qal li huwa *financial manager* ta` Andren Group li hija komposta minn diversi kumpaniji. Spjega li dan ilu f`din il-kariga sa mis-sena 1988. Spjega li huwa ggradwa fis-sena 1967. Kien ghamel tlett snin jahdem ma` *auditing firm* u

mbaghad fis-sena 1970 kien beda jahdem ma` Ericsson fejn hadem ghal 18-il sena. Spjega li fl-ahhar tmien snin, huwa hadem bhala *financial manager* ta` wiehed min-negozji . Spjega li huwa ggradwa wkoll minn *management school* f`Fontainebleau fi Franza. Spjega li huwa kien involut f`din il-kwistjoni peress li gie mitlub jara l-proposta ta` l-investiment u jaghti r-rakkomandazzjonijiet tieghu. Spjega li din il-proposta nghatat lilhom lejn l-ahhar tas-sena 2006. Spjega li huwa kien ma` Bjorn u Erik Andren meta saret il-laqgha ma` Ahlman u Menlyk. Huwa qal illi l-memorandum innifsu gie esegwit tramite SEPJ li hija *consultancy group* serja. Spjega li n-negozju kien li tinbeda wind farm fil-Bulgarija. Il-proposta kienet ghal investiment ta` 1.5 miljuni ta` Ewro izda Andren Group accettat li tippartecipa b`1.3 miljuni ta` Ewro. Spjega li gie formulat ftehim finanzjarju fil-bidu tas-sena 2007 fejn kien hemm imnizzel meta certu ammonti kellhom jithallsu u dana in linea ma` meta jintlahqu certu *benchmarks*. Spjega li fl-*investment memorandum* kien hemm *time schedules* u kif ukoll spjega li l-kalkolazzjoni finanzjarja kienet inkluza. Huwa ezebixxa dan it-time schedule preliminari flimkien mal-kalkoli relattivi ma` finanzjament tal-progett. Huwa specifika li l-hlas tal-flus kien relatat ma` l-otteniment ta` certi milestones.

Gabrielson xehed illi huwa kien irrakomanda lil Andren Group li din il-proposta ta` investiment ghandha tigi adottata izda kien imperattiv li jigi segwit u onorat it-terminu miftiehem. Huwa ppreciza li kien hemm 4 *milestones* li lkoll kellhom data meta kellhom jigu raggunti. Spjega li l-ewwel milestone li kellha terminu sa Marzu 2007 giet ottenuta f`Gunju 2007. F`dak l-istadju, huwa qal li Andren Group kellha thallas EUR 250,000. Spjega li din l-ewwel milestone kienet tikkonsisti fil-formazzjoni tal-kumpanija. It-tieni milestone kellha ssir sa Gunju 2007 izda giet raggunta f`Dicembru 2007, minkejja li kien hemm bdil zghir fiha. Spjega li milestone 2 tinsab deskritta f`pagna 3 tal-financial agreement. Spjega li f`dan l-istadju, thallset is-somma ta` EUR 300,000 izda kien mhallas f`Marzu 2008 u zewg pagamenti f`Ottubru 2008. Kompla jghid li t-tielet milestone kellha tintlahaq sa Settembru 2007 . Huwa spjega li sehh kien li gie osservat li t-termini tal-milestones fil-ftehim originali saru outdated u ghalhekk kien hemm bzonn ghal ftehim iehor. Huwa spjega li f`Gunju 2009, gie ffirmat ftehim finanzjarju emendat fejn gew iffissati milestones godda jew ahjar targets godda. Spjega li dawn it-targets il-godda gew ghal darb`ohra pprezentati minn Melnyk u Ahlman peress li dawn kienu esperjenzati u intizi fi progetti bhal dawn. Huwa spjega li saru aktar pagamenti matul 2009 ta` madwar EUR 55,000 u iehor ta` EUR 65,000. Dawn kienu pagamenti zghar sabiex jithallsu suppliers halli jigu evitati lmenti.

Gabrielson ikkonferma li huma kienu jircievu kull xahar rapport dwar il-kumpaniji Bulgari u dawn kienu jikkontjenu *profit and loss statement* kif ukoll *balance sheet.* Spjega li uhud mit-targets gew ottenuti inkluz l-ewwel u t-tieni targets gew ottenuti. Spjega li t-target relata ma` ftehim dwar il-Bulgarian forest fund ma setax jigi ottenut peress li dawn kienu qed jorbtu l-permess mal-prezentazzjoni tad-dokumenti kollha rekwiziti li kienu jinkludu environmental impact assessment li kien ghadu ma sarx. Spjega li dan id-dokument dwar l-environmental impact assessment wasal f`Novembru 2009. Spjega li t-target tal-15 ta` Awissu biex ikun hemm *connection agreement* ma setax isehh qabel ma` jkun lest l-*environmental impact assessment.* Huwa spjega li anke l-ahhar 2 items fuq il-lista li kellhom isiru sal-5 ta` Dicembru 2010 u 30 ta` Marzu 2010 ossija akkwist ta` art u permess tal-bini ma ntlahqux. Spjega li kulma nxtraw xi 8 bicciet zghar ta` art meta kien necessarju tinxtara madwar 60 jew 80 bicca art.

Gabrielson xehed li f`2010, il-fiducja li kellhom f`dan il-progett bdiet tonqos. Spjega li fil-bidu tas-sena 2010, gie infurmat mill-managers tal-kumpaniji Bulgari li kien hemm xi haga hazina fil-progett . Spjega li Chavdar kien baghat email fejn issottolinja l-problema ta` investiment futur f`dan il-progett(Dok UG3). Spjega li huwa kien tkellem mal-manager attwali u huwa kien ta` l-istess fehma. Spejga li saru jafu li spejjez personali kienu qed jithallsu mill-kontijiet tal-kumpanija . Spjega li f`Awissu 2010, huwa talab lil Hristina Pavlova ta` VM Consultancy sabiex taghtih stampa cara tal-flus li kienu hergin u dehlin, izda din irrispondiet li kellha struzzjonijiet cari minn Ahlman sabiex ma tghaddix tali informazzjoni (Dok UG4). Spjega li huwa kien cempel lil din wkoll izda din kienet sempliciment avzatu li ma setghetx tkellmu. Huwa spjega li l-parti l-ohra kienet qed tutilizza fondi minn dan il-progett ghal progetti personali taghhom. Spjega li Ahlman iffirma bhala rapprezentant ta` kumpaniji Rumeni kompetituri tal-kumpaniji Bulgari.

Gabrielson xehed li matul is-sajf u l-harifa tas-sena 2010, kien hemm varji laqghat bejn il-partijiet sabiex tinstab soluzzjoni. Huwa spjega li f`xi stadju, Cementir baghtet *notice for breach of contract* ghax sahqet li Lonavi kellha thallas aktar flus. Izda huwa spjega li dan ma kienx minnu peress li l-pagament kien konness ma` *performance.* Spjega li kien ikun irresponsabbli li jigu nvestiti aktar flus minghajr ma jkun hemm sigurta dwar fejn u kif kienu ser jintuzaw tali fondi. Huwa ezebixxa dokument datat 25 ta` Mejjufejn Melnyk kien qed jaghti struzzjonijiet lil Hristina Pavlova li kien ser jipprepara *loan agreement* li allegatament kienet sehhet fil-bidu ta` Mejju (Doc UG11).

<u>Bjorn Ahlman</u> spjega li minn verifiki li ghamel flimkien ma` Melnyk skopra li kien hemm negozju tajjeb ghal renewable energu fil-Bulgarija. Spjega li kienu inkarigaw lil SCK financial advisers dwar dan u dawn kienu kkonfermaw li kien hemm negozju tajjeb. Spjega li dawn gew inkarigati biex jaghmlu *information memorandum* u jinvestigaw jistghux isibu nies biex jinvestu. Spjega li f`dan il-memorandum, gie mnizzel ukoll li Bulgarija ghandha procedura amministrattiva kumplessa . Spjega li tramita dawn il-financial advisers, iltaqghu mal-familja Andren. Spjega li dawn accettaw il-proposta u dana minkejja li skont hu, din kienet sorpriza ghax solitament irid isir xi *due diligence report* qabel ma tittiehed decizjoni bhal din. Spjega li n-negozjati gew finalizzati fi Frar 2007, fejn giet iffirmata *shareholder`s agreement* fejn l-ishma kienu 49% u 51% izda l-*voting rights* kienu vot ghal Cementir u vot ghal Lonavi. Spjega li gie ffirmat ftehim ta` finanzjar fejn Lonavi kellha tinvesti EUR1,350,000 u Cementri EUR 205,000. Spjega li dawn kienu relatati ma` 4 *milestones.* Spjega li l-investiment ta` EUR 205,000 kien relatat mat-tieni *milestone.* Spjega li flimkien ma` Erik kienu marru jaraw diversi siti. Spjega li f`Lulju 2007, Bjorn Andren mar il-Bulgarija. Spjega li kien instab is-sit ta` Sakar u kienet giet inkarigata kumpanija Norvegiza sabiex tiddisinja dak li kien hemm bzonn isir. Spjega li l-applikazzjoni ghal first class investment fil-Bulgarija hadet hafna zmien. Huwa sostna li beda jara li l-interess tal-familja Andren naqas.

