



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta tas-27 ta' Novembru, 2014

Rikors Numru. 754/2014

Patrio Malta Limited (C39595)

kontra

X

Il-Qorti :

I. Preliminari

Rat ir-rikors li l-kumpanija Patrio Malta Limited (C39595) (“ir-rikorrenti”) ipprezentat fid-29 ta` Awissu 2014 li jaqra hekk :-

Illi l-kumpanija rikorrenti giet kostitwita nhar it-22 ta` Settembru 2006 taht il-Ligijiet ta` Malta u ghadha hekk kostitwita sal-lum. Kopja tal-Memorandum and Articles of Association tal-kumpanija qed tigo hawn annessa u mmarkata bhala Dok 'A'

Illi l-attiv tal-kumpanija rikorrenti ma jkoprix il-passiv u d-djun tal-kumpanija rikorrenti u ghaldaqstant tali kumpanija tinsab fi stat ta` insolvenza ;

Illi fl-14 ta` Awissu 2014, il-kumpanija rikorrenti ghaddiet rizzoluzzjoni straordinarja fejn gie deciz li l-kumpanija ghandha tkun xolta u konsegwentement stralcjata mill-Qorti a tenur tal-Artikolu 214(1)(a) tal-Kap 386 tal-Ligijiet ta` Malta. Kopja ta` din ir-rizzoluzzjoni qed tigi hawn annessa u mmarkata bhala Dok 'B' ;

Ghaldaqstant is-socjeta` rikorrenti, ghar-ragunijiet elenkati iktar `il fuq, titlob lil dina l-Onorabbli Qormi joghgobha :

1. Tordna illi l-kumpanija Patrio Malta Limited tigi xolta u konsegwentement stralcjata minn dina l-Onorabbli Qormi ;

2. *Taghti kull provvediment iehor xieraq jew opportun.*

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

Rat id-digriet taghha tal-4 ta` Settembru 2014 u tas-7 ta` Ottubru 2014.

Rat in-nota b`dokumenti li r-rikorrenti pprezentat fis-6 ta` Novembru 2014.

Rat id-digriet taghha tat-13 ta` Novembru 2014 fejn appuntat ir-rikors ghas-smigh ghal-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. Il-*locus standi* tar-rikorrenti 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 tal-azzjonisti. Ghalhekk il-procediment jinkwadra ruhu f`dak illi jipprovdi l-Art.218(1)(a) tal-Kap.386.

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 Dok B li jaqra hekk –

Extraordinary Resolution in writing executed by all the shareholders of Patrio Malta Limited (The ‘Company’) pursuant to Article 6.2 of the Articles of Association of the Company

Date : August 14th 2014

It is hereby resolved :

That the company be dissolved and consequently wound up by the Court as per Art 214(1)(a) of the Companies Act, Chapter 386 of the Laws of Malta.

That Dr David Gonzi (holder of Maltese identity card numbered 551078M) Dr Stephanie Ellul Sullivan (holder of Maltese identity card numbered 1485M) and/or any other advocate from the firm Gonzi & Associates Advocates be appointed to assist and represent the Company in the judicial proceedings connected with the dissolution and winding-up by the Court as mentioned above.

Ir-risoluzzjoni hija ffirmata mill-istess persuni li ffirmaw il-*Memorandum* u l-*Articles of Association*.

Fil-11 ta' Settembru 2014, ir-rikorrenti kkonsenjat lir-Registratur tal-Kumpanniji l-avviz rikjest bl-**Art.265(1)** tal-Kap. 386.

Fid-19 ta' Settembru 2014, ir-Registratur tal-Kumpanniji kien notifikat b'kopja tar-rikors promotur skond l-**Art. 218(8)** 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 qiegħed jingħad għaliex 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 għandu jsir mill-qorti, fil-kaz tal-(b) ir-risoluzzjoni straordinarja tghid li x-xoljiment u stralc għandu 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 mhijiex tressaq it-talba skond dawn id-disposizzjonijiet.

Għalkemm mhuwiex il-kaz tal-lum, is-*shall* topera wkoll (din il-Qorti tghid **b`riserva**) fil-kazi ndikati fil-paragrafi (i) sa (iv) tal-paragrafu (b) tas-subinciz (2) tal-istess Art.214. Din il-Qorti tagħmel riserva għar-raguni li l-Art.214(2)(b) jitkellem **biss** dwar xoljiment mhux ukoll dwar l-stralc fl-erba` kazi hemm specifikati. Dan huwa hekk għax 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 C39595 fis-16 ta` April 2013.

