



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

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum il-Hamis 30 ta` Jannar 2020

**Kawza Nru. 3
Rikors Nru. 19/19 JZM**

TRTO Agency Limited (C77031)

kontra

X

Il-Qorti :

I. Preliminari

Rat ir-rikors ipprezentat fid-9 ta` Lulju 2019 li jaqra hekk :-

1. *Illi dan ir-rikors qiegħed isir a tenur tal-Artikoli 214(1)(a) u 214(2)(a)(ii) ta` l-Att dwar il-Kumpanniji (Kap 386 tal-Ligijiet ta` Malta) permezz ta` liema qiegħed jintalab l-istralc tas-socjeta` esponenti minhabba l-insolvenza tagħha.*

2. *Illi s-socjeta` esponenti giet kostitwita fid-disgha u ghoxrin (29) ta` Awwissu tal-elfejn u sittax (2016) bhala Limited Liability Company.*

3. *Illi s-socjeta` esponenti kienet attiva u topera fl-industrija tal-avjazzjoni fejn fost servizzi tal-ivvjaggar, kienet tikri u topera ajruplani zghar ghal titjiriet privati, fil-fatt is-socjeta` rikorrenti kienet licenzjata sabiex topera ajruplani tat-tip Cessna 525, Citation Jet u PA46. Apparti minn hekk ukoll, is-socjeta` esponenti kellha l-intenzjoni li tkabbar il-flotta taghha billi tibda tikri wkoll ajruplan tat-tip Airbus A320.*

4. *Illi waqt li kienu ghaddejnin dawn in-negozjati sabiex jidhol fis-servizz l-Airbus A320, u wara li kienu anke diga` gew mharrga diversi piloti sabiex ihaddmu dawn l-ajruplani, qamu diversi dizgwiti bejn id-Direttur uniku tas-socjeta` u diversi Post Holders, b`rizultat ta` liema l-kumpanija eventwalment spiccat kolpita b`diversi mandati li bejniethom ilahhqu ghal aktar minn mija u tletin elf ewro (€130,000).*

5. *Illi r-rizultat ahhari ta` dawn il-mandati kien li s-socjeta` esponenti tilfet ghal kollox il-likwidita` taghha u spiccat f` sitwazzjoni fejn ma setghetx tibqa` topera. Ic-cirkostanzi li sabet ruhha fihom is-socjeta` esponenti waslu wkoll sabiex kellhom jitwaqqfu n-negozjati mas-sid tal-Airbus 320.*

6. *Illi kumpanija ta` din ix-xorta topera bi kreditu ma` diversi suppliers, liema suppliers, illum kredituri tas-socjeta` esponenti, qeghdin jaghmlu talbiet ghal hlas, tant li d-dejn globali tal-kumpanija jaqbez il-mitejn elf ewro (€200,000).*

7. *Illi ghalhekk is-socjeta` esponenti ghaddiet rizzoluzzjoni straordinarja, fejn ghar-ragunijiet kollha premessi, kien deciz li s-socjeta` esponenti tigi xjolta u konsegwentement stralcjata minn dina l-Onorabbli Qorti a bazi ta` dak provdut fl-Artikoli 214(1)(a) u 214 (2)(a)(ii) tal-Att Dwar il-Kumpaniji (Kap 386 tal-Ligijiet ta` Malta).*

8. *Illi jkun ghaqli wkoll illi pendenti d-decizjoni finali ta` dina l-Qorti, jigi appuntat ukoll amministratur provvizoiju sabiex jamministra s-socjeta` esponenti.*

Ghaldaqstant, u in vista tas-suespost, is-socjeta` esponenti qiegħda umilment titlob illi din l-Onorabbli Qorti jogħgobha, prevja kwalsiasi dikjarazzjoni necessarja u opportuna :

1. Tordna illi s-socjeta` TRTO Agency Limited tigi xjolta u konsegwentement stralcjata minn dina l-Onorabbli Qorti abbazi tal-Artikoli 214(1)(a) u 214 (2)(a)(ii) tal-Att Dwar il-Kumpaniji (Kap 386 tal-Ligijiet ta` Malta) u dan a tenur tal-Artikolu 218(1) tal-Att dwar il-kumpaniji, bl-ispejjez a karigu tal-istess socjeta.

