



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta tas-17 ta' Gunju, 2014

Rikors Numru. 219/2014

BGGC Limited (C42948)

kontra

X

Il-Qorti :

I. Preliminari

Rat ir-rikors li l-kumpanija BGGC Limited (C42948) (“ir-rikorrenti”) ipprezentat fit-13 ta' Marzu 2014 li jaqra hekk :-

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

Illi l-kumpanija rikorrenti BGGC Limited giet kostitwita fil-11 ta' Dicembru 2007 (Dok “BGGC1”) u l-azzjonisti taghha huma Dugan Edward Lane (detentur ta' passaport Kanadiz JV745671) ta' 120, David Crescent Tecumseh, Ontario N8N225 Canada, in kwantu detentur ta' sehem privilegga li jista' jigi mifdi ; u Noble Trust Company Limited (bin-numru ta' registrazzjoni: 54388) ta' 35, New Road, Belize City, Belize, in kwantu detentrici ta' 1,499 sehem ordinarju (Dok “BGGC2”);

Illi l-istatut tal-kumpanija rikorrenti qed jigi anness ma' dan ir-rikors u mmarkat (Dok “BGGC3”);

Illi l-azzjonisti kollha tal-kumpanija ffirmaw risoluzzjoni straordinarja ghall-finijiet tal-Artikolu 214(a) tal-Att dwar il-Kumpanniji (Dok “BGGC4”) li permezz taghha gie deciz unanimament illi l-kumpanija ghandha tigi stralcjata u xjolta minn dina l-Onorabli Qorti a tenur tal-Artikoli 219 tal-Att dwar il-Kumpanniji ghar-ragunijiet hemm imsemmija u senjatament ghaliex skont l-istess azzjonisti n-negozju l-kumpanija ilu sospiz ghal perjodu bla waqfien ta' aktar minn erba' u ghoxrin xahar u jidher illi l-kumpanija mhijiex f'qagħda finanzjarja li tippermettiha li thallas id-djun taghha u għalhekk ma tistax terga' tibda topera ;

Ghaldaqstant, u in vista tas-suespost, il-kumpanija rikorrenti titlob bir-rispett illi dina l-Onorabbli Qorti joghgobha tordna illi l-kumpanija BGGC Limited (C42948) tigi xjolta u konsegwentement stralcjata minn dina l-Onorabbli Qorti stess a tenur tal-Artikolu 219 et sequitur tal-Att dwar il-Kumpaniji ghar-raguni mfissra fl-Artikolu 214(1)(a) tal-istess Att u dan taht dawk il-provvedimenti kollha illi dina l-Onorabbli Qorti jidhrilha illi huma xierqa fic-cirkostanzi.

Rat id-dokumenti li r-rikorrenti pprezentat flimkien mar-rikors.

Rat id-digriet taghha tas-27 ta` Marzu 2014.

Rat in-nota b`dokumenti li r-rikorrenti pprezentat fl-14 ta` Mejju 2014.

Rat id-digriet taghha tad-19 ta` Mejju 2014 fejn appuntat ir-rikors ghas-smigh ghall-udjenza tal-lum.

Rat il-verbal tal-udjenza tal-lum.

Rat id-digriet taghha moghti fl-udjenza tal-lum fejn halliet il-kawza ghal provvediment ghal-lum stess.

Rat l-atti ta` dan il-procediment.

Ikkunsidrat :

II. Dritt

Bil-procediment tal-lum, qeghda ssir talba lil din il-Qorti mir-rikorrenti sabiex tordna x-xoljiment u l-istralc taghha. Tiddikjara li l-*locus standi* taghha jirrizulta mill-**Art 218 tal-Kap 386**. Il-parti rilevanti ta` dan l-artikolu huwa s-subartikolu **(1)(a)** 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' obligazzjoni, kreditur jew kredituri, jew minn xi kontributorju jew kontributorji.

Fil-kaz tal-lum, il-procediment kien inizjat mill-kumpannija wara decizjoni tal-laqgha generali. Ghalhekk il-procediment jinkwadra ruhu f'dak illi jipprovdi l-Art.218(1)(a) tal-Kap.386.

