



**QORTI CIVILI  
(SEZZJONI TAL-KUMMERC)**

**ONOR. IMHALLEF  
JOSEPH ZAMMIT McKEON**

**Illum il-Hamis 28 ta` Marzu 2019**

**Kawza Nru. 4  
Rikors Nru. 29/2018 JZM**

**Avukat Jean-Pie Gauci-Maistre  
(ID 345384M) bhala  
mandatarju specjali tal-assenti  
Stephen George Roest, ta` 6  
Norman AV, Twickenham,  
London TW1 2LY, United  
Kingdom, detentur tal-  
passaport Ingliz numru  
099245146**

***kontra***

**Ir-Registratur tal-Kumpanniji**

***u***

**Alexander Mamo (ID 615256M)  
gja stralcjarju tal-kumpannija  
SGR Group Ltd (C63472)**

## **Il-Qorti :**

### **I. Preliminari**

Rat ir-rikors prezentat fit-12 ta` Dicembru 2018 li jaqra hekk :-

1. *Illi dan ir-rikors qed jigi mhejji a tenur tal-artikolu 300B tal-Att dwar il-Kumpanniji (Kapitolu 386 tal-Ligijiet ta` Malta);*

2. *Illi l-esponent huwa awtorizzat jaghmel dan ir-rikors ghan-nom tal-mandatarju tieghu permezz ta` prokura moghtija lilu fit-13 ta` Novembru 2018 (kopja annessa u mmarkata **Dok SGR1**);*

3. *Illi r-rikorrent **Stephen George Roest** kien id-detentur tal-ishma kollha fil-kumpannija SGR Group Ltd (C 63472), u cioe ta` elf, mija u hamsa u sittin (1,165) sehem ordinarju tal-valur nominali ta` Euro (€1) kull sehem sakemm din ma giet xjolta u l-isem taghha ma gie mhassar b`effett mit-tnejn (2) t` Awwissu tas-sena elfejn u tmintax (2018) (**Dok A**);*

4. *Illi l-kumpannija SGR Group Ltd kienet giet xjolta permezz ta` rizzoluzzjoni straordinarja tal-kumpannija datata sbatax (17) t` April tas-sena elfejn u tmintax (2018) a tenur tal-artikolu 268(1) tal-Att dwar il-Kumpanniji (**Dok B**);*

5. *Illi l-istralcjarju tal-kumpannija kien l-intimat is-Sur Alexander Mamo li hejja r-rapport tieghu ghall-fini tal-istralc tal-kumpannija ossia l-Liquidation Accounts tal-kumpannija mit-tmienja (8) ta` Dicembru tas-sena elfejn u sittax (2016) sal-wiehed u tletin (31) ta` Dicembru tas-sena elfejn u sittax (2016) u pprezenta l-istess lill-intimat Registratur tal-Kumpanniji fit-18 ta` April 2018 (**Dok C**);*

6. *Illi kif jirrizulta mill-istess rapport tal-istralcjarju, senjament a fol.3 tal-istess rapport il-kumpannija SGR Group Ltd kellha surplus assets tal-valur ta` Euro (€1.00) li jirrapprezenta l-valur ta` l-ishma*

kollha ta` kumpannija sussidjarja registrata gewwa l-Olanda bl-isem Skeye B.V. ta` Spangesekeade 167, 3026 GW Rotterdam, l-Olanda;

7. Illi skond l-iskema ta` distribuzzjoni (kif approvata mill-uniku membru tal-kumpannija fil-wiehed u tletin (31) ta` Dicembru tas-sena elfejn u sittax (2016) (**Dok B**) dawn l-ishma kellhom jigu distribwiti jew trasferiti lir-rikorrent Stephen George Roest li skond il-ligi u l-istatut tal-kumpannija kien (u ghadu) intitolat ghalihom;

8. Illi peress illi l-ishma in kwistjoni huma ishma f` kumpannija registrata gewwa l-Olanda, sabiex jigi formalizzat it-trasferiment taghhom kellu jsir att notarili ta` trasferiment skond il-ligi tal-Olanda u dan kellu jkun iffirmit minn rapprezentant tal-kumpannija SGR Group Ltd quddiem nutar gewwa l-Olanda;

9. Illi jirrizulta illi bi zvista l-istralcjarju tal-kumpannija naqas milli jifformalizza t-trasferiment tal-ishma billi jidher fuq l-att notarili msemmi u jiffirma l-istess ghan-nom tal-kumpannija SGR Group Ltd u nel frattemp wara li rcievi d-debiti dokumenti skond il-ligi l-intimat Registratur tal-Kumpanniji ghadda biex ihassar l-isem tal-kumpannija SGR Group Ltd mir-Registru tal-Kumpanniji;

10. Illi b`rizultat ta` dan, l-ishma fil-kumpannija Olandiza msemmija, li llum il-gurnata huma ta` valur materjali, effettivament kienu ghadhom fil-pussess tal-kumpannija SGR Group Ltd fiz-zmien ili l-isem taghha gie mhassar mill-intimat Registratur tal-Kumpanniji fit-tnejn (2) t` Awwissu tas-sena elfejn u tmintax (2018) u ghalhekk it-thassir sar qabel ma gie effettivament konkluz l-istralc u distribuzzjoni tal-assi tal-kumpannija;

11. Illi filwaqt illi ma hemm ebda allegazzjoni ta` frodi jew abbuz fic-cirkostanzi jirrizulta illi t-thassir tal-isem tal-kumpannija SGR Group Ltd sar b`mod irregolari jew illegali ghaliex sar qabel ma gew distribwiti l-assi kollha tal-kumpannija skont l-iskema ta` distribuzzjoni mhejjija mill-istralcjarju tal-kumpannija u ghalhekk jissussistu l-elementi rikjesti mill-Artikolu 300B tal-Att dwar il-Kumpanniji sabiex l-isem tal-kumpannija jerga` jigi restitwit u l-istralc tal-kumpannija

