QORTI CIVILI
(SEZZJONI TAL-KUMMERC)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis 28 ta` Novembru 2019

Kawza Nru. 3
Rik. Nru. 243/2019 JZM

Fl-Atti tar-Rikors Nru. 582/2002 ghax-xoljiment mill-Qorti ta` Rocksolid Enterprises Limited, kumpannija Numru C21412 deciz fl-14 ta` Jannar 2009

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors li pprezenta Paul Bajada fil-kwalita` tieghu ta` stralcjarju tas-socjeta` Rocksolid Enterprises Limited fis-**<u>27 ta` Frar 2019</u>** fil-Prim`Awla tal-Qorti Civili li jaqra hekk :-

Illi fl-14 ta` Jannar 2009, l-esponenti gie mahtur minn dina l-Onorabbli Qorti bhala stralcjarju tas-socjeta` msemmija.

Illi min-naha tieghu l-esponenti pprepara d-dokumenti segwenti konsistenti fil-"Financial Statements" ghas-snin li bdew minn April 1998 sa April 2012 (kopja hawn mehmuza)[Dok PB1 sa PB16].

Illi pero` huwa ma jistax jibqa` ghaddej bl-inkarigu tieghu stante nuqqas ta` komunikazzjoni u koperazzjoni.

Illi sal-lum ukoll huwa ghadu ma thallas xejn u dwar dan qed jirriserva d-drittijiet tieghu.

Ghaldaqstant l-esponenti jitlob bir-rispett illi dina l-Onorabbli Qorti joghgobha tirrevoka l-inkarigu moghti lilu ta` stralcjarju tas-socjeta` fuq imsemmija b`effett immedjat u dan taht dawk il-provvedimenti li jidhrilha li huma xierqa u opportuni.

Rat id-dokumenti li kienu annessi mar-rikors u cioe` l-Annual Report and Financial Statements ta` Rocksolid Enterprises Limited ghas-snin ta` bejn 30 ta` April 1998 u 23 ta` Jannar 2002, kif ukoll il-Liquidator`s Accounts ghas-snin ta` bejn 30 ta` April 2002 sa 30 ta` April 2012.

Rat id-digriet li tat fl-**<u>14 ta` Marzu 2019</u>** fejn, wara li ddikjarat li kienet kompetenti li tisma` r-rikors (mhux il-Prim`Awla tal-Qorti Civili) ordnat in-notifika tar-rikors u tad-digriet lill-persuni li ghandhom interess fl-esitu tal-procediment, u appuntat ir-rikors ghas-smigh ghall-udjenza ta` nhar il-Hamis 28 ta` Marzu 2019 fid-9.30 a.m.

Rat illi r-rikors u d-digriet kienu notifikati lil Edward Grima Baldacchino, Rocksolid Enterprises Limited u lir-Registratur tal-Kumpanniji (fol 166 u 167 tal-process).

Rat il-verbal tal-udjenza tat-28 ta` Marzu 2019.

Rat ir-risposta li pprezenta Edward Grima Baldacchino bhala "persuna interessata" fl-istess udjenza li taqra hekk :-

1. Illi din hija risposta ghal rikors ipprezentat mill-istralcjarju Paul Bugeja fis-27 ta` Frar 2019 permezz ta` liema l-istess stralcjarju talab ir-revoka tal-inkarigu tieghu.

2. Illi l-esponent bhala Direttur u Azzjonista tal-kumpannija li qieghda fi stralc dejjem ikkollabora bi shih mal-istralcjarju u jekk dan sab xi xkiel dan evidentement jew ikkagunati minn haddiehor. B`danakollu l-esponent ghandu interess li l-kumpannija tigi stralcjata u l-process jintemm mill-aktar fis possibbli u r-revoka tal-inkarigu tal-istralcjarju jista` jkun ta` pregudizzju serju ghall-process. Jekk l-istralcjarju sab xi xkiel seta` jirrikorri ghand il-Qorti ghad-direzzjonijiet u ordnijiet mehtiega fl-interess tal-istralc u l-esponent zgur ma kienx ser jopponi.

3. Fi kwalsiasi kaz l-istralcjarju ghandu jaghti rendikont ta` kull ma ghamel fil-qadi ta` dmirijietu.

4. F`dan l-istadju u salv dak li jinghad fil-qosor f`din ir-risposta l-esponenti qieghed jirrimetti ruhu ghad-decizjoni tal-Qorti.

Rat ukoll li fl-istess udjenza kienet ordnata wkoll in-notifika ta` Steve Busuttil bhala "persuna interessata" ohra.