Ahlman sostna li xhin ra dan id-dizinteressament da parti ta` Andren, huwa kien inkariga lil Kristian Melnyk sabiex jzomm il-kotba tal-kumpanija. Spjega li l-progett vera dam izda minkejja d-dewmien ma kinux qed jintalbu aktar flus. Huwa sostna li anke r-raba` milestone kien intlahaq izda l-flus rigwardanti dan ma ntbaghtux minn Andren. Spjega li meta gie suggeriet li jsri ftehim iehor, huma kienu qablu izda ma qablux li jiddahhal investitur iehor fil-progett hekk kif gie suggeriet minn Andren. Spjega li sussegwentement inholqot il-kwistjoni li huwa kellu jidhol bhala manager sakemm dahal Atansov. Spjega li kien hemm ukoll diskors fis-sens li dan is-sit jigi dikjarat bhala Natura 2000. Xehed li kienu tqabbdu zewg professuri mill-Forest University biex jara jekk kienx possibli li dan is-sit jigi dikjarat bhala Natura 2000. Spjega li r-ragunijiet moghtija minn dawn ma kinux japplikaw ghal art fejn kienu ser jitpoggew it-*turbines* u ghalhekk Atanasov ghamel notifikazzjoni f`Dicembru 2009 lil Ministeru liema notifikazzjoni giet approvata. Huwa spjega li f`Lulju 2009, Lonavi telqet mill-progett u l-porzjon taghhom ittiehdet minn Chagos. Spjega li Chagos riedet taghmel negozzjar gdid peress li din argumentat illi huwa kellu xi progetti f`Rumanija. Huwa insista li l-progett fir-Rumanija ma kellux x`jaqsam mal-progett tal-Bulgaria. Spjega li kien hemm bzonn ta` flus peress li kien ser jintilef dak kollu li kien gie ottenut. Huwa sahaq li dahlu f`non commercial loan ta` EUR 200,000 biex b`hekk juru lil Chagos illi huma kienu genwini f`dan il-progett. Spjega li xhin

aktar flus ma gewx investiti, kellha issir *pledge* ta` l-assi ta` Terra Bulgaria 1.

Ahlman spjega li mbaghad f`daqqa rcivew dawn il-proceduri istitwiti minn Lonavi. Spjega li l-parti l-ohra ma tistax tifhem li jista` jkollhom direttur huma u direttur l-ohrajn u b`hekk il-kumpanija tista` titmexxa. Spjega li meta Goran Rise gie mahtur, huwa pprova jara minn fejn jista` jgib flus . Spjega li meta Andren sostna li kien lest li jbiegh l-ishma tieghu ghal prezz ta` 49% ta` EUR 700,000 u ta` EUR 205,000, dan ma kienx minnu. Huwa sahaq li l-formazzjoni ta` Terra Bulgaria 1 kienet giet iffurmata fuq suggeriment ta` Consulco. Spjega li hemm board fis-socjeta` intimata mentri fil-kumpaniji Bulgari, dan ma jezistiex. Huwa jaqbel li kien hemm dewmien imma dak kien l-izvantagg li x-xoghol kien qed isir fil-Bulgarija. Huwa baqa` jsostni li dak li kien qed jaghmel fir-Rumanija ma kienx qed jikkompeti ma` dak li kien qed isir il-Bulgarija. Huwa insista li l-klawsola dwar *non competition* gite diskussa biss fis-sena 2010, ossija sitta jew seba` xhur wara li kien gia nvolut fil-progett ta` Rumanija.

Ahlman sostna li dwar il-kwistjoni tal-kotba tal-kumpaniji Bulgari, huwa spjega li la Chagos u lanqas Cementir ma kellha prorjeta` f`dawn il-kumpaniji u ghalhekk, kien ta dawn l-istruzzjonijiet. Dwar l-allegazzjoni li spejjez personali thallsu minn fondi tal-kumpaniji, huwa sostna li ma jafx ghal xiex kienu qed jirreferu. Huwa spjega li l-ohrajn talbu biss laqgha f`Awissu jew Settembru 2010 . Spjega li l-pledge agreement gie ffirmat fit-22 ta` ottubru 2010. HUwa spjega li Chakov kien habib tieghu izda dan kien tkecca ghaliex ra li ma kienx adegwat ghax-xoghol li kien mehtieg jaghmel. Huwa insista li fir-rigward ta` din il-kumpanija, ma jistax jinghad li hemm xenarju ta` *minority* u *majority shareholding* peress li l-partijiet huma ugwali ghal dak li ghandu x`jaqsam ma` votazzjoni. Huwa insista li Atanasov abbanduna l-inkarigu tieghu u li meta ntalab biex inehhi l-affarijiet mill-ufficju peress li l-kera ta` l-ufficju kien ghalaq, dan irrifjuta u kellu jiehu hsieb hu. Huwa insista li llum il-gurnata Chagos huma s-sidien ta` l-ishma li kienu ta` Lonavi, izda ghal xi raguni r-registru ghadu ma giex emendat. HUwa sostna li jekk verament it-tlett milestones gew sodisfatti, suppost kellu jsir investiment ta` EUR 805,000 u mhux EUR 700,000. Huwa ghadda imbaghad biex ipprezenta sett ta` dokumenti li ghamel referenza ghalihom matul ix-xhieda tieghu.

Fil-**kontroezami**, Ahlman ikkonferma li kien hemm memorandum u articles of association tal-kumpanija intimata. Huwa kkonferma li kien sar bdil fl-isem tas-socjeta` intimata u minn Rallye, sar l-isem attwali . Spjega li

dan il-bdil fl-isem ma kienx jaffettwa l-istruttur u l-azzjonisti li baqghu l-istess. Huwa sostna li Cementir ghamlet offerta lil Lonavi wara dak li kien intqal minn Andren fil-Qorti izda din il-proposta giet michuda. Huwa spjega li kien hemm dritt li jkun hemm zewg diretturi u hekk kien sakemm irrizenjaw u Alex Frendo gie nkarigat miz-zewg partijiet. Spjega li Frendo kien l-ewwel uniku direttur tas-socjeta` intimata peress li qabel kienu jigu nkarigati zewg diretturi li riedu jiehdu decizjonijiet unanimi. Huwa spjega li qatt ma kien involut bhala direttur tas-socjeta` intimata. Huwa kkonferma li l-azzjonisti ta` Bulgarian Power kienet is-socjeta` intimata. Huwa spjega li d-decizjoni li jigi rimpjazzat Chavdar bih innifsu, ittiehdet miz-zewg diretturi li kien hemm qabel ma` gie appuntat Frendo, izda imbaghad ikkonferma li fid-dokument li gie ezebiet fir-rigward tat-tnehhija ta` Chavdar, tirrizulta l-firma ta` Frendo. Huwa kkonferma li sar direttur ta` Bulgarian Power wara li ttiehdet decizjoni minn Chagos u Cementrir. Huwa kkonferma li l-firmatarji f`pagna 70 kienet tieghu t-tnejn u kien qed jiffirma ghan-nom tas-socjeta` intimata u ghas-socjeta` Bulgarian Power EOOD. Spjega li huwa deher ghas-socjeta` Maltija ghaliex kellu prokura u kkonferma li dan id-dokument kien jirrigwarda *assignment of management contract*. Huwa nsista li meta l-loan skadiet f`Dicembru 2011, intalbet li ssir pledge u din il-pledge qatt ma ntuzat. Huwa ikkonferma li s-self inghata minn kumpanija bl-isem ta` Oskoulier u li Peter Kristiansen ghamel kuntatt ma` din il-kumpanija. Spjega li dan kien qed jirraprezenta lilu nnifsu izda kien ukoll sid ta` Cementir. Huwa kompla jghid li din il-loan inghatat lil Terra Bulgaria 1. Huwa sostna li Cementir mhijiex azzjonista f`Terra Bulgaria 1 u Kristiansen lanqas ma huwa azzjonist f`Terra Bulgaria 1.