*jerga` jinfetah u dan sabiex it-trasferiment tal-ishma fi Skeye B.V. lir-rikorrent jista jigi formalizzat;*

*12. Illi a tenur tal-Artikolu 300B tal-Att Dwar il-Kumpanniji, meta kumpannija tkun thassret minn fuq ir-registru, kull persuna interessata tista` b`rikors, titlob lill-Qorti biex tordna l-isem tal-kumpannija jkun restitwit fuq ir-registru u l-istralc jerga` jinfetah. Il-Qorti tista` tilqa` talba ta` din ix-xorti jekk tkun sodisfatta li l-istralc u t-thassir tal-kumpannija jkun vizzjat bi frodi jew b`illegalita` ta` natura materjali, u l-Qorti ghandha tfisser ir-ragunijiet u z-zmien ghal dan il-ghan u taghti d-direttivi u timponi dawk il-kondizzjonijiet li jidrilha xieraq fic-cirkostanzi. Barra minn hekk il-ligi tghid illi l-Qorti ghandha tilqa` t-talba biss jekk tkun sodisfatta li dak ikun l-uniku rimedju li jkun hemm;*

*13. Illi sabiex ikun jista jigi formalizzat it-trasferiment tal-ishma tal-kumpannija estera Skeye B.V. lir-rikorrent hemm bzonni illi l-kumpannija SGR Group Ltd tidher fuq att notarili gewwa l-Olanda. L-uniku mod kif dan jista` jsehh huwa billi l-isem tal-kumpannija terga` titqieghed fir-Registru tal-Kumpanniji u l-istralc jerga` jinfetah biex b`hekk l-istralcjarju tal-kumpannija jerga` jinghata rapprezentanza tal-istess kumpannija u jkun jista` jidher f`isimha fuq l-istess kuntratt;*

*14. Illi dan huwa ghalhekk l-uniku rimedju illi ghandu r-rikorrent sabiex tigi sanata l-irregolarita` illi nholqot fic-cirkostanzi odjerni u jkun jista` jinghalaq definittivament l-istralc tal-kumpannija skond il-ligi;*

*Ghaldaqstant ir-rikorrenti nomine jitlob bir-rispett illi dina l-Onorabbli Qorti joghgobha:*

*1. Tiddikjara illi t-thassir tal-isem tal-kumpannija SGR Group Ltd mir-registru tal-kumpanniji sar b`mod irregolari jew illegali ghaliex sar qabel ma gew distribwiti l-assi kollha tal-kumpannija skond l-iskema ta` distribuzzjoni mhejjija mill-istralcjarju tal-kumpannija u ghalhekk jissussistu l-elementi rikjesti mill-Artikolu 300B tal-Att dwar*

*il-Kumpanniji sabiex l-isem tal-kumpannija jerga` jigi restitwit u l-istralc tal-kumpannija jerga` jinfetah;*

*2. Tordna a tenur tal-Artikolu 300B tal-Att dwar il-Kumpanniji lill-intimat Registratur tal-Kumpanniji sabiex jerga` jqiegħed l-isem tal-kumpannija SGR Group Ltd fuq ir-Registru tal-Kumpanniji;*

*3. Tordna illi jerga` jinfetah l-istralc tal-istess kumpannija limitament sabiex l-intimat Alexander Mamo ikun jista` jifformalizza d-distribuzzjoni tal-ishma tal-assi tal-istess kumpannija ossia illi jagħmel dak kollu li hemm bzonn għan-nom tal-istess kumpannija sabiex jigi formalizzat it-trasferiment tal-ishma kollha illi għandha fil-kumpannija estera Skeye B.V.;*

*4. Tordna lill-intimat Alexander Mamo illi jagħmel dak kollu li hemm bzonn għan-nom ta` SGR Group Ltd sabiex jigi formalizzat it-trasferiment tal-ishma kollha illi għandha fil-kumpannija estera Skeye B.V. u dan taħt dawk il-pattijiet u kundizzjonijiet kollha illi jidrilha xierqa fic-cirkostanzi.*

*Bl-ispejjez u bl-ingunzjoni tal-intimati in subizzjoni.*

*Rat l-elenku ta` dokumenti eseħiti mar-rikors promotur.*

*Rat ir-risposta li pprezenta l-intimat Alexander Mamo fl-1 ta` Frar 2019 li taqra hekk :-*

*Illi l-fatti dikjarati fil-paragrafi 3 sa 14 tar-rikors promotur ma ħumiex kontestati;*

*Illi għaldaqstant l-esponent ma joggezzjonax għat-talba tar-rikorrent nomine u għalhekk jirrimetti ruħu għad-decizjoni ta` dina l-Onorabbli Qorti dwar l-istess izda jissolleva bir-rispett illi jekk dina l-Onorabbli Qorti tilqa` t-talba rikorrenti, fid-decizjoni tagħha għandha tagħti dawk id-direttivi kollha illi jidrilha xierqa fic-cirkostanzi sabiex wara illi jigu ffirmati d-debiti kuntratti notarili u/jew dokumenti oħra għat-trasferiment ta` l-ishma in kwistjoni skont il-ligi tal-Olanda, l-*

*isem tal-kumpanija SGR Group Ltd ikun jista` jerga` jigi kancellat minn fuq ir-registru tal-kumpaniji minghajr dewmien u sabiex b`hekk l-esponent jinheles mill-obbligi legali tieghu in kwantu stralcjarju ta` l-istess kumpanija.*

Rat ir-risposta li pprezenta l-intimat Registratur tal-Kumpaniji fis-6 ta` Frar 2019 li taqra hekk :-