Rat illi Steve Busuttil kien debitament notifikat (ara tergo ta` fol 170) izda la pprezenta risposta u lanqas qatt deher ghal xi wahda mill-udjenzi tar-rikors.

Semghet ix-xiehda ta` r-rikorrent fl-udjenza tal-21 ta` Ottubru 2019 u rat id-dokument li pprezenta.

Rat illi r-rikors thalla ghal provvediment finali ghal-lum.

Rat l-atti l-ohra.

II. <u>**Ix-xiehda tar-rikorrent**</u>

<u>Ir-rikorrent</u> xehed illi huwa kien inhatar mill-qorti bhala stralcjarju tal-kumpannija Rocksolid Enterprises Limited ("**<u>Rocksolid</u>**"). Sabiex jespleta l-inkariku tieghu, huwa kiseb taghrif minghand id-ditta ta` awdituri Busuttil & Micallef, kif ukoll minghand Edward Grima Baldacchino, li kien wiehed miz-zewg diretturi. Id-direttur l-iehor kien Steve Busuttil. Ikkonferma r-*reports, financial statements* u l-*accounts* kollha li kienu prezentati mar-rikors promotur.
Wara li mal-Kummissarju tat-Taxxi rnexxielu jasal fi tnaqqis qawwi tal-multi, kien jonqos li l-Kummissarju jithallas mat-€3,400. Billi Steve Busuttil ma ghamel ebda kuntatt mieghu, l-ammont dovut lill-Kummissarju baqa` ma thallasx ghaliex f`idejh huwa ma kellux flus ta` Rocksolid mnejn ihallas. Ghalkemm hadem hafna baqa` ma thallas xejn tax-xoghol tieghu. Ghalhekk ma kompliex ghaddej bl-gheluq tal-accounts ta` wara l-2012. Ipprezenta kopja tal-atti tal-qorti mnejn tirrizulta l-hatra tieghu.

III. <u>**Il-hatra tar-rikorrent**</u>

Fil-kors tad-deposizzjoni tieghu, ir-rikorrent ipprezenta kopja tal-atti (Dok PB1) mnejn tirrizulta l-hatra tieghu bhala stralcjarju.

Minn Dok PB1 jirrizulta dan li gej :-

Permezz ta` rikors tat-**<u>22 ta` Mejju 2002</u>** (Rik. Nru. 583/02) li kien prezentat fil-Prim`Awla tal-Qorti Civili, Edward Grima Baldacchino u Rocksolid, ghar-ragunijiet indikati fir-rikors, u a tenur tal-Art 214 tal-Kap 386, talbu mill-Qorti : i) ix-xoljiment u l-istralc ta` Rocksolid skont rizoluzzjoni straordinarja tal-kumpannija u tal-bord tad-diretturi u ; ii) il-hatra ta` stralcjarju.

Permezz ta` provvediment moghti mill-Prim`Awla tal-Qorti Civili fl-**<u>14 ta` Jannar 2009</u>**, kien ordnat l-istralc ta` Rocksolid u kien mahtur Paul Bugeja bhala stralcjarju.

IV. <u>**Konsiderazzjonijiet**</u>

Ir-rikorrent qieghed jitlob <u>ir-revoka</u> tal-inkariku tieghu bhala stralcjarju ghar-ragunijiet li semma fir-rikors u li kkonferma fid-deposizzjoni tieghu.

Qabel tqis ir-rikors fil-mertu, il-Qorti trid tqis *in primis* jekk ghandhiex is-setgha li tirrevoka l-inkariku tal-istralcjarju b`talba tal-istralcjarju nnifsu.

Jekk dan tista` taghmlu, allura tmur ghall-konsiderazzjoni tal-mertu tat-talba.

Jekk dan ma tistax taghmlu, allura jkollha tieqaf hemm ghaliex issib quddiemha pregudizzjali ta` dritt li jzommha milli tmur oltre.

Rocksolid kienet xjolta u stralcjata mill-Qorti. Ghalhekk it-talba trid titqies fil-kuntest tad-disposizzjonijiet tal-Kap 386 li jirregolaw dan il-qasam.