2. Tordna li sakemm tingħata decizjoni finali jigi appuntat amministrator provvizorju sabiex jieħu hsieb l-amministrazzjoni tal-istess socjeta` esponenti.

3. Tagħti kull provvediment iehor li jidrilha xieraq u opportun.

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

Semgħet ix-xieħda u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat illi l-kawza thalliet għal provvediment għal-lum.

Rat l-atti l-ohra.

II. Xieħda viva voce

Mark Attard, rapprezentant ta` BDO Services Limited ("**BDO**"), xehed illi BDO kienet tagħmel xogħol ta` taxxa u kontabilita` għall-kumpanija rikorrenti ("**TRTO**"). L-audit kien isir minn haddiehor. Għall-bidu r-relazzjoni kienet normali fis-sens illi l-kumpanija kienet thallas il-kontijiet tagħhom. Imbagħad waqfet thallas u għalhekk kellhom iwaqqfu l-prestazzjonijiet tagħhom. Kellhom anke jinkarikaw lill-avukat tagħhom biex jikteb lil TRTO halli thallas dak dovut. Ipprezenta erba` dokumenti minn Dok BDO1 sa Dok BDO4. Marcello Labor għamel kuntatt magħhom fejn filwaqt li accetta li kien debitur tagħhom talabhom jistennew sakemm ibiegh il-kumpanija. TRTO

taghmel charters ta` ajruplani zghar. L-ahhar prestazzjonijiet li ghamlu kien sa Dicembru 2018.

Av. Dr. Claudette Fenech, rapprezentant tar-Registratur tal-Kumpanniji, xehdet illi minn mindu kienet registrata fid-29 ta` Awissu 2016 TRTO qatt ma baghtet financial statements, ghalkemm sal-10 ta` Awissu 2018 kienet obligata tibghat sett wiehed ta` *abridged financial statements*. Baghtet biss zewg annual returns u cioe` dawk tal-2017 u 2018.

Lara Buttigieg, rapprezentant tal-Awtorita` ghat-Trasport f` Malta, xehdet illi hija tahdem fid-Direttorat tal-Avjazzjoni Civili tal-Awtorita`. TRTO kisbet ic-certifikati AOC u AOL fl-2017 u 2018 rispettivament. In segwitu kienu l-ewwel sospizi u mbaghad revokati. Kienet TRTO stess li talbet is-sospensjoni ghaliex l-ajruplani ma baqghux kummercjali izda saru privati. Ghalhekk kien kaz ta` *self suspension*. B`hekk l-ajruplani setghu jaghmlu biss titjiriet privati mhux kummercjali. Segwiet ir-revoka min-naha tal-Awtorita` wara li nvestitur gdid li kellu l-hsieb li jakkwista l-kumpannija ma kompliex bil-hsieb li kellu. Intant l-ajruplani tnehhew mir-registru Malti u kienu kollha trasferiti lil kumpanniji oħrajn. Ebda wiehed ma baqa` fuq ir-registru Malti. Ghalhekk ukoll kienu revokati ic-certifikati. Dan ifisser li TRTO ma setghetx tkompli topera. Ippreżentat erbatax-il dokumenti li kienu esebiti bhala dokument wiehed Dok ADT1.

Johanna Bartolo, rapprezentant ta` Bank of Valletta plc, xehdet li TRTO kellha tliet kontijiet. L-ewwel kont kien Savings Account fil-US\$; dan ghandu zero balance ghaliex ma sarux transazzjonijiet. Hemm ukoll zewg kontijiet li huma Current fl-€ li ghadhom miftuhin. Ippreżentat Dok BOV1 u BOV2.

