MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tas-16 ta' Marzu, 2022

Appell Inferjuri Numru 60/2021 LM

Ante Kelava (K.I. 163900A)
('l-appellat')

vs.

Coinspace Limited (C 70466)
('is-soċjetà appellanta')

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mis-soċjetà intimata **Coinspace Limited (C 70466)**, [minn issa 'l quddiem 'is-soċjetà appellanta'], minn deċiżjoni tat-Tribunal tal-Arbitraġġ fiċ-Ċentru dwar l-Arbitraġġ ta' Malta [minn issa 'l quddiem 'it-Tribunal'], tat-12 ta' April, 2021 [minn issa 'l quddiem 'il-*lodo* arbitrali appellat'], li permezz tiegħu t-Tribunal laqa' l-ewwel talba tar-rikorrent **Ante**

Kelava (K.I. 163900A) [minn issa 'l quddiem 'is-soċjetà appellata'], fil-konfront tas-soċjetà intimata Coinspace Limited, billi (i) ordnala tagħtih aċċess għall-*portal* tagħha fi żmien erbatax-il jum mill-għoti tal-*lodo* arbitrali; (ii) ċaħad l-ewwel eċċezzjoni tas-soċjetà intimata; (iii) laqa' t-tieni talba tar-rikorrent u ordna lis-soċjetà intimata tħallas lir-rikorrent is-somma ta' €1,094,858.42 b'żieda mas-somma ta' €220,000, bl-imgħaxijiet fuq din is-somma fit-totalità tagħha; (iv) ċaħad it-tieni eċċezzjoni tas-soċjetà intimata; (v) ċaħad it-tielet talba tar-rikorrent; laqa' t-tielet eċċezzjoni tas-soċjetà intimata; (vi) laqa' r-raba' talba tar-rikorrent, u ordna lis-soċjetà intimata tagħmel tajjeb għall-ispejjeż kollha tal-proċeduri tal-arbitraġġ; (vii) kif ukoll ċaħad ir-raba' eċċezzjoni tas-soċjetà intimata u l-ħames talba tar-rikorrent.

Fatti

2. Is-soċjetà intimata topera fis-settur tal-*cryptocurrency*, b'mod partikolari billi tipprovdi servizzi ta' *optimised hashing* lill-klijenti tagħha. Ir-rikorrent kien *affiliate* tas-soċjetà intimata, u kien fdat bil-bejgħ ta' pakketti ta' *cloud mining* tal-*cyrptocurrency* offruta minnha. Minn dan il-bejgħ ir-rikorrent kien jaqla' kummissjoni diretta mħallsa lilu fi flejjes kontanti, filwaqt li parti mill-bilanċ tal-kummissjonijiet dovuti lilu (25%) kienu jitħallsu lilu fil-forma ta' *coins* tal-*cryptocurrency*. Jirriżulta li s-soċjetà intimata għamlet għadd ta' investigazzjonijiet dwar l-operat tagħha, minn fejn allegatament irriżultalha li r-rikorrent kien kiser it-termini u l-kundizzjonijiet tas-soċjetà intimata bħala *affiliate,* u huwa kellu jirrifondi ammont sostanzjali ta' kummissjonijiet li tħallsu lilu, għaliex lis-soċjetà intimata allegatament rriżultalha li l-bejgħ ma kienx sar

u/jew ma ġiex irreġistrat mir-rikorrent. Sussegwenti għal dawn l-investigazzjonijiet, is-soċjetà intimata kienet iddeċidiet li tittermina r-relazzjoni li kellha mar-rikorrent, issospendiet il-ħlas ta' kummissjonijiet allegatament dovuti lilu, u kompliet tinvestiga aktar dwar il-possibilità li seta' kien hemm frodi da parti tar-rikorrent. Permezz tal-proċeduri arbitrali istitwiti minnu, ir-rikorrent ipproċeda sabiex isiru pagamenti li allegatament għadhom dovuti lilu fil-forma ta' kummissjonijiet li baqgħu ma tħallsux lilu, u *rewards* għal *coins* miġbura minnu, li s-soċjetà intimata wkoll qiegħda tirrifjuta li tħallas.

Mertu

3. Ir-rikorrent spjega li fil-15 ta' Ġunju, 2015 huwa kien irreġistra lilu nnifsu bħala *affiliate* mas-soċjetà appellata permezz tan-*network* fuq is-sit *www.coinspace.eu*, u kien anki xtara xi pakketti ta' *cyrpto coins* mill-imsemmi sit. Spjega li fuq dan in-*network*, huwa kien irreġistrat bl-isem *Diamond Team,* liema isem kien jikklassifikah fi grad partikolari fin-*network* tas-soċjetà intimata, u r-relazzjoni tiegħu mas-soċjetà intimata kienet regolata permezz ta' *Product, Service and Business Plan Overview and Policies and Procedures,* li r-rikorrent jgħid li ġew emendati unilateralment mis-soċjetà intimata mingħajr ma huwa kien notifikat b'dan. Ir-rikorrent qal li fil-pożizzjoni tiegħu ta' *affiliate* u *marketer* tan-*network* tas-soċjetà intimata, huwa kien qala' diversi punti u kummissjonijiet skont it-termini u kundizzjonijiet li kienu jirregolaw ir-relazzjoni bejn il-partijiet, u s-soċjetà intimata irrikonoxxiet ukoll li dawn il-kummissjonijiet huma dovuti lilu anki skont l-informazzjoni li tidher fuq l-*eWallet* disponibbli fuq il-*portal* tas-soċjetà intimata. Ir-rikorrent qal li bejn il-15 ta' Ġunju, 2015 u l-

aħħar ta' Ġunju 2017, huwa kien qiegħed jirċievi kummissjonijiet b'mod regolari minn għand is-soċjetà intimata, li kienet qiegħda tonora t-talbiet li kienu qegħdin isiru minnu għall-ħlas. Ir-rikorrent spjega li s-soċjetà intimata kellha żona protetta minn *password* għall-utenti tas-sit tagħha, liema żona kienet tikkwantifika l-kummissjonijiet pagabbli lill-*affiliates* u tattribwihom lil kull utent rispettiv. Ir-rikorrent spjega li fil-fatt l-utent m'għandux kontroll fuq il-bilanċ li jidher fl-*eWallet,* għaliex l-utent irid jagħmel talba għall-ħlas tal-flus dovuti lilu. Qal ukoll li matul Ġunju tal-2017, is-soċjetà intimata waqfet tonora it-talbiet tiegħu għall-ħlas, u waqfet tħallas il-kummissjonijiet dovuti, u minflok dawn il-ħlasijiet bdew jidhru fuq is-sistema li għadhom 'pendenti'. Qal li l-ammont totali ta' kummissjonijiet pendenti fis-17 t'Awwissu, 2017 kien ta' €1,094,858.42, flimkien mal-ammont ta' €220,000, liema ammont tnaqqas mill-*eWallet* tar-rikorrent, iżda qatt ma tħallas lilu. Ir-rikorrent qal li hemm ammont ulterjuri ta' €18,883 f'*bonus* li oriġinarjament kellu jitħallas lilu fit-13 t'Awwissu, 2017, li qatt ma kien inkluż fil-bilanċ li jidher fl-*eWallet* tiegħu, liema ammont ir-rikorrent qal li ma jistax jipprova li huwa dovut lilu għaliex huwa m'għadx għandu aċċess għall-profil tiegħu. Ir-rikorrent allega li hu dovut lilu wkoll il-bilanċ ta' 3,802,445.96 f'*reward coins* li għandhom jiġu kkalkulati bil-prezz garantit ta' €0.50, u li għandhom jirriżultaw fl-ammont ta' €1,901,222.93 u total ta' 340,000 f'*coins* li kellhom jitħallsu lilu wara li kklassifika fil-grad ta' '*Crown Diamond'* fin-*network* tas-soċjetà intimata, u dan skont il-*Product, Service and Business Plan Overview*, liema kummissjonijiet u *rewards* qatt ma tħallsu lilu. Ir-rikorrent qal li fis-26 ta' Settembru, 2016 huwa kien xtara pakkett mingħand is-soċjetà intimata bl-isem ta' '*Double Mine'* għall-prezz ta' €12,000, liema pakkett kellu jħallas 100 *coin* kuljum, u li l-bilanċ ta' *coins* minn dan il-pakkett kellu jiġi

akkreditat fil-kont tar-rikorrent, bl-għażla li dawn jiġu kkonvertiti f'valuta Euro bil-prezz garantit ta' €0.50 għal kull munita. Ir-rikorrent qal li huwa xtara pakkett ta' '*Double Mine*' ieħor fis-6 t'April, 2017, u dan il-pakkett ukoll kellu jrendi 100 *coin* kuljum, li kellhom jiġu akkreditati fil-kont tiegħu, bl-għażla li dawn jiġu kkonvertiti f'Euro. Ir-rikorrent qal li fid-19 ta' Ġunju, 2017 huwa bagħat ittra legali lis-soċjetà intimata fejn staqsa għal liema raġuni din kienet qiegħda tonqos milli tonora l-obbligi tagħha. Qal li huwa kellu jibda proċeduri quddiem it-Tribunal għaliex is-soċjetà intimata qiegħda tonqos milli tonora l-obbligi tagħha fil-konfront tiegħu.

4. Ir-rikorrent qal li huwa nżamm milli jaċċedi għall-*user account* tiegħu, u għalhekk dan il-kont issa qiegħed taħt il-kontroll assolut tas-soċjetà intimata, li tista' għalhekk temenda d-dettalji u d-*data* li fih bi ksur tal-obbligi tagħha fil-konfront tar-rikorrent. Qal li għad hemm dovuti ħlasijiet ta' kummissjonijiet għas-servizzi pprestati minnu, hekk kif jirriżulta mill-kont tal-*eWallet* tiegħu, u minkejja li l-bilanċ tal-ħlasijiet dovuti lilu jidhru bħala li ġew iddepożitati fl-*eWallet* tiegħu, fil-fatt dan il-bilanċ ma jistax jintuża minnu. Permezz ta' dawn il-proċeduri, ir-rikorrent qiegħed jitlob ukoll il-ħlas tar-*rewards* dovuti lilu bil-prezz ta' €0.50 għal kull *reward.* In vista ta' dan, ir-rikorrent talab lit-Tribunal jagħti deċiżjoni provviżorja biex jingħata aċċess sabiex ikun jista' jikseb *data* u informazzjoni oħra li tinsab maħżuna fil-kont tiegħu, kif ukoll talab lit-Tribunal jordna lis-soċjetà intimata tirrestawra d-*data* fil-kont bl-istess mod kif kienet dakinhar li ġie revokat l-aċċess tar-rikorrent, minħabba s-suspett tar-rikorrent li kien hemm tbagħbis fl-informazzjoni ġo dan il-kont. Ir-rikorrent talab lit-Tribunal jiddeċiedi wkoll li huwa għandu jitħallas is-somma ta' €1,094,858.42,

flimkien mas-somma ta' €220,000 li huma pendenti, liema somom jirrappreżentaw kummissjonijiet dovuti lilu. Ir-rikorrent talab ukoll lit-Tribunal jordna lis-soċjetà intimata tħallas ir-*rewards* f'valuta monetarja ekwivalenti għall-prezz ikkalkolat skont il-*Policies and Procedures,* liema *rewards* ir-rikorrent jgħid li huma dovuti lilu għax-xiri ta' prodotti mibjugħa mis-soċjetà intimata, kif ukoll bħala ħlas ta' kull kummissjoni li s-soċjetà intimata naqset milli tħallas lir-rikorrent, fl-ammont ta' €2,090,105.93, kif jirriżulta mill-*eWallet* tar-rikorrent. Ir-rikorrent talab lit-Tribunal jiddikjara wkoll li s-soċjetà intimata għandha tħallas l-ispejjeż tal-proċeduri arbitrali.