*Illi in kwantu ghall-meriti fattwali tal-kawza peress illi l-esponent Registratur mhux edott mill-fatti kollha huwa jirimetti ruhu ghall-provi u ghall-gudizzju ta` dina l-Onorabbli Qorti.*

*Illi meta l-esponent ircieva d-dokumentazzjoni rilevanti ghax-xoljiment u konsegwentement ghall-kancellament tal-kumpanija, wara illi kkkonferma illi dawn huma konformi mal-Att dwar il-Kumpaniji 1995, huwa mexa sabiex irregistrhom skont kif jItlob minnu l-Artikolu 401 tal-istess Att.*

*Illi fil-kaz odjern il-kumpanija qeghda issostni illi l-isem taghha gie mhasar minn fuq ir-Registru qabel ma giet formallizata l-procedura notarili necessarja fl-Olanda izda dan qieghed jinghad meta l-esponent kien diga` ircieva u rregistra d-dokumentazzjoni illi waslet ghall-kancellament tal-isem tal-kumpanija minn fuq ir-registru u wara illi ghadha t-terminu ta` tlett xhur preskritt mill-Att fejn persuna interresata setghat toggezzjona ghat-tali thassir.*

*Illi l-kumpanija qeghda titlob lil dina l-Onorabbli Qorti sabiex l-isem taghha jerga` jitqieghed fuq ir-Registru sabiex l-istralc jerga` jigi miftuh u l-istralcjarju jkun jista` jaghmel dawk il-proceduri necessarji f`isem il-kumpanija sabiex jkun jista` jsir it-trasferiment tal-imsemmija ishma favur ir-rikorrent. Dan ai termini ta` l-Artikolu 300B tal-Att.*

*Illi skont r-rikors promotur ir-rikorrent qieghed fi kliemu jghid illi ghalkemm ma hemm ebda allegazzjojni ta` frodi jew abbuz ai termini ta` l-Artikolu 300B ta` l-Att, il-process illi wassal sabiex tigi mhejjja l-iskema tad-distribuzzjoni kien wiehed illi sar b`mod irregolari u llegali peress illi l-procedura illi kellha twassal sabiex l-ishma tas-socjeta` estera jghaddu f`isem ir-rikorrent ma saritx kif preskritta mil-ligi barranija.*

*Illi d-definizzjoni ta` illegalita` dejjem inghatat interpretazzjoni mill-iktar wiesgha. B` illegalita` dina l-Onorabbli Qorti dejjem fehmet att mhux permess mil-ligi. L-Artikolu 300B ikompli jikkwalifika illi l-illegalita` trid tkun ta` natura materjali. L-materjalita` ta` l-illegalita` trid tkun tali li tivvizzja l-istralc u timpedixxi l-procediment illi iwassal fejn il-ligi tridu jwassal.*

*Illi dina l-Onorabbli Qorti ssosniet illi r-ravvivar ta` kumpanija ma` ghandux jigi facilment accetat. Dina l-Onorabbli Qorti dejjem ssosniet illi Irid jigi assikurat illi f` kazijiet bhal dawn ic-cirkostanzi iridu ikunu genwini sabiex jigi evitat kwalunkwe element jew forma ta` abbuz. Ghaldaqstant l-azzjonisti m` ghandhomx jipprocedju ghal-likwidazzjoni u ghal-kancellament ta` socjeta b` mod legger ghax ikunu taht l-impressjoni komda, izda zbaljata, illi f`kaz ta` bzonn jista` japplikaw sabiex il-kumpanija tista terga` tigi facilment ravivata u l-istralc jerga` jinfetah skond il-bzonn illi jidrilhom huma.*

*Illi kien fl-istess hin, id-dmir u d-dover tal-istralcjarju illi kellu jaccerta ruhu illi l-pendenzi u l-affarjiet tal-kumpanija kienu verament gew iffinalizzati qabel ma` prezenta d-dokumentazzjoni tal-kancellament ghar-registrazzjoni. Il-process illi jibda bix-xolijiment, ighaddi bl-istralc u tispicca bil-kancellament ghandu ikun wiehed li jsir b` responsabbilita u kawtela kbira. Il-kondotta tal-imsemmi stralcjarju ghandha tkun wahda vigilanti, komprensiva u ezawrenti.*

*Illi ghalhekk il-Qorti kjarament dejjem issottolineat in-natura specjali u straordinarja tal-procediment taht l-Artikolu 300B ghax talli procediment ddelinajat fl-imsemmi Artikolu huwa wiehed li bis-sahha tieghu li wara li jinghalaq l-istralc u jithassar l-isem tal-kumpanija minn fuq ir-registru jista` jerga` jintalab illi l-isem taghha jerga` jitqieghed fuq ir-registru f` stat ta` stralc.*

*Illi minghajr preguddizzju ghas-suespost ir-registratur ma joggezzjonax illi l-isem tal-kumpanija jerga` jitqieghed fuq ir-registru u l-istralc taghha jerga` jigi miftuh sablex l-imsemmia assi jghaddi ghand ir-rikkorent kif kellu jsir mill-bidu. Ir-registratur umilment jissollewa illi dan il-process ghandu jsir skont direttivi u kondizzjonijiet illi dina l-Onorabbli Qorti jidrilha xieraq fic-cirkostanzi partikolari ta` dan il-kaz. Ir-registratur umilment jissugerixxi illi dina l-Onorabbli Qorti ghandha fis-sentenza taghha taghti terminu preciz u mprorogabbli sabiex l-istralc jigi regolarizzat biex wara l-esponent ikun jista` jipprocedi sabiex l-isem tal-kumpanija jerga` jigi kancellat minn*

*fuq ir-registru minghajr dewmien bla bzonn. Dan sabiex jigi evitat jinholoq kwalunkwe element ta`ncertezza fl-istatus tal-kumpannija jew xi pregudizzju kontra terza persuni.*

*Illi r--registratur mexa b`mod korrett meta rregistra d-dokumentazzjoni pprezentata ghar-registrazzjoni u ghalhekk m`ghandux jinzamm responsabbli ghal ebda spejjez gudizzjarji konnessi ma`dan il-kaz.*

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

Semghet is-sottomissjonijiet tad-difensuri.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti l-ohra.