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L-Art.218(1)(a) tal-Kap.386 jirreferi ghall-**Art.214(1)(a) tal-Kap.386** li jaqra 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 ;

Mela b`riferenza ghat-talba tar-rikorrenti kif dedotta, fil-kaz illi din il-Qorti tiddeciedi li tordna l-istralc taghha, dik l-ordni tkun **preceduta** minn ordni ta` xoljiment.

Kien esebit mir-rikorrenti a fol 16 id-Dok BGGC4 li jaqra hekk –

Extraordinary Resolution in writing by all the shareholders of BGGC Limited (hereinafter referred to as the “Company”) a limited liability company registered Under the laws of Malta on the 11 December 2007 made in terms of article 11 of the Articles of Association of the Company.

WHEREAS :

The Company`s business has been interrupted for a period of more than twenty-four months ; and

It appears that the Company is in a state of insolvency and in the circumstances there is no reasonable prospect of a continuation of its business ; and

In the circumstances the shareholders have been advised that it is in the best interest of all stakeholders concerned to put the Company into liquidation by the Courts of Malta and to authorise the directors of the Company to take all necessary action and file all necessary judicial or other acts or documents required for this purpose in terms of Maltese law ;

NOW THEREFORE, the shareholders of the Company unanimously RESOLVE :

(i) that it is in the best interest of the Company and consequently wind up the Company in accordance with the provisions of 214(1)(a) of the Companies Act ;

(ii) to authorise the directors of the Company to take all necessary action and file all necessary judicial or other acts or documents on behalf of the Company as may be required to procure the dissolution and winding up of the Company by the Court in terms of Maltese law.

Ir-risoluzzjoni ggib id-data tad-19 ta` Frar 2014 u hija ffirmata minn Dugan Edward Lane u minn Sebastien B.J. Moermar ghal Noble Trust Company Limited. Dawn il-persuni huma l-istess li ffirmaw il-*Memorandum* u l-*Articles of Association*.

Fis-7 ta` April 2014, ir-Registratur tal-Kumpanniji kien notifikat b`kopja tar-rikors promotur skond l-**Art 218(8)** tal-Kap 386.

Fit-2 ta` Mejju 2014, ir-rikorrenti kkonsenjat lir-Registratur tal-Kumpanniji l-avviz rikjest bl-**Art 265(1)** tal-Kap 386.

L-Art.214 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 ***jistghu*** (***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, it-talba qeghda ssir fuq dak li jipprospetta l-paragrafu (a) u cioe` x-xoljiment u stralc mill-qorti.

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

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

Ghalkemm mhuwiex il-kaz tal-lum, is-***shall*** topera wkoll (din il-Qorti tghid ***b`riserva***) fil-kazi indikati fil-paragrafi (i) sa (iv) tal-paragrafu (b) tas-

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subinciz (2) tal-istess Art.214. Din il-Qorti taghmel riserva ghar-raguni li l-Art.214(2)(b) jitkellem **biss** dwar xoljiment mhux ukoll dwar l-stralc fl-erba` kazi hemm specifikati. Dan huwa hekk ghax b`effett tal-Art.214(3) ***l-istralc*** huwa diskrezzjoni tal-qorti f`dawk l-erba` kazi.

Ikkunsidrat :

III. Risultanzi

Mill-provi akkwiziti, jirrizulta li r-rikorrenti kienet registrata skond il-Kap 386 bin-Nru C42948 fil-11 ta` Dicembru 2007.

Minn qari tal-*Memorandum* u l-*Articles of Association*, jirrizulta illi diversi huma l-*objects* tal-kumpannija. Dak li ewlieni jidher li huwa dak markat (i) u maqsum f`sitt *areas of interest*. Dawn huma (a) *the provision of consultancy and management services to e-commerce websites* (b) *to hold shares and investment portfolios in corporate bodies engaged in activities similar or ancillary to those performed by the Company* (c) *to act as agent or attorney either solely or with others for any person, firm, Company or corporation* (d) *to hold, manage and administer any kind of property permitted by law, including patents, copyrights and trademarks* (e) *to acquire and undertake the whole or any part of the business, property and liabilities of any person or Company carrying on any business* u (f) *to carry on any other business which may seem to the Company capable of being conveniently carried on in connection with its business and calculated directly or indirectly to enhance the value of the Company's property rights*.