5. Is-soċjetà intimata wieġbet li r-rikorrent kien fdat bil-bejgħ ta' pakketti tal-*cloud mining* tal-*cyrptocurrency* lil individwi oħra li jkunu jistgħu joffru dawn il-pakketti għall-bejgħ mill-ġdid lil terzi. Qalet li bħala *affiliate,* ir-rikorrent kien jirċievi ħlas ta' kummissjonijiet b'mod dirett fil-forma ta' flus kontanti permezz tan-*network* amministrat minnha, kif ukoll fil-forma ta' *coins* iġġenerati permezz tal-istess *network.* Is-soċjetà intimata kkonfermat li r-rikorrent kien tħallas somom kbar ta' kummissjonijiet, iżda li fis-sena 2016 hija kellha suspetti ta' frodi fuq volum għoli li allegatament kienet qiegħda sseħħ f'diversi pajjiżi, partikolarment fit-Turkija, u għalhekk is-soċjetà intimata bdiet tinvestiga numru ta' transazzjonijiet li saru bejn id-distributuri u l-utenti f'diversi pajjiżi. Żiedet tgħid li eventwalment ġie allegatament stabbilit li saret frodi b'volum qawwi ta' bejgħ li sar minn ċertu *affiliates,* inkluż bejgħ li sar mir-rikorrent. Qalet li dan irriżulta f'kummissjonijiet li nteħħu b'mod artifiċjali, mingħajr ma kien fil-fatt sar bejgħ. Qalet li dan il-bejgħ artifiċjali wassal biex ir-rikorrent u membri tat-tim tiegħu ħadu ammont ta' kummissjonijiet li kien ogħla minn dak li kellhom

jirċievu, u b'dan il-mod huma akkwistaw klassifika ogħla fin-*network* operata mis-soċjetà intimata. L-soċjetà intimata spjegat li l-klassifika taħdem permezz ta' kunċett ta' *multi-level-marketing,* fejn ir-*rewards* li jirċievi l-*affiliate* jiddependu direttament fuq il-bejgħ irreġistrat minnu, kif ukoll mill-bejgħ li jsir mix-xerrejja u mill-aġenti li jaqgħu taħt dak l-*affiliate* partikolari, fi ħdan l-istess *network* tagħha. Żiedet tgħid li hija nfurmat lir-rikorrent li l-kummissjonijiet li kienu diġà tħallsu lilu kellhom jiġu riveduti, għaliex kien hemm perċentwali ta' bejgħ li ġie ġġenerat b'mod frawdolenti, bil-konsegwenza li s-soċjetà intimata ħallset flus li ma kinux dovuti. Is-soċjetà intimata qalet li mill-investigazzjonijiet preliminari li saru minnha, jirriżulta allegatament li kien hemm volum ta' bejgħ sostanzjali li kien frawdolenti għaliex il-kontijiet abbinati magħhom inħolqu għal individwi li ma jeżistux, jew inkella għaliex il-flus iġġenerati mill-bejgħ tal-pakketti tal-*cyrpto coins* allegatament mibjugħa mir-rikorrent ma ġewx trasferiti lis-soċjetà intimata. Żiedet tgħid li t-termini u l-kundizzjonijiet li jirregolaw ir-relazzjoni bejn il-partijiet jgħidu li s-soċjetà intimata għandha l-jedd li taġġusta l-kummissjonijiet li jitħallsu, ibbażati fuq is-somom attwali li jkun għamel l-*affiliate* partikolari. Qalet ukoll li l-*eWallet* tar-rikorrent allegatament jikkonferma numru ta' transazzjonijiet suspettużi, u li komplew iżidu s-suspetti tas-soċjetà intimata li r-rikorrent ipprova jiffrodaha. Qalet li numru ta' persuni li akkwistaw pakketti mingħand ir-rikorrent ikkonfermaw magħha li huma ħallsu lir-rikorrent direttament bi flus kontanti, b'*wire transfers* jew bil-Bitcoin. Is-soċjetà intimata żiedet tgħid li minn investigazzjonijiet ulterjuri li għamlet, skopriet li r-rikorrent kien kiser termini u kundizzjonijiet oħra li jirregolaw il-kuntratt tiegħu, inkluż permezz ta' reklami qarrieqa, in-nuqqas tiegħu li jirreġistra u jħallas miżati tal-abbonament annwali mas-soċjetà intimata, iż-

żamma minnu ta' flus iġġenerati mill-bejgħ, u l-aċċess mhux awtorizzat minnu ta' *data* u dettalji dwar il-klijenti, kif ukoll għamel bejgħ mhux awtorizzat f'ċerti ġurisdizzjonijiet. Qalet li kien in vista ta' dan l-allegat ksur tal-obbligi tar-rikorrent, li hija kienet imblukkatlu l-aċċess għall-pjattaforma tagħha.

6. Is-soċjetà intimata eċċepiet ukoll li r-rikorrent kien allegatament ammetta li kien aċċessa informazzjoni dwar il-klijenti meta ma kellu l-ebda awtorizzazzjoni li jagħmel dan, u ftit wara hija kienet ġiet mgħarrfa li diversi kontijiet kienu ġew kompromessi (*hacked*). Qalet li in vista ta' din l-informazzjoni, fit-22 ta' Frar, 2017 hija kienet issospendiet l-aċċess tar-rikorrent, liema aċċess reġa' ngħatalu fis-26 ta' Frar, 2017. Kompliet tgħid li wara li għamlet verifiki dwar l-abbonamenti f'Lulju tal-2017, kien irriżulta li r-rikorrent kien naqas milli jġedded l-abbonament annwali tiegħu, bi ksur tat-termini u l-kundizzjonijiet miftiehma bejn il-partijiet. Qalet ukoll li kien irriżulta li r-rikorrent kien qiegħed jiġbor flus kontanti mingħand l-*affiliates* il-ġodda, bi ksur ukoll tat-termini u l-kundizzjonijiet tal-ftehim. F'din is-sitwazzjoni, spjegat s-soċjetà intimata, hija ddeċidiet li l-aċċess tar-rikorrent kellu jiġi sospiż, u li kellhom isiru aktar indaġni dwar it-transazzjonijiet li kien involut fihom ir-rikorrent. Is-soċjetà intimata qalet li r-rikorrent ippubblika wkoll materjal u kummenti fuq il-*website* tiegħu, bl-iskop li jikkawżalha l-ħsara. Is-soċjetà intimata ċaħdet li hija bidlet b'mod unilaterali it-termini u l-kundizzjonijiet tal-ftehim li kellha mar-rikorrent, u qalet li r-rikorrent innifsu kien preżenti għal għadd ta' laqgħat fejn ġew diskussi l-emendi għal dawn it-termini u kundizzjonijiet. B'riferiment għat-tieni talba tar-rikorrent, is-soċjetà intimata wieġbet li t-talbiet tar-rikorrent għall-ħlas ġew rifjutati wara li ġie stabbilit l-aġir frawdolenti tiegħu, u wara li ġie skopert li

r-rikorrent żamm għalih flus iġġenerati mill-bejgħ ta' pakketti tas-soċjetà intimata. Is-soċjetà intimata spjegat li l-volum ta' frodi fit-Turkija biss kien jammonta għal 51 miljun Euro. Qalet ukoll li l-flus mitluba mir-rikorrent mhumiex dovuti għaliex il-bejgħ li suppost iġġenera dawn il-kummissjonijiet kien iġġenerat b'mod frawdolenti u ma ġiex irreġistrat b'mod korrett fis-sistema tagħha. Qalet ukoll li għalhekk il-pretensjoni tar-rikorrent li titħallas lilu s-somma ta' €1,094,858.42 b'żieda mas-somma €220,000, m'għandhiex tiġi milqugħa. B'riferiment għar-raba' talba tar-rikorrent, is-soċjetà intimata qalet li l-prezz tar-*rewards* qatt ma kien iffissat fl-ammont ta' €0.50, u l-prezz tagħhom ikun determinat fis-suq meta dawn ir-*rewards* jitpoġġew għall-bejgħ fis-suq. Finalment is-soċjetà intimata qalet li l-*coins* li r-rikorrent jippretendi li huma dovuti lilu, allegatament inġabru minnu b'mod illeċitu minħabba l-volum frawdolenti ta' bejgħ u kummissjonijiet iġġenerat minnu. Is-soċjetà intimata qalet li d-deċiżjoni tat-Tribunal trid tkun li l-ebda kummissjonijiet u l-ebda *rewards* m'huma dovuti lir-rikorrent.

7. Quddiem it-Tribunal ġew ippreżentati diversi dokumenti li jispjegaw ir-relazzjoni bejn il-partijiet, u dak li ġie pattwit bejniethom.

8. Ir-rikorrent **Ante Kelava**, fl-*affidavit* tiegħu spjega li kien ċertu Jernej Plesko li introduċieh għan-*network* tas-soċjetà intimata f'Ġunju tal-2015, u li kien talbu jinvolvi ruħhu bħala *multi-level marketing member.* Ir-rikorrent qal li huwa kien abbona man-*network* permezz tas-sit www.coinspace.eu, amministrata mis-soċjetà intimata, u hekk kif iffirma, sab li kien hemm xi termini u kundizzjonijiet li kienu japplikaw għalih. Qal li tul iż-żmien li fih hu kien membru ta' Coinspace, il-persuni li kellu kuntatt dirett magħhom kienu Jernej

Plesko u s-sieħba tiegħu Maja Rejec, u qal li fil-fehma tiegħu dawn it-tnejn minnies kienu l-imħuħ wara s-soċjetà intimata, għaliex huwa dejjem magħhom iddiskuta. Qal ukoll li meta għamel ir-riċerki tiegħu fir-Reġistru tal-Kumpanniji kien sab li l-unika direttur tas-soċjetà intimata kienet ċerta Mocja Plut, persuna li sussegwentement huwa ltaqa' magħha darbtejn b'kollox fis-Slovenja. Ir-rikorrent qal li minkejja s-suċċess u l-volum ta' xogħol li huwa kien qiegħed iressaq lejn il-kumpannija, Plut lilu qatt ma awguratlu għas-suċċess tiegħu. Qal li fi Frar 2017 huwa sar jaf mingħand Jernej Plesko li s-soċjetà intimata kienet qiegħda tiffaċċja problemi f'għadd ta' ġurisdizzjonijiet, u kien hemm suspetti ta' frodi u problemi sabiex isiru l-verifiki ħalli jkunu jistgħu jitħallsu l-kummissjonijiet dovuti. Qal li huwa qatt ma kien infurmat b'dawn is-suspetti bil-miktub, u lilu ħadd ma kien qallu li huwa kien qiegħed ikun suspettat. Ir-rikorrent qal li l-ewwel darba li huwa sar jaf li allegatament kien hemm transazzjonijiet frawdolenti, kien fl-10 t'April, 2018 minn Pat Berry, persuna li tressaq biex jixhed quddiem it-Tribunal mis-soċjetà intimata. Ir-rikorrent qal li Jernej Plesko lilu kien infurmah li l-problemi interni li kienet qiegħda tiffaċċja s-soċjetà intimata, kienu riżultat tal-imġiba tal-*General Manager* ta' Coinspace Turkey, u dan ma kellux x'jaqsam mal-operat tas-soċjetà intimata f'Malta. B'riferiment għal Selcuz Ozkan, li kien indikat mis-soċjetà intimata bħala *Customer Service Manager,* ir-rikorrent qal li huwa qatt ma kellu aċċess dirett jew indirett għall-kontijiet ta' din il-persuna. Qal li xi żmien qabel Ġunju tal-2017, flimkien ma' membri oħra fil-livell '*diamond'* tal-kumpannija, huwa rċieva invit sabiex imur fuq *cruise* bħala premju (*Coinspace Cruise Trip*), li però tħassret ftit ġranet qabel ma kellu jsir it-tluq. Qal ukoll li fil- frattemp, il-kumpannija waqfet tħallas il-kummissjonijiet dovuti, u huwa kien inkariga ditta legali

