QORTI CIVILI PRIM' AWLA

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum il-Hamis, 15 ta' Gunju, 2017

Numru 8

Rikors Nru. 810/2016

Samsung C&T Deutschland and GMBH, socjeta estera registrata fil-Germanja bin-numru ufficjali HRB 4631, bl-indirizz registrat Am Kronberger Hang 6, 65824, Schwalbach am Taunus, Germanja, rappresentata hawn Malta mill-mandatarju specjali taghha l-Avukat Louis Cassar Pullicino

vs

Geden Holdings Limited

Il-Qorti,

Rat ir-rikors tal-attrici tas-16 ta' Settembru, 2016 li jghid hekk:

Illi s-socjeta intimata Geden Holdings Limited ("Geden") hija socjeta li giet registata hawn Malta f£1-14 ta' Ottubru 2002; b'risoluzzjoni datata 27 ta' Dicembru 2010 l-azzjonisti ta' Geden ftehmu li jillimtaw l-iskop li ghaliha twaqqfet l-imsemmija socjeta ghal dawk l-attivitajiet elenkati fl-artikolu 84z(1) tal-Att Dwar il-Bastimenti Merkantili (Kap. 234 tal-Ligijiet ta' Malta). Bhala rizultat ta' dan u b'effett mis-7 ta' Jannar 2011 Geden kienet regolata mid-disposizzjonijiet u regolamenti li jinsabu fl-Avviz Legali 223 tal-2004 - Merchant Shipping (Shipping Organisations - Private Companies) Regulations 2004 u ghalhekk tikkwalifika bhala "shipping organsiation" ai termini tal-artikolu 84z tal-Kap. 234;

Illi l-attivita principali ta' Geden hi dik li takkwista u tiskrivi f'isimha ishma f'diversi socjetajiet sussiddjarji taghha, liema sussiddjarji joperaw bastimenti fis-suq marittimu internazzjonali kemm billi jinnolleggjaw bastimenti li jappartjenu lilhom kif ukollli jikru u jinnolleggjaw bastimenti minghand terzi u dan sabiex igorru u jittrasportaw prodotti taz-zejt kif ukoll merkanijza ohra (dry cargo); Geden ghandha ukoll il-funzjoni li

tagixxi bhala t-tezorier tal-kumpanniji fil-grupp u li taghhom hija l-parent company u dan billi tissellef flus minn banek u istituzzjonijiet finanzjarji biex imbaghad tislef u tiffinanzja lis-sussiddjarji taghha mill-flus li takkwista permezz ta' dawn il-facilitajiet bankarji;

Illi s-socjeta rikorrenti Samsung C&T Deutschland GMBH ("Samsung Deutschland") hija kreditur ta' Geden fis-somma komplessiva ta' sbatax-il miljun u disa' telef seba' mija u tmienja u disghin dollar Amerikan (US$17,009,798.00);

Illi dan il-kreditu origina kif ser jinghad u cioe:-
i. Samsung Deutschland kienet innolleggjat favur taghha permezz ta' bareboat charter minghand terzi numru ta' bastimenti u cioe m.v. Capital, m.v. World, m.v. Secret u m.v. Sharp u li da parti taghha imbaghad ikkoncediet l-istess bastimenti permezz ta' sub bareboat charter a favur ta' diversi sussiddjarji ta' Geden u l-obbligi assunti talvolta minghand dawn il-kumpanniji sussiddjarji ta' Geden gew garantiti solidalment minnha stess permezz ta' Corporate Guarantee;
ii. Jirrizulta illi dawn is-sussiddjarji ta' Geden bdew jiffaccjaw problem finanzjarji fl-operat ta' dawn il-bastimenti ;
iii. Illi sallum hemm ammonti sostanzjali dovuti lil Samsung Deutschland minghand dawn l-entitajiet sussidjarji ta' Geden in konessjoni man-nollegg ossia sub bareboat charter ta' dawn il-bastimenti bil-konsegwenza illi Geden hija responsabbli solidalment ma' dawn l-entitajiet bhala garanti a tenur tal-obbligi assunti minnha a tenur tal-imsemmija Corporate Guarantee;

Illi permezz ta' ittra datata 5 ta' Lulju 2016 Samsung Deutschland talbet formalment minghand Geden il-hlas tal-ammonti dovuti a tenur tal-garanzija izda sallum l-ebda pagament ma sar u wisq anqas saret xi proposta da parti ta' Geden dwar xi skema ta' pagamenti jew xi soluzzjoni alternattiva sabiex jigi saldat id-dejn sostanzjali favur Samsung Deutschland;

Illi ghalhekk Geden hija insolventi ghaliex mhijiex f'qaghda li thallas id-djun taghha; dan il-fatt jafuh jew imisshom jafuh id-diretturi ta' Geden. Samsung Deutschland saret taf illi ricentement u ad insaputa taghha diversi entitajiet sussiddjarji ta' Geden bieghu u ttrasferew numru ta' bastimenti fil-patrimonju taghhom b'valuri sostanzjali. Skont ma jirrizulta mill-anness affidavit ta' Heon Joong Jung jirrizulta bic-car il-qaghda finanzjarja hazina ta' Geden u l-inabilita taghha li thallas id-dejn kif anke ammess minn ufficjali ta' Geden stess filwaqt li I-Consolidated Financial Statements ta' Geden u tas-sussiddjarji taghha jikkonfermaw li l-passiv jecceddi l-valur tal-assi u li l-grupp ilu ghal dawn l-ahhar snin igarrab telf finanazjarji qawwi u sostanzjali;

Ghar-ragunijiet kollha premessi s-socjeta rikorrenti titlob li dina l-Onorabbli Qorti:

1. Tiddikjara u tiddeciedi illi s-socjeta intimata Geden Holdings Limited mhijiex f'qaghda li thallas d-djun taghha u konsegwentement tordna ix-xjoljiment u stralc konsegwenzjali tal-istess socjeta intimata a tenur tar-Regolament 99(2) (a) u 4(b) tal-Merchant Shipping (Shipping Organisations - Private Companies) Regulations 2004 (Avviz Legali 223 tal-2004); u

2. Taghti kull provvediment opportun sabiex jinhatar l-istralcjarju u jigi kondott l-istralc konsegwenzjali skond id-disposizzjonijiet u regolamenti tal-Merchant Shipping

(Shipping Organisations - Private Companies) Regulations 2004 (Avviz Legali 223 tal-2004.

Bl- ispejjez.

Rat ir-risposta tas-socjeta konvenuta li tghid hekk:

1. Illi preliminarjament fil-fehma umli tal-esponenti s-socjeta rikorrenti ma ghandiex id-dritt jew il-fakulta li tintavola dawn il-proceduri odjerni f'dan l-istadju stante illli ma tidhirx li tikkwalifika bhala persuna li tista' tipprezenta rikors ghall-istralc ai termini ta' dispozizzjonijiet tar-Regolamenti dwar Bastimenti Merkantili (Organizzazzjonijiet ta' Bastimenti - Kumpaniji Privati), legislazzjoni sussidjaraja 234.42 tal-Ligijiet ta' Malta, u dan ghas-segwenti ragunijiet:

a) Illi Regolament 100 tal-istess S.L. 234.42 jelenka specifikament liema persuni ghandhom il-jedd li jintavolaw rikors ghall-istralc ta' socjeta li tikkwalikifa bhala "shipping organisation" ai termini ta' artikolu 84Z tal-Att dwar il-Bastimenti Merkantili, Kapitolu 234 tal-Ligijiet ta' Malta. Ghal kull buon fini dan ir-regolament qed jigi riprodott hawn taht:
"An application to the court (hereinfter referred to as the "winding up application",) for the winding up of a company shall be made by means of an application which may be made either by the company or by any of its members or directors, or by any creditor having a debt due and unpaid in excess of twenty-three thousand and two hundred and ninety-three euros and seventy-three cents (23,293.73) or by all or any of them together or separately."

b) Illi ghalhekk hawnhekk il-ligi tipprovdi li sabiex allegat kreditur jipprezenta rikors ghall-istralc ta' shipping organisation bilfors irrid ikollu dejn dovut ta' mhux anqas mill-ammont stipulat fl-istess regolament.

c) Illi fil-fehma umli tal-esponenti sabiex l-kreditu tas-socjeta rikorrenti jkun meqjus bhala dovut s'intendi li dan l-istess allegat dejn irrid jigi kkanonizzat jew ippronunzjat guridikament bhala ammont dovut lill-istess rikorrenti mis-socjeta intimata.

d) Illi tajjeb li hawnhekk wiehed jaghmel paragun ukoll mad-disposizzjonijiet korrispondenti taht l-Att dwar il-Kumpaniji, Kap. 384 tal-Ligijiet ta' Malta fejn il-legislattur jaghti l-jedd ghat-talba tal-istralc fil-kuntest ta' socjetajiet Maltin ohra lil kull "kreditur jew kredituri" tas-socjeta intimata.

e) Illi shipping organisations huma soggetti ghar-regim separat u regoli differenti minn kumpaniji Maltin ohrajn u jidher car li l-iskop tal-legislattur hawnhekk huwa biex jaghti dawn s-shipping organisations diversi protezzjonijiet ulterjuri u vantaggi fiskali.

f) Illi fil-kuntest tar-rekwiziti mehtiega ghall-proceduri ghall-istralc, dawk relatati ma' shipping organisations jidhru li huma aktar oneruzi minn dawn ta' kumpaniji ohra fis-sens li l-ligi tisspecifika li fil-kaz ta' shipping organisation kreditur irrid ikollu dejn dovut sabiex jipprocedi u ghaldaqstant il-kreditu in kwistjoni jrid jigi kkonfermat mill-qorti jew tribunal kompetenti. Ghalhekk dina l-Onorabbli Qorti ma ghandiex tmexxi semplicement fuq bazi prima facie ghaliex idejha marbuta mill-ligi.

g) Inoltre, jinghad li l-allegat pretenzjonijet tas-socjeta rikorrenti Samsung C&T Deutschland GMBH li abbazi taghhom is-socjeta rikorrenti qeghda taghmel t-talbiet taghha huma naxxenti minn erbgha (4) garanziji (Corporate Gaurantees) li iffirmat is-socjeta intimata fir-rigward l-obbligi ta' erbgha (4) entitajiet ohra taht erbgha (4) bareboat charterparties li ikkonkludew mas-socjeta rikorrenti.

h) Nonostante li kemm il-bareboat charterparties kif ukoll l-Corporate Gaurantees huma kollha soggetti ghal klawzoli ta' arbitragg li jirreferu l-partijiet ghal proceduri ta' arbitragg gewwa Londra, is-socjeta rikorrenti naqqset milli tipprocedi kontra l-nolleggaturi u/jew kontra s-socjeta intimata ghall-irkuprar tal-allegat djun dovut lilha quddiem il-forum kompetenti u minflok qeghda immedjatament titlob l-istralc tas-socjeta intimata.

i) Illi t-talba ghax-xoljiment ghall-istralc ta' kumpannija hija mizura ta' natura eccezzjonali li ghandha tigi ntavalota biss bhala l-ahhar rimedju u ghalhekk dawn l-proceduri odjerni ma ghandhom QATT jissostitwixxu r-rimedji ordinarji li ghandhom kreditur/i sabiex jirkurpra/w kwalunkwe allegat djun dovut lil/lilhom.

2. In ogni caso din il-Qorti trid tivverifika li l-allegat pretenzjonijiet tas-socjeta rikorrenti mhumiex preskritti taht il-ligi Ingliza l-ligi applikabbli partikolarment meta l-underling debt huwa l-hlas ghal-kiri tal-bastiment u skond il-ligi nostrana (specifikament artikolu 2148(f) ta' Kapitolu 16) azzjoni simili quddiem il-Qrati Maltin possibilment tista' tkun meqjusa bhala preskritta.

3. Illi inoltre jinghad li jekk dina Onorabbli Qorti tiddeciedi sabiex tipprocedi bis-smigh tal-kawza (qabel is-socjeta rikorrenti ma tigi kkonfermata bhala kreditrici mit-tribunal kompetenti tal-arbitragg), hemm perikolu reali u konkret li s-socjeta intimata kif ukoll kwalunkwe kreditur iehor jistghu jigu pregudikati serjament stante illi l-mertu tal-allegat pretenzjonijiet tas-socjeta rikorrenti qatt ma huma ser jigu ezaminati u skrutinizzati quddiem qorti jew tribunal kompetenti.

4. Illi dato ma non concesso li dina l-Onorabbli Qorti tordna li s-socjeta rikorrenti ghandha d-dritt li tintavola r-rikors promotur, xorta wahda ghandha tezamina l-provi tas-socjeta rikorrenti u l-valur probatorju tal-imsemmi provi, partikolarment in vista tal-fatt li dawn il-proceduri ma nfethux permess ta' rikors guramentat.

5. Illi bla pregudizzju, qed jigi sottomess li din l-Onorabbli Qorti ghandha l-poter diskrezzjonali biex tordna l-istralc tas-socjeta intimata, u dan in vista tar-Regolament 99(2)(a) tal-S.L. 234.42, fejn il-ligi tghid espressament "a company may be dissolved and wound up by the Court ..." (emfazi tas-socjeta esponenti) u ghaldaqstant ma ghandiex tilqa’ t-talbiet attrici sakemm ma hiex assolutament certa li s-socjeta intimata qeghda fi stadju li ma tistax thallas id-djun taghha.

6. Illi minghajr pregudizzju ghas-suespost, jinghad li peress allegat kreditu tas-socjeta rikorrenti mhuwiex kanonizzat, dina l-Onorabbli Qorti ma ghandiex tkompli b'dawn il-proceduri sakemm ikun hemm decizjoni finali ta' arbitragg li tikkonferma li s-socjeta rikorrenti hija kreditrici tas-socjeta intimat a u dan inter alia ai termini tal-artikolu 742(3) ta' Kapitolu 12 u artikolu 8 ta' Konvenzjoni tan-Nazzjonijiet Uniti dwar l-Gharfien u l-Ezekuzzjoni ta' Decizjonijiet ta' Arbitragg Barranin (New York 1958) fost ohrajn.

7. Illi fil-fehma umli tal-esponenti, dina l-Onorabbli Qorti ma ghandiex tidhol fil-mertu jew taghmel ebda ezami tal-allegat pretenzjonijiet tas-socjeta rikorrenti fil-konfront tas-socjeta intimata ghaliex dawn jibqa' kwistjonijiet li huma soggetti ghall-ftehim ta' arbitragg.

8. Illi ghalhekk kontestwalment ma' din ir-risposta s-socjeta intimata qeghda tipprezenta wkoll rikors ghas-soprasessjoni u/jew sospensjoni tal-dawn il-proceduri odjerni, pendenti l-ezitu finali tal-proceduri ta' arbitragg li s-socjeta rikorrenti ghandha tiftah kontra s-socjeta intimata.

Rat l-atti u semghet lid-difensuri tal-partijiet;

Rat li l-kawza thalliet ghal provvediment.

Ikkunsidrat

Din hi kawza bazata fuq l-artikoli 99(2)(a) u 99(4)(b) tal-Merchant Shipping (Shipping Organisations – Private Companies) Regulations 2004 (Avviz Legali 223/2004).

Is-socjeta attrici qed titlob li s-socjeta konvenuta, debitrici tas-socjeta attrici mhix f'pozizzjoni li thallas id-djun taghha u ghalhekk qed jintalab l-istralc tal-imsemmija socjeta u ghal dan l-iskop jinhatar stralcjarju.

L- artikoli rilevanti tal-ligi in kwistjoni jghidu hekk

> 99(2)(a) a company may be dissolved and wound up by the Court when the company is unable to pay its debts;
>
> 99(4)(b) if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.

A bazi ta' dawn l-artikoli s-socjeta attrici qed tallega li hi ghandha kreditu kontra s-socjeta konvenuta u a bazi tad-dritt moghti bl-artikolu 100 tal-istess Avviz Legali qed titlob qua kreditrici li s-socjeta konvenuta titpogga fi procedura ta' strac. L-artikolu 100 tal- Avviz Legali 223/2004 jghid hekk:

> An application to the court (hereinafter referred to as the "winding up application") for the winding up of a company shall be made by means of an application which may be made either by the company or by any of its members or directors, or by any creditor having a debt due and unpaid in

> excess of ten thousand Maltese liri or by all or any of them together or separately.

Hi l-fehma tal-Qorti illi kuntrarjament ghal dak sottomess mis-socjeta konvenuta, il-kreditur ma ghandux bzonn igib prova ta' kreditu kanonizzat dovut lilu mis-socjeta kovenuta biex jippromuovi din l-azzjoni a bazi tal-artikolu 99(2)(a) u 99(4(b). Il-ligi ma tiesigix li l-kreditur juri titolu ezekuttiv ghal tali kreditu izda li jidher li hu kreditu dovut fil-mument li qed issir l-azzjoni u li mhux imhallas. Il-Qorti trid tkun sodisfatta li jezisti tali kreditu u mhux semplicement pretensjoni ta' kreditu liema kreditu ma jirizulta minn imkien hlief mill-allegazzjoni u pretensjoni tal-allegat kreditur. Il-prova ta' kreditu li tirrizulta lil Qorti taghti l-interess guridiku li jressaq din l-azzjoni intiza primarjament biex il-kreditur jipprotegi l-kreditu tieghu kontra l-assi li hemm tad-debitur li hu jqis mhux f'pozizzjoni li jonora d-debitu. Dan qed jinghad peress illi f'din il-procedura ma jigix kanonizzat il-kreditu jew jsir xi ordni ta' hlas izda li d-debitur jitpogga fi stat ta' 'winding up'. Il-krediti realment dovuti jitqiesu f'l-istadju ulterjuri mhix f'din il-procedura. Dan hu il-principju hi msejsa l-ligi Ingliza f'kaz ta' talba ghal likwidazzjoni ta' kumpanija. F'**Mann vs Goldstein** (1968 IWLR 1091) jintqal hekk:

> The incorporated hairdressing and wig business of two married couples broke down in acrimony. Goldstein and his company petitioned for winding up claiming unpaid directors fees and payment for a wig delivery, but Mann argued that Godlstein had recieved the fees through ad hoc payments and another company owed money for the wigs. Ungoed Thomas J. argued the winding up petition was not the place to decide the debt actually existed and it would be an abuse of process to continue.

Qabel mal-Qorti tqis it-talba attrici, trid ghalhekk fl-ewwel lok tikkunsidra jekk tressqux provi li juru li s-socjeta attrici ghandha kreditu fil-konfront tas-socjeta konvenuta. Il-Qorti rat l-atti u dokumenti esebiti u tasal ghal konkluzjoni li din il-prova saret u tissupera bil-bosta l-bazi ta' kreditu €23,293.73 li ghalih kreditur jista' jaghmel it-talba odjerna. Jidher mill-atti illi s-socjeta konvenuta kienet garanti solidali ghal diversi sussidjarji tal-istess socjeta, u li l-ammonti dovuti lis-socjeta attrici minn dawn is-sussudjarji baqghu mhux imhallsa. Id-dokumenti rilevanti huma l-corporate guarantees (Dok. LCP3A sa LCP3D) u d-demand letter tal-5 ta' Lulju 2016 (Dok. LCP5). Is-socjeta attrici esebiet rendikont tal-ammont dovut (Dok. LCP4). In oltre esebit korrispondenza elettronika fejn is-socjeta konvenuta tirreferi ghal sitwazzjoni finanzjarja xejn felici fejn jikkoncerna hlasijiet (ara f'dan is-sens fol. 76, 85 u 93 tal-

process). Is-socjeta konvenuta mkien ma tinnega li hemm debitu dovut hu kemm hu l-ammont anzi lanqas hu kontestat.

Fid-dawl ta' dan kollu hi l-fehma tal-Qorti illi s-socjeta attrici uriet li hi ghandha kreditu ta' ammont sostanzjali kontra s-socjeta konvenuta.

Is-socjeta attrici trid ukoll tipprova li s-socjeta konvenuta mhix f'pozizzjoni li thallas id-debitu taghha. In tema legali din il-Qorti tiehu spunt minn dak li jghid l-artikolu 214(5)(b) tal-Kap. 386 dwar xoljiment ta' kumpaniji identiku ghall-artikolu 99(4)(b) tal-Avviz Legali 223/2004:

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

Fil-kawza **CMV S.p.a. vs Vittoriosa Gaming Ltd et**, (PA 28/02/2017, JZM) il-Qorti dahlet f'dettal dwar it-tifsira li ghandha tinghata lil dan l-artikolu:

> Fil-Pag 114 tar-Raba` Edizzjoni (2011) ta` Principles of Corporate Insolvency Law (Sweet & Maxwell) Roy Goode ighid hekk –
> The idea underlying this test … is that it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets and these are insufficient for the purpose …
>
> Fil-Pag 130 ikompli hekk –
> The mere excess of liabilities over assets is not in itself determinative. What has to be shown is that by reason of the deficiency of its assets the company has reached the point of no return.
>
> Fil-Pag 134 sa 136, l-awtur jittratta n-nozzjoni ta` contingent liability u jghid hekk –
> To give the phrase "contingent liability" any meaning we must restrict it to a liability or other loss which arises out of an existing legal obligation or state of affairs but which is dependent on the happening of an event which may or may not occur. Many of the cases have stressed the need for the liability to arise out of an existing obligation.
> … in considering whether there is a contingent liability the court has regard to the existing commercial situation, not erely an existing legal obligation. In this regard, assistance can be derived from Financial Reporting Standard 12 which defines a contingent liability in the following terms :
> (a) "A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the entity`s control ; or

(b) a present obligation that arises from past events but is not recognised because:
(i) it is not probable that a transfer of economic benefits will be required to settle the obligation ; or
(ii) the amount of the obligation cannot be measured with sufficient reliability."
… the term "contingent liabilities" is ultimately not a term of art and its precise meaning will depend on its context. The court is thus entitled to have regard to commercial realities …

Fil-Pag 136 u 137, l-awtur jittratta n-nozzjoni ta` prospective liability u jghid hekk –
… The phrase "prospective liability" is neither a legal nor an accounting term of art. It has been judicially defined as : " … a debt which will certainly become due in the future, either on some date which has already been determined or some date determinable by reference to future events."
… it has been described … as unmatured liability which will inevitably ripen into a debt with the passage of time. Such a definition encompasses all forms of debitum in praesenti, solvendum in futuro including an indisputable claim for unliquidated damages which remains only to be quantified and will result in a debt far more than a nominal amount. "Prospective liability" thus embraces both future debts, the sense of liquidated sums due, and unliquidated claims.

Dwar l-Art 214(5)(b) din il-Qorti diversament presjeduta (PA/GV) fid-decizjoni taghha tat-28 ta` Mejju 2003 fil-kawza "**Axel John International AB vs Aluminium Extrusions Limited**" qalet hekk –
Din il-kondizzjoni tista` tigi verifikata permezz tal-balance sheets wara li jigi kunsidrat jekk l-assets are less than its liabilities. Izda … it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets over a lengthy period (Re: European Life Assurance Society 1869 LR 9 Eq 122).
Ghalhekk ma hemmx raguni ghaliex il-kredituri ghandhom joqghodu jistennew sakemm il-kumpannija tbiegh l-assets taghha biex forsi xi darba jithallsu.

Applikati dawn il-principji ghal fatti, il-Qorti tqis illi tali prova trid issir fl-ewwel lok mill-parti li qed tallegah. Is-socjeta attrici ipprezentat il-consolidated financial statements tal-kumpanija Geden ghas-snin 2012 sal-2015. Fl-2014 u 2015 hemm stampa griza tal-finanzi tas-socjeta Geden fejn jirrizulta illi t-telf ghal perjodu Jannar sa Dicembru 2015 kien ta' USD194,173,929 kontra assi ta' USD124,946.87. Il-Qorti tqis li din il-prova turi illi s-socjeta konvenuta qua garanti solidali ghad-debitu tas-sussidjarji taghha mhix f'pozizzjoni li tonora l-hlas ghax ma ghandhiex assi likwidi jew qliegh mill-operazzjonijiet li jaghmlu tajjeb ghal dan l-iskop.

Darba li s-socjeta attrici tat stampa tal-pozizzjoni finanzjarja tas-socjeta attrici, sta ghas-socjeta konvenuta li turi li l-qaghda finanzjarja taghha hi tali li tista' tkompli topera u thallas id-debitu taghha kemm lejn is-socjeta attrici u kredituri ohra taghha. Sfortunatament, nonostante li s-socjeta konvenuta nghatat l-opportunita biex tressaq il-provi taghha, dan ma sarx u ma ngiebet ebda prova mis-socjeta konvenuta li tikkontrasta dak migjub bhala prova tal-qaghda finanzjarja mis-socjeta attrici.

Il-Qorti konxja illi stralc ta' socjeta bhala rimedju hi wahda ta' natura eccezzjonali u ghandha titqies b'kawtela kbira u ghalhekk l-artikolu 99(2)(b) jaghti lil Qorti d-diskrezzjoni jekk tikkonsidrax jew le tali talba. Pero f'dan il-kaz il-provi ma jaghtux ghazla lil Qorti, tenut kont tal-istat finanzjarju prekarju tas-socjeta konvenuta li lanqas ippruvat tikkuntrasta l-provi migjuba kontriha. Ovvjament din il-Qorti mhix tikkonsidra l-kreditu tas-socjeta attrici bhala wiehed kanonizzat. Il-procedura ghal dan l-iskop hi diversa. Il-procedura odjerna hi immirata biss biex jinbeda l-process tal-istralc tas-socjeta konvenuta u preservazzjoni tal-assi tal-istess socjeta kemm ghal kredituri u kemm ghall-azzjonisti nfushom.

Il-Qorti tqis bhala mhux fondat l-eccezzjoni tas-socjeta intimata illi l-ftehim tal-garanzija tas-socjeta intimata hi soggetta ghall-arbitragg f'Londra. Il-kwistjoni quddiem il-Qorti ma tirrigwardax il-garanzija izda l-kapacita tas-socjeta intimata registrata f'Malta li thallas id-djun kolpiti bil-garanzija.

Bhala gheluq din il-Qorti gia esprimiet ruhha fuq it-talba ghal soprasessjoni b'digriet tal-11 ta' Jannar 2017.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tilqa' t-talbiet attrici u tiddikjara li s-socjeta konvenuta mhix f'pozizzjoni li thallas id-djun taghha u tordna li jibda l-procedirment ghax-xoljiment u stralc tal-istess socjeta konvenuta a tenur tal-artikoli 99(2)(a) u 99(4)(b) tal-Avviz Legali 223/2004.
Tordna li jigi nominat Paul Darmanin bhala stralcjarju bid-drittijiet u obbligi kollha ai termini tal-artikoli 107 sa 116 tal-Avizz Legali 223/2004. Spejjez, inkluzi d-drittijiet u l-

ispejjez tal-istralcjarju, kif ukoll l-ispejjez kollha tal-istralc jithallsu mis-socjeta intimata.

Tordna lir-Registratur tal-Qorti jibghat kopja ta' dan il-provvediment lir-Registratur tal-Bastimenti u lir-Registratur tal-Kumpaniji.

Onor. Mark Chetcuti LL.D.
Imhallef

Anne Xuereb
Deputat Registratur