## **II. Fatti**

Kif jirrizulta mill-atti ta`dan il-procediment, is-segweni huma fatti li mhux kontestati :-

Il-mandant tar-rikorrent huwa Stephen George Roest. Dan jiddetjeni l-ishma kollha u cioe` 1,165 -il sehem fil-kumpannija SGR Group Ltd (C63472). Kull sehem ghandu valur nominali ta` Euro (€1).

SGR Group Limited kienet xjolta b`rizoluzzjoni straordinarja tas-17 ta` April 2018 u nhatar l-intimat Alexander Mamo bhala stralcjarju. Wara li lesta, l-istralcjarju hejja liquidation accounts.

Skont dawn il-kontijiet jirrizulta illi SGR Group Limited kellha surplus assets b`valur ta` Euro (€1.00) li huwa l-valur tal-ishma kollha ta` kumpannija Skeye B.V. li hija registrata l-Olanda.



L-iskema ta` distribuzzjoni li hejja l-istralcjarju kienet approvata minn Stephen George Roest. Skont din l-iskema, l-ishma kollha li kellha SGR Group Limited fi Skeye B.V. kellhom jigu trasferiti lil Stephen George Roest. Billi si trattava ta` ishma ta` kumpannija registrata l-Olanda, il-ligi Olandiza tesigi li t-trasferiment ikun formalizzat permezz ta` att notarili quddiem nutar pubbliku rikonoxxjut fl-Olanda bejn l-istralcjarju ghal SGR Group Limited u Stephen George Roest.

Jirrizulta li ghalkemm dan it-trasferiment formali tal-ishma skont il-ligi Olandiza favur Stephen George Roest baqa` ma sarx, u allura ma kenitx saret id-distribuzzjoni tal-assi favur l-istess Roest, l-istralcjarju xorta wahda ghadda d-dokumenti tal-gheluq tal-istralc lir-Registatur tal-Kumpanniji. Abbazi tad-dokumenti li baghat l-istralcjarju, ir-Registatur ghadda ghat-thassir ta` SGR Group Limited mir-Registru.

Ghalhekk saret din il-kawza sabiex SGR Group Limited terga` lura fir-Registru tal-Kumpanniji halli jsir l-att notarili skont il-ligi Olandiza fejn isir it-trasferiment tal-ishma ta` Skeye B.V. favur Stephen George Roest mill-istralcjarju ta` SGR Group Limited.

### **III. Dritt**

Il-procedura tentata mir-rikorrent noe bil-kawza tal-lum hija maghrufa fil-ligi Ingliza bhala **restoration of dissolved companies to the register.**

Guristi awtorevoli tad-dritt socjetarju Ingliz kellhom okkazzjoni jaghmlu analizi mirquma tal-ligi li tirregola l-procediment, l-iskop tieghu, kif jithaddem u fejn iwassal.

Bhala introduzzjoni, il-Qorti sejra tirreferi ghal pagina 778 ta` **Sealy`s Cases and Materials in Company Law** (9th Edition – OUP – 2010) fejn jinghad hekk –

*Restoration of dissolved companies to register may be necessary if, for example, further assets are discovered, or someone wishes to bring a damages claim for which the former company was insured.*

*There are two procedures available for restoring companies to the register :*

*An administrative procedure available when companies have been incorrectly struck off as defunct under CA 2006 s 1000 or 1001 (see ii and vii above) requiring application to the registrar by the company`s former directors or former members within six years of the date of dissolution (CA 2006 s 1024)*

*and*

*A judicial procedure, requiring application to court (CA 2006 s 1029) in all other cases. The application may be made by a wide class of people [s 1029 (2)] and must generally be made within six years of the dissolution of the company although there are various exceptions. For example there is no time limit where the application is for the purpose of bringing proceedings against the company for damages for personal injury (s 1030 1). The court has wide powers to make restoration including any case in which the court thinks it is just to do so (s 1031 1 c)*

*CA 2006 ss 1024-1034 provide detailed rules on the pre-conditions and consequences of the procedures, including special supplementary rules dealing with company names and with restoration of property that had vested in the Crown.*

**Gower and Davies** fil-**Principles of Modern Company Law** (8th Edition – Sweet & Maxwell – 2008) jidhlu fl-isfond tal-legislazzjoni ta` qabel (u cioe` il-Companies Act 1985) u ta` dik viginti fil-prezent (u cioe` il-Companies Act 2006), u jaghmlu analizi aktar dettaljata tal-procedura.

Minn pag 1232 et seq ighidu hekk –

*A contrast between the death of an individual and that of a company is that without divine intervention a dissolved company can be resurrected.*

*Following the CLR, the Act made two innovations in this area. First it introduced a limited form of administrative restoration to the register a result which had previously required a court order. Secondly a single method of court restoration replaced the formerly existing two methods which the courts had found some difficulty in making sense of and which overlapped to a considerable extent.*

### Administrative restoration

*The new form of administrative restoration applies only where the company was dissolved by the Registrar under the provisions relating to defunct companies. Thus it does not apply to either voluntary striking off or to dissolution after winding up. The conditions for administrative restoration to the register confine it to situations where the company was carrying on business or in operation at the time it was struck. Thus the main purpose of administrative restoration is to deal more cheaply with reversing a striking off, which, ideally, should not have occurred in the first place. For probably the same reason, the application for restoration may be made only by a former director or former member of the company, but no application for restoration may be made more than six years after its dissolution. If any of the company's property is vested in the Crown as bona vacantia, the Crown's representative must consent and the applicant must offer to pay any costs of the Crown in relation to the application and more importantly dealing with the property during the period of dissolution. Finally the applicant must deliver to the Registrar such documents as are necessary to bring the company's public records up-to-date and to pay any penalties outstanding at the time the company was dissolved.*