Adriana Guillaumier, rapprezentant ta` SataBank plc, ippreżentat USB drive bid-dettalji kollha tat-transaction history li TRTO kellha maghhom. Kellha zewg e-money accounts : wiehed fil-US\$ u l-iehor fl-€. Ippreżentat zewg dokumenti SATA1 u SATA2.

III. Dokumenti

Sabiex tohrog aktar fic-car il-qaghda tal-kumpannija rikorrenti, il-Qorti sejra tirreferi ghal fatti li jirrizultaw minn dokumenti li kienu prezentati fil-kors tal-kawza :-

TRTO kienet registrata fir-Registru tal-Kumpanniji Malti fid-29 ta` Awissu 2016 (Dok T1).

Dok T3 huwa l-M&A vigenti tal-kumpannija.

Skont dan id-dokument, l-ghan ewlieni tal-kumpannija huwa *to operate aircraft **commercially** and to provide services to third party aircraft operators* (enfasi u sottolinear tal-qorti).

TRTO hija *a sole member limited liability company*. L-unika azzjonista hija Crostair S.A. li hija kumpannija registrata fl-Isvizzera. Ghandha 1500 *Ordinary Shares* li jikkostitwixxu l-intier tal-*Authorised* u tal-*Issued Share Capital* tal-kumpannija li huwa *fully paid up*. Kull sehem ghandu valur nominali ta` €1.

TRTO ghandha direttur wiehed : Marcello Labor, cittadin Taljan.

Fl-*articles of association* il-paragrafi li jirregolaw *ordinary and extraordinary resolutions* huma dawk minn Para. 28 sa Para. 31.

Mid-dokumenti li kienu esebiti mix-xhud Mark Attard, jirrizulta li TRTO hija debitrice versu BDO Services Limited u BDO Consult Limited fl-ammont komplessiv ta` €36,433.17.

Mid-dokumenti li kienu esebiti mix-xhud Johanna Bartolo, jirrizulta li fil-BOV Euro Current Account illum hemm bilanc ta` €15, waqt li fil-BOV Euro Current Account l-iehor hemm zero balance.

Fost id-dokumenti esebiti hemm ix-xiehda bl-affidavit ta` **Marcello Labor**. Fil-qosor hafna, ix-xhud ifisser x`wassal ghall-formazzjoni ta` TRTO, ir-registrazzjoni taghha Malta, in-negozju taghha u ghaliex spiccat fi stat ta` insolvenza. Fid-data tal-prezentata tal-affidavit, u cioe` 2 ta` Dicembru 2019, TRTO kellha dejn ta`

€741,321.98. Il-Qorti rat id-dokumenti li kienu ezebiti mal-affidavit sabiex isostnu dan id-dejn.

Ir-rikorrenti pprezentat ukoll id-dokumenti li obbligat ruhha li tippresenta fl-udjenza tat-2 ta` Dicembru 2019.

IV. Locus standi

Qabel tghaddi biex tqis il-mertu tal-istanza odjerna, il-Qorti tghid illi persuna li tkun trid titlob ix-xoljiment u l-istralc ta` kumpannija, trid toqghod ghal dak li jipprovdi l-**Art 218(1) tal-Kap 386** 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-laqgħa generali jew mill-bord tad-diretturi tagħha jew minn xi detentur ta' obligazzjoni, 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.

Kif jixhed Dok T2, fil-kaz tal-lum, jirrizulta li kienet il-kumpannija rikorrenti stess li hadet id-decizjoni li tmur ghax-xoljiment u l-istralc.

Ghalhekk ir-rikorrenti ghandha locus standi sabiex tippromwovi l-istanza tal-lum.

