MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON

Seduta tal-21 ta' Frar, 2012

Rikors Numru. 865/2011

Melita Gaming Network Limited (C34432)

kontra

X

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fit-2 ta` Settembru 2011 li jaqra hekk –

Illi dan ir-rikors qed isir a tenur ta` l-Artikolu 218(1)(a) tal-Att dwar il-Kumpanniji, Kapitolu 386 tal-Ligijiet ta` Malta ;

Illi l-kumpannija rikorrenti Melita Gaming Network Limited (C34432) giet kostitwita fis-6 ta` Agius 2004 (Dokument "MGN1") u l-azzjonisti taghha huma MelitaGamingGroup Limited (C39772) u Alliance Trust Company Limited (gja F & A Services Limited) (C22228) (Dokument MGN2) ;

Illi l-istatut tal-kumpannija rikorrenti qed jigi anness ma` dan ir-rikors u mmarkata Dok "MGN3";

Illi fit-12 ta` Awissu 2011 ittiehdet rizoluzzjoni straordinarja tax-shareholders tal-kumpannija rikorrenti (Dokument MGN4) fejn filwaqt illi gie innutat illi l-kumpannija ma tistax tkompli topera kemm ghaliex ma hijiex f`qaghda finanzjarja li tippermettilha li thallas id-djun taghha kemm ghaliex il-kumpannija hija sprovvista minn direttur u company secretary u ma tista` ssib lil hadd illi jaqdi dawn il-funzjonijiet, gie deciz unaninimament illi l-kumpannija ghandha tigo stralcjata u xolta minn dina l-Onorabbli Qorti a tenur ta` l-Artikolu 214(1)(a) tal-Kap. 386 ;

Ghaldaqstant, u in vista tas-suespost, il-kumpannija rikorrenti titlob bir-rispett illi dina l-Onorabbli Qorti joghgobha tordna illi l-kumpannija Melita Gaming Network Limited (C34432) tigi xolta u konsegwentement stralcjata minn dina l-Onorabbli Qorti stess u dan abbazi ta` l-Artikolu 214(1)(a) tal-Kapitolu 386 tal-Ligijiet ta` Malta.

Rat id-dokumenti li kienu esebiti mar-rikors.

Rat id-digriet taghha tal-15 ta` Settembru 2011.

Rat it-tliet noti b`dokumenti li kienu esebiti mill-kumpannija rikorrenti wara d-digriet taghha tal-15 ta` Settembru 2011.

Rat id-dikjarazzjoni solenni ta` Victor Martyn.

Rat il-verbal tal-udjenza tas-16 ta` Jannar 2012.

Rat id-digriet taghha moghti f`dik l-udjenza fejn halliet il-kawza ghal provvediment ghal-lum.

Ikkunsidrat :

II. Dritt

Bil-procedura tal-lum, il-kumpannija rikorrenti qeghda titlob lil din il-Qorti sabiex tordna x-xoljiment u l-stralc konsegwenzjali taghha skond l-**Art.214(1) (a) tal-Kap.386** tal-Ligijiet ta' Malta.

Id-disposizzjoni li fuqha qeghda tistrieh il-kumpannija rikorrenti taqra hekk –

Kumpannija xxolji u konsegwentement tigi stralcjata fil-kazijiet li gejjin –
…
(a) il-kumpannija tirrisolvi b`rizoluzzjoni straordinarja li l-kumpannija ghandha xxolji u tkun stralcjata mill-qorti ;

Il-kumpannija rikorrenti qeghda tghid li ghandha *locus standi* f`dan il-procediment abbazi tal-**<u>Art.218(1)(a) tal-Kap.386</u>** li jaqra hekk **–**

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

(a) stralc ta` kumpannija mill-qorti skond l-artikolu 214(1)(a)

…

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

Fil-kaz tal-lum, hija l-kumpannija **<u>stess</u>** illi qeghda tipprezenta r-rikors wara risoluzzjoni straordinarja li hadu l-azzjonisti **<u>kollha</u>** tal-kumpannija (ara Dok MGN4).

Kif jirrizulta mir-referta a tergo ta` fol 50 tal-process, ir-Registratur tal-Kumpanniji kien notifikat b`kopja tar-rikors promotur skond l-**<u>Art.218(8)</u>** tal-Kap.386.

L-**<u>Art.214</u>** tal-Kap.386 jirregola x-xoljiment u l-istralc ta` kumpanniji.