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L-Authorised Share Capital tar-rikorrenti huwa divided into four thousand Euros (€4000) divided into three thousand and nine hundred (3900) Ordinary Shares of one Euro (€1) each and one hundred (100) Participating, Redeemable Preference Shares of one Euro (€1) each.

Mill-bidu nett sal-lum, l-azzjonisti tal-kumpanija baqghu l-istess. L-*issued share capital* huwa ta` 1500 sehem kollha *subscribed and fully paid up*. Kull sehem ghandu valur ta` €1. Noble Trust Company Limited (kumpanija registrata go Belize) ghandha 1499 *Ordinary Shares* waqt li Dugan Edward Lane, cittadin tal-Kanada, ghandu sehem wiehed li huwa *Participating u Redeemable Preference Share*.

Ir-risoluzzjoni straordinarja li skattat dan il-procediment kienet approvata mill-azzjonisti **kollha** fid-19 ta` Frar 2014.

Skond ir-raba` paragrafu tal-Art 10 tal-*Articles* : ... *the dissolution of the Company shall require the consent in General Meeting of a member or members holding not less than seventy-five per centum (75%) of the issued paid up share capital.*

Ir-risoluzzjoni tad-19 ta` Frar 2014 tissodisfa dak rikjest mill-Art 10 tal-*Articles*.

Kien sodisfatt dak li jipprovdi l-istatut tal-kumpanija waqt laqgħa generali li saret fid-19 ta` Frar 2013. Kien għalhekk sodisfatt l-Art 20 tal-*Articles of Association*.

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Fl-affidavit tieghu (Dok BGGC6) Dugan Edward Lane, li huwa l-uniku direttur tar-rikorrenti, ighid hekk *inter alia* :-

... Revenue generated by the Company was on a commission/percentage basis whereby we retained a percentage of the value of transactions billed through our service. Up until end 2008, the Company's business was successful with operating profits in the region of €400,000 during this financial year.

That as competition in this service sector continued to grow, however, the Company started registering a loss of customers which were moving on to other larger service providers which could afford to charge lower commissions. As a result the Company's revenue streams and cash flow were rapidly affected and in fact operating profit in 2009 was half of that registered during the previous year and in subsequent years the situation became increasingly worse and the Company was unsuccessful in raising funds in sufficient time to continue to maintain and grow its business with the result that the Company quickly found itself in a situation where it was unable to continue to meet its financial obligations. Given that the majority shareholders were unwilling to make further investment into the Company I was unable to turn the situation around and as a consequence at the end of 2011 the Company ceased all trading activity.

That as far as I am aware the Company is today unable to pay its debts and its liabilities exceed the value of its assets. The auditors of the Company were BDO Malta but as far as I am aware they have since resigned.

Jirrizulta li n-negozju tal-kumpannija huwa wieqaf. Ghax ma hemmx attivita` ekonomika, mhux se jkun hemm *revenue* u wisq anqas qligh biex jithallas id-dejn li r-rikorrenti taccetta li ghandha.

Wara li qieset il-qaghda tal-kumpannija llum, il-Qorti hija tal-fehma illi ghandha tghaddi ghax-xolijiment u stralc tal-kumpannija, anke fl-interess tal-kredituri.

In vista tal-premess, din il-Qorti qeghda ttiprovdi dwar it-talba tar-rikorrenti billi :-

Fl-ewwel lok, bl-applikazzjoni tal-Art 218(1)(a) u l-Art 214(1)(a) tal-Kap 386 tal-Ligijiet ta` Malta, tordna x-xoljiment u l-istralc tal-kumpanija BGGC Limited (C42948), b`effett mid-19 ta` Frar 2014, skond it-tieni proviso tal-Art 223(1) tal-Kap 386 ;

Fit-tieni lok, tahtar lir-Ricevitur Ufficjali bhala stralcjarju bis-setghat u bid-dmirijiet kollha kif huma definiti fil-Kap 386 tal-Ligijiet ta` Malta.

Fit-tielet lok, tordna li l-ispejjez kollha jithallsu mir-rikorrenti.

Fir-raba` lok thalli l-istralc ghall-udjenja ta` nhar it-Tnejn 3 ta` Novembru 2014 fid-9.00 a.m.

< Sentenza Finali >

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