Kompla jixhed illi huwa azzjonist ta` Cementir. Huwa insista li meta kien qed jigi diskuss ftehim ma` Chagos, huwa ghamilha cara li ma kienx ser ikun hemm klawsola ta` *no competition*. Mistoqsi jekk kienx jaf li skont klawsola 12 tal-memorandum ta` Terra Bulgaria 1, ken hemm imnizzel din in-non competition clause, huwa sostna li kellu avukati fir-Rumanija li kienu vverifikaw li din ma kinitx problema. Huwa insista li ma kien hemm l-ebda kompetizzjoni peress li dawn kienu jkopru pajjizi differenti u cirkostanzi differenti. Huwa qal li kienet saret ittra dwar *material breach* peress li s-socjeta` rikorrenti ma kinitx hallset. Huwa kompla jghid li s-self minn Osculier sar sabiex jigi salvat l-progett u dan fir-rigward ta` kwistjonijiet ambjentali u dwar il-kontroll tas-siti.B`referenza ghal dokument KS1 u KS 2, huwa spjega illi dawn jirrelataw ma` decizjoni sabiex jinbiegh Balkan Power u ma ghandha x`taqsam xejn mal-pledge. Spjega li dawn jirrelataw ma` offerti biex tinbiegh Balkan power lil Cementir.Huwa kkonferma li illum il-gurnata is-socjeta` intimata ma ghandhiex ishma fil-kumpanija Bulgarian Power. Huwa qal li Bulgarian Power hija mmexxija minnu izda Terra One hija mmexxija minn ivan Stojmanov. Spjega li l-kumpaniji fil-Bulgarija,

huma mmexxija minn managing director. Huwa kkonferma li kien il-managing director ta` Terra 1 meta din hadet is-self mill-kumpanija Osculier.

Ikkonferma li Peter Kristensen kellu ishma f`Cementir, f`Osculier u huwa llum id-direttur tas-socjeta` intimata. Huwa kkonferma li s-socjeta` rikorrenti opponiet ghal hatra ta` Peter Kristensen izda l-persuna li giet proposta mis-socjeta` rikorrenti lanqas biss kien attenda. Spjega li huwa ma kellux rwol fis-socjeta` intimata izda kien inghata xi prokuri biex jaghmel xi affarijiet. Huwa spjega li ma setax isib kopja ta` din il-prokura . Huwa spjega li sa fejn jiftakar, il-prokura giet iffirmata minn Alex Frendo ghan-nom tas-socjeta` intimata. Huwa sostna li jekk jiftakar tajjeb, din il-prokura kienet wahda generali u huwa qatt ma uzaha. Huwa spjega li l-prokura ntuzat biss fir-rigward ta` Dok M a fol 70. Mistoqsi jekk wara li nhareg id-digriet ta` inibizzjoni sabiex huwa ma jiffirmax kuntratti ghan-nom tas-socjeta` Maltija, huwa insista li ma ghamel xen. Huwa sostna li llum-il gurnata Bulgarian Power hija proprjeta` ta` Cementir. Spjega li dan sehh minhabba li Rise kien ipprova jsolvi is-sitwazzjoni u Cementir biss uriet interess li takkwista. Huwa spjega li Terra 1 ma ghadhiex daughter company ta` Bulgarian Power u dan madwar sena u nofs ilu.

III. <u>Il-mandat tal-Av. Dr. Adrian Delia</u>

Riferenza ghal din il-kwistjoni tirrizulta fir-risposta tal-intervenuta fil-kawza. Il-Qorti mhijiex tara l-fondatezza tal-insistenza tal-intervenuta fil-kawza fuq il-prova tal-mandat ghar-raguni illi skont l-Art 1857(2) tal-Kap 16, mandat jista` jinghata b`att pubbliku, b`kitba privata, b`ittra, jew bil-fomm, jew ukoll tacitament. Fil-kaz tal-lum, xehdu rapprezentanti tas-socjeta` rikorrenti li fl-ebda waqt ma sostnew li Dr Delia ma kellux mandat mis-socjeta` rikorrenti sabiex jistitwixxi l-kawza tal-lum. Ladarba mandat jista` jkun anke verbali, u d-dirigenti tas-socjeta` rikorrenti hadu sehem attiv fil-procediment tal-lum, il-Qorti hija sodisfatta li Dr Delia kellu mandat tas-socjeta` rikorrenti ghall-finijiet u effetti kollha tal-ligi.

IV. <u>Interess guridiku</u>

Kienet eccepita mill-intervenuta fil-kawza l-karenza ta` interess guridika da parti tas-socjeta` rikorrenti li tistitwixxi dan il-procediment.

Inghad li s-*shareholders` agreement* datat 20 ta` Frar 2007 jidher li gie superfluwu meta sar *shareholders` agreement* iehor bejn is-socjeta` Cementir u Chagos Limited (iktar `il quddiem imsejha Chagos) datat 17 ta` Gunju 2009. Ghaldaqstant, skond Cementir, is-socjeta` rikorrenti ma ghandhiex interess guridiku li tressaq din l-azzjoni.

Minn esami tal-*memorandum u articles of association* ezebiti a fol 5 et seq tal-process, irrizulta illi l-azzjonisti ta` BPI kienu fost ohrajn, Lonavi b`784 ishma. Huwa minnu wkoll illi skont is-*shareholders` agreement* a fol 135 u li huwa dak vigenti giet indikata s-socjeta` Chagos bhala azzonista f`din il-kumpanija BPI. Infatti, il-klawsola 1.1 ta` dan il-ftehim raggunt fis-17 ta` Gunju 2009 jaqra : "*The parties are the direct shareholders of BPI Holding Ltd, a company duly incorporated and organised under the laws of Malta …*"

Huwa l-istat tad-dritt illi huwa l-*membru* ta` kumpannija kif definit fil-ligi li jista` jezercita azzjoni skont l-Art 402 tal-Kap 386.

Fis-sentenza li tat il-Qorti ta` l-Appell fl-24 ta` Gunju 2011 fil-kawza "**Arkitett Raymond Vassallo pro et noe vs Anthony Parlato Trigona et**" qalet hekk :-:

"Illi skont il-ligi l-azzjoni taht l-Artikolu 402 tal-Kap 386 tista` tigi mressqa minn "kull membru ta` kumpanija" u l-Artikolu 2(1) jiddefinixxi `membru` bhala "azzjonista ta` kumpanija u socju f`kull socjeta` kummercjali ohra".

*Illi r-rikorrenti ma humiex azzjonisti jew membri fis-socjeta` Windsor Holding Ltd ghalhekk ma setghux jintavolaw il-kawza u jfittxu rimedju taht l-Artikolu 402 kontra din il-kumpanija. Fil-ligi ma jezisti ebda kuncett ta` `second tier shareholding`. Il-membri f`socjeta` k**ummercjali huma dawk l-azzjonisti li huma registrati fis-socjeta`** u dan kif, bhala regola, jirrizulta mid-dokumenti tas-socjeta`. Fil-kaz in ezami r-rikorrenti mhumiex azzjonisti fis-socjeta` Windsor Holdings Limited. Ghalhekk membru f`socjeta` partikolari ma jistax jarroga ghalih innifsu drittijiet spettanti lil membru f`socjeta` ohra, u jinjora l-principju tal-personalita` guridika separata tas-socjetajiet kummercjali. Ir-relazzjonijiet interni tal-kumpanija, bhalma huma l-ezistenza ta` subsidiary u parent company mhumiex rilevanti f`dan il-kaz."* (enfazi ta` din il-qorti).

Fil-pag 961 tal-ktieb **<u>Principles of Maltese Company Law</u>**, Andrew Muscat ighid hekk :-

"Only a "member" of the company or the Registrar can make an application to the court for relief under article 402. Article 2(1) of the Companies Act defines a "member" as a "shareholder of a company", a "shareholder" is in turn defined as "a person entered in the register of members or ..the bona fide holder of a share warrant…". The requirement for a member to have been entered into the register of members can well prove to be a stumbling block to the successful exercise of the action. Unfortunately, in Malta, the directors and the company secretary often fail to create and properly maintain a register of members. In companies, where no share transfers have been effected since incorporation, it may be arguable that there is no need for a formal register of members. The question whether a formal register of members is required in every case does not however appear to have been addressed by the Maltese Courts. To avoid difficulties and eliminate doubts, directors and the company secretary should always ensure that a proper register of members be kept. If an error occurs in the register of members, it would appear to be necessary for the register to be rectified (either voluntarily by the company or by order of the court) prior to the institution of an action under article 402…In case of a division of a company, if shares held by the company to be divided are allocated to a particular recipient company, that recipient company will need to be registered in the register of members of the company in which the shares are held if such recipient company is to have locus standi to file an action under article 402."

