QORTI CIVILI PRIM'AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tnejn 31 ta` Ottubru 2016

Kawza Nru. 19
Rik. Nru. 145/16 JZM

Adinotec AG kumpannija registrata gewwa l-Germanja bin-numru ta` registrazzjoni (HRB9447)

u

Alexander Papenberg detentur tal-passaport Germaniz bin-numru (CGJM8L026)

kontra

X

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors ipprezentat fl-<u>24 ta` Frar 2016</u> li jaqra hekk :–

Illi l-kumpannija rikorrenti Adinotec AG, li hija kumpannija registrata gewwa l-Germanja, hija azzjonista tal-kumpannija registrata Malta Poligate Russia Limited li ghandha n-numru ta` registrazzjoni C45001 u ghandha elf mija disgha u disghin (1,199) sehem ordinarju minn elfejn (2,000) sehem fl-imsemmija kumpannija Poligate Russia Limited. Ir-rikorrenti l-iehor Alexander Papenberg huwa l-uniku direttur tal-kumpannija Poligate Russia Limited u dana kollu jirrizulta minn estratt mehud mis-sit elettroniku tal-Awtorita` ta` Malta dwar Servizzi Finanzjarji (MFSA) li qieghed jigi hawn anness u mmarkat bhala "<u>Dokument AAG1</u>" ;

Illi l-kumpannija Poligate Russia Limited ilha li waqfet topera b`mod mhux interrott ghal aktar minn erbgha u ghoxrin xahar, kif ser jigi ppruvat ampjament matul is-smigh ta` dan ir-rikors ;

Ghaldaqstant l-esponenti umilment jitolbu illi dina l-Onorabbli Qorti joghgobha tordna x-xoljiment u l-istralc tal-kumpannija Poligate Russia Limited (C45001) fost l-ohrajn ai termini tal-artikolu 214(2)(a)(i) tal-Kap 386 tal-Ligijiet ta` Malta u dana taht dawk il-provvedimenti kollha illi dina l-Onorabbli Qorti jidhrilha xierqa u opportuni.

Rat id-dokument li kien ipprezentat mar-rikors promotur.

Rat illi r-Registratur tal-Kumpanniji kien notifikat bir-rikors promotur u bl-avviz tas-smigh tal-kawza fid-9 ta` Marzu 2016.

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

Rat id-digriet li tat fl-udjenza tas-17 ta` Ottubru 2016 fejn halliet il-kawza ghall-provvediment ghal-lum.

Rat l-atti l-ohra.

II. Xiehda

Alexander Papenberg xehed illi huwa l-uniku direttur ta` Poligate Russia Limited u kien mahtur minflok id-diretturi ta` qabel fix-xahar ta` Dicembru 2015.

Ighid hekk :-

Both companies (u cioe` Poligate Limited u Poligate Russia Limited) *are subsidiaries of Adinotec AG, a German technology provider for road construction listed on the Frankfurt Stock Exchange, of which I am also CEO since the end of last year* (u cioe` l-2015). *I was appointed to replace the same directors with the exception of Marcus Buhl in Adinotec AG to restructure the company. The major shareholder found that there were irregularities in Adinotec AG. He decided to redress the situation and when he learnt that the directors of Poligate Limited and Poligate Russia Limited had resigned he asked me to step in not to leave the two companies without stewardship ... Poligate Russia was supposed to sell the licences of that process* (u cioe` dak li kienet tipproduci Poligate Limited).

Ikompli jghid illi :-

I have very little information of what the actual activities of both companies were because the previous directors were not forthcoming.

Dwar Poligate Russia Limited, il-Qorti staqsiet lix-xhud hekk : *Now what happened to the company for the two years prior to February 2016 ?*

Ix-xhud wiegeb :-

Well we don`t know because we don`t have any information, we have never seen any accounts that patents or anyone else was sold ... There is no personnel whatsoever, no secretary, no offices, there`s no one there, we have never seen.

Bruno Wuethrich xehed illi huwa kien wiehed mid-diretturi tal-kumpannija Poligate Russia Limited. Huwa rrizenja minn direttur fl-4 ta` Dicembru 2015. Kien ilu direttur ghal madwar seba` (7) jew tmien (8) snin. Sa dakinhar li spicca minn direttur, id-diretturi kienu Edmund Krix u hu. Frix irrizenja ukoll minn direttur. Minflokhom inhatar Alexander Papenberg bhala direttur. Ma jafx x`gara wara l-4 ta` Dicembru 2015.