Kopja Informali ta' Sentenza

Minn qari tal-*Memorandum* u l-*Articles of Association*, jirrizulta illi diversi huma l-*objects* tal-kumpannija. Dak **ewlieni** jidher li huwa dak markat (a) li jaqra hekk :-

To carry on the business of operators of all kinds of interactive games, whether games of skill, of chance or a combination thereof, including casinostyle, card-dtyle, board-style games and any other games ; and to facilitate and aid gaming with regard to the said games ; and to run gaming offices for the purposes of processing, by remote means, of gaming transactions, whether by means of the Internet, call centres, mobile platforms, interactive TV or any other platfor, otherwise than with persons resident in Malta and in terms of a permit or licence granted in accordance with the Lotteries and Other Games Act 2001 and any updates or other laws issued under it.

L-Authorised Share Capital tar-rikorrenti huwa ta` one hundred thousand Euro (EUR 100,000) divided into one hundred thousand (100,000) ordinary shares of the nominal value of one Euro (EUR 1.00) each.

L-Issued Share Capital kien l-istess bhall-Authorised Share Capital u huwa fully paid up.

Mill-bidu nett sal-lum, l-azzjonisti tal-kumpannija baqghu l-istess :-

Patrio Wettholding GmbH 99,999 –il sehem

Ronald Wittkopf Sehem wiehed

Kopja Informali ta' Sentenza

Ir-risoluzzjoni straordinarja li skattat dan il-procediment kienet approvata mill-azzjonisti **kollha** fl-14 ta` Awissu 2014.

Fl-*Articles of Association* il-*General Meetings* huma trattati fl-Art 6. Skond is-subinciz 6 ta` dan l-artikolu, *an extraordinary resolution shall be passed if it is approveds by the holder or holders of seventy-five per cent (75%) of the issued shares of the Company.*

Ir-risoluzzjoni tal-14 ta` Awissu 2014 tissodisfa dak rikjest mill-Art.6(6) tal-*Articles*.

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

Fl-affidavit tiegħu tal-14 ta` Ottubru 2014, Ronald Wittkopf, Segretarju tal-kumpannija, jiddikjara solennement hekk :-

1. *The German company Patrio Wettholding GMBH purchased the company Patrio Malta Limited (the 'Company') in 2012 when it also becaome its director. The purpose of this purchase was essentially for the Company to engage in activities of a commercial nature which were to be financed by its shareholder and director.*

2. *However two events took place which led to the fact that the business intended for the Company never commenced :*

Kopja Informali ta' Sentenza

a. *A change in German legislation resulted in a loss of business for the shareholder and director of Patrio Wettholding GMBH which in turn meant that this company could no longer invest or finance the Company. The company's operating costs were instead being paid for by another company, M.Y. Best-Odds Sportwetten GmbH resulting in a substantial debt owed to this company as repayment for the operating costs it has paid ;*

b. *An invoice of €117,630 which had been issued against the Company's subsidiary in Austria, HB Service GmbH was enforced against the Company as per judgement delivered on 13 February 2013 by Mr Justice Silvio Meli in the names 'Dr Kris Balzan noe vs Happybet Limited'. Since the subsidiary company was insolvent (and has been liquidated and wound up) it never paid this invoice and it remains owed by the Company. This increased the Company's liabilities.*

3. *This means that the Company's operating costs, together with the aforementioned invoice, created debts which the Company is unable to pay, thus leading it to its current state of insolvency.*

Fil-kuntest ta` dak dikjarat minn Ronald Wittkopf, kienu prezentati l-*management accounts* ta` Happybet Limited ghas-snin 2012 u 2013.

Ghalkemm ma kienux prezentati l-*accounts* tar-rikorrenti, il-kwadru li johrog tar-rikorrenti mhuwiex felici u l-prospettivi li fil-futur qarib tkun f`qaghda li thallas id-djun taghha jmorru lejn in-negattiv. Wara li qieset il-qaghda tal-kumpannija llum, il-Qorti hija tal-fehma illi ghandha tghaddi ghax-xolijiment u stralc taghha.

In vista tal-premess, din il-Qorti qeghda tipprovdi 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 Patrio Malta Limited (C39595) b`effett mill-14 ta` Awissu 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-udjenza ta` nhar it-Tlieta 27 ta` Jannar 2015 fid-9.00 a.m.

< Sentenza Finali >

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