



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta tal-15 ta' Jannar, 2015

Rikors Numru. 905/2014

Gameinvest Ltd.

(C-22775)

kontra

X

Il-Qorti :

I. Preliminari

Rat ir-rikors li l-kumpanija Gameinvest Ltd. (C-22775) ("ir-rikorrenti") ipprezentat fis-17 ta' Ottubru 2014 li jaqra hekk :-

1. *Illi s-socjeta` rikorrenti giet registrata mar-Registratur tas-Socjetajiet ta` Malta fl-erbatax (14) ta` April tas-sena elf disa` mija u tmienja u disghin (1998) u li ghandha n-numru ta` registrazzjoni (C-22775) u dan hekk kif jirrizulta mic-Certifikat tar-Registrazzjoni tas-socjeta` rikorrenti mahrug taht l-Att dwar il-Kumpanniji (Kapitolu 386 tal-Ligijiet ta` Malta) [kopja hawn anexa u mmarkata bhala Dok 'A'];*

2. *Illi fis-sebgha (7) ta` Mejju tas-sena elfejn u rebatas (2014) ittiehdet rizzoluzzjoni straordinarja tal-azzjonisti tas-socjeta` rikorrenti, permezz ta` liema gie deciz illi, stante li n-negozju tas-socjeta` rikorrenti ilu sospiz ghal perijodu bla waqfien ta` aktar minn erba` u ghoxrin xahar, u inoltre l-kumpannija ma tistax thallas id-djun taghha u mhix ser tkun fil-futur f`posizzjoni li tkompli b`attivitajiet kummercjali, l-istess socjeta` ghandha xxolji u ghandha tigo stralcjata mill-Qorti (kopja tar-rizzoluzzjoni hawn anexa u mmarkata bhala Dok 'B');*

3. *Illi l-imsemmija rizzoluzzjoni tas-socjeta` rikorrenti ttiehdet ai termini tas-subinciz (a) tas-subartikolu (1) tal-artikolu 214 tal-Kapitolu 386 tal-Ligijiet ta` Malta, u giet approvata mill-azzjonisti tas-socjeta` rikorrenti, skond il-Memorandum u l-Istatut ta` Assocjazzjoni tal-istess socjeta` (kopja hawn annessa bhala Dok 'C') u r-Registratur tal-Kumpanniji gie infurmat b`dan permezz tas-sottomissjoni tal-formola apposita ;*

4. *Illi l-imsemmi subinciz (a) tas-subartikolu 214 Kapitolu 386 tal-Ligijiet ta' Malta jipprovi illi kumpanija xxolji u konsegwentement tigi stralcjata fil-kaz inter alia li l-kumpanija tirrizolvi b`rizoluzzjoni straordinarja li l-kumpanija ghandha xxolji u tkun stralcjata.*

Ghaldaqstant in vista tas-suespost, is-socjeta` rikorrenti titlob umilment lil din l-Onorabbli Qormi joghghobha tordna illi s-socjeta` Gameinvest Ltd, li ghandha n-numru ta` registrazzjoni (C-22775) tigi xjolta u konsegwentement stralcjata minn din l-Onorabbli Qorti, u dana salv kwalsiasi provvediment lid in l-Onorabbli jidhrilha xieraq u opportun.

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

Rat id-digriet taghha tat-13 ta` Novembru 2014.

Rat in-nota b`dokumenti li r-rikorrenti pprezentat fit-12 ta` Dicembru 2014.

Rat id-digriet taghha tat-22 ta` Dicembru 2014 fejn appuntat ir-rikors ghas-smigh ghall-udjenja tal-lum.

Rat il-verbal tal-udjenja tal-lum.

Kopja Informali ta' Sentenza

Rat id-dokument li kien prezentat illum mir-rikorrenti.

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` din id-disposizzjoni 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-kumpanija wara decizjoni tal-laqgħa generali** jew mill-bord tad-diretturi tagħha jew minn xi detentur ta' obligazzjoni, kreditur jew kredituri, jew minn xi kontributorju jew kontributorji.*

(enfasi u sottolinear tal-qorti).

