



QORTI CIVILI PRIM'AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tnejn 30 ta` Novembru 2015

Kawza Nru. 18
Rik. Nru. 364/15 JZM

Joseph Farrugia u Karmenu Farrugia

kontra

NFR Limited [C49560]

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fil-21 ta` April 2015 li jaqra hekk :-

Illi l-esponenti huma kredituri tal-kumpannija intimata fl-ammont ta` erbgħa u hamsin elf erba` mija wiehed u tmenin Ewro (€54,481), oltre l-imghaxijiet kummercjali u l-ispejjez gudizzjarji, u dan in forza ta` sentenza mogħtija mill-Onorabbli Prim` Awla tal-Qorti Civili fl-ismijiet “Joseph Farrugia u Karmenu Farrugia vs. NFR Limited” (Rikors Mahluf Numru 1167/2013 SM) fl-10 ta` Gunju 2014.

Illi sal-lum il-kumpannija intimata ghadha ma hallset xejn lill-esponenti minn dan il-kreditu dovut lilhom, u dan minkejja li fil-25 ta` Lulju 2014, huma ottjenew l-ispedizzjoni ta` mandat ta` sekwestru eżekuttiv bin-numru 1129/2014.

Illi kif se jigi ppruvat waqt it-trattazzjoni ta` dan ir-rikors, il-kumpannija intimata ma tistax thallas id-djun taghha u ghalhekk hija insolventi inter alia ai termini tal-Artikolu 214(2)(a)(ii) tal-Att dwar il-Kumpanniji b`applikazzjoni tal-Artikolu 214(5) tal-istess Att.

Illi l-kumpannija intimata ilha fi stat ta` insolvenza ghal zmien twil, u dan kif jafu jew kif imisshom kienu jafu d-diretturi taghha.

Illi barra minn hekk, jirrizulta li l-kumpannija intimata qatt ma prezentat l-audited accounts taghha lir-Registratur tal-Kumpanniji kif titlob il-ligi.

Illi dawn in-nuqqasijiet gew ilkoll perpetrati mill-kumpannija intimata u mid-diretturi taghha sabiex jigu eluzi d-drittijiet tal-kredituri tal-kumpannija intimata.

Illi ghalhekk ix-xoljiment u l-istralc konsegwenzjali tal-kumpannija intimata huwa gustifikat u mehtieg mic-cirkostanzi premessi, liema cirkostanzi huma fil-fatt serji u gravi ai termini tal-Artikolu 214(2)(b)(iii) tal-Att dwar il-Kumpanniji.

Ghaldaqstant ghar-ragunijiet kollha hawn fuq premessi, l-esponenti qieghdin umilment jitolbu lil dina l-Onorabbli Qorti joghghobha:

(1) Tiddikjara u tiddeciedi li l-kumpannija intimata mhijiex f`qaghda li thallas id-djun taghha ai termini tal-Artikolu 214(2)(a)(ii) tal-Att dwar il-Kumpanniji ;

(2) *Tiddikjara u tiddeciedi illi jezistu ragunijiet gravi bizzejjed li jiggustifikaw ix-xoljiment u konsegwentement l-istralc tal-kumpannija intimata ai termini tal-Artikolu 214(2)(a)(iii) tal-Att dwar il-Kumpanniji ;*

(3) *Tordna x-xoljiment u l-istralc konsegwenzjali tal-kumpannija intimata a tenur tal-Artikolu 214(2)(a)(ii) u/jew tal-Artikolu 214(2)(b)(iii) tal-Att dwar il-Kumpanniji ;*

(4) *Tahtar stralcjarju biex jikkonduci l-istralc konsegwenzjali tal-kumpannija intimata, bis-setghat necessarji skont id-disposizzjoni tal-Att dwar il-Kumpanniji, kif ukoll taghti dawk il-provvedimenti kollha opportuni fir-rigward, u dan kollu previa kull dikjarazzjoni u ordni ohra li dina l-Onorabbli Qorti jkun jidhrilha mehtiega u opportuna.*

Bl-ispejjez u b`riserva ghal kull azzjoni ohra spettanti lill-esponenti skont il-ligi, u bl-ingunzjoni ghas-subizzjoni tar-rapprezentanti gudizzjarji u legali tal-kumpannija intimata.

Rat il-lista tax-xhieda ndikati mir-rikorrenti u l-elenku ta` dokumenti esebiti mar-rikors.

Rat id-digriet li tat fil-11 ta` Mejju 2015 fejn ordnat in-notifika tar-rikors u tal-avviz tas-smigh tal-kawza lill-kumpannija intimata, li kellha zmien ghoxrin (20) jum min-notifika sabiex tippresenta risposta, kif ukoll appuntat l-kawza ghas-smigh ghat-2 ta` Gunju 2015 fid-9.00 a.m.

Rat illi ghalkemm is-socjeta` ntimata kienet debitament notifikata skond il-ligi bir-rikors promotur u bl-avviz tas-smigh ma pprezentatx risposta.

Semghet ix-xiehda ta` Joanna Bartolo, Audrey Ghigo, Jeanette Lepre, David Galea, Av. Claudette Fenech, P.L. Eunice Fiorini, tar-rikorrent Joseph Farrugia u tar-rikorrent l-iehor Karmenu Farrugia fl-udjenza tad-19 ta` Novembru 2015.

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

Rat l-atti l-oħra tal-kawza.

II. Locus standi

Fil-materja ta` xoljiment u stralc ta` kumpannija, id-disposizzjoni li tistabilixxi min għandu jedd jagħti bidu għall-procediment hija l-**Art 218(1) tal-Kap 386** li taqra hekk :-

(1) *Talba lill-qorti (aktar `il quddiem imsejha "rikors għal stralc") għal -*

(a) *stralc ta' kumpannija mill-qorti skont l-artikolu 214(1)(a);*

(b) *xoljiment u stralc ta' kumpannija mill-qorti skont l-artikolu 214(2)(a);*

jew

(c) *xoljiment u stralc ta' kumpannija skont l-artikolu 214(2)(b)*

*għandha ssir b'rikors li jista' jsir jew mill-kumpannija wara deċiżjoni tal-laqgħa ġenerali jew mill-bord tad-diretturi tagħha jew minn xi detentur ta' obligazzjoni, **kreditur jew kredituri** (enfasi ta` din il-qorti) jew minn xi kontributorju jew kontributorji :*

Izda rikors skont il-paragrafi (b) jew (c) jista' wkoll isir minn xi azzjonist jew direttur tal-kumpannija.

Fil-kaz tal-lum, jirrizulta li r-rikorrenti huma **kredituri** tas-socjeta` ntimata u għalhekk għandhom *locus standi* li jistitwixxu dan il-procediment.

III. L-istanza tar-rikorrenti

Bl-azzjoni tagħhom tal-lum, ir-rikorrenti qeghdin jitolbu x-xoljiment u l-istralc tas-socjeta` NFR Limited (C49560) abbazi ta` :

(a) **l-Art 214(2)(a)(ii) u l-Art 214(5)(a) tal-Kap 386** ;

(c) **l-Art 214(2)(b)(iii) tal-Kap 386.**

IV. L-Art 214(2)(a)(ii) tal-Kap 386

Bl-Art 214(2)(a) tal-Kap 386 il-ligi taghti lill-Qorti diskrezzjoni li xxolji u tistralcja kumpannija f'zewg cirkostanzi. Dik invokata mir-rikorrent hija is-subinciz **(ii)** tal-paragrafu (a) : *jekk il-kumpannija ma tkunx tista' thallas id-djun taghha.*

Dan is-subinciz **(ii)** ma jistax jitqies bhallikieku kien xi disposizzjoni izolata izda ex lege jrid jinqara flimkien ma` l-Art 214(5) tal-Kap 386 li jistabilixxi meta kumpannija ghandha titqies li ma tkunx tista` thallas id-djun taghha.

Tnejn huma c-cirkostanzi definiti mil-ligi –

(a) jekk id-dejn dovut mill-kumpannija jkun baqa' ma thallasx ghal kollox jew f'parti wara erbgħa u ghoxrin gimgha mill-ezekuzzjoni ta' titolu eżekuttiv kontra l-kumpannija b`xi wiehed mill-atti eżekuttivi msemmijin fl-artikolu 273 tal-Kodici ta' Organizzazzjoni u Procedura Civili

jew

(b) jekk ikun ippruvat għas-sodisfazzjon tal-qorti li l-kumpannija ma tkunx tista' thallas id-djun taghha, meta din tqis ukoll il-passiv kontingenti u prospettiv tal-kumpannija.

Ir-rikorrenti qeghdin jindirizzaw il-lanjanza tagħhom esklussivament fuq il-paragrafu (a).

V. L-Art 214(5)(a) tal-Kap 386

Il-Qorti tirrileva illi meta tfassal il-mudell għal-ligi tagħna l-gdida dwar il-kumpanniji, il-qafas magħzul kien dak tal-Companies Act Ingliza 1985.

Fil-ligi Ingliza, ix-xoljiment u l-istralc ta` kumpanniji kien trattat permezz ta` legislazzjoni *ad hoc* u cioè` l-Insolvency Act 1986.

Meta fl-1995 saret il-ligi taghna l-gdida dwar il-kumpanniji (illum Kap 386) biex tiehu post il-Commercial Partnerships Ordinance 1962, id-disposizzjonijiet li jolqtu x-xoljiment u l-istralc kienu integrati fl-Att tal-1995.

Fil-ligi taghna, li *kumpannija ma tkunx tista` thallas id-djun taghha* ghandu sinjifikat preciz u definit mil-ligi stess fl-Art 214(5). Fil-ligi Ingliza, il-posizzjoni hija aktar wiesgha. Il-koncett ta` insolvenza fil-ligi taghna huwa aktar ristrett minn dak tal-ligi Ingliza ghalkemm hemm *overlaps*.

Fit-Tmien Edizzjoni (2012) ta` l-ktieb **Boyle & Birds` Company Law** (pubblikat minn Jordans) pg 859 jinghad hekk –

There are two principal, although not exclusive or exhaustive, tests of insolvency : a company is insolvent if it unable to pay its debts as they fall due (“cash flow insolvency”) ; it is also insolvent if its liabilities exceed its assets (“balance sheet insolvency”) ...

Fil-Kap 386, *cash flow insolvency* tista` tigi abbinata mal-paragrafu **(a)** tal-Art 214(5) waqt li *balance sheet insolvency* tista` tigi abbinata mal-paragrafu **(b)** tal-istess Art 214(5).

Billi r-rikorrenti mexxew l-istanza taghhom esklussivament fuq l-Art 214(5)(a) tal-Kap 386, il-Qorti sejra taghmel riferenza ghad-dottrina Ingliza dwar *cash flow insolvency*.

Fil-kaz ta` *cash flow insolvency* din il-Qorti tghid illi filwaqt illi fil-Kap 386 huwa specifikat bil-preciz x` m`ghandhiex taghmel kumpannija debitrice sabiex ma tkunx meqjusa li ma tistax thallas id-djun taghha, fil-ligi Ingliza, il-kriterju huwa aktar generiku ghax tkun tirrizulta dik it-tip ta` insolvenza *if it unable to pay its debts as they fall due*.

Fil-Boyle & Birds` Company Law (op. cit.) ikompli jinghad hekk :-

Failure to pay a debt which is due and not disputed amounts to evidence of cash flow insolvency. Thus a company which has a policy of late payment of bills could find itself the subject of a petition for a winding-up order or administration order. Such a petition will not be struck out at an

early stage as a form of improper pressure and an abuse of the process of the court, because, as Staughton LJ explained in Taylor's Industrial Flooring (1990. BBC 44 at 51) creditors, not late payers, are more worthy of insolvency law's protection.

"Many people today seem to think that they are lawfully entitled to delay paying their debts when they fall due or beyond the agreed period of credit, if there is one ... This can cause great hardship to honest traders, particularly those engaged in small businesses recently started. Anything which the law can do to discourage such behaviour in my view should be done."

The position is different if there is a bona fide dispute about a debt. A petition based on a disputed debt will usually be dismissed because the procedure is ill-equipped to resolve factual matters. However it will not be dismissed where the petitioning creditor has a good arguable case and the dismissal would deprive the petitioner of a remedy, injustice would otherwise result, or there is some other sufficient reason for the petitioner to proceed.

Fil-ktieb **Insolvency Law – Corporate and Personal** ta` Andrew Keay u Peter Walton (pubblikat minn Pearson Longman – 2003) pg.17 jinghad hekk dwar *cash flow insolvency* kif mifhuma fil-kuntest tal-Insolvency Act 1986 –

The court, in examining whether a company is suffering cash flow insolvency, will consider whether the company is actually paying its debtors. Courts must take into account what current revenue the company has as well as what the company can procure by realising assets within a relatively short time ... A company can rely upon money which might be obtained from the sale of assets or upon money which might be obtained on the strength of its assets ... It is possible that sometimes a debtor might be able to establish solvency by demonstrating that funds can be obtained through an unsecured loan. In considering whether a person or a company is insolvent, the debtor's whole financial position must be studied ... and a temporary lack of liquidity does not necessarily mean that the company is insolvent ...

At one time courts were rather strict on what they required to be established before they were willing to deem a person or a company insolvent, but in more recent times they have become more liberal as far as creditors are concerned and have held that a debtor is insolvent if a creditor is able to prove that he or she has not paid an undisputed debt after a demand has been made ... and this is the case even if there is other evidence which suggests that the value of the assets outweighs liabilities ...

Whether a company is cash flow insolvent is principally a question of fact and one which may be established in any number of ways, such as the existence of a large number of outstanding debts and unsatisfied judgments ... or there is lack of assets on which execution can be levied ...

It has been said that a debtor is not regarded as solvent just because if sufficient time were granted the debts could be paid off ...

VI. Provi u risultanzi

Ghall-fini tal-prova tar-rekwiziti tal-Art 214(5)(a), ir-rikorrenti jirreferu ghal sentenza moghtija fl-**10 ta` Gunju 2014** minn din il-Qorti diversament presjeduta fil-kawza fl-ismijiet *Joseph Farrugia u Karmenu Farrugia vs NFR Limited (C49560)*. Fil-kawza, is-socjeta` intimata baqghet kontumaci. Il-kawza kienet deciza kontra taghha. Fil-fatt kienet ikkundannata thallas lir-rikorrenti s-somma ta` €54,481, bl-ispejjez u bl-imghax. Kienet esebita bhala Dok A a fol 6 sa 10 tal-process kopja legali ta` din is-sentenza.

Is-sentenza ghaddiet in gudikat (Dok C) a fol 12.

Kienet esebita bhala prova kopja legali ta` Mandat ta` Sekwestru Ezekuttiv Nru. 1129/2014 fl-istess ismijiet tal-kawza li ghaliha saret riferenza fil-paragrafu precedenti, u fl-istess ismijiet tal-kawza tal-lum (ara Dok D a fol 14 et seq tal-process). Skond dan l-att jirrizulta hekk :-

i) Illi ir-rikors bit-talba ghall-hrug ta` Mandat kien ipprezentat fil-**25 ta` Lulju 2014** ;

ii) Illi fir-rikors intalab il-hlas tas-sorta li tieghi r-rikorrenti kienu kanonizzati bhala kredituri tas-socjeta` ntimata skond is-sentenza, kif ukoll l-imghax u l-ispejjez tal-kawza ;

iii) It-talba ghall-hrug tal-Mandat kienet milqugha fil-**25 ta` Lulju 2014**.

iv) Skond l-atti tal-Mandat, jirrizulta li whud mis-sekwestratarji kienu notifikati fil-**25 ta` Lulju 2014** u ohrajn fit-**28 ta` Lulju 2014**.

Ghall-fini tal-Art 214(5)(a) tal-Kap 386, ir-rekwizit rilevanti sabiex jiskatta l-perijodu ta' erbgha u ghoxrin (24) gimgha huwa **l-ezekuzzjoni** tal-Mandat, li fil-kaz tal-lum ifisser in-notifika tas-sekwestratarji.

Fil-kaz tal-lum jirrizulta li l-ahhar jum tal-24 gimgha kien it-**28 ta' Jannar 2015**.

Abbazi tax-xiehda moghtija miz-zewg rikorrenti fl-udjenza tad-19 ta' Novembru 2015, jirrizulta li sal-lum ma thallsu xejn mill-ammonti dovuti mis-socjeta' konvenuta skond il-Mandat fuq riferit.

Fil-fehma tal-Qorti, saret il-prova sal-grad rikjest mil-ligi ta' dak li jipprovdi l-Art 214(5)(a) tal-Kap 386, bil-konsegwenza li *jista'* jkun hemm lok ghax-xoljiment u l-istralc tas-socjeta' intimata, skond l-Art 214(2)(a)(ii) tal-Kap 386.

VII. Id-diskrezzjoni tal-Qorti

Accertat u ppruvat illi l-kumpannija ntimata mhijiex f'qaghda li thallas id-djun taghha fis-sens tal-Art 214(5)(a), il-Qorti sejra tara jekk **attwalment** ghandhiex tipprocedi ghax-xoljiment u ghall-istralc tal-intimata fis-sens tal-Art 214(2)(a)(ii).

Il-Qorti taghmel riferenza ghal Pg 913-914 ta' **Boyle & Birds' Company Law** (op. cit.) :-

*Unpaid creditors of a company may consider commencing winding-up proceedings against the company as an alternative to suing for payment. As a debt collection mechanism, winding up proceedings may be swifter and, for the individual creditor, less expensive than a claim that may come to trial for some time ; **on the other hand, winding up is a collective procedure for the benefit of creditors generally and it does not benefit specific creditors individually (F. Oditah "Winding Up Recalcitrant Debtors" 1995 LMCLQ 107) ...***

Since winding up is a collective procedure for the benefit of creditors generally, one situation where the court may exercise its discretion against winding-up is where other creditors in the same class oppose the making of the

order. In this regard the court will usually have regard to the majority of the creditors and will refuse the petition if its opposed by the majority.

Dan premiss, il-Qorti taghmel dawn il-konsiderazzjonijiet :-

i) Skond ix-xiehda ta` l-Av. Dr. Claudette Fenech, rapprezentant tar-Registratur tal-Kumpanniji, l-ahhar *report and abridged financial statements* ipprezentati lir-Registratur kienu daww ghaz-zmien ta` bejn l-4 ta` Mejju 2010 u l-31 ta` Dicembru 2010 ;

ii) Incidentament, dawn *report and abridged financial statements* dahlu ghand ir-Registratur tal-Kumpanniji fil-21 ta` Marzu 2013, allura certament tardivament skond il-ligi ;

iii) Skond dan ir-*report and abridged financial statements*, is-socjeta` ntimata kellha *current liabilities* ta` €547,207 ;

iv) Fil-25 ta` Marzu 2014 li baghat ir-Registratur tal-Kumpanniji lil wiehed mid-diretturi tas-socjeta` ntimata, Neville Muscat, dan tal-ahhar kien interpellat ihallas penalitajiet li kienu komminati lis-socjeta` ntimata skond id-disposizzjonijiet tal-Kap 386 ;

v) Ma jirrizultax jekk dan id-direttur ottemperax ruhu jew inkella jekk ir-Registratur hax passi kontra tieghui jew kontra s-socjeta` ntimata ;

vi) Wara l-31 ta` Dicembru 2010, il-Qorti hija sprovvista mill-kontabilita` tas-socjeta` ntimata. Il-provi huma ndikattivi tal-fatt illi matul dawn l-ahhar erba` snin, is-socjeta` ntimata ma ghamlet l-ebda kontijiet debitament awditjati ;

vii) Ma jirrizultax illi fil-banek kummercjali ewlenin fil-pajjiz u cioe` il-Bank of Valletta plc, l-HSBC Bank Malta plc, il-Lombard Bank Malta plc u l-APS Bank Malta plc ghandhom depoziti li bihom jista` jitmexxa negozju ;

ix) Skond id-deposizzjoni tar-rikorrenti, dawn kienu litteralment lusingati li xi darba sejr in jithallsu l-kreditu taghhom, izda fir-realta` r-rikorrenti baqghu b`xejn ;

x) Ghal din il-Qorti ma jaghmel l-ebda sens illi kumpannija li tassew ghandha l-interess li tibqa` fin-negozju tigi notifikata skond il-ligi bi procediment hekk serju, b`konsegwenzi daqstant gravi, bhal dak tal-lum, imbaghad imqar taghmel l-icken sforz biex tiddefendi ruhha. Eppure, hekk gara fil-kaz tal-lum, ghaliex il-kumpannija ntimata la pprezentat risposta u wisq anqas baghtet rapprezentant taghha biex isegwi dan il-procediment ;

xi) Is-socjeta` ntimata ma ghamlet propju xejn biex tagevola l-kompitu iebes ta` din il-Qorti. Il-kumpannija ntimata kellha l-opportunita` kollha li tigi quddiem il-Qorti fejn filwaqt li taccetta li baqghet inadempjenti versu r-rikorrenti skond l-Art 214(5)(a) tipprova tissoddisfa lill-Qorti illi ma timmeritax li tigi xjolta u stralcjata ;

x) Il-Qorti m`ghandhiex prova ta` x`assi ghandha l-kumpannija intimata llum u jekk ghandha, hemmx minnhom disponibbli biex jinbieghu halli thallas lir-rikorrent pro et noe fi zmien ragonevoli. Cio` nonostante, u rinfaccjata bl-inerzja u addirittura bid-dizinterest tal-kumpannija intimata u tad-diretturi taghha, il-Qorti ghandha l-prova nkonfutabbli li l-kumpannija intimata mhijiex f`qaghda li thallas id-djun taghha skond l-Art 214(5)(a) ;

xi) Tar-rikorrent mhuwiex dejn li kien ikkontestat. Qabel ittentaw dan il-procediment, ir-rikorrenti mexxew bil-procediment ordinarju, hadu sentenza favur taghhom, ipprezentaw att ezekuttiv, kienu prudenti fil-mizuri ta` wara ; eppure baqghu b`xejn u ghalhekk mexxew bil-pass tal-lum li l-ligi stess taghtihom id-dritt li jippersegwixxu. Certament illi dan tal-lum mhuwiex kaz ta` xi pressjoni ndebita fuq is-socjeta` debitrici jew addirittura abbuz tal-process gudizzjarju. Ir-rikorrenti huwa fin-negozju bhal ma suppost hija fin-negozju s-socjeta` ntimata u mhuwiex kif fatt minn awl id-dinja li kredituri spiccaw *out of business* ghaliex hallew *unsettled credits* favur taghhom jigbru bihom ;

xii) Il-Qorti m`ghandhiex prova ta` jekk s-socjeta` ntimata ghandhiex kredituri ohra apparti r-rikorrenti. Cio` nonostante l-Qorti ssostni li l-ghan wara d-disposizzjonijiet li jirregolaw l-insolvenza huma ghall-beneficcju tal-kredituri bhala totalita` mhux ghal beneficcju ta` dawk id-debituri li jippretendu li ghandhom il-jedd japprofittaw ruhhom mid-disponibilita` tal-kredituri ;

xiii) Huwa l-obbligu tal-Qorti li ma thallix lid-debitur jabbuza u li jirrendi lill-kreditur kwazi tallab ;

Fl-isfond ta` dawn il-konsiderazzjonijiet, din il-Qorti tqis illi jkun gust u ragonevoli li tghaddi ghad-dikjarazzjoni tax-xoljiment u stralc tas-socjeta` ntimata.

VIII) L-Art 214(2)(b)(iii) tal-Kap 386

Billi l-Qorti qeghda tezercita d-diskrezzjoni taghha u qeghda tordna x-xoljiment u l-istralc tas-socjeta` ntimata abbazi tal-Art 214(2)(a)(ii) u tal-Art 214(5)(a) tal-Kap 386, il-Qorti ma tarax il-htiega li tmur ghal analizi ta` jekk l-Art 214(2)(b)(iii) tal-Kap 386 huwiex ippruvat ukoll fil-kaz tal-lum.

Provvediment

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

1) Riferibbilment ghall-ewwel talba, tiddikjara u tiddeciedi li l-kumpannija ntimata NFR Limited [C49560] mhijiex f'qaghda li thallas id-djun taghha abbazi ta` l-Art 214(2)(a)(ii) u l-Art 214(5)(a) tal-Kap 386 tal-Ligijiet ta` Malta.

2) Tastjeni milli tiehu konjizzjoni tat-tieni talba.

3) Riferibbilment ghat-tielet talba, tordna x-xoljiment tal-kumpannija ntimata NFR Limited [C49560] a tenur tal-Art 214(2)(a)(ii) u l-Art 214(5)(a) tal-Kap 386 tal-Ligijiet ta` Malta, b`effett mill-21 ta` April 2015, kif irid l-Art 223(1) tal-Kap 386 tal-Ligijiet ta` Malta

4) Riferibbilment ukoll ghat-tielet talba, tordna l-istralc tal-kumpannija ntimata NFR Limited [C49560].

5) Riferibbilment ghar-raba` talba, tahtar lir-Ricevitur Ufficjali bhala stralcjarju tal-kumpannija ntimata NFR Limited [C49560] bis-setghat u bid-dmirijiet li huma stabbiliti fil-Kap 386 tal-Ligijiet ta` Malta.

Bla hsara ghall-generalita` ta` dawk is-setghat u dmirijiet :-

a) wara li jikseb dikjarazzjoni dwar il-qaghda tal-kumpannija intimata, kif irid l-Art 226 tal-Kap 386 tal-Ligijiet ta` Malta, jaghmel rapport lill-Qorti, kif irid l-Art 227 tal-Kap 386 tal-Ligijiet ta` Malta.

b) jagħmel verifika dwar l-assi u d-djun tal-kumpannija intimata u dwar il-gradwazzjoni tad-djun.

c) jiehu taht il-kustodja jew kontroll tieghu l-assi kollha tal-kumpannija intimata, kif ighid u jrid l-Art 237 tal-Kap 386 tal-Ligijiet ta` Malta.

d) jagħmel jew jiddefendi kull azzjoni jew procediment legali iehor fl-isem u fl-interess tal-kumpannija intimata.

e) jirrelata dwar il-mizuri mehtiega għall-harsien tal-assi tal-kumpannija intimata.

f) jipprezenta r-rapport mhux aktar tard minn tliet (3) xhur mil-lum.

6) Għar-rigward tal-ispejjez, il-Qorti qeghda tipprovdi billi -

a) Tordna li l-ispejjez ta` dan il-provvediment sal-lum jithallsu mill-kumpannija intimata ; u

b) Tordna li l-ispejjez kollha tal-istralc, inkluzi d-drittijiet u l-ispejjez tar-Ricevitur Ufficjali fil-vesti tieghu ta` stralcjarju, jithallsu mir-rikorrenti u mis-socjeta` ntimata solidament bejniethom, u dan bl-applikazzjoni tal-Art 236(2) tal-Kap 386.

7) Thalli l-istralc għall-udjenza ta` nhar il-Hamis 3 ta` Marzu 2016 fid-9.00 a.m.

Onor. Joseph Zammit McKeon
Imhalled

Amanda Cassar
Deputat Registratur