V. L-Art 214(1)(a) tal-Kap 386

Ir-rikorrenti qeghda titlob li tkun xjolta u stralcjata skont l-**Art 214(1)(a) tal-Kap 386** fejn *kumpanija tirrizolvi b`rizoluzzjoni straordinarja li ghandha xxolji u tkun stralcjata mill-qorti.*

Ir-Registratur tal-Kumpaniji kien notifikat fis-7 ta` Awissu 2019 (tergo ta` fol 17) b` kopja tar-rikors promotur skont l-**Art 218(8) tal-Kap 386**.

Il-Qorti rat ir-risoluzzjoni Dok T2.

Tqis li d-dokument jikkwalifika bhala risoluzzjoni straordinarja skont l-*articles of association* tar-rikorrenti, u kwindi hija bizzejjed biex twassal ghax-xoljiment tal-kumpanija.

Il-Qorti hija tal-fehma illi, fil-kuntest tal-fatti u tac-cirkostanzi ta` dan il-kaz, kif jirrizultaw mill-provi, huma sodisfatti r-rekwiziti tal-Art 214(1)(a) tal-Kap 386 u ghalhekk ir-rikorrenti ghandha tigi xjolta u stralcjata.

Fl-ambitu tal-Art 214(1)(a), il-Qorti m`ghandhiex diskrezzjoni.

Ippruvat dak li jrid l-Art 214(1)(a), il-Qorti trid tghaddi ghax-xoljiment u ghall-istralc.

VI. L-Art 214(2)(a)(ii) tal-Kap 386

Ir-rikorrenti talbet **ukoll** lill-Qorti sabiex tordna x-xoljiment u l-istralc taghha **anke** abbazi tal-Art 214(2)(a)(ii) tal-Kap 386.

Il-Qorti mhijiex sejra toqghod lura, u ghalhekk sejra tghaddi biex tqis din it-talba **wkoll**.

Skont l-**Art 218(1) tal-Kap 386** *talba lill-qorti ... ghax-xoljiment u stralc ta` kumpanija mill-qorti skont l-artikolu 214(2)(a) ...*

ghandha ssir b'rikors li jista' jsir ... mill-kumpannija wara decizjoni tal-laqgħa generali.

Fil-kaz tal-lum, ir-rikorrenti għandha *locus standi* biex tmexxi bl-azzjoni skont l-Art 214(2)(a)(ii).

Diversament mill-Art 214(1)(a), fl-Art 214(2)(a)(ii) il-ligi tagħti lill-Qorti **diskrezzjoni** li xxolji u tistralcja kumpannija jekk issib li *ma tkunx tista' thallas id-djun tagħha.*

Id-disposizzjoni trid tingħara flimkien ma` l-**Art 214(5)** li jstabilixxi meta skont il-ligi tagħna, kumpannija għandha titqies li *ma tkunx tista' thallas id-djun tagħha.*

Tnejn huma c-cirkostanzi definiti fil-ligi :-

(a) jekk id-dejn dovut mill-kumpannija jkun baqa' ma thallasx għal kollox jew f`parti wara erbgha u ghoxrin gimgha mill-ezekuzzjoni ta' titolu eżekuttiv kontra l-kumpannija b`xi wiehed mill-atti eżekuttivi msemmijin fl-artikolu 273 tal-Kodici ta' Organizzazzjoni u Procedura Civili ;

jew

(b) jekk ikun ippruvat għas-sodisfazzjon tal-qorti li l-kumpannija ma tkunx tista' thallas id-djun tagħha, meta din tqis ukoll il-passiv kontingenti u prospettiv tal-kumpannija.

Ir-rikorrenti ma indikatx fuq liema minn dawn ic-cirkostanzi qed tinkwadra t-talba tagħha. Per konsegwenza, il-Qorti sejra tqis iz-zewg sitwazzjonijiet.