Ladarba fil-kaz tal-lum ma tistax tigi nvokata l-estensjoni tat-tifsira ta` *membru* kif tirrizulta fl-Art 402(6) [i.e. *f`dan l-artikolu, il-kelma "membru" tinkludi persuna li legalment tista` tirrapprezenta l-interessi ta` membru mejjet, persuna li ghandha jkunu ghaddew leġittimament azzjonijiet fil-kumpannija b`wirt testamentarju jew mhux testamentarju, u trustee kif imfisser fl-artikolu 127 li jkollu azzjonijiet fil-kumpannija*] ghax ma tapplikax ghall-kaz tal-lum, dak li ghandu jiddetermina min ghandu l-interess guridiku li jipprocedi bl-azzjoni tal-lum huwa l-persuna li jaqa` fid-definizzjoni generali ta` *membru* u cioe` l-*azzjonista* u l-*azzjonista* huwa definit bhala *persuna reġistrata fir-reġistru ta` kumpannija skont l-artikolu 123 jew id-detentur bona fide* ta` *warrant ta` azzjoni msemmi fl-artikolu 121.*

Il-Kap 386 jispjega l-procedura li ghandha tittiehed sabiex trasferiment ta` ishma jigi registrat fil-kumpannija u notifikat lir-Registratur tal-Kumpanniji. Madanakollu l-essenzjali huwa li jinzamm register of members sabiex ikun hemm imnizzel min huma x-shareholders :

"Whenever a share transfer takes place, the name and address of the transferee should, on the application of the transferor or of the transferee, be enterd in the register of the members (Art 119(1) Companies Act)....A person can only be recognised as a shareholder, at least for the purposes of the Companies Act, if his name is entered into the register of members. This rule results from Article 2(1) of the Act which inter alia defines a shareholder, as "a person entered in the register of members of a company..." Moreover, articles of association often provide that the transferor of a share is to be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof." (pg 813, 816, **Principles of Maltese Company Law**, op. cit)

Fis-sentenza citata fil-Kollez. Vol. LXXXI.II.277 fl-ismijiet "**Herbert Baldacchino noe vs Cecil Pace et pro et noe et**" inghad hekk :-

"Punti saljenti ohra f`din il-materja li tittrata dwar ishma f`socjetajiet Limited Liability Companies huwa illi d-dottrina Anglo-Sassona hija d-dottrina li ghandha tigwida l-interpretazzjoni tal-ligi taghna li hija fil-fatt immodellata fuq il-principju ta` dik is-sistema legali;

F`dik is-sistema il-pussess li huwa relevanti, vis-à-vis il-kumpannija, huwa dik tal-persuna li tkun giet irregistrata fl-ishma mill-istess socjeta` u minkejja illi share transfer seta` ta` a beneficial ownership, dan ma kienx sufficjenti. Hekk per ezempju il-Gower- Gower`s Principle of Modern Company Law (Fourth Edition) f`pagna 454 :

"...does not become a member or shareholder until the transfer is registered. Moreover it is the policy of our company law that the company shall not be concerned with the beneficial ownership but shall only be bound or entitled to recognize the person whose name is on the register."

Fl-istess sens Pennington`s Company Law (Fourth Edition) fil-pagna 296:

"The Legal title to the share is vested in the person entitled to it either by allotment by the company or by a transfer from a former holder, but if all the legal rights, in respect of the share are to be enjoyed by that person, the company must have registered him as a holder of it in the company`s register of members."

Hekk ukoll fit-tieni edizzjoni tal-ktieb Company Law- Questions and Answers – Griffiths & Gregory 2nd Edition, fejn jghidu:

"The key to the system of transferability of shares is the register of members kept by a company. Entry on the register completes the biased item and makes him a member."

Jasal ghall-istess konkluzjoni l-Professur Joseph Micallef fil-ktieb tieghu The European Company – A Comparative Study with the English & Maltese Law;

Jidher ghalhekk, illi huwa pacifiku li fis-sistema legali taghna l-kwistjoni tal-pussess u t-tgawdija ta` dan id-dritt personali ma jappartjenix lil min ghandu ix-share certificate biss f`idejh izda lil min ghandu share certificate li giet registrata mill-kumpanija."

Fl-isfond tal-premess, fil-kaz tal-lum, ma jidhirx li ghalkemm sar ix-*shareholders agreement* a fol 135, l-azzjonista Chagos giet imnizzla u registrata fir-registru tal-membri minflok is-socjeta` Lonavi. Dan ikkonfermah ix-xhud Bjorn Ahlman fejn insista li llum il-gurnata Chagos huma s-sidien ta` l-ishma li kienu ta` Lonavi, izda ghal xi raguni r-registru ghadu ma giex emendat.

Fil-fehma ta` din il-Qorti l-azzjoni giet impostata korrettement peress li prezenzjalment hija s-socjeta` rikorrenti li ghadha registrata bhala membru tas-socjeta` ntimata u mhux is-socjeta` Chagos. Bhala membru tal-kumpanija ntimata, is-socjeta` rikorrenti ghandha l-interess guridiku li tmexxi b`din l-azzjoni peress li huwa biss membru tal-kumpannija ntimata li jista` jipprocedi b`azzjoni skont l-Art 402. tal-Kap 386.

L-eccezzjoni dwar karenza ta` interess guridiku qeghad tkun respinta.

V. <u>L-Art 402(1) tal-Kap 386</u>

L-ewwel subinciz tal-Art 402 jaqra hekk :-

Kull membru ta` kumpanija li jilmenta li l-affarijiet tal-kumpanija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod li, jew li xi att jew ommissjoni talkumpanija kienu jew huma jew x`aktarx se jkunu oppressivi b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju, ghal membru jew membri jew b`mod li jkunu kontra l-interessi

tal-membri in generali, jista` jaghmel rikors lill-qorti ghal ordni taht dan l-artikolu.

Fis-sentenza li tat din il-Qorti (diversament presjeduta) [`**PA/GV**] fit-30 ta` Jannar 2008 fil-kawza "**Cutajar pro et noe et vs S.C. & Company Limited et"** inghad hekk –

Illi l-prova biex tirnexxi dina l-azzjoni tispetta lir-rikorrenti li ressqu dina l-azzjoni. Huma jridu jippruvaw li (a) l-affarijiet tal-kumpanija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod li… (b) jew li xi att jew ommissjoni tal-kumpannija kienu jew huma jew x`aktarx se jkunu, oppressivi b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju, ghal membru jew membri jew b`mod li jkunu kontra l-interessi tal-membri in generali.

Il-ligi taghna ma taghtix spjegazzjoni ta` x`inhu oppressiv b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju. Kull kaz ghalhekk irid jigi trattat u deciz fuq il-mertu tieghu proprju, u dana kaz b`kaz. L-iskop tal-ligi hu biex il-Qorti tkun tista` tintervjeni f`dawk il-kazijiet fejn hemm bzonn li jinghata rimedju minhabba unfair dealing fejn jigi pruvat li kien hemm azzjonijiet jew ommissjonijiet li ma kienux gusti u li kienu ta` pregudizzju jew li l-affarijiet tal-kumpanija mhux qed jitmexxew sew.

Fis-sentenza li tat il-Qorti ta` Ghawdex (Gurisdizzjoni Superjuri) **[AE]** fl-4 ta` Frar 2009 fil-kawza "**Ellis vs Ellis"** inghad hekk –

Jibda biex jinghad li dan il-provvediment jista` jigi nvokat mill-membri kollha, u mhux biss minn membri minoritarji u m`hemmx dubju li d-diskrezzjoni u l-poteri moghtija lill-qorti f`dan il-kuntest huma wesghin. Minn dan il-provvediment hu evidenti li :

(a) Dan il-provvediment japplika wkoll f`kaz ta` att jew ommissjoni izolata ;

(b) Ir-rimedju jista` jinghata kemm ghal dak li jkun gara fil-passat u wkoll xi att propost li jsir fil-futur ;

(c) L-ilment jrid ikun fuq it-tmexxija tal-affarijiet tal-kumpannija jew fuq att jew ommissjoni tal-kumpannija.

Fis-sentenza taghha tad-9 ta` Marzu 2007 fil-kawza "**<u>Vella et vs Vella Brothers Ltd et</u>**", il-Qorti tal-Appell qalet hekk –

… l-Artikolu 402 ta` l-Att dwar il-kumpaniji jaghti diskrezzjoni pjuttost wiesa` lill-Qrati u dan ghaliex dawn il-provvedimenti ghandhom l-ghan li jissalvagwardjaw u jipprotegu lill-azzjonisti ta` socjeta` kummercjali, partikolarment lil dawk li huma minoritarji u li ghalhekk qeghdin fl-impossibilita` li jirregolaw il-mod li bih tkun qed titmexxa s-socjeta` li fiha huma jkollhom interess …

… din id-disposizzjoni, li hija bbazata fuq l-Art.459 tal-Companies Act (1985) Ingliza, hija ispirata fuq principji ta` ekwita` aktar milli minn drittijiet strettament legalistici biex ikun jista` jigi moghti rimedju. Dak li hu necessarju hu li l-azzjonista jipprova li minhabba l-gestjoni tas-socjeta` partikolari hu qed isofri, jew ukoll jista` jsofri, pregudizzju ta` natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista` tirreferi sempliciment ghal xi att specifiku jew xi ommissjoni tal-kumpanija. Il-pregudizzju jista` jirreferi ghall-azzjonist li qed jippromwovi l-proceduri, ghal xi azzjonist iehor jew ghall-interess in generali ta` l-azzjonisti. Ma hemmx ghalfejn li huwa jipprova li huwa zgur ser isofri xi pregudizzju fil-futur. Tali prova tista` ssir fuq bazi ragjonevoli ta` possibilita` ***("Vincent Monreal et v. Lino Delia noe"*** *deciza mill- Prim`Awla tal-Qorti Civili fit-13 ta` Mejju, 1999). Infatti gie deciz mill-Qrati Inglizi fil-kawza in re* ***Bovey Hotel Ventures Ltd*** *[(1983) B.C.L.C. 290] li `the Court will not give a list of situations when this remedy may be resorted to however one principle remains clear. A shareholder may make use of this article when his shareholding in the company has been seriously diminished at least seriously jeopardized by reason of a course of conduct or the part of those who have the de facto control of the company, which has been unfair to the member concerned".*

… Fid-decizjoni ***O`Neill v Phillips*** *moghtija mill-House of Lords fl-20 ta` Mejju 1999, gie ritenut illi l-legislatur ried illi biex jinghata rimedju taht l-artikolu jigi kkunsidrat il-kriterju ta` dak li huwa `fair`. Izda Lord Hoffman izid ighid li - "Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used … The requirement that prejudice must be suffered as a member should not be too narrowly or technically construed.*

Fis-sentenza ***<u>Bovey Hotel Ventures Ltd</u>*** (op. cit.) kien inghad hekk –

The test of unfairness must, I think, be an objective, not a subjective one. In other words it is not necessary for the petitioner to show that the persons who have had the de facto control of the company have acted as they

did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith ; the test, I think, is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner`s interests.