Stqarr illi l-kumpannija kienet kostitwita sabiex tmexxi fir-Russja r-*royalties*, il-licenzi u l-*patent rights* ta` prodotti li kienet tipproduci kumpannija ohra bl-isem Poligate Limited. Din tal-ahhar kienet involuta fil-produzzjoni ta` *polymer* ghall-kostruzzjoni tat-toroq. Il-hsieb ma kienx distribuzzjoni tal-prodott fir-Russja izda l-bejgh tal-*patents* u tat-teknologija fir-Russja. Bazikament il-bejgh kien tan-*knowhow* milli tal-materjal jew tal-makkinarju.

Fisser illi l-operazzjoni fir-Russja bdiet fl-2011 izda ma kenitx success. Fil-fatt ma rnexxielhomx jaghmlu bejgh kif kien mahsub, ghalkemm hadu inizjattivi sabiex jippromwovu bejgh.

Ighid illi l-kumpannija kienet kostitwita ghal habta tal-2007. Huwa baqa` direttur ma` haddiehor mill-bidu nett sakemm irrizenja.

Sostna li l-kumpannija kienet waqfet topera. Ighid illi :-

... in the yearly reports you can see there is no sales, so if you look at the sales, at the revenue generated by the company for the past three years there was no sales ...

Irrefera ghas-snin 2013, 2014 u 2015.

Accerta l-Qorti illi fis-snin ta` bejn l-2013 u l-2015 *there was no activbvity on the part of the company to fulfil the objects for which it was constituted.*

Qal illi Poligate Russia Limited kienet topera minn ufficcju Malta ; li kien post divers minn dak ta` Poligate Limited. Kienet titmexxa mid-diretturi biss.

Ighid illi sar jaf li waqfet topera ghal sentejn milli sar jaf mid-diretturi li kien hemm qablu.

III. <u>Locus stanti</u>

Qabel tqis il-mertu tal-istanza odjerna, il-Qorti trid taccerta ruhha li r-rikorrenti ghandhom *locus standi* skont il-ligi.

Persuna li tkun trid titlob ix-xoljiment u l-istralc ta` kumpannija, trid toqghod ghal dak li jipprovdi l-**<u>Art 218(1) tal-Kap 386</u>** li jaqra hekk –

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

(a) stralc ta' kumpannija mill-qorti skont l-artikolu 214(1)(a) ;

(b) xoljiment u stralc ta' kumpannija mill-qorti skont l-artikolu 214(2)(a) ; jew

(c) xoljiment u stralc ta' kumpannija skont l-artikolu 214(2)(b),

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

Izda rikors skont il-paragrafi (b) jew (c) jista' wkoll isir minn xi azzjonist jew direttur tal-kumpannija.

Fil-kaz tal-lum, ir-rikorrenti qeghdin jitolbu x-xoljiment u l-istralc ta` Poligate Russia Limited abbazi tal-Art 214(2)(a)(i) tal-Kap 386.

Il-Qorti sejra tqis il-posizzjoni ta` kull rikorrent.

a) <u>Adinotec AG</u>

Skont l-Art 218(1), xoljiment u stralc ta' kumpannija mill-qorti skont l-Art 214(2)(a) jista` jintalab :-

i) mill-kumpannija wara decizjoni tal-laqgha generali ; jew
ii) mill-bord tad-diretturi ; jew
iii) minn xi detentur ta` obbligazzjoni ; jew
iv) minn kredituri jew kredituri ; jew
v) minn xi kontributorju jew kontributorji.

Fil-kaz tal-lum, ir-rikorrenti Adinotec AD ma jirrizultax li taqa` fl-ebda wahda mill-(i) sal-(v) ghalkemm hija l-azzjonista bil-maggoranza tal-ishma ta` Poligate Russia Limited.

Setghet tkun rikorrenti li kieku t-talba ghax-xoljiment u l-istralc saret abbazi tal-Art 214(2)(b) jew (c) li mhuwiex il-kaz tal-lum.