Meta tfassal il-mudell għal-ligi tagħna l-gdida dwar il-kumpanniji, il-qafas magħzul kien dak tal-**Companies Act Ingliza 1985.**

Fil-ligi Ingliza, ix-xoljiment u l-istralc ta` kumpanniji kien trattat f`legislazzjoni *ad hoc* u cioè` l-**Insolvency Act 1986.**

Meta fl-1995 saret il-ligi taghna l-gdida dwar il-kumpanniji li hadet post il-Commercial Partnerships Ordinance 1962 (Kap 168 tal-Ligijiet ta` Malta), id-disposizzjonijiet li jolqtu x-xoljiment u l-istralc kienu integrati fl-Att tal-1995.

Dan premiss, fil-ligi taghna, li kumpannija ma tkunx tista` thallas id-djun taghha ghandu sinjifikat **preciz u definit** mil-ligi stess fl-Art 214(5).

Fil-ligi Ingliza, il-posizzjoni hija aktar wiesgha.

Il-koncett ta` insolvenza fil-ligi taghna huwa aktar ristrett minn dak tal-ligi Ingliza ghalkemm hemm *overlaps*.

Fit-Tmien Edizzjoni (2012) ta` l-ktieb **Boyle & Birds` Company Law** (pubblikat minn Jordans) pg 859 jinghad hekk –

There are two principal, although not exclusive or exhaustive, tests of insolvency : a company is insolvent if it unable to pay its debts as they fall due ("cash flow insolvency") ; it is also insolvent if its liabilities exceed its assets ("balance sheet insolvency") ...

1. L-Art 214(5)(a) tal-Kap 386

Dwar din id-disposizzjoni, tajjeb jinghad illi titkellem dwar l-ezekuzzjoni ta` *atti ekekuttivi*.

Ghalhekk kumpannija ma tistax titqies illi mhijiex f`qaghda li thallas id-djun taghha abbazi ta` mandat kawtelatorju, anke jekk dak il-mandat ikun gie ezegwit kontra d-debitur.

Tajjeb jinghad ukoll illi l-fattur rilevanti sabiex jiskattaw l-erbgha u ghoxrin (24) gimgha huwa **l-ezekuzzjoni tal-Mandat**.

Fil-kaz ta` mandat ta` sekwestru, l-ezekuzzjoni tal-mandat tiskatta bin-notifika tal-att lis-sekwestratarji minghajr il-htiega tan-notifika tad-debitur.

B` mod aktar strett, fil-ligi taghna dak previst mill-Art 214(5)(a) jixbah il-koncett ta` *cash flow insolvency* fil-ligi Ingliza.

Fil-kaz ta` *cash flow insolvency* din il-Qorti tghid illi filwaqt illi fil-ligi taghna huwa specificat bil-preciz x`m`ghandhiex taghmel kumpannija debitrici sabiex ma tkunx meqjusa li ma tistax thallas id-djun taghha, fil-ligi Ingliza il-kriterju huwa aktar generiku ghax ikun hemm dik it-tip ta` insolvenza *if it is unable to pay its debts as they fall due*.

Fil-**Boyle & Birds` Company Law** (op. cit.) ikompli jinghad hekk –

Failure to pay a debt which is due and not disputed amounts to evidence of cash flow insolvency. Thus a company which has a policy of late payment of bills could find itself the subject of a petition for a winding-up order or administration order. Such a petition will not be struck out at an early stage as a form of improper pressure and an abuse of the process of the court, because, as Staughton LJ explained in Taylor`s Industrial Flooring (1990. BBC 44 at 51) creditors, not late payers, are more worthy of insolvency law`s protection :

"Many people today seem to think that they are lawfully entitled to delay paying their debts when they fall due or beyond the agreed period of credit, if there is one ... This can cause great hardship to honest traders, particularly those engaged in small businesses recently started. Anything which the law can do to discourage such behaviour in my view should be done."