Issa hemm kazi specifikati fil-ligi stess fejn xoljiment u stralc ***ghandhom*** (***shall***) jigu ordnati, u ohrajn fejn xoljiment u stralc ***<u>jistghu</u>*** (***may***) jigu ordnati.

Il-kazi fejn topera s-***shall*** huma dawk indikati fil-paragrafi (**a**) u (**b**) tas-subinciz (**1**) tal-Art.214.

Fil-kaz tal-lum, il-kumpannija rikorrenti qeghda tistrieh fuq dak li jipprospetta l-paragrafu (**a**) u cioe` x-xoljiment u stralc mill-qorti.

Dan qieghed jinghad ghaliex l-unika differenza bejn l-(**a**) u (**b**) tas-subinciz (**1**) tal-Art.214 hija li filwaqt li fl-(**a**) ir-rizoluzzjoni straordinarja tghid li x-xoljiment u stralc ghandu jsir mill-qorti, fil-kaz tal-(**b**) ir-rizoluzzjoni straordinarja tghid li x-xoljiment u stralc ghandu jsir volontarjament.

Issa l-kazi fejn topera il-***may*** huma dawk indikati fis-subparagrafi (**i**) u (**ii**) tal-paragrafu (**a**) tas-subinciz **(2)** tal-Art.214. Ir-rikorrenti mhix taghmel talba skond dawn id-disposizzjonijiet.

Is-***shall*** topera wkoll (din il-Qorti tghid **<u>b`riserva</u>**) fil-kazi indikati fil-paragrafi (**i**) sa (**iv**) tal-paragrafu (**b**) tas-subinciz (**2**) tal-istess Art.214. Din il-Qorti taghmel riserva ghar-raguni li l-Art.214(2)(b) jitkellem **<u>biss</u>** dwar xoljiment mhux ukoll dwar l-stralc fl-erba` kazi hemm specifikati. Dan huwa hekk ghax b`effett tal-Art.214(3) ***<u>l-istralc</u>*** huwa diskrezzjoni tal-qorti f`dawk l-erba` kazi.

Ikkunsidrat :

III. <u>Risultanzi</u>

Mill-provi akkwiziti, jirrizulta l-kumpannija rikorrenti giet registrata bin-Nru.C34432 fl-isem ta` E-Support Services Limited fis-6 ta` Awissu 2004 (Dok MGN1). Fil-21 ta` April 2006 bidlet l-isem ghal Melita Gaming Network Limited ghalkemm zammet l-isem numru ta` registrazzjoni (Dok MGN7).

Mill-atti socjetarji ufficjali, jirrizulta li *(i) The main object of the Company is : to carry on the business of a bookmaker, to act as a remote gaming and betting operator or as a betting exchange and to run a remote gaming and betting office for the purpose of conducting remote gambling and betting transactions by eletronic means and in terms of a permit or licence granted by the Lotteries & Gaming Authority.*

Il-kumpannija ghandha *Authorised Share Capital* ta` €50,000 *divided into 50,000 (fifty thousand) Shares of Euro 1 each.* L-*Issued Share Capital* huwa l-istess bhall-*Authorised Share Capital.* L-*issued Share Capital* huwa pero` 20% *paid up*.

L-azzjonista principali hija l-kumpannija MelitaGamingGroup Limited (C39772) li ghandha 49,999 *shares* waqt li kumpannija ohra bl-isem ta` F & A Services Limited (C2228) ghandha *share* wahda.

Jirrizulta li fit-12 ta` Awissu 2011, l-azzjonisti **kollha** tal-kumpannija ghaddew rizoluzzjoni (Dok MGN4) li taqra hekk –

Whereas : *It was decided by the shareholders of the Company that it is in the best interest of the Company to dissolve and consequently wind up the Company with the provisions applicable to a court winding up under the Companies Act, Chapter 386, Laws of Malta.*

According it has been resolved that :

(a) The Company cannot, by reason of its liabilities, continue its buisness, an dit cannot continue in its existence as it currently has no Director and no Company Secretary and no ris it possible to appoint a

Directo rand a Company Secretary for the Company at this stage, that it is accordingly in the best interest thereof to dissolve the Company and consequently liquidate the Company`s affairs in terms of Article 214(1)(a) of the Companies Act (Chapter 386 of the Laws of Malta) ;

(b) To appoint Melita Gaming Group Limited (C39772) to act as Director limitedly for the purposes of filing a winding-up application in Court in terms of Article 218 et seq of the Companies Act (Chapter 386 of the Laws of Malta) for the dissoilution and winding up of the Company.