Fis-sentenza "**Monreal et vs Delia noe**" (op. cit.) inghad hekk –

Dawn il-provedimenti huma ta` salvagwardja u ta` protezzjoni ghall-azzjonisti ta` socjeta` kummercjali, b`mod partikolari ghal dawk li huma minoritarji. Ir-rimedji li johorgu minn dawn il-provedimenti huma moghtija lil kull azzjonist ta` socjeta` kummercjali. Kull azzjonist, anke jekk hu minoritarju, ta` socjeta` kummercjali, anke jekk hi pubblika, jista` jitlob li jinghataw l-ordnijiet kollha necessarji u opportuni, f`kaz li jirnexxielu jipprova illi minhabba l-gestjoni tal-istess socjeta` huwa qed isofri jew ukoll jista` jsofri xi pregudizzju ta` natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista` tirreferi semplicement ghal xi att specifiku jew xi ommissjoni tal-kumpanija. Il-pregudizzju jista` jirreferi ghall-azzjonist li qed jippromuovi l-proceduri, ghal xi azzjonist iehor jew ghall-interessi in generali tal-azzjonisti. In vista ta` dan kollu jista` jinghad li hu bizzejjed li l-azzjonista jipprova li huwa qed isofri jew eventwalment jista` jsofri xi pregudizzju minhabba xi agir tas-socjeta` li taghha huwa jippossjedi xi ishma. Ma hemmx ghalfejn li huwa jipprova li huwa zgur li ser isofri xi pregudizzju fil-futur. Tali prova tista` ssir fuq bazi ragjonevoli ta` probabbilita`. Inoltre, skond dak li hemm provdut fis-subartikolu (3) tal-istess artikolu 402, il-Qorti tista` tipprocedi biex taghmel kull ordni necessarja u opportuna skond dawn il-provedimenti, jekk jirrizulta li l-ilment tal-azzjonista hu sewwa bbazat u jekk il-Qorti thoss li huwa ekwu u gust li taghmel.

Fis-sentenza taghha tal-31 ta` Jannar 2003 fil-kawza "**Ellul vs Ellul pro et noe**"**,** il-Qorti tal-Appell qalet hekk –

… Fil-ligi Ingliza (ara Art 459 tal-Companies Act, 1985) jinstab rimedju simili li hu maghruf bhala "The Unfair Prejudice Remedy". Il-Qorti ta` l-Appell Ingliza stabbiliet fil-kaz "in Re Saul D. Harrison & Sons plc ([1995]) 1BCLC 14)" il-linji ta` gwida dwar kif kellu jkun l-operat biex ikun jista` jigi kkwalifikat bhala, "unfairly prejudicial" (fit-test tal-Ligi Maltija din il-frazi hi tradotta "b`mod mhux gust ta` pregudizzju"). Wiehed kellu, fl-ewwel lok, jara jekk dak l-operat kienx jew le skond l-istatut tal-kumpanija. Izda fl-applikazzjoni tal-imsemmija dispozizzjoni – ispirata fuq principji ta` ekwita` aktar milli minn drittijiet strettament legali – il-Qorti tiehu in konsiderazzjoni l-aspettattivi legittimi ("legitimate expectations") li r-rikorrent

jista` jkollu u li sikwiet ikunu ferm aktar wiesgha mid-drittijiet strettament legali li johorgu mill-istatut ta-ssocjeta`. Dawn l-aspettativi legittimi jitwieldu minn xi relazzjonijiet personali partikolari bejn l-azzjonisti. Fil-kaz Ebrahimi vs Westbourne Galleries Ltd. ([1973] AC 360) Lord Wilberforce elenka numru ta` sitwazzjonijiet fejn dan ir-rimedju jista` jinghata, sitwazzjonijiet dawn li x`aktarx jinstabu f` kumpaniji zghar privati li ta` sikwiet jissejhu "quasi partnerhsips", fosthom is-segwenti :-

"(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company ;

(ii) an agreement, or understanding, that all, or some (for there may be "sleeping members") of the shareholders shall participate in the conduct of the business ;

(iii) restriction upon the transfer of the members` interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere".

Fil-pagna 464 tat-Tielet Edizzjoni tal-***<u>Ferrar`s Company Law</u>*** jinghad hekk –

... The position will vary greatly from the small private companies, commonly called quasi-partnerships, to public companies of considerable size. As a quasi-partnership, the company will usually have been formed or continued on the basis of a personal relationship involving mutual confidence. There may be an agreement or understanding that all or some of the shareholders are to participate in the conduct of the business. Restrictions on the transfer of shares will be the rule rather than the exception. The individuals involved may also have made relatively substantial capital contributions to the company. Shareholders in such companies will be a small close-knit group, actively involved in many instances in the daytoday operations and financially and personally committed to the company. Here the scope for legitimate expectations beyond their strict legal rights is obviously greatest.

However, as Lord Wilberforce stressed in Ebrahimi v Westbourne Galleries Ltd, the case for giving effect to equitable considerations must be made in each instance and it is not sufficient simply to assert that the company is small or private, for in many cases the basis of the relationship will be adequately and exhaustively laid down in the articles. If it is so defined by the articles or, for example, by the articles supplemented by a shareholders`

agreement, then there is little room for finding further legitimate expectations beyond those outlined in the documents.

The interests of shareholders in larger private and public companies, on the other hand, are likely to be quite different from those of shareholders in quasi-partnerships and considerably more restricted. In these larger companies there is usually no underlying personal relationship, employment is rarely an issue and the shareholders are more interested in such matters as dividend yield and capital appreciation than involvement in the day-to-day running of the company. If they become dissatisfied, especially if it is a public company, they can sell their shares and withdraw from the company. Here the members rarely have expectations beyond their strict legal rights as provided by the articles.

"That is not to say that s.459 does not apply to larger private companies and public companies for the section is clearly not limited to quasi-partnerships. The point is that it may be harder to establish conduct which is unfairly prejudicial to the interests of the members in such companies.

Kif qalu Hicks u Goo fil-pagna 409 tal-Hames Edizzjoni ta` ***Cases and Materials on Company Law*** –

In the early days of S.459, it was thought that the petitioner must have unfairly suffered prejudice to an interest as a member only (and not eg. as a director). This requirement has never been relaxed in that the Court is prepared to recognise that members may have different interests having regard to their rights, expectations and obligations (re a company (No 00477 of 1986 [1986 BCLC 376; O`Neill v Phillips. [1999] 1 WLR 1092). This is particularly so in quasi-partnership cases where a minority is excluded from management. But where the articles make detailed provision for any departing members to sell their shares at a fair price, the position may be different …Section 459 has proved to be a powerful weapon for minority shareholders, particularly in the case of quasi-partnerships. In such companies, minorities who are excluded from management participation or who unfairly suffer loss as a result of wrongdoing by directors or majority shareholders may get relief under the section.

Fil-kawza ***In Re Hotel Ventures Ltd.*** (1983) Slade J iddeskriva `*unfair prejudice*` hekk –

The test for unfairness must, I think, be an objective, not a subjective, one. In other words it is not necessary for the petitioner to show that the

persons who have de facto control of the company have acted as they did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith ; the test, I think is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner`s interests."

Fil-pagna 449 tar-Raba` Edizzjoni tal-***Farrar`s Company Law***, jinghad illi –

A member`s interests are not necessarily limited, therefore, to his strict legal rights under the Articles and the Companies` Act but can extend also to legitimate expectations as to the conduct of the company`s affairs arising from the nature of the company and the agreements and understandings between the parties.

VI. L-ilmenti

Is-socjeta` rikorrenti qed tikkontesta l-mod kif is-socjeta` intimata giet zvestita miill-assi taghha, ghaliex tikkontendi li sar hekk ghad-detriment taghha u ghall-vantagg tal-intervenuta fil-kawza u tal-azzjonisti taghha.