Fil-pag 17 tal-ktieb **Insolvency Law – Corporate and Personal** ta` **Andrew Keay u Peter Walton** (ippubblikat minn Pearson Longman – 2003) jinghad hekk dwar *cash flow insolvency* kif mifhuma fil-kuntest tal-Insolvency Act 1986 –

The court, in examining whether a company is suffering cash flow insolvency, will consider whether the company is actually paying its debtors. Courts must take into account what current revenue the company has as well as what the company can procure by realising assets within a relatively short time ... A company can rely upon money which might be obtained from the sale of assets or upon money which might be obtained on the strength of its assets ... It is possible that sometimes a debtor might be able to establish solvency by demonstrating that funds can be obtained through an unsecured loan. In considering whether a person or a company is insolvent, the debtor's whole financial position must be studied ... and a temporary lack of liquidity does not necessarily mean that the company is insolvent ... At one time courts were rather strict on what they required to be established before they were willing to deem a person or a company insolvent, but in more recent times they have become more liberal as far as creditors are concerned and have held that a debtor is insolvent if a creditor is able to prove that he or she has not paid an undisputed debt after a demand has been made ... and this is the case even if there is other evidence which suggests that the value of the assets outweighs liabilities ... Whether a company is cash flow insolvent is principally a question of fact and one which may be established in any number of ways, such as the existence of a large number of outstanding debts and unsatisfied judgments ... or there is lack of assets on which execution can be levied ... It has been said that a debtor is not regarded as solvent just because if sufficient time were granted the debts could be paid off ...

2. L-Art 214(5)(b)

Fit-test bl-Ingliz id-disposizzjoni tal-ligi taghna taqra hekk :-

For the purposes of subarticle (2)(a)(ii), a company shall be deemed to be unable to pay its debts ... if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

Fl-Insolvency Act 1986, insibu disposizzjoni li tixbah dik tal-ligi taghna, ghalkemm mhijiex l-istess.

Il-Qorti qeghda tirreferi ghall-**Art 123(2) tal-Insolvency Act 1986** li jaqra hekk –

A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company`s assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

Id-divergenza bejn il-legislazzjoni Ingliza u dik Maltija hija li filwaqt li fil-kaz ta` l-Maltija, il-mizura hija semplici : u cioe` *the company is unable to pay its debts account being taken also of contingent and prospective liabilities of the company*, fil-kaz tal-ligi Ingliza, il-kriterju huwa divers ghaliex il-Qorti tkun trid tqis illi : *the value of the company`s assets is less than the amount of its liabilities ... billi tiehu kont tal- ... contingent and prospective liabilities.*

Ghal din il-Qorti, id-differenza hija ta` sostanza mhux ta` *drafting* ; fl-istess waqt, hija tal-fehma li xorta ghandha tfittex sintesi bejn id-disposizzjoni tal-ligi taghna u dik tal-ligi Ingliza. Din is-sintesi hija mehtiega sabiex tinghata tifsira aktar preciza ghal dawk li huma *contingent and prospective liabilities* li jsibu l-fonti taghhom fil-qasam tal-kontabilita` .

Bid-debiti riservi, u tenut kont tad-disparita` fid-disposizzjonijiet ta` bejn il-ligi Ingliza u dik taghna, il-Qorti sejra tirreferi ghal dak li tghid id-dottrina Ingliza dwar dak li huwa maghruf bhala *balance sheet insolvency* meta abbinat mal-Art 123(2) tal-Insolvency Act 1986 tar-Renju Unit.

Fil-Pag 19 tal-ktieb **Insolvency Law – Corporate and Personal** (op. cit.) jinghad hekk :-

In determining whether the assets are outweighed by the liabilities a court is able to take into account contingent and prospective liabilities, but not contingent and prospective assets [Byblos Bank SAL v. Al-Khudhair (1986) 2 BCC99,

549 (CA)] It has been said that "liabilities" is a broadened term compared with "debts" [Re A debtor (No 17 of 1966) (1967) Ch 590 ; (1967) 1 All ER 668]. "Liabilities" is defined for the purposes of winding up in rule 13.12 (4) to mean "a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution". Then rule 13.12 (3) states that it is immaterial whether the liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

Clearly with this test it is only possible to take into account the assets owned by the company including the uncalled capital of the company [Re National Livestock Insurance Co (1858) 26 Beav 153; 53 ER 855 ...