Fil-Pag 1267 ta` **<u>Principles of Maltese Company Law</u>** (Volume Three – Second Edition – MUP – 2019) **<u>Andrew Muscat</u>**, wara li jirreferi ghall-Art 289(1) tal-Kap 386 dwar it-tnehhija ta` stralcjarju kemm fil-kaz kemm ta` *a members` voluntary winding up* u kif ukoll fil-kaz ta` *a creditors` voluntary winding up,* ikompli jghid hekk fil-footnote 119 tal-pagna :

... *In the case of a winding up by the court, the court may, **<u>on the application of any creditor or contributory</u>**, remove a liquidator if it is satisfied that there exist sufficient grounds to warrant his removal. [Article 236(1) Companies Act]* (enfasi u sottolinear ta` din il-qorti)

L-Art 236 tal-Kap 386 huwa inserit fost id-disposizzjonijiet ta` Chapter III (Liquidators in a winding up by the court) li jaghmel parti minn Sub-title I (Winding up by the court) liema sub-title jaqa` taht Title II (Dissolution and Consequential Winding Up of Companies).

Fl-estratt citat, **Andrew Muscat** jirreferi ghal parti biss mill-Art 236(1). Tenut kont tal-mertu tar-rikors taht ezami, il-Qorti jidhrilha li jkun opportun li tirreferi ghad-disposizzjoni fl-intier taghha :

A liquidator appointed in accordance with the provisions of article 230 may resign or, on the application of any creditor or contributory, may be removed by the court if it is satisfied that there exist sufficient grounds for his removal.

Fil-ligi taghna, ghad-differenza tal-ligi tal-Ingilterra, stralcjarju m`ghandux vinkoli sabiex jaghti r-rizenja mill-inkariku tieghu.

Fil-ligi tal-Ingilterra dawn il-vinkoli jezistu.

Fil-Pag 925 ta` **Boyle & Birds` Company Law** (Eighth Edition, Jordans, 2012) jinghad hekk :-

A liquidator may resign only in certain circumstances prescribed in r.4.108 of the Insolvency Rules 1986. The liquidator may only resign following the procedure laid down in the rule on the grounds of ill-health or if intends to cease to practise as an insolvency practitioner or if there is some conflict of interest or change in personal circumstances which precludes or makes it impracticable for him to discharge his functions as liquidator of the company.

Fil-Pag 278 ta` **Insolvency Law : Corporate and Personal** (2003 – Pearson Longman) ikompli jinghad :

Before resigning a liquidator must convene a meeting of creditors for the purpose of receiving the resignation. The notice of the meeting must be accompanied by an account of the liquidator`s administration of the liquidation and include a summary of receipts and payments and a statement by the liquidator that he or she has reconciled his or her account with that which is held by the Secretary of State [rule 4.108(3)]

Except where the creditors` meeting decides against the

liquidator being released, the liquidator is automatically released once his or her resignation is effective under rule 45.109.

If a creditors` meeting does not accept the resignation, the liquidator may apply, in a compulsory or creditors` voluntary liquidation, to the court and it may give leave to the liquidator to resign [rule 4.111(1)]

Nergghu lura ghall-posizzjoni fil-ligi taghna.

Milli diga` rajna, johrog car illi fil-Kap 386, stralcjarju jispicca mill-hatra tieghu b`zewg modi. Jew billi jirrizenja. Inkella billi jitnehha mill-qorti wara talba ta` kreditur jew kontributorju jekk jirrizultaw *sufficient grounds*.

Fil-kaz tal-lum, ir-rikorrent ghazel illi ma jirrizenjax mill-inkariku tieghu.

Minflok ipprezenta r-rikors odjern sabiex din il-Qorti **<u>tirrevoka</u>** l-inkariku tieghu. Ghal din il-Qorti *revoka* tfisser *tnehhija.*

Il-Qorti hija tal-fehma li r-rikorrent ma setax jimposta t-talba tieghu bil-mod kif tinsab dedotta fir-rikors tieghu ghaliex dak li l-ligi tippermetti hija <u>jew</u> ir-rizenja mill-istralcjarju nnifsu inkella t-tnehhija *(removal)* tal-istralcjarju.

Fil-kaz ta` rizenja, il-ligi tahseb anke ghal formola *ad hoc* li hija l-Form L(3) : Notification of resignation of liquidator Pursuant to article 300(1).

Fil-kaz ta` tnehhija, it-talba ma tistax issir mill-istralcjarju nnfisu izda minn kreditur jew kontributorja.

Ghalhekk it-talba tar-rikorrent tikkozza ma` pregudizzjali ta` natura legali li zzomm lill-Qorti milli tqis ir-rikors fuq il-mertu tieghu.

<u>Provvediment</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tichad it-talba tar-rikorrent kif dedotta.

L-ispejjez jibqghu bla taxxa.

Onor. Joseph Zammit McKeon
Imhallef

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