Fil-kaz tal-lum, il-procediment kien inizjat mill-kumpanija wara decizjoni tal-laqgħa generali straordinarja tal-azzjonisti. Għalhekk 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 għall-**Art.214(1)(a) tal-Kap.386** li jaqra hekk –

Kumpanija xxolji u konsegwentement tigi stralcjata fil-kazijiet li gejjin –

...

(a) il-kumpanija tirisolvi b'rizoluzzjoni straordinarja li l-kumpanija għandha xxolji u tkun stralcjata mill-qorti ;

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

Kienet esebita mir-rikorrenti bhala Dok C ir-risoluzzjoni straordinarja li taqra hekk :-

Kopja Informali ta' Sentenza

Extract of the Extraordinary Resolution of Gameinvest Limited (“the Company”) a limited liability Company registered Under the laws of Malta Under registration number C22775, passed at the Extraordinary General Meeting held on the 7th May of the year 2014 at Tower Business Centre, Tower Street, Swatar.

Present for the meeting were :

Mr Joseph Mallia (“JM”) – empowered by Proxy to represent shareholders Mr. Johann Schembri, Pinnacle Gaming Group Limited and Betco Digital Entertainment Limited ;

Mr. Sebastián Dalli (“SD”) – representing himself and Asset Investment Limited ;

Dr. Christian Farrugia (“CF”) – legal representative of Mr. Johann Schembri, Pinnacle Gaming Group Limited, Betco Digital Entertainment Limited and Mr. Joseph Mallia ;

Dr. Gianfranco Gauci (“GG”) – legal representative of Mr. Sebastián Dalli and Asset Investment Limited.

The Chairman moved to the second item of the agenda and referred to the “Notice of the Extraordinary General Meeting” dated 14 April 2014 which states :

“Item 2 – The liquidation and winding up of the Company – In the light of the fact that the Company has not operated or carried out any economic activity for an uninterrupted period of over 24 months, that it is unable to pay its outstanding creditors and that the Company is not in a position to continue with any commercial activities in the future, it is being proponed that the Company be put into liquidation and subsequently wound up.”

The proposal was then put to the vote of the shareholders present.

Kopja Informali ta' Sentenza

To this end, JM representing by way of a Proxy shareholder namely Johann Schembri, Betco Digital Entertainment Limited and Pinnacle Gaming Group Limited voted in favour of the extraordinary resolution that the Company be dissolved and consequently wound up by the Court.

On the other hand, SB abstained.

The resolution that the Company be dissolved and consequently wound up by the Court was therefore passed by the shareholders.

There being no further matters to discuss, the meeting was closed.

L-estratt igib il-firma ta` Johann Schembri bhala *Company Secretary*.

Fit-18 ta` Novembru 2014, ir-rikorrenti kkonsenjat lir-Registratur tal-Kumpanniji l-avviz rikjest bl-**Art.265(1)** tal-Kap. 386 (Dok GI4 a fol 50).

Fit-28 ta` Ottubru 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.

Kopja Informali ta' Sentenza

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 qieghed 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 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.

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-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 C22775 fl-14 ta` April 1998 (Dok 1 a fol 3).

Minn qari tal-*Memorandum* u l-*Articles of Association*, jirrizulta illi diversi huma l-*objects* tal-kumpannija. Dawk ewlenija huma dawk markati bl-ittri (a), (b) u (c). Ighidu hekk :-

a. *To promote and purchase all types of electronic and computerised machines and equipment used in entertainment and ancillary business and to use, sell, rent and lease same whether in localities owned and/or operated by the company and/or third parties.*

b. *To operate bingo halls as well as to purchase, lease, sell and sell machinery equipment ancillary to the said operation.*

c. *To render any type of services related to the machines and equipment mentioned in (a) above to whomever shall required such services and whether such machines and equipment are owned and/or operated by the company and/or third parties.*

L-*Authorised Share Capital* tar-rikorrenti u l-*Issued Share Capital* huma l-istess. L-*Issued Share Capital* huwa *fully paid up*.