*If these conditions are met the Registrar is under a duty to restore the company to the register. Notice of the decision must be given to the applicant and the restoration takes effect when that notice is sent. Public notice must be given of the restoration. The effect of restoration is that the company is deemed to have continued in existence as if it had not been struck off. However any consequential directions, if necessary, for placing the company and all other persons in the position (as nearly as possible) as they would have been in, had the company not been struck off, are to be given, not by the Registrar, but by a court, to which application may be made within three years of restoration.*

### Restoration by the court

*The two court-based restoration methods previously provided were contained sections 651 and 653 of the 1985 Act. The current provisions are based on those of section 653, the somewhat simpler procedure. The court-based procedure applies to all forms of dissolution and a much wider range of persons may apply for restoration. These include not just former directors or members but any creditor of the company at the time of dissolution, anyone who but for the dissolution would have been in a contractual relationship with it, any person with a potential legal claim against the company, any manager or trustee of an employee pension fund, and the Secretary of*

*State. This caters for a much wider range of reasons for wanting to have the company restored to the register, a common one being in order to sue or assert a right against it. Normally such persons must act within six years of the date of dissolution, but a claim for restoration in order to bring a claim for damages for personal injury against the company may be made at any time.*

*The court has power to order restoration if (a) in the case of striking off of a defunct company, it was carrying on business or in operation at the time ; (b) in the case of voluntary striking off, the conditions for such a striking off were not complied with ; and (c) in any other case the court thinks it just to do so. Restoration, if ordered, takes effect from the time the court`s order is delivered to the Registrar and the Registrar must give publicity to the order in the usual way. The effect of restoration by the court is the same as with administrative restoration and the court may give the necessary directions to effect the principle that the company should be treated as if never dissolved.*

Fil-Kap 386 tal-Ligijiet ta` Malta, id-disposizzjoni rilevanti hija l-**Art 300B** li kienet introdotta bis-sahha tal-Att IV tal-2003.

Taqra hekk –

*(1) Meta kumpannija tkun thassret minn fuq ir-registru, kull persuna interessata tista' b'rikors, titlob lill-Qorti biex tordna hi li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah.*

*(2) Meta, fuq rikors maghmul taht is-subartikolu (1), il-Qorti tkun sodisfatta li l-istralc u t-thassir tal-kumpannija jkun vizzjat bi frodi jew b'illegalità ta' natura materjali, il-Qorti tista' tordna li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah ghal dawk ir-ragunijiet u ghal dak iz-zmien li l-Qorti tispecifika fid-decizjoni taghha, u l-Qorti ghandha taghti dawk id-direttivi u timponi dawk il-kondizzjonijiet li jidhrilha xieraq.*

*(3) Il-Qorti ghandha tilqa' t-talba biss jekk tkun sodisfatta li dak ikun l-uniku rimedju li jkun hemm.*

*(4) Fid-decizjoni taghha l-Qorti ghandha wkoll tiddeciedi jekk l-ordnijiet u d-direttivi taghha jkunux effettivi favur il-persuni kollha jew jekk ghandhomx japplikaw limitatament ghal persuni specifiki indikati fid-decizjoni.*

(5) *Ma jista' jsir ebda rikors taht dan l-artikolu wara li jghaddu hames snin mid-data li fiha l-isem tal-kumpannija jkun thassar mir-registru.*

Apparti l-pronunzjamenti dwar id-disposizzjoni li tat il-Prim`Awla tal-Qorti Civili **kif presjeduta**, din il-Qorti ltaqghet ma` zewg pronunzjamenti taghha li tat il-Prim`Awla tal-Qorti Civili, meta kienet diversament presjeduta (**PA/GV**) :

L-ewwel wiehed huwa dak tat-2 ta` Frar 2007 fir-Rikors Nru 1108/2006 fl-ismijiet "**Rikors konjuntiv ta' George (401744M) u Maruccia (217951M) konjugi Muscat ai termini tal-Artikolu 300B ta' l-Att dwar il-Kumpanniji (Kap 386 tal-Ligijiet ta' Malta)**".

It-tieni wiehed huwa dak tad-19 ta` Novembru 2007 fil-kawza fl-ismijiet "**Salvatore Pisani vs Registratur tal-Kumpanniji**".

Il-Qorti tghid mill-ewwel li dawn iz-zewg kazi kienu jirrigwarda socjetajiet *en nom collectif* mhux kumpanniji bhal fil-kaz tal-lum.

Fl-ewwel kaz, is-socji ddecidew li jxolju s-socjeta' in kwistjoni. Meta r-Registratur tal-Kumpanniji kien avzat bid-decizzjoni ta' xoljiment ha l-passi necessarji sabiex is-socjeta' tigi cancellata mir-Registru kif fil-fatt sar. Gara pero` li meta sar il-kancellament, is-socjeta` kien ghad kellha assi mmobbli registrati f'isimha li kienu ghadhom ma ddevolvewx fuq is-socji f'isimhom personali jew fuq terzi. Ghalhekk saret talba lill-Qorti sabiex is-socjeta` ma tibqax mhassra mir-registru sakemm tiddisponi mill-propjeta`, u mbaghad wara li dan isir, tithassar b`mod definittiv. Il-Qorti laqghet it-talba ghax sostniet li t-thassir tal-kumpannija sar bi zball.