Skont is-socjeta` rikorrenti, il-hsieb wara l-hidma ta` l-azzjonisti tal-intervenuta fil-kawza kien sa minn dejjem li jgieghel lis-socjeta` rikorrenti tinvesti ammonti sostanzjali ta` flus fis-socjeta` intimata u sussegwentement tittrasferixxi dawk l-assi lejn numru ta` kumpanniji ohra.

Min-naha taghha, l-intervenuta fil-kawza ssostni li kien in-nuqqas ta` interess da parti tas-socjeta` rikorrenti u n-nuqqas ta` agir da parti taghha li kkawza pregudizzju lejn l-interessi taghha.

Tishaq ukoll li min-naha ma sar xejn li huwa censurabbli skont l-Art 402(1) tal-Kap 386.

Il-Qorti sejra tghaddi ghall-ezami tal-ilmenti ta` s-socjeta` rikorrenti u li abbazi taghhom mexxiet bl-azzjoni tal-lum :-

1. **Ir-rizoluzzjoni tad-29 ta` Mejju 2009 u r-riperkussjonijiet li kellha minhabba l-*assignment of management contract***

Is-socjeta` rikorrenti ssostni illi s-socjeta` intimata waqqfet kumpannija BP gewwa l-Bulgarija, u wara BP waqqfet il-kumpannija Terra Bulgaria 1.

Hemm dizgwid fil-verzjonijiet tal-partijiet fir-rigward tal-formazzjoni ta` Terra 1 peress li Lonavi tghid li din kienet kostitwita b`inizjattiva ta` Bjorn Ahlman mentri Cementir tghid li kienet kostitwita wara decizjoni li hadu flimkien Lonavi u Cementir fl-20 ta` Dicembru 2007. Ahlman jinsisti li Terra 1 giet iffurmata b`inizjattiva ta` Consulco International Ltd li kienet giet inkarigata bil--progett u mhux b`inizjattiva tieghu.

Din il-Qorti mhux ser toqghod tindaga dwar l-inizjattiva ta` min kienet biex saret il-kumpannija, izda tosserva li skont Dok CEM 4 ezebit a fol 148, liema dokument huwa ffirmat minn Bjorn Ahlman, Erik Andren u Kristian Melnyk, Terra Bulgaria 1 kienet saret bl-approvazzjoni ta` kulhadd tant li kienet ittiehdet decizjoni li jigu jsiru Terra Bulgaria 2 sa 6.

Is-socjeta` rikorrenti tghid illi fid-29 ta` Mejju 2009, id-direttur uniku ta` dak iz-zmien tas-socjeta` intimata, Alexander Frendo hatar lil Bjorn Ahlman bhala manager ta` BPI u dana b`setghat ferm wiesa`. (Dok L a fol 65). Sussegwentement Ahlman deher fuq kuntratt ta` *assignment of management contract* ezebit bhala Dok M a fol 70 ghan-nom tas-socjeta` intimata a tenur ta` rizoluzzjoni tad-29 ta` Mejju 2009 kif ukoll ghan-nom tas-socjeta` Bulgarian Power. Fil-kuntratt, Ahlman ittrasferixxa id-drittiijet ta` amministrazzjoni li kellha s-socjeta intimata fil-BP. Is-socjeta` rikorrenti sostniet li dan kollu sar minghajr ma hija kellha konoxxenza tieghu.

L-ilment tas-socjeta` rikorrenti huwa li Bjorn Ahlman qatt ma kellu d-drittijiet rapprezentattivi tas-socjeta intimata u ghalhekk qatt ma seta` jidher fuq kuntratt fejn prattikament is-socjeta` intimata BPI giet zvestita mid-drittijiet taghha ta` amministrazzjoni fil-progett. Inghad ukoll illi l-agir ta` Ahlman, li huwa l-beneficjarju tal-azzjonista maggoritarju Cementir fi hdan is-socjeta` intimata, kien biss li jeskludi lis-socjeta` Lonavi mill-gestjoni tal-progett u partecipazzjoni fl-istess.

Mill-banda l-ohra, is-socjeta` intimata u l-intervenuta fil-kawza argumentaw li ma kien hemm assolutament xejn irregolari fil-hatra tal-istess Bjorn Ahlman bhala *manager* tas-socjeta` BP wara l-laqgha li sehhet fid-29 ta`Mejju 2009 ezebita a fol 65 tal-process.

Inghad ukoll din il-laqgha nzammet skond ir-regoli applikabbli u l-hatra saret mid-direttur Alexander Frendo li kien mahtur bi qbil bejn Lonavi u Cementir bhala persuna professjonali u independenti.

Kien rimarkat ukoll illi ma kien hemm xejn irregolari fl-*assignment of management contract* datat 2 ta` Lulju 2009 peress li dan il-kuntratt jinkwadra ruhu fl-ambitu tas-setghat li gew akkordati lil Bjorn Ahlman fid-29 ta` Mejju 2009.

2. <u>Self u special pledge fuq il-going concern a favur ta` Oskoulier Holding Limited (iktar `il quddiem imsejha Oskoulier)</u>

Is-socjeta` rikorrenti tallega wkoll li Ahlman deher fil-vesti tieghu ta` Managing Director ta` Terra 1 fil-kuntratt ma` Oskoulier fejn in segwitu ghal kuntratt ta` self li sar fl-1 ta` Mejju 2010 versu l-ammont ta` EUR 200,000, giet stabbilita special pledge fuq il-going concern kollu ta` Terra 1. Fil-kuntratt ezebit bhala Dok O mar-rikors promotur, jirrizulta li din is-sigurta` specjali fuq il-going concern ta` Terra 1 hija marbuta mal-obbligu tal-hlas lura tas-self entro l-1 ta` Dicembru 2010.

Is-socjeta` rikorrenti nsistiet li dan kollu sar minn ad insaputa taghha, u minghajr ma nghatat l-ebda informazzjoni. Madanakollu, irrizulta mix-xiehda ta` Erik Andren, illi dan kien jaf li kienet ittiehed dan is-self u li kien anke staqsa dwaru. Is-socjeta` rikorrenti sostniet ukoll illi dan is-self sar bi skop uniku – ried jigi krejat passiv li kien ovvju li ma seta` qatt jithallas mis-socjeta Terra 1 biex b`hekk imbaghad jigi mehud il-kontroll kollu ta` Terra 1.

Min-naha taghha, Cementir sostniet li minkejja li kien sar hafna xoghol preliminari, il-finanzi kienu skarsi u kien ghalhekk li sar dan il-kuntratt ta` self bejn is-socjeta` Oskoulier u Terra 1. Skont Cementir, dan is-self gie indikat b`mod car fir-rapporti finanzjarji li ntbaghtu lil Chagos . Skont Cementir, is-self ghadu ezistenti u ghadu ma thallasx izda ghadha ma ntuzatx il-garanzija nkorporata fil-pledge agreement. Cementir argumentat li

dan kollu sar minnha sabiex taghmel l-almu taghha bhala azzjonista fis-socjeta` BPI u bhala investitrici fil-progett fil-Bulgarija li tara li dan il-progett jirnexxi. Saret referenza ghax-xhieda ta` Ahlman li spjega li kien hemm riskju kbir li dak li gie akkwistat jintilef u b`hekk il-progett ifalli u ghalhekk kien necessarju li jittiehed dan is-self.

3. Ilment dwar Competing Activities

Is-socjeta` rikorrenti lmentat ukoll li skont il-kuntratt ta` l-formazzjoni ta` Terra 1, Bjorn Ahlman ma setax jippartecipa f`negozji li jikkompetu ma` l-istess negozju ezercitat mis-socjeta`. Sar l-argument li kien ksur ta` dak l-obbligu peress li Ahlman iffirma ftehim ma` kumpannija kompetitrici ta` Terra 1, bl-isem ta` Romanian Power.

Da parti tieghu, Ahlman insista li huwa ma kiser l-ebda obbligu peress li n-negozju ta` Romanian Power ghandu x`jaqsam ma` progett fir-Rumanija u mhux fil-Bulgarija bhal dan il-progett.

Dwar din il-kwistjoni, ghalkemm Bjorn Andren ipprova jixhet dubji li fondi ta` BP kienu qed jigu effettivament utilizzati ghal Romanian Power, ma tressqux provi sodisfacenti li jippruvaw tali allegazzjoni.

Inoltre, din il-Qorti hija ferm xettika dwar dan l-ilment partikolarment meta tqis il-minuti ta` laqgha li ghaliha kien attenda Erik Andren, u li fiha ssemmiet Romanian Power, u ma kienx hemm rapportat l-ebda ilment dwarha u dwar il-konnessjoni li Ahlman kellu maghha. Infatti fid-dokument a fol 148 et seq, hemm imnizzel "Negotiations to get cash injections for Romanian Power and Terra Bulgaria 2 continues."