L-azzjonisti tal-kumpannija huma :-

Kopja Informali ta' Sentenza

Pinnacle Gaming Group Limited	20,000 –il sehem
Asset Investments Limited	12,750 –il sehem
Johann Schembri	8,625 –il sehem
Betco Holdings Limited	8,375 –il sehem
Sebastian Dalli	2,250 –il sehem

Ir-risoluzzjoni straordinarja li skattat dan il-procediment kienet approvata fil-laqgħa generali straordinarja tal-kumpannija li saret fis-7 ta' Mejju 2014. Għal-laqgħa kienu prezenti l-azzjonisti kollha jew rapprezentanti tagħhom. Jirrizulta li Pinnacle Gaming Group Limited, Johann Schembri u Betco Holdings Limited ivvotaw favur ix-xoljiment u l-istralc tal-kumpannija mill-Qorti, filwaqt li Sebastian Dalli u Asset Investment Limited astjenew fil-vot. Mid-dokument prezentat illum ma jirrizultax illi kien hemm bdil fis-sistemazzjoni tal-ishma tal-kumpannija.

Skont l-Art 27 tal-*Articles of Association* :-

An extraordinary resolution shall be deemed to have been validly carried :

If it has been taken at a general meeting at which notice specifying the intention to propose such resolution as an extraordinary resolution has been duly given ; and

It has been passed by a member or by a number of members having the right to attend and vote at any such meeting holding alone or, as the case may be, in aggregate not less than seventy per cent (70%) in nominal value of the shares conferring that right.

Billi jirrizulta li l-membri li vvotaw favur ir-risoluzzjoni tax-xoljiment u l-istralc tal-kumpanija jippossjedu fl-ghadd aktar minn 70% tal-valur nominali tal-ishma, ir-risoluzzjoni approvata tissoddisfa r-rekwiziti tal-Art 27 tal-*Articles*.

Fl-affidavit tieghu tad-9 ta` Dicembru 2014, Johann Schembri xehed li r-rikorrenti kienet kostitwita bil-ghan illi topera *snooker hall*. Fil-fatt inkera fond go San Giljan ghal dan l-iskop minghand St. Georges Park Company Limited. In-negozju kien operat bejn l-1998 u l-2006. Fis-snin 2004 sa 2006, id-dhul ma kienx bizzejjed biex ilahhaq mal-ispejjez bil-konsegwenza li r-rikorrenti bdiet ghaddejja minn problemi finanzjarji. Biex in-negozju jkun sostenibbli u l-kumpanija tibda tara l-profitt, kien deciz li l-post fejn kien *snooker hall* isir *commercial bingo hall* bl-uzu ta` *electronic bingo machines*. Attivita` ta` din ix-xorta kienet tirrikjedi licenzja specjali u investment qawwi. Il-kumpanija hasbet biex il-post taghha jigi operat minn operatur li diga` kellu licenzja u li kien lest jinvesti fil-progett. Ir-rikorrenti ghamlet ftehim ma` Gaming Operations Limited li permezz tieghu hija bdiet tiehu persentagg mill-introjtu. Hekk sar bejn l-2006 u l-2009. Effett tal-ftehim il-qaghda finanzjarja tar-rikorrenti qalbet ghall-ahjar, sakemm fix-xahar ta` Awissu 2009, il-Gvern irtira kull licenzja li kien hareg ghal *electronic bingo machines*. Din id-decizjoni effettwat drastikament u b`mod negattiv l-operat tar-rikorrenti tant li spiccat f`qaghda li ma tistax thallas lill-haddiema taghha u lill-kredituri taghha fosthom is-sidien tal-fond ; b`hekk il-kirja kellha tigi terminata. Il-kumpanija kienet kostretta thallas €750,000 f`arretrati ta` kera u penali ghat-terminazzjoni bikrija tal-kirja. Sabiex thallas parti mid-djun taghha, il-kumpanija kellha tissellef minghand l-azzjonisti taghha. It-tnehhija tal-licenzja waqfet ghal kollox l-operat tar-rikorrenti b`effett immedjat. Kien ghalhekk li kien deciz li l-kumpanija tigi xjolta u stralcjata.

Kienu prezentati r-*report and financial statements* tal-kumpanija ghas-sena li ghalqet fit-30 ta` Gunju 2012. Fid-*Directors` Report*, jinghad li *the company did not trade during the year under review. It is the intention of the directors to place the company into liquidation. As at 30 June 2012, the company reports a net deficiency position of €956,040 as compared to a deficiency of €926,487 as at 30 June 2011.* Fl-*Auditor` Report* jinghad li *at the end of the*

Kopja Informali ta' Sentenza

reporting period, the company's current liabilities exceeded its current assets by €956,040. I believe that the going concern concept of accounting is no longer applicable.

Kienu prezentati wkoll *r-report and financial statements* tal-kumpannija ghas-sena li ghalqet fit-30 ta' Gunju 2013. Fid-*Directors' Report*, jinghad li *the company did not trade during the year under review. It is the intention of the directors to place the company into liquidation. As at 30 June 2013, the company reports a net deficiency position of €957,102 as compared to a deficiency of €956,040 as at 30 June 2012.* Fl-*Auditor' Report* jinghad li *at the end of the reporting period, the company's current liabilities exceeded its current assets by €957,012. I believe that the going concern concept of accounting is no longer applicable.*

Il-kwadru li johrog tar-rikorrenti mhuwiex felici. Ladarba rrizulta li waqfet ghal kollox milli topera n-negozju taghha certament ghal zmien ininterrott ta' aktar minn sentejn, il-kumpannija mhijex tiggenera dhul, u ladarba huwa bid-dhul li jkun jista' jithallas id-dejn u jsir investiment, il-prospettivi tar-rikorrenti jibqghu hziena. Il-bicca l-kbira tal-azzjonisti intervenew b'self dirett lill-kumpannija sabiex tkun tista' thallas almenu parti mid-djun taghha. Fl-istess waqt huwa evidenti li l-azzjonisti ddikjaraw il-kumpannija bhala *un capitolo chiuso* u ma wrew l-ebda hsieb minhabba l-mod kif jirrizulta li svolga s-settur tal-*gaming* li jaghmlu *an injection of fresh capital* fil-kumpannija. Il-konsegwenza ta' dan kollu hija li kif inhi llum ir-rikorrenti sejra tkompli tiggenera t-telf. Ghalhekk 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 tal-Art. 214(1)(a) tal-Kap. 386 tal-Ligijiet ta` Malta, tordna x-xoljiment u l-istralc tal-kumpannija Gameinvest Ltd (C22775) b`effett mis-7 ta` Mejju 2014, skond kif jipprovdi t-tieni proviso tal-Art 223(1) tal-Kap 386 ;

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

Fit-tielet lok, tordna li l-ispejjez ta` dan il-procediment sal-lum għandhom jithallsu mir-rikorrenti.

Fir-raba` lok, bl-applikazzjoni tal-Art 236(2) tal-Kap 386 tal-Ligijiet ta` Malta, tordna li l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tar-Ricevitur Ufficjali fil-vesti tiegħu ta` stralcjarju, għandhom jithallsu minn Pinnacle Gaming Group Limited, Asset Investments Limited, Johann Schembri, Betco Holdings Limited u Sebastian Dalli *in solidum* bejniethom bhala azzjonisti tar-rikorrenti.

Thalli l-istralc għall-udjenza ta` nhar it-Tlieta 17 ta` Marzu 2015 fid-9.00 a.m.

< Sentenza In Parte >

-----TMIEM-----