Kienu esebiti l-ahhar *report and financial statements* tal-kumpannija rikorrenti li jkopru s-sena li ghalqet fil-31 ta` Dicembru 2009 (Dok. MGN5).

Mid-*Directors` Report* jirrizulta li *during the year under review, the Company registered a loss after taxation amounting to EURO 663,275* (ara fol 42). Fir-rapport tieghu l-awditur Stefan Bonello Ghio ighid illi *the financial statements give a true and fair view of the financial position of Melita Gaming Network Limited as at 31st December 2009.*

Fid-dikjarazzjoni tieghu, Victor Martyn jixhed illi fl-2009 huwa ghamel investiment fil-kumpannija MelitaGamingGroupLimited li ghandha l-ishma kollha (hlief wahda) tal-kumpannija rikorrenti. Qabel dak l-investiment tieghu, huwa la kien involut fil-kumpannija MelitaGamingGroupLimited u lanqas fil-kumpannija rikorrenti. Meta huwa ghamel l-investiment tieghu, il-kumpannija rikorrenti kienet diga` qeghda titlef il-flus mill-operat taghha kull xahar. Huwa kien gie konvint illi bl-investiment tieghu u ta` haddiehor fil-MelitaGamingGroupLimited in-negozju seta` jaqleb ghall-profitt fi zmien sentejn. Il-pjan pero` ma kienx success ghax it-telf kompla. Fil-bidu tal-2011, kien infurmat li l-

operat tal-kumpannija kien jehtieg injezzjoni ta` aktar flus. Fi Frar 2011 saret laqgha tal-azzjonisti fejn qablu li ma jkunx hemm aktar investiment ta` fondi godda u l-Managing Director tal-Group, li kien Trevor Ellis, inghata struzzjonijiet sabiex jiehu *the necessary steps towards the winding up and/or sale of part or all of the assets of the group companies or the sale of the companies themselves.* MelitaGamingGroupLimited kienet l-azzjonista ta` maggoranza mhux biss tal-kumpannija rikorrenti izda wkoll ta` kumpannija ohra bl-isem ta` TrueMoneyGames.net Limited (C41488) li wkoll qieghed jintalab ix-xoljiment u stralc taghha bi procedura separata quddiem din il-Qorti stess. Baqa` pero` ma sar xejn ghaliex Trevor Ellis irrizenja minn direttur tal-kumpanniji kollha. Kien l-uniku direttur u kien imexxi kollox hu. Meta telaq, ma ta handover lil hadd. Bil-konsegwenza li n-negozju tal-kumpannija spicca bla tmexxija ghaliex hadd mill-azzjonisti ma ried jassumi t-tmexxija meqjus l-istat finanzjarju prekarju tal-kumpanniji. Huwa talab direzzjoni minghand is-Segretarju tal-kumpanniji li kien l-Av. Christian Farrugia li infurmah li anke hu ma kienx thallas tad-drittijiet ghall-prestazzjonijiet tieghu. Fil-fatt Dr. Farrugia irrizenja minn Segretarju fis-17 ta` Marzu 2011. Bl-istat tan-negozju tal-kumpanniji kif kien, u cioe` ghaddej bit-telf, minghajr tmexxija, minghajr direttur, u minghajr segretarju, il-parir li kellu kien li jipprocedi ghax-xoljiment u l-istralc tal-kumpanniji.

In vista tal-premess, din il-Qorti qeghda tipprovdi dwar it-talba tal-kumpannija rikorrenti kif gej –

1) Tiddikjara li l-kumpannija rikorrenti ottemperat ruhha ma` l-Art.214(1)(a) tal-Kap.386 tal-Ligijiet ta` Malta.

2) Tordna x-xoljiment u l-istralc tal-kumpannija Melita Gaming Network Limited (C34432)

b`effett mit-12 ta` Awissu 2011 kif ighid it-tieni proviso tal-Art.223(1) tal-Kap.386.

3) Tahtar lill-Avukat Dottor Peter Fenech bhala stralcjarju bis-setghat u d-dmirijiet kif huma definiti fil-Kap.386.

4) L-ispejjez jithallsu mill-kumpannija rikorrenti.

< Sentenza Finali >

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