4. Nuqqas ta` access ghall-kotba tal-kumpanniji Bulgari

Is-socjeta` rikorrenti sostniet li hija kienet imcahhda ukoll minn access ghall-kotba tal-kumpanniji BP u Terra 1 minhabba li min kien izomm il-kotba, infurmaha li kellhom struzzjonijiet cari minn Ahlman li jirrifjuta li jaghti access. Kienet esebita korrispondenza li tikkorrabora l-verzjoni tas-socjeta` rikorrenti (fol 335 et seq).

Mill-banda l-ohra, Ahlman spjega li huwa kien ta dawk l-istruzzjonijiet peress li la Lonavi u lanqas Cementir ma kienu azzjonisti ta` BP u ta` Terra 1 ; ghalhekk ma kellhomx jedd ghal informazzjoni dwar iz-zewg kumpanniji.

5. <u>Hatra ta` Goran Rise</u>

Fil-mori ta` dan il-procediment, inhatar Goran Rise bhala direttur tas-socjeta` intimata. Is-socjeta` rikorrenti pprotestat ghal din il-hatra li skont hi kienet irregolari. Fissret illi b`ittra tal-25 ta` April 2011 mibghuta lill-azzjonisti tas-socjeta` intimata, Goran Rise fl-assunta kapacita tieghu ta` direttur ta` BPI, stieden lill-azzjonisti sabiex sa mhux aktar tard mid-9 ta` filghodu tas-27 ta` April 2011 jaghmlu l-offerta taghhom ghall-ishma li s-socjeta` ghandha f`BP sabiex l-istess ishma jinbieghu lill-ahjar offerent.

Is-socjeta` rikorrenti spjegat illi fis-16 ta` Mejju 2011, Goran Rise biegh lill-intervenuta fil-kawza l-ishma li l-intimata kellha f`BP u ghalhekk, Cementir saret l-unika azzjonista ta` BP. Dan gab il-konsegwenza li BPI giet zvestita mill-assi kollha taghha. Dan kollu sehh fil-mori tal-pronunzjament li kellu jinghata minn din il-Qorti fid-9 ta` Gunju 2011.

Is-socjeta` rikorrenti sostniet ukoll li Cementir bieghet l-ishma kollha li kellha f`Terra 1 lil Oskulier Holdings Limited bil-prezz ta` 5,000 Bulgarian Lev (BGN).

Da parti taghha, Cementir spjegat li Goran Rise kien ilu sa mis-16 ta` Marzu 2011 li avza lill-partijiet kollha b`laqgha li ssejhet ghat-22 ta` Marzu 2011 bil-ghan specifiku li tigi diskussa s-sitwazzjoni prekarja li fiha kienet tinsab BPI (fol 821). Spjegat li fl-24 ta` Marzu 2011 (fol 290) Goran Rise stieden lill-partijiet sabiex jaghmlu l-offerti taghhom fir-rigward tal-kreditu illi kellha BPI fil-konfront tas-socjeta` BP "*to secure the economic situation of BPI and receive liquid assets …*" Kien hemm skmabju ta` emails bejn Goran Rise u l-legali ta` Lonavi dwar din il-kwistjoni hekk kif jirrizulta minn dokumenti a fol 372 et seq. Gie spjegat li fl-1 ta` April 2011 hekk kif kien avza Goran Rise, ladarba saret biss l-offerta minghand Cementir, sar ftehim (fol 682/828) li bih kien akkwistat dak il-kreditu. Imbaghad fil-25 ta` April 2011, hekk kif ukoll ikkonfermat is-socjeta` rikorrenti, Goran Rise talab li

jsiru offerti sabiex jinxtraw l-ishma li BPI kellha fi BP, izda ghal darba ohra, kienet biss Cementir li ghamlet offerta u b`hekk l-ishma gew mibjugha lilha.

VII. Konsiderazzjonijiet

Din il-Qorti qieset id-diversi lmenti fl-isfond tal-provi kollha li tressqu.

Abbazi tal-provi rrizulta li s-socjeta` ntimata kienet kostitwita minn zewg kumpanniji : is-socjeta` Lonavi kellha 49% tal-ishma ; u s-socjeta` Cementir kellha 51%. Mis-*shareholders agreement* ta` l-20 ta` Frar 2007, jirrizulta li kull azzjonist fis-socjeta` ntimata nghata d-dritt li jappunta direttur tal-ghazla tieghu (klawsola 5.2 : *The shareholders of the Company shall have the right to nominate one (1) director each to the Board of Directors*) mentri kull direttur nghata vot wiehed (klawsola 6.3 : *At a board meeting, each director shall have one vote. Decisions of the Board of Directors shall be adopted by a simple majority vote of the directors present. All board meeting decisions have to be unanimous.*)

Anke l-*agreement* emendat li sar fis-17 ta` Gunju 2009, sabiex tigi regolata mill-gdid ir-relazzjoni bejn l-azzjonisti, kienet taghti l-fakolta` lil kull parti li jkollha d-dritt li tappunta kemm direttur u kif ukoll deputy director b`vot wiehed :-

5.2 The shareholders of Chagos Ltd and Cementir Holding Ltd shall have the right to nominate one (1) director and one (1) deputy each to the Board of Directors.

6.3 At a board meeting, each director shall have one vote. All board meeting decisions have to be unanimous.

Din il-Qorti tirrileva mill-ewwel illi dan l-istat ta` fatt jistona mal-verzjoni tas-socjeta` rikorrenti, peress li din sostniet li bhala azzjonista minoritarja fis-socjeta` intimata sabet ruhha rinfaccjata b`agir ta` pregudizzju ghall-interessi taghha. Fil-verita` s-socjeta` rikorrenti qatt ma giet imcahhda mid-dritt li tippartecipa bi shih fit-tmexxija tas-socjeta` intimata. Infatti kellha kull dritt li jkollha direttur tal-ghazla taghha li seta` b`hekk jipprotegi l-interessi taghha, izda hija qatt ma nvokat tali hatra.

Irrizulta li r-relazzjoni ta` bejn l-azzjonisti tas-socjeta` intimata BPI giet stabbilita b`mod dettaljat ghall-ahhar fil-kuntratti li huma kkonkludew bejniethom u ghalhekk kollox kien sarkjarament, fid-dettall u b`mod metikoluz. Dak li gara f`dan il-kaz huwa li s-socjeta` rikorrenti ghazlet li ma tezercitax id-drittijiet taghha u qatt ma invokat id-dritt taghha li titlob li jigi appuntat direttur iehor minnha. Mid-dokumentazzjoni ezebita jidher li kien biss fil-mori ta` dan ir-rikors ossija b`talba maghmula fit-18 ta` Ottubru 2011 (fol 580) li s-socjeta` rikorrenti talbet li jigi mahtur direttur minnha wkoll a tenur tal-artikoli fuq kwotati.

Irrizulta wkoll illi skont il-*financial agreement* ezebit bhala Dok CEM3, is-socjeta` rikorrenti intrabtet li tikkontribwixxi s-somma ta` EUR 1,350,000 filwaqt illi s-socjeta` Cementir intrabtet li tikkontribwixxi s-somma ta` EUR 205,000. Dawn il-kontribuzzjonijiet kellhom isiru ai termini tal-kondizzjonijiet kontenuti fil-*financial agreement* u kienu dovuti skont id-diversi *milestones* specifikati. Mill-provi, irrizulta li s-socjeta` Cementir ssodisfat l-obbligi taghha skont il-ftehim raggunt kuntrarjament ghas-socjeta` Lonavi. Infatti, Cementir ikkontribwiet fl-intier is-somma minnha dovuta. Mill-banda l-ohra, Lonavi argumentat li hija bdiet tara li l-*milestones* kienu qed jintlahqu biss tard hafna, u in vista li kellha *feedback* negattiv minn persuni li kienu jahdmu fis-socjetajiet Bulgari li gew iffurmati, qaghdet lura milli tinvesti aktar flus fis-socjeta` ntimata.

Fil-fehma ta` din il-Qorti, ghalkemm tifhem li l-aspettativi tas-socjeta` rikorrenti f`dan il-progett ipprecipitaw meta raw li ma kienx qed isir progress fil-progett fit-termini mixtieqa, ma tarax li l-agir tas-socjeta` Lonavi kien wiehed accettabbli. F`dan il-kaz, is-socjeta` rikorrenti ma ghamlet l-ebda sforz biex tghin ruhha u b`hekk ikollha aktar kontroll fuq dak li kien qed jigri. Spiccat li minkejja li kellha l-poter li tkun hi li tikkontrolla l-interessi taghha, hija baqghet ma tinvolvix ruhha. Jidher li kienet qatghet qalbha mill-progett tant li kienet anke talbet li l-ishma taghha jigu trasferiti lil Chagos kif fil-fatt jidher li sehh izda mhux b`mod formali hekk kif rikjest skont il-ligi.

Mid-dokumentazzjoni pprezentata, jidher li s-socjeta` Lonavi kienet tigi nfurmata b`dak li kien qed isehh anke fir-rigward tal-kumpanniji Bulgari u dana anke tramite rapport ta` kull xahar li kien jintbaghat. Din il-Qorti tifhem li jista` jkun li dan ir-rapport kien jinhtieg li jigi elaborat u investigat f`aktar dettal, izda minn tali rapport, is-socjeta` rikorrenti setghet taghmel il-verifiki preliminari taghha u fejn tara li qed isehh xi haga li mhux toghgobha,

issejjah laqgha ta` l-azzjonisti, u tinvoka d-drittijiet taghha. Minn dan jidher li qatt ma sar xejn u din baqghet passiva.

Din il-Qorti ma tistax tinjora l-fatt li l-lment dwar ir-rizoluzzjoni mehuda mid-direttur ta` dak iz-zmien Frendo sehhet f`Mejju 2009, fi zmien qabel ma sar il-ftehim tas-17 ta` Gunju 2009 bejn l-azzjonisiti. Din il-Qorti tara kemmxejn dubjuz kif is-socjeta` rikorrenti qed tallega li kellha l-ilment dwar it-tmexxija tas-socjeta` intimata u fl-istess nifs taccetta li tidhol fi ftehim gdid. Barra minn hekk, anke jekk forsi jigi kkunsidrat li sakemm sar dan il-ftehim f`Gunju 2009, jista` jaghti l-kaz li s-socjeta` rikorrenti ma kinitx konsapevoli b`din ir-rizoluzzjoni mehuda fid-29 ta` Mejju 2009, xorta wahda jibqa` l-fatt li s-socjeta` rikorrenti baqghet ma lmentatx dwarha meta saret taf biha, kif ukoll lanqas ilmentat bl-*assignment of management contract* tat-2 ta` Lulju 2009. Hija baqghet ma attakatx id-decizjoni mehuda mid-direttur Alexander Frendo li baqa` fil-kariga tieghu sa Novembru 2010.

Jidher li l-uniku zmien meta s-socjeta` rikorrenti bdiet tiehu azzjoni u tilmenta dwar dak li allegatament hija ddeskriviet bhala oppressiv u ingust fil-konfront taghha, kien f`Novembru 2010 u dana wara li fit-2 ta` Settembru 2010, is-socjeta` Cementir baghtet avviz ai termini ta` l-artikolu 14 tas-*Shareholders` Agreement* fejn gie nvokat material breach tal-ftehim u sabiex l-ishma rapprezentanti s-sehem ta` 49% jigu trasferiti lil Cementir bi prezz li kellu jigi stabbilit skont kif stipulat fl-istess ftehim.

Anke l-ilmenti li saru dwar dak li sehh fil-mori ta` dan ir-rikors, dwar l-agir ta` Goran Rise, juru nuqqas ta` azzjoni tas-socjeta` rikorrenti. Din il-Qorti hija konsapevoli li s-socjeta` rikorrenti ma kinitx qed taqbel mal-hatra ta` Goran Rise bhala direttur, izda dak li kellu jsir mis-socjeta` rikorrenti ma kienx li sempliciment tinjora dak li kien qed isehh, izda li tiehu azzjoni anke l-qrati. Jidher car li dak li sehh kien li s-socjeta` attrici ma ghamlet l-ebda offerti minkejja li giet interpellata u ghalhekk, sussegwentement, intghazlet l-unika offerta li kienet saret.

Ghal darb`ohra, din il-Qorti tara li dak li sehh seta` jigi evitat li kieku s-socjeta` rikorrenti assumiet il-poter disponibbli lejha li tiehu hsieb tappunta direttur iehor u b`hekk tigi involuta aktar fit-tmexxija. B`dan il-mod, bil-mezzi moghtija lill-istess azzjonisti bil-kuntratti ffirmati bejniethom, kienet tinholoq sitwazzjoni fejn is-socjeta` rikorrenti kienet isserrah mohhha li ghandha aktar kontroll f`dak li qed jigri u tkompli tinvesti hekk kif kienet obbligat ruhha li taghmel.

Hareg bic-car anke mix-xhieda tar-rapprezentant tas-socjeta` attrici Erik Andren illi huwa kien jaf li l-Bulgarija l-affarijiet jimxu bil-mod hafna u kien ser ikun hemm diffikultajiet. Ghalhekk, huwa kien konsapevoli tar-riskju li l-progett ma kienx ser jimxi skont it-termini ta` zmien impost. Madanakollu, minkejja li d-dewmien ghandu jigi ccensurat, din il-Qorti ma tarax li s-socjeta` rikorrenti ddecidiet b`mod ghaqli li tirrifjuta li tkompli tinvesti hekk kif kienet obbligat ruhha li taghmel skont l-istess ftehim raggunt. Dan aktar u aktar meta kien hemm problema ta` fondi f`dawn is-socjetajiet inkluza s-socjeta` intimata. Din il-Qorti tara li l-maggor parti ta` l-azzjonijiet li lmentat dwarhom l-istess socjeta` rikorrenti gew kagunati proprju minhabba dan in-nuqqas ta` adempiment ta` l-obbligu kontrattat mis-socjeta` rikorrenti, partikolarment ghal dak li ghandu x`jaqsam mas-self mehud fl-1 ta` Mejju 2010 u ghal *pledge agreement.*

Fil-kuntest ta` dan kollu, din il-Qorti mhijiex sodisfatta li saret il-prova sal-grad rikjest mil-ligi li kien hemm allegata tmexxija hazina da parti ta` l-intervenuta fil-kawza ghal dak li jirrigwarda s-socjeta` intimata. Din il-Qorti tara li dan il-kaz inbeda mis-socjeta` rikorrenti meta sar evidenti ghaliha illi l-progett ma kienx ser jirnexxi u ghalhekk, saret din il-procedura sabiex b`xi mod tigi evitata l-applikazzjoni tal-provvedimenti mahruga ai termini ta` l-artikolu 14 tal-*shareholders` agreement,* u kif ukoll sabiex is-socjeta` rikorrenti tfarfar minn fuq spallejha kwalunkwe responsabilita` li kellha ghal dak li gara.

F`dan l-isfond, din il-Qorti taghmel referenza ghal xi punti senjalati minn awturi in konnessjoni ma` dan ir-rimedju sancit taht l-artikolu 402 tal-Kap 386.

Alan Dignam & John Lawrey fil-ktieb **Company Law** (OUP – pg. 224) ighidu :-

"There is some authority which suggests that if the petitioner is substantially at fault for the breakdown in relations with his co-venturer, he may be denied relief under S 994 yet paradoxically succeed in a petition for just and equitable winding-up.

In Re Noble & Sons (Clothing) Ltd, 1983, NOurse J held that the circumstances of the case justified a winding up order on the basis of a breakdown in mutual confidence between the company`s two founding

members (equal shareholders) but not relieg under the unfair prejudice provision. The petitioner by his lack of interest in the management of the business had brought about his own exclusion from it by the other member."

L-istess ighid **John De Lacy** fil-ktieb **The Reform of United Kingdom Company`s Law** (Routledge – pg 240) :-

"The application of this test (as envisaged in Re Bovey Hotel Ventures Ltd) can be seen in Re RA Noble & Sons (Clothing) Ltd where the petitioner, a founder member of the business, in essence, a quasi –partnership, alleged that he had been excluded from the running of the company. In fact, the respondent had not set out to deliberately oust him, but had simply proceeded to manage the company`s business in the belief based on the petitioner`s conduct that he was uninterested in its affairs. It was held, applying the objective test, that a reasonable man might well have thought that the conduct complained of was prejudicial but would not have regarded it as unfair, for the petitioner by his lack of interest, had partly brought it upon himself."

Ben Pettet fil-**Company Law** (Pearson Education pg 234) jirrimarka li :-

"In Re RA Noble and Sons (Clothing) Ltd (1983) BCLC 273, Nourse J took the view that a petitioner who had behaved badly himself would not get a remedy, but in a later case Re London School of Electronics Ltd (1985) 1BCC 99 394 he seemed to retract this in favour of the approach that although he need not come to court with clean hands, his own conduct could affect the remedy which he received."

Fl-isfond ta` dak li rrizulta mill-evalwazzjoni tal-provi, din il-Qorti ma tistax tara li kien hemm agir jew tmexxija li jisthoqqilha titqies bhala oppressiva, diskriminatorja jew ta` pregudizzju ai termini ta` l-Art 402(1). Dak kollu li sar, sehh in linea mar-regoli miftehma bejn il-kontendenti u s-socjeta` rikorrenti qatt ma lmentat fi zmien propizju izda lmentat biss meta giet rinfaccata b`ittra dwar *material breach* minnha tal-ftehim raggunt. Din il-Qorti mhijiex sejra taghti r-rimedji skont l-Art 402(3).

<u>Provvediment</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar it-talbiet u dwar l-eccezzjonijiet billi :-

Qeghda tichad it-talbiet kollha tas-socjeta` rikorrenti.

L-intervenuta fil-kawza ghandha thallas l-ispejjez taghha, waqt li l-bqija tal-ispejjez tal-kawza ghandhom jithallsu kollha mis-socjeta` rikorrenti.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur