



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta ta' l-24 ta' Marzu, 2015

Citazzjoni Numru. 203/2014

Anthony Mifsud (ID 255865M) u Steven Agius (ID 220869M)

kontra

Turmaly Projects Limited (C-48579)

u

**Bis Holding Limited (C-48574) bhala membru/azzjonist ta` Turmaly
Projects Limited (C-48579), u b`digriet tat-30 ta` Ottubru 2014 l-Av.
Fransina Abela kienet konfermata bhala kuratur deputat biex**

**tirrapprezenta liz-zewg kumpanniji intimati, wara li b`nota tat-30 ta`
Ottubru 2014 l-istess Av. Fransina Abela accettat il-bandu tal-hatra**

Il-Qorti :

I. Preliminari

Rat ir-rikors guramentat prezentat fis-6 ta` Marzu 2014 li jaqra hekk :—

1. Premess illi s-socjeta` konvenuta giet kostitwita fil-hamsa ta` Jannar elfejn u ghaxra (05.01.2010) u kopja tal-istatut taghha jinsab hawn anness u mmarkat Dok TPL1 ;

2. Premess illi l-membri tas-socjeta` konvenuta huma l-istess rikorrenti flimkien ma` socjeta` bl-isem ta` BIS Holding Limited, socjeta` kostitwita f`Malta bin-numru ta` registrazzjoni C-48574 ;

3. Premess illi BIS Holding Limited hija socjeta` kostitwita b`membru wiehed biss li huwa Ibrahim Aslan, li huwa wkoll direttur tas-socjeta` konvenuta ;

4. *Premess illi l-hsieb li kellhom il-membri bil-kostituzzjoni ta` din is-socjeta` ma rnexxiex, tant li din ilha ma taghmel negozju sa mill-2011 u minn dak iz-zmien `il quddiem is-socjeta` konvenuta giet abbandunata u ma kellha l-ebda profitti izda biss spejjez ta` amministrazzjoni, tant li l-ahhar audited accounts huma tal-2011 hekk kif jidher mid-dokument hawn anness u mmarkat TPL2;*

5. *Premess illi r-relazzjonijiet ta` bejn il-membri ddeterjoraw irrimedjabilment b`mod li m`ghadux iktar possibbli li s-socjeta` tibqa` tintuza ghall-iskop li ghalih giet imwaqqfa ;*

6. *Premess ukoll illi r-rikorrenti ghamlu diversi tentattivi sabiex ikellmu lil Ibrahim Aslan kif ukoll sabiex issir laqgħa generali tas-socjeta` konvenuta bl-iskop ewlieni li s-socjeta` tigi xolta (Dok TPL3), izda dawn it-tentattivi kienu kollha inutili, tant li l-ittra registrata li ntbagħtet lil Ibrahim Aslan fl-indirizz li pprova huwa stess, giet ritornata lura b`nota li dan l-indirizz ma jezistix (Dok TPL4) ;*

7. *Illi biex is-socjeta` konvenuta tigi xolta u stralcjata tehtieg risoluzzjoni straordinarja ta` mhux inqas minn 75% tal-membri tal-istess socjeta` u għaldaqstant ir-rikorrenti wahedhom ma jistghux jghaddu din ir-risoluzzjoni ;*

8. *Premess illi bhala konsegwenza ta` dan kollu kif ukoll tal-fatt li s-socjeta` konvenuta ilha inattiva sa mill-2012 tant li fit-23 ta` Awwissu tas-sena 2012 ir-rikorrenti Anthony Mifsud irrizenja minn segretarju tas-socjeta` konvenuta u sussegwentement f`Awwissu 2013 iz-zewg rikorrenti rrizenjaw ukoll minn diretturi u rapprezentanti legali tal-istess socjeta` (Doks TPL 5-6) ;*

9. *Premess illi bhala konsegwenza, is-socjeta` konvenuta ilha sa minn Awwissu 2012 minghajr segretarju u dan kontra d-disposizzjonijiet fir-rigward tal-Kap 386 ;*

10. *Premess illi ai termini tal-artikolu 214(2)(a)(i) tal-Kap 386 kumpannija tista` xxolji u tkun stralcjata mill-Qorti jekk in-negozju tal-kumpannija jkun sospiz ghal perjodu bla waqfien ta` ebrgha u ghoxrin xahar kif inhu l-kaz odjernm;*

11. *Premess illi ai termini tal-artikolu 214(2)(b) kumpannija ghandha tkun xolta bil-Qorti fil-kazijiet jekk (ii) in-numru ta` diretturi jkun nizel ghal inqas mill-minimu preskritt bl-artikolu 137 u jibqa` hekk nieqes ghal aktar minn sitt xhur u (iii) il-Qorti tkun tal-fehma li hemm ragunijiet gravi bizzejjed li jiggustifikaw ix-xoljiment u konsegwentement l-istralc tal-kumpannija ;*

12. *Premess illi dan kollu jinkwadra ruhu fic-cirkostanzi tas-socjeta` konvenuta.*

Tghid ghalhekk is-socjeta` konvenuta ghaliex ghar-ragunijiet fuq imsemmija din il-Qorti m`ghandhiex :

1. *Tiddikjara, ai termini tal-artikoli 214(2)(a)(i) jew/u 214(2)(b)(ii) u (iii) fuq citati, li hemm ragunijiet sufficjenti ghax-xoljiment u stralc tas-socjeta` Tumaly Projects Limited ;*

2. *Tordna x-xoljiment u l-istralc tas-socjeta` Turmaly Projects Limited* ;

3. *Tordna lir-Registratur tal-Qorti sabiex jikkonsenja lir-Registratur tas-Socjetajiet kummercjali ghar-registrazzjoni u pubblikazzjoni l-avviz tax-xoljiment u stralc relattiv tas-socjeta` Turmaly Projects Limited ;*

4. *Tinnomina u tahtar stralcatarju, jekk inhu l-kaz, biex isir l-istralc tas-socjeta` Turmaly Projects Limited bis-setghat u d-dmirijiet kif huma definiti u previsti fil-Kap. 386.*

Rat il-lista tax-xhieda ndikati mir-rikorrenti u l-elenku ta` dokumenti li kienu prezentati mar-rikors guramentat.

Semghet ix-xiehda ta` Raymond Vella fl-udjenza tas-16 ta` Ottubru 2014 u rat id-dokument li pprezenta.

Rat in-nota li pprezentat l-Av. Fransina Abela fit-30 ta` Ottubru 2014 li taqra hekk :-

Li permezz taghha qieghda taccetta l-bandu fil-kawza odjerna u b`hekk tirrapprezenta z-zewg socjetajiet intimati ghall-finijiet tar-rikors promotur fl-atti ta` din il-kawza kif ukoll fl-atti konnessi u sussegwenti li jkunu mehtiega u dan

Kopja Informali ta' Sentenza

filwaqt li peress illi mhux edotta mill-fatti, tiriserva li tissottometti risposta ulterjuri meta tkun taf il-fatti u dan flimkien mal-Prokuratur Legali Josette Attard. Illi mhux edott mill-fatti u jiriserva li jissottometti risposta ulterjuri meta jkun jaf il-fatti.

Semghet ix-xiehda tar-rikorrent Anthony Mifsud fl-udjenza tas-17 ta` Frar 2015.

Rat id-digriet taghha moghti fl-istess udjenza fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti tal-kawza.

Ikkunsidrat :

II. Ix-xiehda ta` Anthony Mifsud

Ir-rikorrent **Anthony Mifsud** xehed illi huwa kien direttur tal-kumpannija Turmaly Projects Limited (“Turmaly”) pero` ghadu azzjonista taghha. L-istess ir-rikorrent l-iehor Steven Agius : kien direttur pero` rrizenja izda baqa` azzjonista. In-negozju tal-kumpannija kien kostitwit mill-importazzjoni ta` prodotti mit-Turkija bhal PVC, irham u aluminium. Turmaly damet tinnegozja ghal xi sentejn wara li kienet kostitwita, imbaghad huma tilfu kull kuntatt ma` Bis Holding Limited (“Bis”) li l-azzjonista u direttur taghha huwa cittadin mit-Turkija. Bis kienet azzjonista ta` Turmaly. Hu u r-rikorrent

Kopja Informali ta' Sentenza

L-iehor ippruvaw jaghmlu kuntatt bit-telefon, bl-email, permezz ta` ittri izda kien kollu ghalxejn. Ir-rikorrent l-iehor Steve Agius sahsitra mar di persona t-Turkija jfittex lid-direttur ta` Bis izda ma rnexxielux isib tarf. Fis-sitwazzjoni li sabu ruhhom fiha, huma xtaqu jxolju l-kumpanija b`mod volontarju pero` dan ma setax isir minhabba li hu u r-rikorrent l-iehor ma kellhomx bizzzejjed ishma biex flimkien ighaddu rizoluzzjoni straordinarja. Sabiex isir xoljiment volontarju tal-kumpanija, kien ghalhekk mehtieg li taccetta Bis ukoll izda billi tilfu kull kuntatt maghha kellhom imorru ghall-procedura ta` xoljiment u stralc bil-Qorti. Huma ma kellhomx post tan-negozju ; kellhom ufficcju registrat li kien l-indirizz tar-rikorrent Steve Agius. In-negozju ta` Turmaly waqaf ghal kollox fil-bidu tal-2012 u hekk baqa` anke sal-lum. Turmaly la kellha assi u lanqas djun.

Ikkunsidrat :

III. Dokumenti

1) L-istatut

Kien prezentat mir-rikorrenti l-*memorandum* u l-*articles of association* ta` Turmaly (Dok TPL1).

Minn dan id-dokument jirrizulta hekk :-

i) Il-kumpanija kienet registrata fil-5 ta` Jannar 2010 bir-nru C48579.

Kopja Informali ta' Sentenza

ii) L-indirizz registrat taghha kien 190, Triq il-Fortizza, Qasam Industrijali, Mosta.

iii) L-ghan principali taghha huwa *to carry on the business and generally trade under any title whatsoever in the manufacturing business of aluminium, metal profiles and accessories, including but not limited to the manufacture and sale of doors, windows and general fixtures for the construction industry at large whether in Malta or abroad, which goods are to be manufactured in Malta or abroad for export.*

iv) Il-kapital azzjonarju huwa kompost minn 1200 Ordinary Shares b'valur ta' €1 ghal kull sehem maqsum in kwantu ghal 480 Ordinary Shares ghand Bis, 360 Ordinary Shares ghand Anthony Mifsud u 360 Ordinary Shares ghand Steven Agius. Dan ifisser li r-rikorrenti ghandhom flimkien 60% tal-ishma waqt li Bis ghandha 40%.

v) Meta kienet kostitwita, Turmaly kellha tliet diretturi u cioe` iz-zewg rikorrenti u Ibrahim Aslan. Is-segretarju kien r-rikorrent Anthony Mifsud.

vi) L-Art 18 tal-articles of association jittratta r-risoluzzjonijiet straordinarji u jghid hekk :-

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

a) *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*

b) *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 80% in nominal value of the share conferring that right.*

2) L-annual report ghas-sena 2011

Dan huwa Dok TPL2. Minnu jirrizulta hekk :

i) L-ufficju registrat kien inbidel ghal Shanti Court Flat 1, Triq Edgar Bernard, Gzira.

ii) Fir-rapport tad-diretturi li kien iffirmat minn Ibrahim Aslan u Steve Agius jinghad inter alia :

During the year under review, the company did not engage in any trading activity (in 2010 – nil) other than purchasing goods towards the end of the year which remained in inventories. Consequently the company incurred a pre-tax loss of €950 (in 2010 – a pre-tax loss of € 2,382). As at year-end the company reported a net liability of €2,132 (in 2010 - €1,182). The directors expect the operations of the company to commence in the foreseeable future.

3) L-ittra tat-18 ta` Novembru 2013

Din hija Dok TPL4. Kienet mibghuta lid-direttur Ibrahim Aslan minn Dr Geoffrey Mifsud Farrugia. Inter alia jinghad hekk : *This company (u cioe` Turmaly) is incurring expenses on a yearly basid but is not operating and there is no indication that it will be operating in the future. Mr Mifsud and Mr Agius have resigned their posts as directors of the company ...* L-ittra giet lura mhux notifikata.

4) **Ir-rizenji tar-rikorrenti**

Skond Dok TPL5 u TPL6, jirrizulta li Anthony Mifsud u Steven Agius irrizenjaw minn diretturi b`effett mis-6 ta` Awissu 2013.

Ikkunsidrat :

IV. **Risultanzi**

1) **Locus standi tar-rikorrenti**

L-iskop dikjarat tar-rikorrenti huwa li jitolbu x-xoljiment u stralc ta` Turmaly skond l-**Art 214(2)(a)(i) u/jew l-Art 214(2)(b)(ii) u/jew (iii) tal-Kap 386.**

L-eligibilita` o meno tar-rikorrenti sabiex jittentaw l-azzjoni tal-lum hija stabbilita` bl-**Art 218 tal-Kap 386.**

Skond l-Art 218(1)(b) u (c), talba lill-Qorti fejn jintalab ix-xoljiment u l-istralc ta` kumpannija skond l-Art 214(2)(a) u l-Art 214(2)(b) ghandu jsir

Kopja Informali ta' Sentenza

b`rikors, u fost il-persuni li jistghu jipprezentaw ir-rikors hemm inkluzi l-azzjonisti.

Fil-kaz tal-lum, irrizulta li r-rikorrenti jippossjedu flimkien 60% tal-ishma tal-kumpannija. Ghalhekk ghax huma azzjonisti ghandhom *locus standi* sabiex jittentaw l-azzjoni tal-lum.

2) L-Art 214(2)(a)(i) tal-Kap 386

Skond l-Art 214(2)(a)(i) tal-Kap 386, *kumpannija tista' xxolji u tkun stralcjata mill-qorti ... jekk in-negozju tal-kumpannija jkun sospiz ghal perjodu bla waqfien ta' erbgha u ghoxrin xahar.*

Sabiex jissussisti dak li qeghda tesigi din id-disposizzjoni, jehtieg : i) li jkun hemm is-**sospensjoni tan-negozju** tal-kumpannija ; ii) ghal perijodu **bla waqfien** iii) ta` erbgha u ghoxrin **(24) xahar**.

Il-prova tat-tliet rekwiziti hija ghalhekk kwistjoni ta` fatt.

Jidher illi d-disposizzjoni kellha l-origini taghha fl-Art 12(1)(d) tal-UK Insolvency Act 1986, liema disposizzjoni Ingliza m`ghadhiex taghmel parti mill-Act, ghax kienet superata b`legislazzjoni aktar ricenti.

Fil-pag 1020 ta' "*Principles of Maltese Company Law*" (Malta University Press – 2007) Andrew Muscat jirreferi ghal sentenza moghtija mill-Qorti tal-Kummerc fid-29 ta' Marzu 1979 fil-kawza "Joseph Zammit Tabona noe vs Francis Zammit Tabona noe et" u jghid hekk :-

... a case decided under the Commercial Partnerships Ordinance, a company had completely stopped its manufacturing and commercial activities. These activities had, for all practical purposes, been in the hands of the holder of half of the issued share capital of the company. This person had however been absent from Malta for the previous five years and was no longer in touch with the other directors of the company. The Court ordered the dissolution and winding up of the company on the basis of article 150(b) of the Commercial Partnerships Ordinance (although the plaintiff had requested the dissolution of the company on the grounds of sufficient gravity). Under the Companies Act, the same factual scenario would probably give rise to a dissolution under both article 214(2)(a)(i) and article 214(2)(b)(iii).

Fil-kaz tal-lum, kien diga` rrizulta b`dikjarazzjoni li ghamlu Ibrahim Aslan u Steven Agius fir-rapport taghhom bhala diretturi mal-*financial statements* ghas-sena 2011 illi *during the year under review, the company did not engage in any trading activity (in 2010 – nil) other than purchasing goods towards the end of the year which remained in inventories.* Fix-xiehda tieghu, ir-rikorrent Anthony Mifsud stqarr illi fis-snin ta` wara nkluz fid-data tal-presentata tar-rikors promotur, u anke wara, in-negozju ta` Turmaly kien wieqaf ghal kollox.

Il-Qorti tqis li dak tal-lum mhuwiex kaz fejn it-thaddim tan-negozju tal-kumpannija kien sospiz minhabba xi kontingenza limitata fiz-zmien. Tal-lum huwa kaz fejn ir-rikorrenti tilfu kull kuntatt mal-azzjonista barrani b`tali mod illi sabiex ma jibqghux jiffaccjaw l-ispejjez ta` l-gestjoni ta` kumpannija li m`ghandhiex negozju hadu decizjoni li jirrizenjaw minn diretturi. Rilevanti hafna huwa l-fatt l-prodott taghhom kien jigi mit-Turkija fejn kienet topera Bis. Ghalhekk kif appena r-rikorrenti tilfu l-kuntatt ma` Ibrahim Aslan waqaf is-sors tan-negozju taghhom. U ma kienx ragonevoli u lanqas mistenni mir-rikorrenti li ladarba Bis qatghet kull kuntatt maghhom jittentaw ifittxu jgibu x-xoghol minn

band`ohra. Bis ma kenitx qeghda hemm biex tgawdi mill-beneficcji tan-negozju tal-kumpannija izda kien jinkombi fuqha l-obbligu li terfa` mal-azzjonisti l-ohra l-pizijiet tan-negozju.

Fil-fehma tal-Qorti, jirrizultaw ippruvati r-rekwiziti tal-Art 214(2)(a)(i) tal-Kap 386.

3) Id-diskrezzjoni tal-Qorti

Il-Qorti taghmel riferenza ghal *Palmer's Company Law* (Edition 25 - Sweet & Maxwell) fejn jinghad hekk –

The court's jurisdiction is discretionary and the fact that the petitioner can establish this ground does not give him an automatic right to an order (re. Metropolitan Railway Warehousing Co. Ltd 1887.36.LJCh 827). The court has refused to make an order where there are good reasons for the delay and where the great majority of members desire that the company shall continue. An order may however be made in appropriate circumstances against the majority's wishes. Where the business has merely been suspended the court must be satisfied of an abandonment or inability to carry on. In ascertaining such intention the court will have regard to the opinion and wishes of the majority of shareholders whose names appear on the register. Merely abandoning one of several objects is insufficient (re. Norwegian Titanic Iron Co. (1866) 35 Beav.223).

Fil-kaz tal-lum irrizulta ppruvat illi n-negozju tal-kumpannija waqaf ghal aktar minn 24 xahar mid-data tal-presentata tar-rikors promotur. Waqaf anke ghaliex l-azzjonista li jzomm 40% tal-ishma ta` Turmaly ittronka kull kuntatt mal-azzjonisti l-ohra. Huwa evidenti li l-azzjonisti li jzommu l-maggoranza tal-ishma ma jistghu jghaddu l-ebda risoluzzjoni straordinarja billi skond l-*articles of association* din it-tip ta` risoluzzjoni tirrikjedi mhux anqas minn 80% tal-

Kopja Informali ta' Sentenza

ishma. Il-posizzjoni ta' Turmaly llum hija dik ta' kumpannija li mhijiex tinneozja u allura la qeghda tiggenera dhul u lanqas qeghda tilhaq l-iskopijiet li ghalihom kienet kostitwita. Fil-gurisdizzjoni ta' Malta, ma hemmx diretturi prezenti billi r-rikorrenti irrizenjaw minn dik il-kariga. Kif ukoll l-azzjonista l-iehor qata' kull kuntatt u almenu fuq l-iskorta tal-provi mhux juri aktar interess fin-negozju tal-kumpannija. Tal-lum ma jidhirx li huwa kaz fejn in-negozju kien biss sospiz ghal xi zmien. Jirrizulta ppruvat illi n-negozju waqaf ghal kollox u ma hemmx ir-rieda kollettiva tal-azzjonisti li jergghu jdawwru r-rota mill-gdid. Rinfaccjata b'dik is-sitwazzjoni fejn ironikament l-azzjonisti bil-maggoranza tal-ishma f'idejhom qeghdin jigu pregudikati mill-inerzja tal-azzjonista l-iehor li jzomm il-minoranza tal-ishma, il-Qorti tghid illi x-xoljiment u l-istralc ta' Turmaly huwa inevitabli.

4) L-Art 214(2)(b)(ii) u (iii) tal-Kap 386

Billi l-Qorti qeghda tezercita d-diskrezzjoni taghha u qeghda tordna x-xoljiment u l-istralc ta' Turmaly Projects Limited abbazi tal-Art 214(2)(a)(i) tal-Kap 386, il-Qorti ma tarax il-htiega li tmur ghal analizi ta' jekk saritx il-prova skond l-Art 214(2)(b)(ii) u (iii) tal-Kap 386.

5) It-tielet talba

It-tielet talba tar-rikorrenti mhijiex sejra tinghata konsiderazzjoni billi dak li qiegħed jintalab mir-rikorrenti mhuwiex rikjest mil-ligi. Fi kwalunkwe kaz, kif jirrizulta mill-atti, ir-Registratur diga' huwa edott bil-procediment tal-lum.

Provvediment

Ghar-ragunijiet kollha premessi, il-Qorti ttiprovdi dwar it-talbiet tar-rikorrenti billi :-

1) Tiddikjara li fir-rigward tal-kumpannija intimata Turmaly Projects Limited (C-48579) jirrizultaw pruvati sal-grad rikjest mil-ligi r-rekwiziti tal-Art 214(2)(a)(i) tal-Kap 386 tal-Ligijiet ta` Malta.

2) Tordna x-xoljiment tal-kumpannija intimata Turmaly Projects Limited b`effett mis-6 ta` Marzu 2014 skond l-Art 223(1) tal-Kap 386. Tordna wkoll l-istralc taghha.

3) Tastjeni milli ttiprovdi dwar ix-xoljiment u l-istralc tal-kumpannija intimata Turmaly Projects Limited (C-48579) skond l-Art 214(b)(ii) u (iii) tal-Kap 386 tal-Ligijiet ta` Malta.

4) Tastjeni milli tiehu konjizzjoni ulterjuri tat-tielet talba tar-rikorrenti.

5) Tahtar lill-Awditur Michelle Spiteri Bailey bhala stralcjarja tal-kumpannija intimata Turmaly Projects Limited (C-48579) bis-setghat u d-dmirijiet kollha previsti mid-disposizzjonijiet tal-Kap 386 tal-Ligijiet ta` Malta.

6) Tordna lir-rikorrenti u liz-zewg kumpanniji intimati sabiex *in solidum* bejniethom ihallsu l-ispejjez kollha, inkluzi l-ispejjez tal-kuratur deputat, l-ispejjez tal-istralc, kif ukoll id-drittijiet u l-ispejjez tal-istralcjarja, u dan bl-applikazzjoni tal-Art 236(2) tal-Kap 386.

Thalli l-istralc ghall-udjenza ta` nhar it-Tlieta 7 ta` Lulju 2015 fid-9.00 a.m.

< Sentenza Finali >

-----TMIEM-----