Ġermaniża sabiex tirrappreżentah f'din il-kwistjoni partikolari li huwa kellu mas-soċjetà intimata. Ir-rikorrent kompla jgħid li Plesko kien infurmah li r-rappreżentanti legali tiegħu ma kienu ser jirċievu l-ebda risposta għall-ittra mibgħuta minnu, u li aktar tard kellha tiġi organizzata laqgħa mal-membri l-oħra fil-kategorija '*Diamond'* tal-pjattaforma, sabiex jiġu spjegati l-problemi kollha li kienet qiegħda tiffaċċja s-soċjetà intimata. Ir-rikorrent qal li però din il-laqgħa baqgħet ma mmaterjalizzatx. Kompla jgħid li kuntrarjament għal dak li qalet is-soċjetà intimata fir-risposta tagħha, l-aċċess tiegħu għall-pjattaforma tagħha kien ġie sospiż fil-bidu t'Awwissu tal-2017 u mhux fit-18 t'Awwissu ta' dik is-sena. Qal ukoll li fl-istess ġurnata huwa kien ġie infurmat li d-dettalji li permezz tagħhom huwa kien jaċċessa din il-pjattaforma, kien ġew mibdula. Qal li s-soċjetà intimata qatt ma ressqet prova ta' xi aġir frawdolenti, u qal li kien hemm istanzi fejn is-soċjetà intimata allegat li huwa kien żamm għalih ħlasijiet għal pakketti mixtrija, imma huwa kien sab prova tal-ħlas li sar lis-soċjetà intimata permezz ta' trasferimenti bankarji. Qal li s-soċjetà intimata dejjem aċċettat l-għoti ta' pakketti bħala forma ta' ħlas li għandu jitnaqqas mill-*eWallet* tal-membru, u huwa dejjem qies li dawn il-fondi kienu jappartjenu lilu. Qal li huwa ħallas għall-abbonament annwali tiegħu għas-sena 2017 permezz ta' *email* mibgħuta minnu. Ir-rikorrent elenka l-ammonti li huwa qiegħed jippretendi fi ħlas mingħand is-soċjetà intimata, u semma is-somma ta' €1,329,020.67 miżmuma f'*eWallet* bil-kummissjonijiet dovuti lilu, €1,919,989.18 ikkwantifikat bħala €0.50 għal kull munita minn bilanċ ta' 3,839,978.36 *coins,* u €170,000 li huwa l-ammont ta' *coins* li kellhom jitħallsu lilu wara li huwa segwa l-*Award Program* skont il-*Product, Service and Business Plan Overview,* u għalhekk għadda minn diversi klassifiki skont il-programmi mħaddma mis-soċjetà

intimata fuq in-*network* tagħha. Qal li l-valur ta' kull waħda minn dawn il-*coins* huwa ta' €0.50, u qal li ladarba dawn il-*coins* qatt ma ssarrfu fis-suq, huwa intitolat għall-prezz li kien jitħallas bħala *legitimate marketer* u *affiliate* tal-kumpannija, u għall-prezz li huwa ħallas biex akkwistahom, jiġifieri €0.50.

Il-lodo arbitrali appellat

9. Permezz tal-lodo arbitrali mogħti fit-12 ta' April, 2021, it-Tribunal iddeċieda l-vertenza li kellu quddiemu billi laqa' l-ewwel talba tar-rikorrent u ordna li dan għandu jingħata aċċess għan-*network* tas-soċjetà intimata fi żmien erbatax-il ġurnata mid-data tad-deċiżjoni; ċaħad l-ewwel eċċezzjoni tas-soċjetà intimata; laqa' t-tieni talba tar-rikorrent u ordna lis-soċjetà intimata tħallsu s-somma ta' €1,094,858.42 b'żieda mal-ammont ta' €220,000, u l-imgħaxijiet fuq it-totalità ta' dawn l-ammonti b'effett mid-data tan-notifika tal-ittra ġudizzjarja għall-ħlas ta' dan l-ammont, sad-data tal-eventwali pagament; ċaħad it-tieni eċċezzjoni tas-soċjetà intimata; ċaħad it-tielet talba tar-rikorrent; laqa' r-raba' talba tar-rikorrent, u ordna lis-soċjetà intimata tagħmel tajjeb għall-ispejjeż tal-proċeduri arbitrali; u ċaħad ir-raba' eċċezzjoni tas-soċjetà intimata, filwaqt li ċaħad ukoll il-ħames talba tar-rikorrent wara li għamel il-konsiderazzjonijiet li ġejjin:

> *"**Facts***
>
> *The claimant Ante Kelava was an affiliate of the respondent company Coinspace Ltd., ("Coinspace") which company deals with the sale of crypto currency cloud mining packages ("packages") and which, in the period after June 2015, proposed the launch of a new crypto currency ("**S COIN**").*

On the 15th June, 2015, the claimant signed up as an affiliate of the network administered by the respondent company and purchased packages available (Annex 1 Doc. A);

*The claimant used the public name "DiamondTeam" on the network, together with the username "antekelava", under the email address designation powerteam.eu@gmail.com (**Annex 1 Doc. C1, C2, C3**).*

Through his activities as an affiliate and marketer of Coinspace, the claimant gained points and commissions found in his eWallet held on the Coinspace portal. On this basis, the claimant asserts that he is entitled to:-

- *Direct commission payments effected in FIAT money through the network;*
- *Rewards in the form of coins gained through the same network which would then be quantified and converted into Euro;*

These payments were deposited in the claimant's eWallet and cashed out pursuant to transfer-out requests made by the claimant.

This procedure was adopted between July, 2015 and June, 2017. As from June 2017, the transfer out requests submitted by the claimant ceased to be honoured by the respondent company and in August 2017 the respondent company blocked the claimant's access to his Coinspace account (Annex 5 Doc. O). The respondent company never brought any evidence to rebut the closing of the said account, and the Tribunal understands that the account was never re-activated despite a decree of the 22nd October, 2018 ordering the respondent company to grant access within 14 days to the claimant.

Annex 3 shows the money transfer request within the Coinspace Platform. The transactions being processed by third party electronic payment gateways sometimes refer to "Coinspace Ltd" and other times to "Koinostar" which is registered in Slovenia and is the sole shareholder of Coinspace Ltd.

The claimant alleges that his account balance with the respondent company as at August 2017 was of €3,404,964.35, and which breaks down as follows:

- *€1,094,858.42 in addition to €220,000 pending to be transferred by the respondent to the claimant representing commissions earned through his work as an affiliate. The amount of €200,000 was deducted from the claimant's eWallet balance and never actually transferred to the claimants third-party held eWallet and therefore never effectively paid (**Annex 5 Doc. O**);*

- *€2,090,105.93 representing rewards (converted into monetary value according to the Policies and Procedures) that the claimant had gained through the purchase of products ordered by Coinspace Limited and any missing commissions (these rewards are evident in the claimant's e-Wallet);*
- *Damages caused by the respondent's actions acting in dolo and negatively affecting the claimant's business, the breach of fiduciary duties owed by the respondent company to the claimant and the respondent's failure to honour its obligations;*
- *€18,883 missing bonus calculation due on 13 August, 2017, which was never reflected in the eWallet balance and which the claimant cannot sufficiently prove as his access has been revoked unilaterally by the respondent company;*
- *€12,000 representing Double Mine packages purchased on 26th September, 2016, which balance of coins should be credited to the claimant's account;*

With interest payable till the effective date of the decision.

During the proceedings, on 21st May, 2018, the claimant filed a detailed account of the full amount due to him.

*Further to the above, on the 19th June, 2017, the claimant sent a legal letter to the respondent company questioning why it had failed to honour its obligations and, to the best of the Tribunal's knowledge the said letter remained unanswered. (**Annex 6**). Following this, on the 18th August, 2017, the claimant sent a mediation request, however, this also remained unanswered (**Annex 6**).*

The respondent company has requested the Tribunal to reject all claims (commissions and rewards) put forward by the claimant on the basis of fraud.

The respondent company alleges that there was a substantial volume of fraudulent sales found under a number of affiliates, including the claimant, which resulted in artificially inflated commissions based on package sales ostensibly secured by the applicant but which were actually registered with the respondent company in a proper fashion. The respondent company alleges that such artificially inflated sales and related commissions resulted in the claimant and members of his team (under his affiliate line), attaining a higher ranking within the system, which affects the amount of commission payable, since it is also related to the ranking.

The respondent company asserts that the claimant had been warned that the commissions which had already been paid to him would have to be re-visited because it emerged that a percentage of the alleged sales, had not been registered and that

monies corresponding to the sales, had been fraudulently generated. On this basis, the respondent company claims that a substantial volume of sales/activity registered under the claimant is essentially fraudulent, due to the following:-

A. *The accounts created for the individuals do not really exist and/or;*
B. *Fraudulent sales and/or;*
C. *The proceeds of the sale of the package/s were never transferred to the respondent by the claimant;*
D. *Suspicious transactions made to alleged account holders and which raised founded suspicions that the claimant aided and abetted in defrauding the respondent company. (In this regard, after having contact with a number of members who purchased packages, the company confirmed that they have either paid the claimant directly in cash, wire transfers or Bitcoin).*
E. *Other breaches which provide adequate grounds to block access of the platform of the claimant – malicious and false advertising, failure to register and pay annual subscription fees, holding on to monies from alleged sales, unauthorised access to data and client details, unauthorised sales in certain jurisdictions.*

The respondent company alleges that, in view of the above, they maintain the right to adjust any commissions paid to the claimant, for the sales made.

On 8th August, 2017, the respondent company decided that there was no other option but to indefinitely suspend the claimant's access and to continue with a thorough review of the transactions involving the claimant.

Policies and Procedures, Terms and Conditions revised 30 May, 2017 (Annex 2 Document E)

- ***Unilateral changes to the terms and conditions***

*The claimant insists that the terms available and which regulate the relationship between the parties are those made available to him on the 26th June, 2015, which were still available on the website up till 11 December, 2018 (fn. 1 affidavit of Ante Kelava 27.12.18 – signed up to the network on 15 June 2015 and that upon signing the terms and conditions were still available on the website (**Dok. AK1**). These terms and conditions make no reference to any alleged restrictions imposed by the company pertaining to e-wallet credits), and any changes that were carried out beyond that date were done unilaterally by the respondent company. To the contrary the respondent company insists that there have been interim changes to the same Policies and Procedures, Terms and Conditions, which were announced to the affiliates by*

means of newsletters and other means of communication (fn. 2 statement of defence 15.11.17 – the claimant was present at a number of meetings which discussed the amendment of the terms and conditions. Moreover, due notification, in terms of the same terms was always provided to all affiliates. Moreover, the respondent company published regular newsletters wherein such updates and amendments had been released), with the latest version being that issued in May 2017.

It is apparent that the Policies and Procedures, Terms and Conditions made available have never been signed by any of the parties but represent standard terms which must be adhered to by both parties, without the possibility of negotiation or amendment by counter-parties.

*The revised version of the Policies and Procedures, Terms and Conditions provides in Section 1.1 and 1.2 "*These policies and procedures, in their present form and as amended from time to time at the sole discretion of COINSPACE and its affiliate companies … discretion. By executing this Agreement, an Affiliate agrees to abide by all amendments or modification that COINSPACE makes. Amendments shall become effective immediately after publication of, and posting, the amended provisions on the corporate website and or posting on the Affiliate Back Office. Amended policies may apply retroactively to conduct that occurred prior to the effective date of the amendment. The continuation of an Independent Affiliate Member's COINSPACE business or an Independent Affiliate Member's acceptance of bonuses or commissions constitutes an acceptance of all amendments."

The Tribunal's understanding is that the revised Policies and Procedures, Terms and Conditions are valid and had been duly accepted by the claimant. Therefore, the tribunal will not entertain the merit as to whether or not the previous version of the same document (the one provided to the claimant upon enrolment) included this clause or otherwise.

The latest version of Policies and Procedures, Terms and Conditions and therefore deemed to be accepted by the claimant on the basis of acquiescence resulting from the fact that the claimant continued to act as an affiliate for Coinspace after the introduction of the revised version, thereby creating a contractual basis to regulate the affairs between the parties.

Moreover, claimant has adhered to, and applied, the provisions contained in the said Policies and Procedures, Terms and Conditions, particularly clause 7 when instituting the current proceedings and also Section 5 for the quantification and conversion of the monetary claim.

Therefore, the Tribunal deems valid all changes that have been made by the respondent company and this on the basis that all changes have occurred prior to the issue that is currently being dealt with. Furthermore, the changes can in no way be considered invalid or unenforceable. Consequently, the Policies and Procedures, Terms and Conditions as amended on 30th May, 2017, will be taken into consideration during the analysis of the current case.

Fraud

Fraud is the main objection brought forward by the respondent company. Throughout the current proceedings, the respondent company argued that any commissions, rewards, etc., claimed by client (even though they have been made available in his eWallet) are not due, since they have been obtained fraudulently , per 5.2 Adjustment to Bonuses and Commissions (Policies and Procedures, Terms and Conditions, May 2017).

Coinspace reserves the right to adjust commissions and to claw back any overpayment of commissions that may have incorrectly paid or which may have been paid as a result of fraudulent activities committed by Independent Affiliate Members within your downline until the overpaid commission is recovered, from the up line Independent Affiliate Members who received bonuses and commissions as a result of the said fraudulent activity.

Since the evidence in support of the existence of fraud is central to the current case, the Tribunal will first undertake an analysis of the legal considerations in connection with fraud under Maltese Law, considering the interpretation given by Maltese Courts, on the matter.

- ***Maltese law – legal principles***

To begin with, it is important to consider the basic legal principles of Fraud under Maltese Law.

The Maltese civil courts, when faced with allegations of fraud take into account the applicable law and jurisprudence, and give due regard to the consideration as to whether or not the evidence submitted is consistent, convincing and corroborative.

> "Il-Ġudikant għandu jeżamina bir-reqqa l-provi rilevanti li jkollu quddiemu u imbagħad jiddeċiedi l-kawża abbażi tal-**liġi applikabbli, tal-ġurisprudenza u tal-provi li fl-opinjoni tiegħu huma konsistenti, konvinċenti u korroborati"** (fn. 3 **Norbert Agius vs Anthony Vella** – 25th April, 2008 – Court of Appeal (140/1991/2)

In addition, our courts also take into consideration the demeanour of the witnesses, since it is deemed to be an important factor to establish credibility of the witness and truthfulness of testimony.

- ***Applicable Law***

Our law follows the legal maxim Fraus Omnia Corrumpit, *meaning that no one can benefit from fraud, as stated in the case* ***Edward Enriquez et vs Avukat Dr Anthony Farrugia Senior et nomine*** *(1476/2001/1)*

> *"*Il-Qorti tifhem li fejn jirriżulta aġir skorrett li juri 'mala fides' ma għandhiex tħalli lil min jaħti għal dan l-aġir jieħu vantaġġ mill-'mala fides' tiegħu. Il-liġi tagħna hija mibnija fuq il-'bona fides'. L-ebda negozju ġuridiku m'għandu immunità mill-prinċipju 'fraus omnia corrumpit'."

Furthermore, under Maltese Law (article 562 of Chapter 12 of the Laws of Malta) whoever is alleging the commission of fraud must prove it (respondent company in this particular case):

> *"*Saving any other provision of the law, the burden of proving a fact shall, in all cases, rest on the party alleging it."

This has been enunciated in several local judgments, including;-

> *"*Dan għas-sempliċi raġuni illi jekk hi kkontraponiet tali allegazzjoni, kif artikolata minnha, hi kienet fl-obbligu li tforni dimostrazzjoni sodisfaċenti, fis-sens tal-artikolu 562 tal-Kap. 12, tal-fatt hekk allegat minnha. In-nuqqas ta' prova simili jagħmel l-allegazzjoni tagħha tibqa' waħda insuffiċjenti u effimera." (*57/2003/1 – **Gaby Schanzlin vs Vella Joe** et – Qorti tal-Appell Sede Inferjuri)*

It is therefore entirely up to the respondent company to prove the actual commission of fraud and most importantly that this has been committed by the claimant.

- ***Evidence***

As is to be expected in cases of this nature, the evidence brought forward by both parties is contradictory. It is therefore the Tribunal's duty to seek the most credible version presented by the parties during the proceedings. This approach is outlined in the court case (1564/2004/1) ***Interior Finishes Supplies Limited vs Tabone*** *– 8 June, 2005, Qorti tal-Appell Sede Inferjuri:*

> *"*Irid jingħad ukoll illi mhuwiex insolitu li tribunal jew qorti jsibu ruħhom rinfaċċjati b'żewġ verżjonijiet, anke dijametrikament opposti, però kif jinsab osservat "mhux kwalunkwe tip ta' konflitt għandu jħalli lill-Qorti f'dak l-istat ta' perplessità li minħabba fih ma tkunx tista' tiddeċiedi b'kuxjenza kwieta u jkollha taqa' fuq ir-

regola ta' '*in dubio pro reo'* (Vol. LP II pg. 440), ossia, l-applikazzjoni tal-massima '*actore non probante reus absolvitur'.* Dik il-Qorti jew tribunal għandhom ifittxu, jeżaminaw u jisiltu mill-provi dak is-sostenn u dik iċ-ċertezza morali li tagħmel il-verżjoni l-aktar waħda kredibbli u attendibbli mill-oħra. Dan anke fuq bilanċ tal-probabilitajiet u tal-preponderanza tal-provi hekk ġeneralment meqjus bħala suffiċjenti għall-konvinċiment tal-ġudikant. Huwa biss fejn l-assjem tal-provi hu tali li l-verżjonijiet huma hekk bilanċjati li kull waħda tita' tirriżulta plawsibbli illi allura ma jibqax leċitu li l-ġudikant jifforma opinjoni motivata fuq probabilitajiet u l-preponderanza. Ara "**Joseph Vincent Rausi vs Joseph Muscat**, Prim'Awla Ċivili 5 ta' Ottubru, 1987"."

- **Standard of Proof**

At this stage, the Tribunal also makes reference to the standard of evidence requested in similar cases, which is entirely in the hands of the respondent company as the party alleging the fraud. It is evident that the law requires the relevant party to bring forward concrete evidence and excludes any presumptions, except in cases where the presumptions are serious, concrete and corroborated by other matters which give them the strength required at law. This argument was further examined in the court case, (153/1994/2) ***Emanuel Ciantar vs David Curmi noe*** *Prim'Awla Qorti Ċivili:*

"Tajjeb illi qabel xejn jiġi puntwalizzat il-prinċipju illi l-piż tal-prova huwa mixħut fuq min jafferma fatt u mhux fuq min jinnegah. Dan l-istess prinċipju jgħodd ukoll għas-soċjetà konvenuta assiguratriċi in kwantu din tiddefendi l-pożizzjoni tagħha bl-allegazzjoni illi s-sinistru ma kienx wieħed aċċidentali iżda r-riżultat ta' kunċert frawdolenti u ta' pjan qarrieqi biex tiġi defrodata. Prova bħal din tinkombi di rigore fuqha bħala l-parti illi qed tavvanza allegazzjoni simili. Dan jipprovdi għalih espressament l-**Artikolu 981 (2) tal-Kodiċi Ċivili fejn testwalment jgħid illi 'l-għemil doluż ma jistax jiġi preżunt, imma għandu jiġi provat"**

"b'dana kollu f'kawża ċivili d-dolo jista' jiġi stabbilit anke permezz ta' preżunzjonijiet u indizji purche s'intendi jkunu serji, preċiżi u konkordati b'tali mod illi ma jħallu l-ebda dubju f'min huwa msejjaħ sabiex jiġġudika."

In the end, it is up to the adjudicating body that possesses the discretional power to analyse and decide which evidence and version of events is considered most credible and truthful while adopting the above-mentioned principles.

In this case, the Tribunal considers it releant to mention that the witnesses brought forward by the respondent company lacked co-operation, courtesy and credibility,

with company representatives demonstrating hesitancy and occasionally hostility in their behaviour.

<u>The Current Case</u>

The Tribunal will now analyse the evidence brought forward by the parties, particularly by the respondent company, in connection with fraud, so as to establish and determine whether the claimant is entitled to the money he is claiming, or not.

- ***Detecting Fraud***

All witnesses produced by the respondent company were knowledgeable about the fraud within the company (mainly related to the company in Turkey which is a separate entity from the respondent company in Malta) and also about the plaintiff's alleged involvement.

Pat Berry, a consultant for Coinspace, provided the following insight in his testimony:

> *"*I began to notice the Ranks achieved and the requirements did not match the sales volumes ... When I began to look at where the volumes did not match it was where they were primarily in the Team of Mr Ante Kelava ... We also found out that Mr Kelava and others were collecting money and not turning it into the company. They would transfer coin credits some fraudulently generated to others as a way to fence the bad coins (fn. 4 *affidavit 9.11.18)."*
>
> "we started seeing rank advancements that required amount of volumes that could not be met by the amount of the sales report. That's how the anomaly was found. We realised that the volume in Mr Kelava's wallet was not equal to the volume that was reported in sales (fn. 5 *cross-examination 24.10.18)."*

*Jernej Plesko, ostensibly an advisor to Coinspace, said, "*the company started to block internal transactions which were the cause of the fraud and after it blocked them the ones who gained most benefit from the fraud started attacking and accusing the company of fraud for changing the system. (*fn. 6 affidavit 19.9.18)"*

*Tanja Simoncic, Head of Customer Support "*I was immediately informed that the company had fell victim of a major fraud in Turkey which directly affected the Turkish sister company and indirectly effected the sales registered on Coinspace Ltd., in Malta. At the time, <u>I was informed</u> some affiliates, including Ante Kelava had artificially inflated the sales volumes and defrauded the company in claiming commissions on those fake sales (*fn. 7 affidavit 6.9.18)."*

*Mojca Plut, sole director of Coinspace, said "*Carlo who is in charge in Turkey informed them there are sales going and we got information that there were mismatches in

January, 2017. Carlos informed us via email and even Multisoft over the phone (something was wrong with figures in accounts). Mismatches between the back system and the opened packages but Multisoft was the final source of information (*fn. 8 sitting 8.1.19).”*

This information was also relayed to the claimant (fn. 9 affidavit of Jernej Plesco – 19.9.18 – “I informed Ante that there was a major fraud and that he was in agreement to return as much as need”) who maintained that he was never presented with any evidence to support these allegations:

> *“*That in the month of February 2017, and in the months following it, Jernej Plesko informed me over a number of calls via Skype, that Coinspace was having a number of problems in various jurisdictions. Turkish fraud was mentioned, then Italian fraud, then regulatory problems as well as problems with payment verifications. For me these were always excuses to hide the real facts as to why I was not being paid for my commissions and I always replied by asking for proof to substantiate these allegations. (*fn. 10 affidavit of Ante Kelava – 27.12.18).”*

- ***Source of Information – Hearsay***

However, notwithstanding, that the director and the advisers and consultants of Coinspace tendered evidence in connection with the fraud allegations, neither of them was in a position to give any direct information or explanation of the alleged fraud – all evidence brought forward by the mentioned witnesses was not first-hand but depended on what they have been told. None of them was involved in the investigation and therefore none of them could give any insight on the alleged fraudulent activities, much less so on the claimant’s involvement in such fraud. All of the evidence consisted of a series of repetitive statements relayed to them by third parties without proper corroboration.

*Pat Berry stated that “*the company asked Multisoft to do an investigation when the anomalies were found and that is in the reports they provided (*fn. 11 cross-examination – 24.10.18)”.*
*Jernej Plesco added “*I didn’t spend time in investigating the specific fraud as I was busy developing the blockchain infrastructure for the company*”* (*fn. 12 affidavit 19.9.18).*

Tanja Simoncic too declared that “I have no information about the conclusions made by Multisoft because I never communicated directly with them” ... “My role in the investigation was to help find and gather data from the back office and the e-Wallet.”

*Admittedly, Ms Simoncic also states that "*I specifically analysed Ms. Kelava's eWallet activity. At the time, I recall to have concluded that from the details of Mr Kelava's e-Wallet that a large amount of transactions took place (received and sent to other Coinspace members involving huge number of funds (*fn. 13 affidavit 6.9.18)". However this, of itself, provides insufficient information as a basis to conclude that fraudulent activity acutally took place as a result of Mr Kelava's behaviour.*

Therefore, one can only conclude that much of the evidence tendered by the witnesses brought forward by the respondent company can be treated largely as hearsay. None of the witnesses were actually directly involved in the investigation of the fraud itself and were solely aware of the fact that the company had instructed Multisoft to investigate the alleged fraud and subsequently that the company allegedly filed a police report in Turkey.

This kind of evidence, even in civil proceedings, gives rise to hearsay (detto del detto) and is not admissible, especially if the adjudicating body is convinced that a higher level of evidence can be produced, as required by law, in order to substantiate the fraudulent allegations (fn. 14 article 598(1) – Chapter 12 of the Laws of Malta);

As a rule, the court shall not consider any testimony respecting facts the knowledge of which the witness states to have obtained from the relation or information of third persons who can be produced to give evidence of such facts.

Article 598 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).

The evidence of hearsay, per article 599 of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta), is admissible only in very particular situations none of which appear to have subsisted vis-à-vis the respondent company.

The court may, according to circumstances, allow and take into consideration any testimony on the relation of third persons, where such relation has of itself a material bearing on the subject-matter in issue or forms part thereof; or where such third persons cannot be produced to give evidence and the facts are such as cannot otherwise be fully proved, especially in cases relating to births, marriages, deaths, absence, easements, boundaries, possession, usage, public historical facts, reputation or character, words or deeds of persons who are dead or absent and who had no interest to say or write a falsehood, and to other facts of general or public interest or of public notoriety.

- ***Other evidence including documentary evidence***

The plan of action, following the discovery of fraudulent activities, was described by the sole director of Coinspace Malta, Mojca Plut and included the following:-

"We started the crime investigation with Turkey. Then we involved companies who carry out KYC Procedures. Then we started the procedure for verifying user account and account activities. Then Multisoft started an internal investigation. And then we hired law firms and lawyers who helps us with the investigation at an internal level."

Notwithstanding that they had engaged various companies and entities to handle the investigations, the respondent company brought no evidence regarding the investigations they commissioned, save for the following, which yielded no tangible conclusion;

- *Multisoft – All or most of the witnesses brought forward by the respondent company relied heavily on the investigations carried out by Multisoft itself and therefore excluded any material information which could not be verified by Multisoft. This is clearly discernible from the evidence of Robert Proctor (president and executive work member of Multisoft Corporation) (fn. 15 Sitting of 24 September, 2018)*

  *"*We act on the instructions of Coinspace ... we do not have access to that kind of information (to check whether the payments were actually paid or not). So the request for deleting data came from Coinspace management (in the executive level)".

The same witness also confirmed that he had received orders to delete a number of transactions relating to claimant and followed the respondent company's orders without any thorough investigation into the matter as per the directions given by the client. He also confirmed that they received this kind of information solely regarding the claimant.

In view of the above, the documents submitted in the records of the case which include the values in the claimant's eWallet – inflated due to the alleged fraudulent activities – together with the alleged realistic values which were computed by Multisoft, cannot be considered as satisfactory evidence seeing that they were generated by Multisoft, on the basis of information provided by Coinspace which could not have been independently verified.

- *Police report and investigations – Mojca Plut during the sitting of 22nd January, 2019, stated that* – "in early 2017 the company communicated with its lawyer in Turkey about the fraud and they started criminal proceedings". *However, the witness was not in a position to confirm whether a formal*

complaint had been filed on the matter but rather exhibited a letter from the law firm "KAVALIC" referring to the investigation bearing number 2018/8043, which was carried out in Turkey. The claimant clarified the situation during the sitting of the 14th May, 2019, when he exhibited Doc. AK 031902 confirming that the actual investigation file held at the "Istanbul Antolian Public Prosecution Office" numbered 201//8043 bears the following data, "Suspect; Mr Ugurcan Senol" and AK 031903 stating that the reason of the complaint are actions which were committed by a former Coinspace board member.

- *Accountant/Auditor Francis Buttigieg – Also aware of these allegations were the outsourced accountants engaged by Coinspace and Francis Buttigieg. The former tendered evidence on the 11th of February, 2019, and exhibited* ***Doc. FB1*** *consisting of a letter addressed to Coinspace dated 27th of September, 2017. His comments with regard to the allegations on fraud, once again, did not shed any light on the issue as he stated that, "*No updates and/or documentation were submitted to us regarding the so called 'Turkish Fraud'."

It is evident to the Tribunal that, although all witnesses were aware of the fraud, none of the witnesses produced were personally handling the investigation and therefore none of them could elaborate on the matter in a formal manner required by law other than by repeating information obtained from others.

Alleged Fraudulent activities committed by the claimant

In the interest of completeness, the Tribunal has considered each fraudulent allegation brought forward by the respondent company in respect of the claimant.

- ***The allegation regarding the fictitious accounts created by the claimant***

This allegation was mentioned by various witnesses including Pat Berry (fn. 16 cross-examination 24 October, 2018) who insists that Mr. Kelava was creating multiple accounts with the same password. Although in the note of final submissions, the respondent company states that this was detected through a vast and detailed KYC procedure implemented by the respondents in order to identify who the account holders were and whether they were real or not, none of this documentation was ever actually exhibited as evidence. The only related documents made available to the Tribunal are those which have already been referred to above, being the documents produced by Multisoft; ***Doc CS2*** *Internal Audit Report confirming that claimant had been overpaid and* ***Doc CS3*** *which represents calculations of* ***Doc CS2,*** *upon instructions from the respondent company. So once again, the respondent company brought no evidence to corroborate this allegation.*

On the other hand, even though the burden of proof lies on the respondent company, the claimant, in his affidavit, rebutted this allegation by producing documents showing the bank transfers; -

Despite the fact that Coinspcae and their witness Mr. Pat Berry were supposed to present further details about Document SS5 which the respondent presented on 10th April, 2018 so as to enable me to ascertain its veracity, such details were never presented. However, I still managed to track and collect certain documentary proof of payment, made by members indicated in Document CS5. A detailed explanation of this is attached hereto and marked as Doc AK4 which shows that in actual fact, packages indicated as fraudulent in Doc CS5, were in actual fact paid to Coinspace via Bank transfers;

- ***Fraudulent sales***

This allegation was mainly raised by Mojca Plut (22.1.19) who stated that after this investigation, they discovered that, despite of the high number of created packages entered into the system, only 267 were actually paid for out of approximately 20,000. The majority of the packages were fictitious – there were no users behind them – this happened in about 3 months. Once again, therefore, there appears to be no evidence to support this claim.

In addition, Robert Proctor testified that every new package that was sold had to be physically approved and activated by the Coinspace Customer Support team.

Unexpectedly, during the cross-examination both Berry and Plut seemed to point fingers towards the customer support agents who were meant to be handling these matters:

*Pat Berry says: "*100% manual procedure that someone would order a package on the system, the payment would go into like a holding den and then support staff would go through and verify payments and then activate the package. The package would then be activated by the customer service manager."

Mojca Plut says: "Support department were opening packages based on provided payments. Without that they were not able to open package. First it was the support department who made checks whether the payment was provided and after that when fraud was discovered then also the accounting service ... We later discovered some discrepancies and we carried out investigation and we discovered that some packages were open by the support dept without the necessary underlying documentation. We search out that some data was falsified.

*It is clear that mistakes had been carried out by the customer support agent, as results from Ms Plut's reply to claimant's legal advisor's questions relating to the central question as to how it was possible that no one within the respondent company noticed the discrepancy in payment for approximately 20,000 clients: "*That is exactly the point of the fraud. Because they failed to do any checks and they failed to inform us about it (*fn. 17 Mojca Plut ***)."*

In the context of this statement, it becomes irreconcilable for the Tribunal to connect the fraud to the claimant when the cause of that same fraud results from wrong-doing on the part of Coinspace's own customer support agents, as supported by Ms Plut's statement.

- ***Claimant's interference***

*The Tribunal has also considered the possibility of the claimant's interference. The claimant categorically denies that he ever had access or control over the figures represented in the Coinspace back-end system since payments were processed by third-party electronic payment gateways and the money was only transferred after filing a transfer out request (**Annex 5, Doc P**). The claimant also maintains that the respondent company administered a password-protected user, accessible only by registered users of the Coinspace network per **Annex 4**, who would automatically quantify the commissions and attribute them to the relevant user in the section labelled as eWallet Balances" (**Annex 5 Doc N**) emphasising how the user has no control over the eWallet balances.*

*The respondent's evidence on the matter seems to confirm what has been stated by the claimant all along. This has been confirmed by Mr Robert Proctor too, since he confirmed that only Coinspace had access to the system, "*The system provided is hosted by a third-party provider. The system is extremely secure – we have never been hacked and never had data breached. Data never been retrieved outside the system. It is not possible for Multisoft to change the commissions as the only time commissions would be changed would be at the direction of Coinspace from any investigations or reports."

- ***Suspicious transactions made to alleged account holders and which raised founded suspicions that the claimant added and abetted in defrauding the respondent company. In this regard, after having been contacted, a number of members who purchased packages, confirm to have either paid the claimant directly (breach of article 4.3) in cash, wire transfers or Bitcoin.***

Firstly, there is no correspondence with any members regarding packages.

Secondly, the respondent company's witnesses mention the issue with transfer to third parties insisting that this was not permissible. Claimant's evidence shows that this procedure had been adopted and approved by the company and consequently certainly does not give rise to fraud.

- ***Other breaches which provide adequate grounds to block access of the platform of the claimant – malicious and false advertising, failure to register and pay annual subscription fees, holding on to monies from alleged sales, unauthorised access to data and client details, unauthorised sales in certain jurisdictions.***

None of these allegations constitute to fraud properly so called. Consequently, the Tribunal will refrain from considering the matter further.

By way of conclusion, the Tribunal deems once again that insufficient evidence has been brought forward on this matter. The respondent company alleging fraud exhibited no substantial proof of fraud neither through its witnesses nor through the documents exhibited. Instead, as can be seen from above, all allegations were unfounded or rebutted by the claimant who corroborated his counter arguments with clear and substantiated evidence instead.

Monetary claim

The monies claimed by claimant and held in his eWallet have been blocked by the respondent company on the basis of fraudulent activies per revised Policies and Procedures which were operative as from May, 2017, which state:

Coinspace reserves their right to adjust commissions and to claw back any overpayment of commissions that may have incorrectly paid or which may have been paid as a result of fraudulent activities committed by Independent Affiliate Members within your downline until the overpaid commission is recovered, from the up line Independent Affiliate members who received bonuses and commission as a result of said fraudulent activity.

However, there is an agreement between the parties regulating the manner in which affiliates / independent associated members are compensated:-

As an affiliate, the claimant would receive direct commission payments delivered in FIAT money through the network itself as well as rewards in the form of coins gained through the same network. The coins attributed to the affiliate would then be converted to the blockchain in terms of the policies set forth by the respondent and

then deposited in the e-wallet of each affiliate accordingly (*fn. 18 statement of defence – 15th November, 2017).”*

The figures quoted by the claimant were never contested by the respondent company and cannot be re-calculated since there is no evidence on the amounts paid by the end purchasers of the packages, in order to reconcile the monetary claim. However, the Tribunal is able to rely on the balance indicated in the claimant’s eWallet held with Coinspace since both Mojca Plut and Pat Berry testified that the eWallet belongs to claimant;

*Pat Berry: “*So if the person was in good standing and abiding by the rules and those were not fraudulent numbers then that commission would be owed, yes (*fn. 19 cross-examination 24.10.18)”.*

*Mojca Plut – “*If there is no fraud, and there is a balance in the account that balance is payable to the customer – this is also written in the general terms and conditions (*fn. 20 cross-examination 8.1.19).”*

Quantification and Liquidation of the amounts claimed by claimant

The figures below have been provided by the claimant (fn. 21 note of 21st May, 2018), when he last accessed the Coinspace platform:-

1. *€1,094,858.42 – **Annex 5 Doc. N** – amount of commissions pending as at the date when the access was revoked 15th August, 2017: this available commission was quantified and available in Euro and there was a declaration by the system and by the company that the money was the claimant’s so could be cashed out and paid to his 3rd party e-Wallet.*
2. *€220,000 (commission) – **Annex 5 Doc O** – cash out request as at 18th July, 2017, (since he had already requested cash-out they would have been automatically deducted from the system).*
3. *€1,901,222.93 – **Annex 5 Doc N** and **Annex 2 Doc D**: coins which the company itself used to attribute to the claimant (rewards system within the company) – the business plan of the company guaranteed that the rate would be delivered to the claimant once the actual S-coin is introduced to the public, to the block chain and once people start to trade in it at the rate of 50c (per business plan).*
4. *€18,883 Point 1 – amount equivalent to the last commission received by claimant but not yet deposited to his e-Wallet balance at the date when his account was blocked.*
5. *€170,000 – **Annex 2 Doc D (Annex 1 Doc A)** – same as point 3 and again calculated at 50c each: these do not show in the eWallet but rewards incentive*

*scheme and can be inferred from the fact that he was a crown diamond member per **Annex 1 Doc A**;*

6. ***Annex 2 Doc D** – rewards in kind which include the delivery of two luxury vehicles per **Annex 2 Doc D**;*
7. *Pending value of commissions and coins following date of access revocation 18th August, 2017, which claimant cannot properly assess or quantify;*
8. *Liquidation and quantification of the damages consisting in loss of commissions due to claimant following access revocation on the 18th August, 2017 which can be assessed and quantified on the basis of the 3 moths prior to his access revocation, estimated at €1,030,764.15.*

Decision

For the foregoing reasons, the Arbitral Tribunal renders the following decisions:

1. *Upholding the request of the Claimant ordering the Respondent company to grant access to the Claimant within 14 days of notification of this award to Respondent Company.*
2. *Rejecting the first plea of the Respondent Company.*
3. *Upholding the second request of the Claimant and orders the Respondent company Coinspace Limited to pay the amount of €1,094,858.42 in addition to the amount of €220,000 and interest on this sum in its totality from the date of notification of judicial intimation for the payment of such sum until the date of effective payment.*
4. *Rejecting the second plea of the Respondent Company.*
5. *Rejecting the third request of the Claimant.*
6. *Upholding the third plea of the Respondent Company.*
7. *Upholding the fourth request of the Claimant and orders the respondent company Coinspace Limited to fully bear the costs of arbitration as per Taxed Bill of Costs issued by the Malta Arbitration Centre, which is being attached hereto and marked Document Letter X.*
8. *Rejecting the fourth plea of the Respondent Company.*
9. *Rejecting the fifth and final request of the Claimant.*
10. *All other claims are dismissed."*

L-Appell

10. Is-soċjetà appellanta spjegat li hija ħasset ruħha aggravata bil-*lodo* arbitrali appellat, u għaldaqstant ressqet l-appell tagħha minn din id-deċiżjoni fil-31 ta' Mejju, 2021, fejn talbet lil din il-Qorti sabiex,

> *"... jogħġobha tirriforma l-Lodo Arbitrali limitatament għal dik il-parti tagħha fejn it-Tribunal tal-Arbitraġġ ma laqax l-eċċezzjonijiet tagħha u laqa' t-talbiet tal-appellat u senjatament:-*
>
> *(1) Laqa' t-tieni talba tal-appellat u ordnat tħallas lis-soċjetà appellanta tħallas is-somma ta' €1,094,858.42 b'żieda mas-somma ta' €220,000 u interessi fuq din is-somma tagħha mid-data tan-notifika tat-talba ġudizzjarja għall-ħlas ta' dik is-somma sad-data tal-ħlas effettiv;*
>
> *(2) Ċaħdet it-tieni eċċezzjoni tal-appellanta;*
>
> *(3) Laqgħet ir-raba' talba tal-appellat fejn ordnat illi l-ispejjeż jiġu sopportati mill-Appellanta fl-interità tagħhom; u*
>
> *(4) Ċaħdet ir-raba' eċċezzjoni tal-Appellanta.*
>
> *Billi tħassar u tirrevoka l-Lodo Arbitrali f'dawk il-partijiet fejn laqgħet it-tieni u r-raba' talbiet tal-appellat u ċaħdet it-tieni u r-raba' talba tal-Appellanti u minflok, tiċħad it-tieni u r-raba' talbiet tal-appellat u tilqa' t-tieni u r-raba' eċċezzjonijiet tal-Appellanta filwaqt illi tikkonfermaha fil-partijiet rimanenti bl-ispejjeż taż-żewġ istanzi kontra l-appellat."*

11. Is-soċjetà appellanta spjegat li hija ħasset ruħha aggravata (i) mill-parti tal-*lodo* arbitrali fejn ġiet milqugħa l-ewwel talba tal-appellat u ordnat lis-soċjetà appellanta tagħti aċċess lill-appellat għall-*portal* tal-appellanta fi żmien erbatax-il ġurnata min-notifika tal-*lodo* arbitrali; (ii) mill-parti li ċaħdet l-ewwel eċċezzjoni tas-soċjetà appellanta; (iii) mill-parti li laqgħet it-tieni talba tal-appellant u ordnat lis-soċjetà appellanta tħallas is-somma ta' €1,094,858.42 b'żieda mas-somma ta' €220,000, flimkien mal-imgħaxijiet fuq din is-somma;

(iv) mill-parti li ċaħdet it-tieni eċċezzjoni tas-soċjetà appellanta; (v) mill-parti li laqgħet ir-raba' talba tal-appellat, (vi) mill-parti li ordnat lis-soċjetà appellanta tagħmel tajjeb għall-ispejjeż kollha tal-proċeduri li nżammu quddiem it-Tribunal; (vii) u mill-parti li ċaħdet ir-raba' eċċezzjoni tas-soċjetà appellanta. Is-soċjetà appellanta spjegat li peress li l-*lodo* arbitrali ngħata taħt it-Taqsima IV tal-Att, skont l-artikolu 69 tal-Kap. 387, huwa ċar li t-Tribunal tal-Arbitraġġ kif anki l-*lodo* għandhom jiġu regolati wkoll mill-Kostituzzjoni ta' Malta u mill-Att dwar il-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem. Żiedet tgħid li *ai termini* tal-artikolu 69A(2) tal-Kap. 387, jista' jsir biss appell fuq punt ta' liġi li jitnissel minn deċiżjoni finali *ai termini* tal-artikolu 70A tal-Kap. 387. B'mod aktar speċifiku, is-soċjetà appellanta qalet li t-Tribunal ma messux laqa' t-tieni talba tal-appellat, u ma messux ordna lill-appellanta tħallas xi tip ta' kummissjoni, u dan tenut kont tal-provi ċari u inekwivoċi li jikkonfermaw li fil-każ odjern verament seħħet frodi. Qalet ukoll li t-Tribunal ma kienx korrett meta ordnalha tħallas l-ispejjeż kollha tal-proċeduri.

12. L-appellanta qalet li mill-provi ppreżentati quddiem it-Tribunal kellu jirriżulta li verament seħħet frodi mill-appellat, imma dawn il-provi ġew skartati mit-Tribunal mingħajr ebda raġuni. Qalet ukoll li t-Tribunal kien selettiv għall-aħħar f'dak li għażel li jikkonsidra qabel ta l-*lodo* tiegħu. Qalet ukoll li l-aktar punt kruċjali kien jekk kienx hemm ksur tal-kuntratt viġenti bejn il-partijiet da parti tal-appellat, liema punt l-appellanta qalet li ġie injorat kompletament mit-Tribunal. Qalet li għalhekk l-appell tagħha huwa msejjes fuq il-bażi ta' drittijiet fundamentali kif sanċiti fil-Kostituzzjoni ta' Malta u fl-artikolu 6 tal-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem, kif ukoll fuq il-punt ta' liġi li f'dan il-każ

it-Tribunal naqas milli jagħmel analiżi msejsa fuq l-argumenti u provi mressqin mis-soċjetà appellanta sabiex jasal għall-konklużjoni dwar jekk fil-fatt kienx hemm ksur tal-kuntratt da parti tal-appellat.

13. Is-soċjetà appellanta qalet li fil-fatt kien hemm ħafna provi li juru li l-appellat kien ħati ta' ksur tal-kuntratt li kellu mas-soċjetà appellanta. Qalet li l-*affidavit* ta' Simončič ma ġiex ikkonsidrat, meta dan l-*affidavit* kien jitkellem fit-tul dwar dak li kien għaddej. Qalet ukoll li t-Tribunal naqas milli jqis eluf ta' provi li nġabu fil-forma ta' *account records, spreadsheets,* xhieda, u li lkoll juru li fil-każ odjern kien hemm frodi ċara li kienet qiegħda titwettaq. Qalet ukoll li t-Tribunal naqas milli jiddeċiedi dwar il-ksur tal-*General Terms and Conditions* min-naħa tal-appellat, u dan meta l-appellat stess qal li huwa ma kienx marbut b'dawn it-termini u kundizzjonijiet. Qalet li minkejja dan, it-Tribunal ikkonkluda li l-appellat kien marbut b'dawn it-termini u kundizzjonijiet, u għalhekk it-Tribunal ma setax jonqos milli janalizza l-punt dwar jekk kienx hemm ksur tal-obbligi kuntrattwali kollha vinkolanti fuq l-appellat. L-appellanta qalet li kien hemm xhieda li qalu li kienu għaddew flus lill-appellat, iżda li t-Tribunal ma ħa l-ebda konsiderazzjoni tagħhom, u għalhekk ikkonkludiet li t-Tribunal naqas milli jagħtiha smigħ xieraq, u minflok qagħad biss fuq il-verżjoni mogħtija mill-appellat.

14. It-tieni aggravju tal-appellanta huwa dwar id-deċiżjoni fuq il-kap tal-ispejjeż. Qalet li ladarba t-Tribunal iddeċieda li l-ammont kollu dovut minnha, ma kienx l-ammont kollu pretiż mill-appellant, ma kien hemm l-ebda raġuni valida għalfejn kellu jiġi deċiż li l-ispejjeż kellhom jiġu sopportati interament mill-appellanta.