Fil-Pag 114 tar-Raba` Edizzjoni (2011) ta` **Principles of Corporate Insolvency Law** (Sweet & Maxwell) **Roy Goode** ighid :-

The idea underlying this test ... is that it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets and these are insufficient for the purpose ...

Fil-Pag 130 ikompli hekk –

The mere excess of liabilities over assets is not in itself determinative. What has to be shown is that by reason of the deficiency of its assets the company has reached the point of no return.

Fil-Pag 134 sa 136, l-awtur jittratta l-contingent liability billi jghid hekk –

To give the phrase "contingent liability" any meaning we must restrict it to a liability or other loss which arises out of an existing legal obligation or state of affairs but which is dependent on the happening of an event which may or may not occur. Many of the cases have stressed the need for

the liability to arise out of an existing obligation. ... in considering whether there is a contingent liability the court has regard to the existing commercial situation, not merely an existing legal obligation. In this regard, assistance can be derived from Financial Reporting Standard 12 which defines a contingent liability in the following terms :

(a) "A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the entity`s control ; or

(b) a present obligation that arises from past events but is not recognised because :

(i) it is not probable that a transfer of economic benefits will be required to settle the obligation ; or

(ii) the amount of the obligation cannot be measured with sufficient reliability."

... the term "contingent liabilities" is ultimately not a term of art and its precise meaning will depend on its context. The court is thus entitled to have regard to commercial realities ...

Fil-Pag 136 u 137, l-awtur jittratta l-prospective liability u jghid hekk –

... The phrase "prospective liability" is neither a legal nor an accounting term of art. It has been judicially defined as :

" ... a debt which will certainly become due in the future, either on some date which has already been determined or some date determinable by reference to future events."

... it has been described ... as unmatured liability which will inevitably ripen into a debt with the passage of time. Such a definition encompasses all forms of debitum in praesenti, solvendum in futuro including an indisputable claim for unliquidated damages which remains only to be quantified and will result in a debt far more than a nominal amount. "Prospective liability" thus embraces both future debts, the sense of liquidated sums due, and unliquidated claims.

Dwar l-Art 214(5)(b) il-Prim`Awla tal-Qorti Civili fis-sentenza taghha tat-28 ta` Mejju 2003 fil-kawza "**Axel John International AB vs Aluminium Extrusions Limited**" qalet hekk –

Din il-kondizzjoni tista` tigi verifikata permezz tal-balance sheets wara li jigi kunsidrat jekk l-assets are less than its liabilities. Izda ... it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets over a lengthy period (Re : European Life Assurance Society 1869 LR 9 Eq 122).

Ghalhekk ma hemmx raguni ghaliex il-kredituri ghandhom joqghodu jistennew sakemm il-kumpannija tbiegh l-assets taghha biex forsi xi darba jithallsu.

3. Risultanzi

a) L-Art 214(5)(a) tal-Kap 386

Abbazi tal-provi li gabet ir-rikorrenti, il-Qorti ma tistax tasal ghal sejbien ta` insolvenza specifikament skont din id-disposizzjoni.

Ma tistax taghmel dan ghaliex ma rrizultax li kien ezegwit kontra r-rikorrenti mandat ezekuttiv.

Ghalhekk qeghda tirrespingi talba tar-rikorrenti abbazi tal-Art 214(5)(a) tal-Kap 386.

b) L-Art 214(5)(b) tal-Kap 386

Mid-dokumenti li kienu ezebiti bhala prova fil-kors tal-kawza, jirrizulta ppruvat li TRTO hija debitrici lejn terzi fl-ammont ta` `l fuq minn €740,000.

Mill-provi ma rrizultax li TRTO ghandha assi.