Ghalkemm hija azzjonista, Adinotec AD ma tikkwalifikax bhala *kontributorju* peress illi l-1200 *Ordinary Shares* kollha li jaghmlu l-*issued share capital* ta` Poligate Russia Limited huma kollha *fully paid up* (ara d-dokumenti ; ara ukoll id-definizzjoni ta` *kontributorju* skont l-Art 215 sa 217 tal-Kap 386).

Mela l-Qorti tghid mill-ewwel illi r-rikorrenti Adinotec AG <u>m`ghandhiex</u> *locus standi* biex titlob ix-xoljiment u l-istralc ta` Poligate Russia Limited skont l-Art 218(1) tal-Kap 386 abbazi tal-Art 214(2)(a)(i) tal-Kap 386.

b) <u>Alexander Papenberg</u>

Jirrizulta illi fid-data tal-presentata tar-rikors odjern (ara fol 3 et seq tal-process ta` din il-kawza) is-socjeta` Poligate Russia Limited kellha direttur wiehed biss u cioe` ir-rikorrent Alexander Papenberg - detentur tal-passaport Germaniz bin-numru (CGJM8L026). Dan ifisser li kien jikkostitwixxi wahdu l-bord tad-diretturi, tenut kont tal-istatut tas-socjeta`.

Ghalhekk Alexander Papenberg <u>ghandu</u> locus standi biex jitlob ix-xoljiment u l-istralc ta` Poligate Russia Limited skont l-Art 218(1) tal-Kap 386 abbazi tal-Art 214(2)(a)(i) tal-Kap 386.

IV. <u>L-Art 214(2)(a)(i) tal-Kap 386</u>

Skont l-**<u>Art 214(2)(a)(i) tal-Kap 386</u>**, *kumpannija **<u>tista'</u>** xxolji u tkun stralcjata mill-qorti ... jekk in-negozju tal-kumpannija jkun sospiz ghal perjodu bla waqfien ta' erbgha u ghoxrin xahar.*

Ir-rekwiziti tal-**<u>Art 214(2)(a)(i)</u>** huma :-

(i) is-**<u>sospensjoni tan-negozju</u>** tal-kumpannija ;
(ii) ghal perijodu **<u>bla waqfien</u>** ;
(iii) ta` erbgha u ghoxrin **<u>(24) xahar</u>**.

Ir-rekwiziti huma kumulattivi mhux alternattivi.

Min-natura taghha, id-disposizzjoni tesigi prova ta` fatt.

Jidher illi d-disposizzjoni kellha l-origini taghha fl-**<u>Art12(1)(d) tal-UK Insolvency Act 1986</u>**, liema disposizzjoni Ingliza m`ghadhiex taghmel parti mill-Act, ghax kienet superata b`legislazzjoni aktar ricenti.

Abbazi tax-xiehda ta` Alexander Papenberg **<u>wahedha</u>**, il-Qorti ma tistax tiddetermina r-rekwiziti tad-disposizzjoni li fuqha kienet ibbazata l-azzjoni odjerna.

Il-Qorti kienet cara hafna dwar dan, kif huwa evidenti mill-ahhar paragrafu tat-traskrizzjoni tax-xiehda ta` l-istess Papenberg.

Kien propju ghalhekk li tressaq bhala xhud Bruno Wuethrich li kien direttur qabel irrizenja u nhatar minfloku u ohrajn Alexander Papenberg.

Abbazi ta` li xehed Bruno Wuethrich, din il-Qorti tasal biex tikkonkludi :-

a) illi Poligate Russia Limited mhux biss issospendiet in-negozju taghha izda waqfet ghal kollox ;

b) illi Poligate Russia Limited waqfet tinnegozja aktar minn sentejn qabel il-presentata tar-rikors tal-lum ;

c) illi wara li waqfet taghmel tinnegozja, ma regghetx ghamlet negozju iehor ;

d) illi dik hija s-sitwazzjoni anke llum.

Ghal din il-Qorti jirrizultaw ippruvati r-rekwiziti tal-Art 214(2)(a)(i) tal-Kap 386.