Ir-Risposta tal-Appell

15. L-appellat fir-risposta tiegħu wieġeb li l-każ odjern jittratta appell minn *lodo* f'arbitraġġ volontarju, u għalhekk japplika għalih l-artikolu 70A (1) tal-Kap. 387, li jipprovdi li f'każ bħal dan hemm jedd ta' appell mid-deċiżjoni finali biss fuq punt ta' liġi, li jitnissel minn deċiżjoni finali magħmula fi proċedimenti tal-arbitraġġ. Qal li l-ewwel aggravju tas-soċjetà appellanta huwa fis-sens li kien hemm provi ċari u inekwivoċi li jippruvaw li verament kien hemm frodi da parti tal-appellat. Qal li t-test użat mis-soċjetà appellanta fir-rigward ta' dan l-ewwel aggravju, juri li dan huwa appell fuq punt ta' fatt u mhux fuq punt ta' liġi, u din hija materja esklussivament ta' provi. L-appellat qal ukoll li l-artikolu 70B tal-Kap. 387 jipprovdi li meta jsir appell abbażi tal-artikolu 70A tal-Kap. 387, l-appellant għandu jidentifika l-punt ta' liġi li għandha tittieħed deċiżjoni dwaru u għandu jispeċifika liema fil-fehma tal-appellant kellha tkun it-tifsira korretta tal-punt ta' liġi identifikat. Qal li għalhekk mhux suffiċjenti li s-soċjetà appellanta tagħmel *sweeping statement* dwar il-fatt li l-appell qiegħed isir fuq punt ta' liġi, u li tagħmel riferiment ġeneriku fir-rikors tal-appell tagħha abbażi ta' dritt kostituzzjonali u ta' drittijiet fundamentali. L-appellat kompla jgħid li l-pożizzjoni li qiegħda tieħu s-soċjetà appellanta tista' twassal għall-konklużjoni erroneja li kull darba li xi parti ma taqbilx ma' apprezzament tal-provi u ma' deċiżjoni tat-Tribunal tal-Arbitraġġ, dik il-parti tkun tista' tiġġustifika l-appell tagħha billi targumenta li t-Tribunal m'għamilx apprezzament korrett tal-fatti, u li allura hija ma ngħatatx smigħ xieraq. Qal li dan ċertament mhuwiex l-ispirtu tal-artikoli 70A u 70B tal-Kap. 387, u din l-interpretazzjoni tmur kontra l-prinċipju sanċit f'dawn l-artikoli, li l-jedd ta' appell minn deċiżjoni finali jeżisti biss fuq punt ta'

liġi. Qal li fil-fatt, uħud mill-paragrafi fir-rikors tal-appell tas-soċjetà appellanta m'huma xejn għajr tentattiv biex din iġġiegħel lill-Qorti terġa' teżamina l-każ mill-ġdid, bl-iskop li din il-Qorti tasal għal konklużjoni differenti minn dik li wasal għaliha t-Tribunal.

16. Fir-risposta tiegħu l-appellat għamel riferiment speċifiku għall-provi li s-soċjetà appellanta tilmenta li ma ġewx ikkonsidrati mit-Tribunal fil-konsiderazzjonijiet tiegħu. Semma l-*affidavit* ta' Simončič, u qal li m'hu minnu xejn li t-Tribunal ma ħax konsiderazzjoni ta' dan l-*affidavit,* tant hu hekk li t-Tribunal qies li dan l-*affidavit* ma kienx biżżejjed sabiex jiġi ppruvat li kien hemm informazzjoni suffiċjenti li seħħet frodi. It-Tribunal qies ukoll li ħafna mill-provi mressqa mis-soċjetà appellanta in sostenn tal-pretensjoni tagħha li fil-każ kien odjern hemm frodi, kienet tammonta għal *detto del detto,* u għalhekk dawn il-provi ma kinux biżżejjed sabiex jippruvaw il-pożizzjoni tas-soċjetà appellanta. L-appellat għamel riferiment ukoll għall-asserzjoni tal-appellanta li l-*account records, spreadsheets* u dokumenti oħra ppreżentati minnha kienu juru mingħajr ebda ombra ta' dubju li kien hemm frodi. L-appellat qal li t-Tribunal ma semmiex dawn il-provi għaliex fil-fatt ma jeżistu l-ebda provi f'dan is-sens, u qal li l-provi kollha prodotti u x-xhieda kollha li taw id-depożizzjoni tagħhom fir-rigward tal-allegata frodi ġew evalwati mit-Tribunal. L-appellat għamel riferiment għall-parti tal-appell li tgħid li t-Tribunal naqas milli jagħmel analiżi tal-punt li kien hemm ksur tal-obbligi kuntrattwali da parti tal-appellat. Qal li fl-*istatement of defence* ippreżentata mis-soċjetà appellanta, din m'għamlet ebda eċċezzjoni fis-sens li l-kummissjonijiet ma kellhomx jitħallsu lilu għaliex kien hemm xi ksur fil-kuntratt bejn il-partijiet, u l-unika eċċezzjoni li dejjem tqajmet

mis-soċjetà appellanta kienet li hija ma kellha l-ebda obbligu ta' ħlas minħabba fl-allegata frodi da parti tal-appellat. Qal li kemm fit-Tweġiba, fin-Nota ta' Sottomissjonijiet u fit-trattazzjoni orali, l-insistenza tas-soċjetà appellanta dejjem kienet li l-kummissjonijiet m'għandhomx jitħallsu biss jekk ikun hemm każ ta' frodi.

17. L-appellat għamel riferiment għall-allegazzjoni tas-soċjetà appellanta li kien hemm flus li qatt m'għaddew lilha minkejja li kienu tħallsu lill-appellat. L-appellat qal li s-soċjetà appellanta naqset milli tispeċifika liema kienu x-xhieda li xehdu li l-appellat kien qalilhom jagħtu l-flus lilu. L-appellat qal li l-*Iodo* fil-fatt janalizza din l-allegazzjoni speċifika fir-rigward ta' membri li qalu li xtraw pakkett ta' *cyrptocurrency* u li ħallsu lill-appellat direttament. L-appellat qal li t-Tribunal, wara li kkonsidra l-provi kollha miġjuba, ikkonkluda li mhux biss ma kien hemm l-ebda evidenza li fil-każ odjern kien hemm xi frodi, imma anki li l-verżjoni tal-appellat kienet aktar kredibbli.

18. L-appellat qal li l-oneru tal-prova li kien hemm xi qerq, jinkombi fuq min jallegah, u qal li fil-każ odjern kien hemm diversi kontradizzjonijiet li juru biċ-ċar li l-allegata frodi kienet biss fabbrikazzjoni da parti tas-soċjetà appellanti u li qatt ma ġiet ipprovata. Qal li hemm kontradizzjoni fl-ammont tal-allegata frodi, fejn xi drabi s-soċjetà appellanta qalet li l-ammont kien ta' madwar sittax-il miljun Euro (€16,000,000), u drabi oħra ssemmiet iċ-ċifra ta' tlieta u sittin miljun Euro (€36,000,000), filwaqt li drabi oħra ssemmew wieħed u ħamsin miljun Euro (€51,000,000) u drabi oħra mitt miljun Euro (€100,000,000) u mija u ħmistax-il miljun Euro (€115,000,000). Qal li dan meta fir-rapport ippreżentat mis-soċjetà appellanta, issemmew danni minn frodi fl-ammont ta' tmien miljun u ħames

mitt elf Euro (€8,500,000). Żied jgħid li kien hemm ukoll kontradizzjoni dwar il-post fejn seħħet l-allegata frodi, u ssemmew pajjiżi bħat-Turkija, il-Kroazja u l-Italja, kif ukoll kien hemm kontradizzjoni dwar min investiga u skopra din l-allegata frodi. Dan għaliex ir-rappreżentant tal-Multisoft xehed li huma kienu segwew biss l-istruzzjonijiet mogħtija mis-soċjetà appellanta. L-appellat qal ukoll li fil-każ odjern ma sar l-ebda rapport dwar l-allegata frodi, u qal li huwa inkonċepibbli kif l-unika prova dokumentarja dwar allegata frodi ta' aktar minn mitt miljun Euro tikkonsisti f'paġna waħda mingħand il-Multisoft, li tgħid li hija kienet qiegħda ssegwi struzzjonijiet mingħand is-soċjetà appellanta speċifikament biex tħassar il-kummissjonijiet tal-appellat minn fuq is-sistema tas-soċjetà appellanta. L-appellat għamel riferiment ukoll għall-ittra ta' riżenja tal-awditur tas-soċjetà appellanta Francis Buttigieg, li bħala raġuni għar-riżenja tiegħu ta l-fatt li huwa ma ngħata l-ebda aġġornament u dokumentazzjoni dwar l-imsemmija allegata frodi.

19. L-appellat qal ukoll li ma ttieħdet l-ebda azzjoni kriminali u ma saret l-ebda kwerela jew xi forma ta' rapport mis-soċjetà appellanta fil-konfront tal-appellat jew fil-konfront ta' xi terza persuna. Qal ukoll li fattwalment kien impossibbli għalih li jikkommetti r-reat ta' frodi kif qiegħda tallega s-soċjetà appellanta, għaliex ma setax jiftaħ kontijiet fis-sistema tas-soċjetà appellanta. Qal li kienu biss il-*customer support agents* tas-soċjetà appellanta li setgħu jirreġistraw kontijiet ġodda fis-sistema, u huwa la qatt kien direttur, *manager* u lanqas impjegat tas-soċjetà appellanta, u għalhekk qatt ma kellu aċċess għas-sistema interna tal-kumpannija. Qal li għalhekk kien impossibbli għalih li jikkrea kontijiet foloz kif qiegħed jiġi allegat.

20. L-appellat qal li s-soċjetà appellanta għandha diversi twissijiet regolatorji inkluż mill-Malta Financial Services Authority, u fil-konfront tagħha saru wkoll allegazzjonijiet li din qiegħda topera xi *scams.* Qal li mhuwiex ċar lanqas min huma d-diretturi u l-azzjonisti tas-soċjetà appellanta, u ma teżisti l-ebda komunikazzjoni jew rapport lil jew ta' xi bord tad-diretturi jew lill-*management* tal-istess kumpannija, u l-ebda xhud minn dawk prodotti ma jidher li kellu aċċess għall-kontijiet bankarji tas-soċjetà appellanta u għall-kontijiet tal-*cyrptocurrency* tagħha. Qal ukoll li tul il-proċeduri tal-arbitraġġ, is-soċjetà appellanta naqset milli tikkollabora mal-Arbitri, u apparti li talbet diversi differimenti, kien hemm drabi meta xhieda prodotti minnha rrifjutaw li jwieġbu għad-domandi li sarulhom.

21. L-appellat qal li d-dokumenti ppreżentati fir-rigward tal-allegata frodi, jinkludu CD li ġie ppreżentat fi stadju tardiv ħafna tal-proċeduri, wara li l-provi tas-soċjetà appellanta kienu ilhom li ngħalqu, u qal li dawn jinkludu taħwid ta' dokumenti li ma jinftehmux, u li huma irrelevanti għall-każ odjern. Qal li ħafna minn dawn id-dokumenti mhumiex datati u ma ġewx ippreżentati taħt ġurament, filwaqt li uħud mid-dokumenti jirreferu għal terzi persuni. Qal li l-lista li ssemmi transazzjonijiet li allegatament saru mill-appellat, tinkludi nota li tgħid '*transactions are speculations and cannot be verified at this point'.* Qal li s-soċjetà appellanta naqset ukoll milli taderixxi mad-digriet *interim* mogħti mit-Tribunal tal-Arbitraġġ fit-22 ta' Ottubru, 2018, li matul il-proċedimenti tal-arbitraġġ ordna lis-soċjetà appellanta terġa' tagħti aċċess lill-appellat għall-pjattaforma tagħha. Qal li l-fatt li s-soċjetà appellanta baqgħet qatt ma tat dan l-aċċess, juri mhux biss nuqqas ta' rispett lejn it-Tribunal, iżda juri kif is-soċjetà

appellanta baqgħet tinsisti li taħbi d-*data* tagħha partikolarment fir-rigward tal-allegata frodi.

22. L-appellat qal ukoll li l-kredibbilità tas-soċjetà appellanta titpoġġa f'dubju wkoll mix-xhieda tal-awditur tagħha stess, Francis Buttigieg, li jispjega li huwa rriżenja mill-kariga ta' awditur tas-soċjetà appellanta għaliex din naqset milli tipprovdilu s-*sales data,* qatt ma ssottomettiet formuli tat-taxxa inkluż il-VAT, u qatt ma pprovdiet informazzjoni dwar il-kummissjonijiet dovuti u ma setgħetx tirrikonċilja l-kontijiet bankarji mat-transazzjonijiet fis-sistema ta' kontabilità. Dan ix-xhud qal li rappreżentanti tas-soċjetà appellanta, fil-preżenza tiegħu, gidbu lill-uffiċjali tal-VAT f'laqgħa li saret partikolarment meta mistoqsija min kien qiegħed jagħmel it-transazzjonijiet f'isem is-soċjetà appellanta. Qal li għalhekk il-konklużjoni tat-Tribunal li l-ebda frodi ma ġiet kommessa, hija konklużjoni korretta.

23. B'riferiment għat-tieni aggravju tas-soċjetà appellanta, l-appellat qal li l-artikolu 70A(1) tal-Kap. 387 jgħid li f'dawn il-każijiet hemm dritt ta' appell mid-deċiżjoni finali fuq punt ta' liġi biss li jitnissel minn deċiżjoni finali magħmula fil-proċedimenti tal-arbitraġġ. Qal li anki hawn, ir-rikors tal-appell tas-soċjetà appellanta jonqos milli jagħmel riferiment għall-artikolu tal-liġi jew għall-prinċipji legali li abbażi tagħhom fl-opinjoni tas-soċjetà appellanta t-Tribunal sejjes id-deċiżjoni. L-appellat qal ukoll li s-soċjetà appellanta naqset milli tispjega liema hija t-tifsira korretta tal-punt ta' liġi identifikat u għalfejn il-punt ta' liġi huwa miftuħ għal dubju serju. Qal li anki l-kwistjoni dwar l-ispartizzjoni tal-ispejjeż hija kwistjoni ta' fatt u mhux ta' dritt, għaliex it-Tribunal għandu d-diskrezzjoni jaqsam l-ispejjeż skont iċ-ċirkostanzi tal-każ.

Konsiderazzjonijiet ta' din il-Qorti

24. Il-Qorti sejra tikkonsidra l-aggravji sollevati mis-soċjetà appellanta, imma qabel tagħmel dan, sejra tagħmel riferiment għal dak deċiż fir-rikors tal-appell numru 59/2021 fl-istess ismijiet, imma li ġie intavolat proprju minn Ante Kelava bħala l-appellant. Din il-Qorti hemmhekk għamlet il-konstatazzjonijiet tagħha dwar safejn jestendu l-poteri tagħha meta jsiru appelli minn deċiżjonijiet arbitrali, u dwar il-fatt li l-appell ta' Ante Kelava ġie kkonsidrat biss wara li l-Qorti qieset li dak l-appell kien dwar punt ta' liġi, jiġifieri dwar jekk kienx hemm ksur tal-obbligi kuntrattwali pattwiti bejn il-partijiet. Il-Qorti bbażat il-konsiderazzjonijiet tagħha fuq il-fatt li l-appellant f'dak ir-rikors kien qiegħed jilmenta għaliex bejn il-partijiet kien hemm kuntratt validu, li ġie miksur mis-soċjetà Coin Space Limited, u din il-Qorti għamlet il-konstatazzjonijiet tagħha f'dak ir-rigward. Din il-Qorti m'għamlitx l-istess konsiderazzjonijiet fir-rigward tat-tieni aggravju sollevat minn Ante Kelava, fejn ilmenta għax d-deċiżjoni tat-Tribunal allegatament ma kinitx immotivata. Quddiem aggravju ta' dik in-natura, din il-Qorti ħadet il-pożizzjoni li l-partijiet kellhom rimedju disponibbli għalihom permezz ta' dak li jipprovdi l-artikolu 49 tal-Kap. 387, li jagħti dritt lill-partijiet fi proċeduri arbitrali jitolbu kjarifika jew addizzjoni għal-*lodo* li jkun ingħata. Dan ma ġarax, u minflok kull parti f'dawk il-proċeduri għażlet li tappella mil-*lodo* arbitrali quddiem din il-Qorti. Imma din il-Qorti għandha l-limitazzjonijiet tagħha fir-rigward ta' dak li tista' tammetti bħala aggravju minn deċiżjoni mogħtija mit-Tribunal. Il-partijiet dan jafuh, u t-tnejn li huma qajmu din eċċezzjoni fir-rigward tal-appell tal-parti l-oħra. Din il-Qorti tista' tisma' appelli biss safejn dawn ikunu bbażati fuq punti ta' dritt u mhux fuq punti ta' fatt, u għalhekk din il-Qorti mhijiex mistennija u m'għandhiex is-setgħa li tiftaħ

il-provi mill-ġdid sabiex abbażi tal-provi li jkunu tressqu quddiem it-Tribunal, tagħti d-deċiżjoni tagħha rigward xi aggravju li jkun tressaq quddiemha dwar xi punt ta' fatt.

L-ewwel aggravju: [nuqqas ta' smigħ xieraq]

25. Is-soċjetà appellanta qiegħda tilmenta mill-fatt li bid-deċiżjoni mogħtija mit-Tribunal, hija ma ngħatatx smigħ xieraq, u dan bi ksur tal-jeddijiet fundamentalib tagħha kif protetti kemm mill-Kostituzzjoni ta' Malta kif ukoll bil-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem. Kompliet tgħid li it-Tribunal injora provi mressqa minnha u li kellhom iwasslu għall-konklużjoni li fil-każ odjern verament kienet seħħet frodi u li għalhekk l-appellat m'għandux jitħallas l-ammonti ta' flus li qiegħed jippretendi li huma dovuti lilu.

26. Din il-Qorti tirrileva li m'għandux ikun li kull meta parti jew oħra ma taqbilx ma' *lodo* arbitrali li jingħata mit-Tribunal, din tersaq quddiem din il-Qorti bil-pretensjoni li ma ngħatatx smigħ xieraq. Kull min jissottometti lilu nnifsu għal proċeduri quddiem iċ-Ċentru tal-Arbitraġġ ta' Malta, jaf li qiegħed jitlob li l-każ tiegħu jinstema' abbażi tal-prinċipju tal-ekwità, u t-Tribunal irid ifittex l-aktar soluzzjoni ekwitattiva għall-partijiet, lil hinn mill-formaliżmu li jitħaddem fil-Qrati tagħna. Dan m'għandux ifisser li d-deċiżjoni li tingħata għandha tkun waħda li tiddipartixxi mill-prinċipji fundamentali li kull parti għandha tingħata smigħ xieraq, u li kull prova li tinġab fi proċeduri bħal dawn tingħata l-importanza u l-konsiderazzjonijiet li jixirqilha mit-Tribunal. Iżda din il-Qorti ma tistax taċċetta li kull meta tingħata deċiżjoni li ma tkunx togħġob lil xi parti jew oħra, dik il-parti tipprova tinqeda bid-disposizzjonijiet tal-liġi tagħna li jipprovdu

għall-jedd li kull parti tingħata smigħ xieraq, sabiex tappella fuq punti li jemerġu mill-fatti u mhux mid-dritt. Din il-Qorti tqis li huwa evidenti li s-soċjetà appellanta mhijiex taqbel ma' dik il-parti tal-*lodo* tat-Tribunal fejn ikkonkluda li ma ġiex ippruvat li saret frodi min-naħa tal-appellat, u għalhekk l-obbligazzjonijiet kuntrattwali maqbula bejn il-partijiet għandhom jiġu onorati kollha. Is-soċjetà appellanta qegħda tressaq l-aggravju li hija ma ngħatatx smigħ xieraq għaliex xi provi mressqin minnha ma ngħatawx il-konsiderazzjoni li tixirqilhom mit-Tribunal, u dan ikkonkluda li ma kienx hemm frodi. Imma din il-Qorti m'għandhiex il-kompetenza li tiftaħ il-provi mill-ġdid u terġa' tagħmel evalwazzjoni tagħhom mill-ġdid, ladarba jirriżulta b'mod lampanti li l-lanjanza vera u proprja tas-soċjetà appellanta mhijiex arġinata fuq in-nuqqas ta' smigħ xieraq, imma għaliex hija ma ngħatatx raġun fil-mertu.

27. Il-Qorti diġà kellha l-opportunità tiċċara l-pożizzjoni tagħha fir-rigward ta' dak li jirriżulta mill-provi[1], sabiex tiddetermina jekk huwiex minnu li kien hemm ksur tal-obbligi kuntrattwali pattwiti bejn il-partijiet, u jekk kienx hemm lok għall-ħlas ta' danni lil Ante Kelava. Din il-Qorti m'għandhiex għalfejn tirrepeti dak li diġà ngħad, ħlief li tirrileva li l-fatt li t-Tribunal ikkonkluda li kien hemm nuqqas ta' provi ċari u konkreti li juru li verament seħħet frodi, kemm kien il-volum tal-qerq, f'liema pajjiż seħħet il-frodi, min talab li din il-frodi tiġi investigata, u n-nuqqas ta' proċeduri kriminali fir-rigward, dan kollu juri li, kuntrarjament għal dak li qiegħda tallega s-soċjetà appellanta, id-deċiżjoni tat-Tribunal ma tteħditx għaliex dan skarta l-provi miġjuba minnha, imma għaliex wara li evalwa l-provi, qies li l-provi miġjuba mis-soċjetà appellanta ma jwasslux

[1] Sentenza App. Inf. rikors numru 59/2021, mogħtija llum ukoll.

għall-konklużjoni li verament kien seħħ xi qerq da parti tal-appellat. Wara kollox hija l-fehma kunsidrata ta' din il-Qorti, li l-investigazzjoni dwar jekk seħħitx frodi jew le, mhuwiex it-Tribunal tal-Arbitraġġ li kellu jagħmilha, iżda l-awdituri u l-*accountants* ingaġġati mis-soċjetà appellanta, u jekk ikun hemm bażi ta' suspett, isiru investigazzjonijiet kriminali fir-rigward. Minn dan kollu ma jirriżulta xejn, u għalhekk din il-Qorti hija tal-fehma li l-aggravju mressaq mis-soċjetà appellanta, li hija ma ngħatatx smigħ xieraq, huwa wieħed frivolu u mingħajr bażi, u għalhekk tiċħdu

It-tieni aggravju: [l-apporzjonament tal-ispejjeż]

28. Is-soċjetà appellanta tgħid li t-Tribunal ma kienx korrett fil-mod kif apporzjona l-ispejjeż għaliex it-talbiet u l-pretensjonijiet imressqa mill-appellat ma ġewx milqugħa kollha. Il-Qorti, filwaqt li tirrileva li f'każijiet quddiem iċ-Ċentru tal-Arbitraġġ ta' Malta, l-apporzjonament tal-ispejjeż huwa mħolli fid-diskrezzjoni tat-Tribunal, tirrileva wkoll li fil-każ odjern il-pożizzjoni tas-soċjetà appellanta kienet li l-ebda kummissjoni u l-ebda ħlas m'huwa dovut lill-appellat ghaliex dan qiegħed jibbaża l-pretensjonijiet tiegħu fuq aġir frawdolenti mwettaq minnu stess. Din kienet il-bażi tad-difiża tas-soċjetà appellanta, liema bażi t-Tribunal sab li ma kinitx timmerita li tiġi milqugħha stante li mhijiex ippruvata. Kien in vista ta' dan li t-Tribunal iddeċieda li l-ispejjeż tal-proċeduri quddiemu għandhom jitħallsu kollha mis-soċjetà appellanta. Il-Qorti ma ssib l-ebda raġuni għalfejn għandha tiddipartixxi minn dik il-pożizzjoni, anki in vista tal-konklużjonijiet l-oħra milħuqa f'dan l-appell, u għalhekk tqis li dan l-aggravju mhuwiex mistħoqq u tiċħdu wkoll.

<u>Decide</u>

Għar-raġunijiet premessi, din il-Qorti qiegħda tiddeċiedi dwar l-appell tas-soċjetà appellanta billi tiċħdu.

L-ispejjeż ta' dan l-appell għandhom jitħallsu mis-soċjetà appellanta.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Rosemarie Calleja
Deputat Reġistratur