Tenut kont tad-dottrina u giurisprudenza citata aktar kmieni, il-Qorti tghid li ghandha l-prova sal-grad rikjest mil-ligi ta` dak li huwa rikjest bl-Art 214(5)(b).

c) Id-diskrezzjoni tal-Qorti

Accertat illi jirrizultaw ippruvati r-rekwiziti tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b), il-Qorti trid tara jekk fuq il-provi akkwiziti, ghandhiex tezercita d-diskrezzjoni taghha li tordna x-xoljiment u l-istralc ta` TRTO.

Il-Qorti kkonduciet ezami akkurat kemm tad-dokumenti esebiti u kif ukoll ta` dak mistqarr mix-xhieda.

Tinsab rinfaccjata b`kumpannija li m`ghandhiex assi, li ghandha dejn ma` terzi li jaqbez is-€740,000, li waqfet topera ghal kollox, u fejn sahsitra sfaxxa l-ghan ewlieni li ghalih kienet kostitwita. Ma jirrizultax li r-rikorrenti ghandha dhul.

Huwa bil-wisq evidenti li r-rikorrenti tinsab minn taht u sejra tibqa` hekk.

Hija l-fehma konsiderata tal-Qorti illi r-rikorrenti ma ghandhiex intenzjoni illi tghin ruhha u tipprova taqdef sabiex tinsorgi.

Irrizulta li ma qieghed isir xejn mill-uniku membru tar-rikorrenti ghall-fini ta` risanament.

Is-socjeta` waqfet ghal kollox mill-esercizzju tan-negozju li ghalih kienet kostitwita.

Kif diga` kellha okkazzjoni tghid fi provvedimenti precedenti taghha, din il-Qorti terga` ssostni li kumpannija li ma taghmilx negozju hija entita` bla ruh. Kumpannija li ma tiggerax attivita`

ekonomika ma jistax ikollha dhul, u minghajr dhul, ma tista` qatt thallas id-dejn taghha. Per konsegwenza, din il-Qorti sejra wkoll tezercita d-diskrezzjoni taghha u sejra tordna x-xoljiment u l-istralc tal-intimata ukoll abbazi tal-Art 214(2)(a)(ii) u tal-Art 214(5)(b) tal-Kap 386.

Provvediment

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar it-talbiet tar-rikorrenti billi :

Riferibbilment ghall-ewwel talba, tiddikjara li fir-rigward tal-kumpannija rikorrenti TRTO Agency Limited (C77031) jirrizultaw ippruvati sal-grad rikjest mil-ligi r-rekwiziti tal-Art 214(1)(a), tal-Art 214(2)(a)(ii), u tal-Art 214(5)(b) tal-Kap 386 tal-Ligijiet ta` Malta.

Riferibbilment ukoll ghall-ewwel talba, tordna x-xoljiment u l-istralc tal-kumpannija rikorrenti TRTO Agency Limited (C77031) b`effett mill-1 ta` Lulju 2019 skont it-tieni proviso ta` l-Art 223(1) tal-Kap 386.

Tahtar lir-Ricevitur Ufficjali bhala stralcjarju tal-kumpannija rikorrenti TRTO Agency Limited (C77031) bis-setghat u bid-dmirijiet kollha li huma stabbiliti fil-Kap 386 tal-Ligijiet ta` Malta.

Tordna lill-istralcjarju sabiex jipprezenta rapport tal-hidma tieghu sa zmien xahrejn mil-lum.

Tastjeni milli tiehu konjizzjoni ulterjuri tat-tieni talba.

Bl-applikazzjoni tal-Art 236(2) tal-Kap 386, tordna lill-kumpannija estera Crostair S.A. (Switzerland Co. Reg. No. CHE-247.306.163) bhala l-uniku membru/azzjonista tal-kumpannija rikorrenti, u lill-kumpannija 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-udjenja ta nhar il-Hamis 23 ta` April 2020 fid-9.00 a.m.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**