Fit-tieni kaz, wiehed miz-zewg socji miet u ma nhatar hadd minflok. Is-socju rimanenti xolja s-socjeta` meta s-socjeta` kien ghad kellha dejn x`jithallas lil terzi kif ukoll propjeta` mmobbli x` tigi trasferita. Ghalkemm sar l-avviz tax-xoljiment, l-ebda kreditur ma resaq biex jaghmel *claim* u s-socjeta` thassret mir-registru. Is-socju rimanenti talab sabiex is-socjeta` terga` titpogga fir-registru sabiex jithallas id-dejn lil terzi u l-propjeta` mmobbli tigi trasferita lilu u mbaghad tithassar b`mod definittiv. Il-Qorti laqghet it-talba billi kienet tal-fehma l-procedura ghat-thassir tas-socjeta` kienet inkompleta.

Din il-Qorti trid tissottolinea li l-procedura skond l-Art 300B tal-Kap 386 (bhal dik skond l-Art 300A) għalkemm huma proceduri distinti, u għandhom jigu intavolati għal ragunijiet kompletament diversi, fl-istess waqt għandhom *a common denominator* u cioè` li jistghu jitressqu, wara li kumpannija tithassar mir-registru, u r-ragunijiet iridu jkunu eccezzjonali, fl-ambitu ta` dak li kull disposizzjoni tahseb għalih distintament.

Fil-**Principles of Maltese Company Law** (MUP – 2007 – pag 43) **Andrew Muscat** jikkummenta dwar l-Art 300B kif gej –

*The amending Act introduced another novel provision dealing with the situation where the winding up and striking off of a company has been vitiated by fraud or illegality of a material nature. A typical example would be where the liquidator deliberately fails to take into account a pending claim against the company.*

*The new article (article 300B of the Companies Act) empowers the court, upon an application filed by any interested person to order that the name of the company be restored to the register and the winding up be reopened for such purposes and such period as the court specifies in its decision. The court is also entitled to give such directives and impose such conditions as it may consider appropriate. No application may be filed after the expiration of five years from the date on which the name of the company has been struck off the register. Prior to the introduction of article 300B, the Maltese courts had in a number of cases tackled situations where a claim against a company was not taken into account by the liquidator who proceeded to finalise the winding up and have the company`s name struck off the register. In these cases the courts applied a remedy involving the effective revival of the company.*

*It should be remarked that the courts have been willing to provide such a remedy even where the omission by the liquidator to take into account a pending claim against the company was purely inadvertent. Article 300B however empowers the court to grant a remedy where it is satisfied that "the winding up and striking off of the company has been vitiated by fraud or illegality of material nature". Would an inadvertent omission constitute "illegality". A wide interpretation ought to be afforded to the term "illegality". A liquidator who, whether negligently or fraudulently, fails to take into account a pending claim will, it is submitted, have acted unlawfully. After all, in terms of general principles of law, a person who does not use the prudence, diligence and attention of a bonus paterfamilias and causes damage as a result is deemed to have acted unlawfully. Moreover a liquidator is clearly bound by law to take into account all pending*

*claims against the company and if he fails to do so through negligence, imprudence or want of attention he should also be deemed to have acted unlawfully.*

#### **IV. Risultanzi**

Huwa maghruf u mizmum fid-dritt socjetarju li kumpannija tibqa' tezisti u tgawdi l-personalita' guridika taghha sa dak il-hin li isimha jithassar mir-Registru tal-Kumpanniji. Meta l-isem ta' kumpannija hekk jithassar, titqies legalment bhala persuna li tkun "*mietet*". Din il-qaghda taghha tibqa' hekk sakemm ma jkunx hemm raguni **serja bizzejjed** sabiex terga' "*tirxuxtaha*" skont kif jipprovdi l-Art 300B tal-Kap 386.

Bhala principju generali, ir-ravvivar ta' kumpannija m'ghandux jittiehed *for granted*.

Ghandu jkun assikurat li l-kaz huwa wiehed genwin u m'ghandux jinghata lok ghall-abbuz jew xi forma ta' kolluzzjoni bejn il-partijiet interessati.

Azzjonisti ta' socjeta' m'ghandhomx jipprocedu ghal-likwidazzjoni u thassir taghha b'mod legger, bl-idea *zbaljata* li jekk `il quddiem jinqala' l-kaz, il-kumpannija tkun tista' tigi ravvivata. Fil-kaz tal-ligi taghna, is-sitwazzjoni mhijiex din. Il-Qorti hija prekluzza milli taccetta l-*irxuxtar* tal-kumpannija jekk ma jirrizultawx il-linji traccjati mill-Art 300B.

Meta wiehed iqabbel l-Art 300B mad-disposizzjonijiet prevalenti fil-ligi Ingliza isib li filwaqt li f`din tal-ahhar, ir-rimedju huwa miftuh ghal numru ta' persuni li lista taghhom tirrizulta fil-ligi stess, fil-kaz tal-ligi taghna, il-legislatur ma llimitax ruhu ghal lista specifika jew ghal kategorija ta' persuni, izda fetah ir-rimedju ghal *kull persuna interessata* (ara is-subinciz 1 tal-Art 300B). Min jikkwalifika bhala *persuna interessata* jrid jitqies skont il-fatti u cirkostanzi ta' kull kaz.

Il-Qorti ma tarax il-htiega li fil-kaz tal-lum taghmel analizi ta' x`ried ifisser il-legislatur bil-frazi *kull persuna interessata* ghaliex ma hemmx dubju li l-mandant tar-rikorrent ghandu kull interess li jippromwovi dan il-procediment, ladarba rrizulta li ghax ma kenitx

osservata l-procedura prevista mill-Olandiza ma jistghux iduru ghal fuqu l-ishma li SGR Group Limited kellha fil-kumpanija Skeye B.V. registrata l-Olanda, ghalkemm hekk kellu jsir, skont l-*scheme of distribution* approvat li hejja l-istralcjarju Alexander Mamo.