V. Id-diskrezzjoni tal-Qorti

Accertat illi jirrizultaw ippruvati r-rekwiziti tal-Art 214(2)(a)(i) tal-Kap 386, il-Qorti sejra tara jekk fuq il-provi akkwiziti, ghandhiex hi tezercita d-diskrezzjoni taghha li tordna x-xoljiment u l-istralc tal-intimata.

Fil-***Palmer's Company Law*** (Edition 25 - Sweet & Maxwell) jinghad hekk :–

The court's jurisdiction is discretionary and the fact that the petitioner can establish this ground does not give him an automatic right to an order (re. Metropolitan Railway Warehousing Co. Ltd 1887.36.LJCh 827). The court has refused to make an order where there are good reasons for the delay and where the great majority of members desire that the company shall continue. An order may however be made in appropriate circumstances against the majority's wishes. Where the business has merely been suspended the court must be satisfied of an abandonment or inability to carry on. In ascertaining such intention the court will have regard to the opinion and wishes of the majority of shareholders whose names appear on the register. Merely abandoning one of several objects is insufficient (re. Norwegian Titanic Iron Co. (1866) 35 Beav.223).

Tajjeb jinghad illi l-azzjoni tal-lum kienet promossa mill-azzjonista ta` maggoranza tas-socjeta` Poligate Russia Limited u mill-uniku direttur taghha.

Dan premess, hija l-fehma konsiderata tal-Qorti illi s-socjeta` de qua ilha snin ma taqbad in-negozju li ghalih kienet kostitwita.

Huwa evidenti anke mill-persuni li gabu l-istanza `l quddiem illi l-azzjonisti m`ghandhomx l-icken hsieb jaghtu hajja ta` xi forma lis-socjeta` de qua.

Din il-Qorti tkompli tishaq, kif diga` kellha okkazjoni tishaq fi provvedimenti qabel dak tal-lum, illi kumpannija li ma taghmilx negozju hija entita` bla ruh. Ma tkunx qeghda taqdi l-ghanijiet taghha. Kumpannija li ma tiggenerax attivita` ekonomika ma jistax ikollha dhul. Fil-kaz tal-lum irrizulta bhala fatt illi l-azzjonista ta` maggoranza wera li m`ghandux l-icken hajra jew intenzjoni li jinvesti fil-kumpannija, sabiex taqbad in-negozju taghha.

Ghal din il-Qorti, ix-xoljiment u l-istralc tal-kumpannija Poligate Russia Limited huwa inevitabbli.

<u>Provvediment</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi billi:

Riferibbilment ghar-rikorrenti Adinotec AG, tiddikjara illi din ir-rikorrenti m`ghandhiex *locus standi* sabiex tippromwovi l-azzjoni tal-lum skont l-Art 218(1) tal-Kap 386 tal-Ligijiet ta` Malta.

Riferibbilment ghar-rikorrent l-iehor Alexander Papenberg, tiddikjara li ghandu *locus standi* sabiex jippromwovi l-azzjoni tal-lum skont l-Art 218(1) tal-Kap 386 tal-Ligijiet ta` Malta.

Tiddikjara li saret il-prova sal-grad rikjest mil-ligi ghall-applikazzjoni tal-Art 214(2)(a)(i) tal-Kap 386 tal-Ligijiet ta` Malta fil-kaz tal-kumpannija Poligate Russia Limited (C45001).

Tordna x-xoljiment u l-istralc tal-kumpannija Poligate Russia Limited (C45001) b`effett mill-24 ta` Frar 2016, skont l-Art 223(1) tal-Kap 386 tal-Ligijiet ta` Malta.

Tahtar lir-Ricevitur Ufficjali bhala stralcjarju tal-kumpannija Poligate Russia Limited (C45001) bis-setghat u bid-dmirijiet kollha stabbiliti fil-Kap 386 tal-Ligijiet ta` Malta.

Tordna lill-istralcjarju sabiex jipprezenta rapport sa zmien xaghrejn mil-lum.

Bl-applikazzjoni tal-Art 236(2) tal-Kap 386, tordna lir-rikorrenti sabiex *in solidum* bejniethom ihallsu l-ispejjez kollha ta` dan il-procediment, kif ukoll l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tal-istralcjarju.

Thalli l-istralc ghall-udjenza ta` nhar il-Hamis 26 ta` Jannar 2017 fid-9.00 a.m.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur