

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 284  
3031851

BETWEEN                      NAVDEEP KAUR  
Applicant

AND                              DIVYA HOLDINGS  
LIMITED  
Respondent

Member of Authority:      Nicola Craig

Representatives:            The Applicant in person  
Divya Devgun for the Respondent

Investigation Meeting:     9 August 2018 by telephone

Submissions Received:     16, 17, 20, 21 and 24 August 2018 from Applicant  
17 and 20 August 2018 from Respondent

Date of Determination:     11 September 2018

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**DETERMINATION OF THE AUTHORITY**

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- A.      Divya Holdings Limited is ordered to comply with the settlement agreement with Navdeep Kaur, by paying to Navdeep Kaur the sum of \$5,300.00 within twenty-eight (28) days of the date of this determination.**
- B.      Divya Holdings Limited is ordered to pay Navdeep Kaur the sum of \$71.56 within twenty-eight (28) days of the date of this determination for the filing fee.**

## **Employment relationship problem**

[1] Navdeep Kaur seeks a compliance order in relation to the non-payment of two sums under a Record of Settlement (settlement agreement) made in mediation with her former employer Divya Holdings Limited (Divya Holdings or the company).

[2] At a case management conference held on 26 July 2018 the parties agreed that this matter could be considered by way of an investigation meeting held over the telephone.

[3] On 9 August 2018 I held the investigation meeting and heard over the telephone from Ms Kaur and Divya Devgun (also known as Divya Singh), the sole director and shareholder of the company. Both Ms Kaur and Ms Devgun wished to file further information and proceeded to do so in the weeks following the investigation meeting.

[4] Both Ms Kaur and Ms Devgun clearly have strong feelings about the employment relationship and the current state of affairs between them. However, a substantial portion of the evidence filed was not relevant to the limited issue of the compliance order. As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

## **Settlement agreement**

[5] The parties reached an agreement and signed the settlement agreement on 17 May 2018. On the same day a Ministry of Business, Innovation and Employment Mediator signed the settlement agreement pursuant to section 149 of the Act.

[6] The settlement agreement provided for the payment by Divya Holdings Ltd, without admission of liability, to Ms Kaur two sums of \$2650.00 pursuant to s 123(1)(c)(i) of the Act. The first sum was to be paid by 15 June 2018 and the second by 15 July 2018.

[7] The settlement agreement also required payment of a sum towards the costs of Ms Kaur's representation. Although I heard some evidence on this issue, Ms Kaur

confirmed, both at the case management conference and the investigation meeting, that she was not pursuing any claim regarding those costs.

### **No payments made**

[8] The times at which the payments were required to be made have long since passed. Divya Holdings accepts that it has not made any payments to Ms Kaur pursuant to the settlement agreement.

### **Instalments**

[9] Divya Holdings seeks to make payment of the amount owing by instalments. This is strongly opposed by Ms Kaur.

[10] Section 182(4A) of the Act empowers the Authority to exercise its discretion to order payments by instalments. The Act is clear that instalments may be ordered only where the employer's financial position requires it.

### **Divya Holding's position**

[11] Ms Devgun says that she intended to borrow money or take a loan to pay for the sums in the settlement agreement but has been unable to arrange a loan for such a large amount. She filed Divya Holdings' financial accounts and bank account statements. Ms Devgun also provided a summary of her own income and expenditure position, as well as copies of various accounts on which she and Divya Holdings owe money.

### **Ms Kaur's position**

[12] Ms Kaur was strongly opposed to any order for instalments. She refers to past occasions when she says offers of payment were made but then no money was forthcoming. Ms Kaur says that she needs the money now rather than waiting for instalments. She provided her bank statements in support.

### **Outcome**

[13] The parties have voluntarily undertaken the obligations in the settlement agreement. They have been informed by the mediator that such agreements are final

and binding and are enforceable by the parties.<sup>1</sup> There is a public interest in mediated settlement agreements being honoured by the parties. It is appropriate for a compliance order to be made.

[14] In terms of instalments, I am very concerned that Divya Holdings has made no attempt to pay even the smallest sum to Ms Kaur towards the amount it owes her under the settlement agreement. It is almost four months since the mediation and almost three months since the first payment was due. Divya Holdings clearly has a number of debts but to have made no effort to at least start making even modest contributions does not support an instalment plan being ordered.

[15] When pressed as to a figure which Divya Holdings could afford to pay, Ms Devgun suggested \$25 per week. At that rate, it would take the company over four years, from whenever the first payment was made, to pay Ms Kaur the total amount which Divya Holdings committed to paying her by 15 July 2018.

[16] I am not satisfied that an order for instalments is appropriate in these circumstances.

[17] I order Divya Holdings Limited to comply with the settlement agreement by paying to Navdeep Kaur the sum of \$5,300.00 within 28 days of the date of this determination.

### **Further non-compliance**

[18] The Authority's orders may be the subject of further application for compliance in the Employment Court which is empowered to impose penalties for continuing non-compliance which includes imprisonment, fines and the sequestration of property.

[19] An alternative procedure is provided under s 141 of the Act, enabling a party, by obtaining a certificate of determination from the Authority, to proceed to the District Court so that the determination can be enforced using the remedies available for a District Court order or judgment.

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<sup>1</sup> Section 149 (3)(a) of the Act

## **Costs**

[20] Ms Kaur was not represented in this proceeding. However, she had to pay the Authority's filing fee. I order that Divya Holdings Limited pay Ms Kaur within 28 days of the date of this determination the sum of \$71.56 for the filing fee.

Nicola Craig

Member of the Employment Relations Authority