**Sodisfatt il-kriterju tal-interess skond is-subinciz 1 tal-Art 300B, il-Qorti sejra tara issa jekk humiex sodisfatti r-rekwiziti tas-subinciz 2 tal-Art 300B.**

**Il-Qorti teskludi mill-ewwel illi fil-kaz tal-lum saret xi allegazzjoni jew prova li l-istralc u thassir tal-kumpanija kien vizzjat bi frodi. Dan il-fatt huwa mistqarr u accettat mir-rikorrent innifsu kif jirrizulta mill-premessi tar-rikors promotur.**

**Eskluz il-vizzju bi frodi, il-Qorti trid tara jekk jirrizultax ir-rekwizit alternattiv tal-illegalita` ta` natura materjali.**

Il-Kap 386 ma jaghti l-ebda tifsira ta` x` tikkostitwixxi *illegalita`* ghall-fini tas-subinciz 2.

Dan ifisser li l-interpretazzjoni ta` *illegalita`* ghandha tkun wiesgha, mhux restrittiva ghal fergha jew ohra tad-dritt. B` *illegalita`* il-Qorti qeghda tifhem att mhux permess mil-ligi. L-unika restrizzjoni li tara l-Qorti hija li mhux kull *illegalita`* tiskatta l-jedd ghal rimedju skond is-subinciz 2 izda l-*illegalita`* trid tkun ta` *natura materjali*. X` hinu *materjali* jiddependi mill-fattispeci ta` kull kaz.

Ghandu pero` jinghad illi l-materjalita` tal-illegalita` trid tkun tali li tivvizzja l-gheluq tal-istralc u l-konsegwenti thassir tal-isem mir-registru.

Huwa propju ghalhekk li l-procediment skont l-Art 300B huwa specjali u straordinarju ghaliex li jigri b`dan il-procediment huwa li wara li jinghalaq l-istralc u jithassar l-isem tal-kumpanija mir-registru jintalab li l-isem jerga` jidhol fir-registru. Fil-ligi taghna (mhux daqstant taht il-ligi Ingliza) ir-ragunijiet ghat-talba huma ristretti u ghalhekk il-materjalita` tal-illegalita`.



Fil-kaz tal-lum, irrizulta bhala fatt dokumentat u nkontestat illi SGR Group Limited kellha *surplus assets* konsistenti fl-ishma kollha ta' kumpannija sussidjarja registrata gewwa l-Olanda bl-isem ta' Skeye B.V. L-ishma ta' din tal-ahhar huma registrati fl-Olanda wkoll. Irrizulta li skont l-iskema ta' distribuzzjoni approvata, l-ishma kollha ta' Skeye B.V. kellhom jigu trasferiti lil Stephen George Roest, mandant tar-rikorrent. Wara l-approvazzjoni tal-iskema ta' distribuzzjoni mill-istess Roest, li kien is-*sole member* ta' SGR Group Limited, it-trasferiment tal-ishma favur Roest baqa' ma sarx.

Huwa fatt ippruvat bis-sahha tad-dokument li pprezenta r-rikorrent noe fl-udjenza tas-7 ta' Marzu 2019 ghall-fini ta' *proof of foreign law* illi skont il-ligi Olandiza sabiex it-trasferiment ta' ishma go kumpannija registrata l-Olanda jkun validu ghall-finijiet u effetti kollha tal-ligi ta' dak il-pajjiz irid isir att notarili quddiem nutar pubbliku fl-Olanda fejn l-istralcjarju ghall-kumpannija xjolta jghaddi l-ishma lill-beneficjarju.

Fir-rikors promotur, ir-rikorrent jimputa dak li gara ghal *zvista* tal-istralcjarju.

Il-Qorti tghid mill-ewwel illi jekk li gara kien unikament frott ta' "*zvista*" allura ma jistax jissussisti r-rekwizit tal-*illegalita' ta' natura materjali* ghaliex il-procediment skont l-Art 300B mhuwix intiz biex jirrimedja ghal *zbalji jew zvesti*.

Meta l-Qorti qieset l-assjem tal-fatti, issib li dak tal-lum kien aktar minn semplici *zvista* izda nuqqas grossolan, u allura att ta' *illegalita'* da parti tal-intimat Alexander Mamo, li kien l-istralcjarju.

Il-Qorti tirrileva li l-istralcjarju ghandu funzjonijiet, setghat u allura responsabilitajiet kbar. Mhux kulhadd huwa eligibbli biex ikun stralcjarju. Il-persuna li taccetta l-hatra, speċjalment fi stralc volontarju bhal ma kien dak tal-lum, trid tkun taf mhux biss x'ghandha taghmel fl-ambitu ta' dak li jghidu l-ligijiet ta' pajjizna izda ghandha tkun edotta minn dak li jghidu ligijiet ta' pajjizi ohra, in partikolari fejn l-iskema ta' distribuzzjoni jkollu effetti barra minn Malta.

Ghalkemm jista' jkun taht pressjoni sabiex ifittex jaghlaq l-istralc, l-istralcjarju ghandu jkun previdenti, juri kawtela u attenzjoni,

u jkun vigilantanti ghaliex xejn ma jsir wahdu aktar u aktar fil-kamp tal-ligijiet soċjetarji.

Il-ligi stess titfa` fuq spallejn l-istralcjarju l-obbligu li jassikura ruhu illi l-process li jibda mix-xoljiment, li jghaddi mill-istralc, sa ma jintemm bl-*striking off* tal-kumpannija mir-registru mhux biss ikun trasparenti u kondott b`kompetenza, izda u fuq kollox bl-osservanza ta` l-ligi inkluz ligijiet ta` pajjizi oħra li jista` jkollhom effett fuq kull ma jsir fl-istralc.

### **Fil-kaz tal-lum, ma garax hekk.**

Ladarba kien jaf li *s-surplus assets* tal-kumpannija xjolta kienu **realment** jikkonsistu minn ishma ta` kumpannija registrata l-Olanda, liema assi kellhom imorru favur il-mandant tar-rikorrent, kiern jinkombi fuq l-istralcjarju, **u fuqu biss**, l-obbligu illi wara li jikseb l-approvazzjoni ta` l-iskema ta` distribuzzjoni, jifformalizza t-trasferiment tal-ishma favur Roest billi jidher fuq l-att notarili fl-Olanda quddiem nutar pubbliku ta` hemm, u jiffirma għan-nom ta` SGR Group Limited. Dan kollu qabel ma jibghat l-inkartament lir-Registatur tal-Kumpanniji sabiex isir l-*striking off* u jigi meħlus mir-responsabilitajiet tiegħu.

Billi dan ma sarx, għal din il-Qorti, dan ma jistax jitqies bhala *zvista*.

Huwa fl-ewwel lok att ta` negligenza grossolan da parti tal-istralcjarju ntimat, u allura *illegalita`* [ara l-Art 1032 tal-Kap 16].

Fit-tieni lok huwa nuqqas evidenti da parti tiegħu fil-qadi tad-dmirijiet tiegħu bhala stralcjarju ghaliex ipproceda bit-thassir ta` SGR Group Limited, qabel ma kien effettivament konkluz l-istralc u distribuzzjoni tal-assi tal-kumpannija kif trid il-ligi, *illegalita`* oħra li l-Kap 386 ma jridx li tigri.

Accertat li saret *illegalita`* il-Qorti trid tara jekk kenitx ta` *natura materjali*.

Il-Qorti m`ghandhiex l-icken dubju li l-illegalita` kommessa mill-istralcjarju ntimat kienet materjali, ghaliex kif inhi s-sitwazzjoni llum,

Stephen George Roest ma jistax jikseb favur tieghu t-trasferiment tal-ishma ta' Skeye B.V. ghaliex illum SGR Group Limited hija *struck off*.

**Il-Qorti tghid illi huwa sodisfatt ir-rekwizit tas-subinciz 2 tal-Art 300B.**

**Daqstant iehor huwa sodisfatt ir-rekwizit tas-subinciz 3 ghaliex huwa evidenti ghal din il-Qorti li dak tal-lum huwa l-uniku rimedju ghad-disposizzjoni tar-rikorrent. L-istess ighodd ghas-subinciz 5 stante li r-rikorrent ittenta dan il-procediment fit-terminu stabbilit mil-ligi.**

Ghar-rigward tal-posizzjoni tar-Registatur tal-Kumpanniji, din il-Qorti ma ssib propju xejn x'ticcensura fl-operat tar-Registru tal-Kumpanniji fil-kaz tal-lum.

Koxjenti minn dak li jghid is-subinciz 4 tal-Art 300B, il-Qorti hadet kont tal-fatt illi r-Registatur tal-Kumpanniji mhux qieghed joggezzjona illi l-isem tal-kumpannija de qua jerga` jitqieghed fuq ir-Registru u l-istralc taghha jerga` jigi miftuh sabiex l-assi in kwistjoni jghaddu ghand ir-rikorrent noe kif kellu jsir mill-bidu. Ir-Registatur pero` jinsisti li dan il-process ghandu jsir skont direttivi u kondizzjonijiet illi l-Qorti jidhrilha xieraq fic-cirkostanzi partikolari ta` l-kaz – senjatament li tistabilixxi terminu preciz u mprorogabbli sabiex l-istralc jigi rregolarizzat. Wara dak it-terminu, ir-Registatur ikun jista` jiprocedi sabiex l-isem tal-kumpannija jerga` jigi kancellat minn fuq ir-Registru minghajr dewmien u b`hekk jigi evitat illi tinholoq incertezza fl-istatus tal-kumpannija jew pregudizzju versu terzi.

L-istralcjarju ntimat qed jiehu linja simili ghal dik tar-Registatur.

### **Decide**

**Ghar-ragunijiet kollha premessi, il-Qorti, bl-applikazzjoni tal-Art 300B tal-Kap 386 tal-Ligijiet ta` Malta, qeghda taqta` u tiddeciedi din il-kawza hekk –**

**Tilqa` l-ewwel (1), it-tieni (2) u t-tielet (3) talbiet.**

**Riferibbilment ukoll ghat-tielet (3) talba, tordna lill-intimat Alexander Mamo sabiex jerga` jassumi l-funzjonijiet, is-setghat u l-obbligi kollha ta` stralcjarju tal-kumpannija SGR Group Limited (C63472).**

**Tilqa` r-raba` (4) talba.**

**Riferibbilment ukoll ghar-raba` (4) talba, tordna lill-intimat Alexander Mamo sabiex, sa zmien erba` xhur mil-lum, jifformalizza u jirrendi effettiv ghall-finijiet u effetti kollha tal-ligi, inkluza dik Olandiza, it-trasferiment favur Stephen George Roest, mandant tar-rikorrent, l-ishma kollha illi SGR Group Limited (C63472) ghandha fil-kumpannija estera Skeye B.V. ta` Spangeskade 167, 34026 GW Rotterdam, l-Olanda.**

**Tordna lill-intimat Registratur tal-Kumpanniji sabiex b`effett mit-28 ta` Lulju 2019 ihassar b`mod definittiv l-isem tal-kumpannija SGR Group Limited (C63472) mir-Registru tal-Kumpanniji.**

**Tordna lill-intimat Alexander Mamo sabiex ibati l-ispejjez kollha ta` dan il-procediment.**

**Onor. Joseph Zammit McKeon  
Imhalled**

**Amanda Cassar  
Deputat Registratur**