

**EMPLOYMENT RELATIONS TRIBUNAL
(EMPLOYMENT PROMOTION AND PROTECTION DIVISION)**

AWARD

ERT/EPPD/RN 02/15

Before:	Rashid Hossen	– President
	Arassen Kallee	– Member
	Ali Osman Ramdin	– Member

In the matter of:-

Mr Deepacksing Ramjeet
(Complainant)

And

Sugar Investment Trust
(Respondent)

In a letter dated 4th June 2015, the Sugar Investment Trust, hereinafter referred to as the ‘Respondent’, an employer of not less than 20 employees, gave notice to the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training of its intention to restructure the company and to reduce its workforce due to financial and economic downturn.

Being of the opinion that one of the redundant workers, Mr Deepacksing Ramjeet (hereinafter referred to as the 'Complainant') who was made redundant on 21 July 2015 has a 'bona fide' case, the Permanent Secretary of the said Ministry has, therefore, in terms of section 39B(6)(a) of the Employment Rights Act 2008, as amended, decided to refer to the Employment Promotion and Protection Division of the Employment Relations Tribunal the aforesaid reduction of workforce case for determination as outlined in the following terms of reference:

In the matter of:

Mr Deepacksing Ramjeet, also known as Sailesh of Avenue Sauvettes, Sodnac, Quatre Bornes

Disputant

v/s

Sugar Investment Trust, service to be effected at its registered office at Ground Floor, Ng Tower, Cybercity, Ebene.

Respondent

Background

1) By letter dated 04 June 2015, addressed to the Permanent Secretary, Ministry of Labour, Industrial Relations, Employment and Training, the Respondent notified the Permanent Secretary of the Ministry that it has decided to restructure the company and it would reduce its workforce due to the following reasons:

- a) Financial and economic downturn due to mismanagement during past 9 years;*
- (b) no future projects for the next 5 years;*
- (c) reduction of staffs in the Land Business Unit due to non-performing projects;*

- (d) *reduction of staffs in the Marketing Department; and*
- (e) *reduction of staffs in the Surveying Unit.*

(2) *On 19 June 2015, Disputant was given notice of termination of employment for 21 July 2015 on ground of financial and economic downturn.*

(3) *On 22 July 2015, the Disputant registered a complaint with the Permanent Secretary of the Ministry, contesting the reasons put forward by Respondent for reducing its workforce and claiming for his reinstatement.*

(4) *The Permanent Secretary enquired into the complaint with a view to promoting a settlement between the parties.*

(5) *However, no settlement was reached between the parties and the Permanent Secretary of the Ministry is hereby referring the matter to the Tribunal under section 39B (6)(a) of the Employment Rights Act 2008.*

The point in dispute:

Whether the reduction of workforce affecting the disputant is justified or not in the circumstances.

The parties were represented by Counsel.

The Respondent filed a Statement of Case (as amended) which reads as follows:

1. Respondent avers that its Board has since the 2nd June 2015 decided to reduce its workforce and by letter dated the 4th June 2015 informed the Permanent Secretary, Ministry of Labour and Industrial Relations of its decision with the following reasons pursuant to section 39B(2) of the Employment Rights Act, viz:-

- a. Financial and economic downturn due to mismanagement during past 9 years.
- b. No reasonable scope for future projects for the next 5 years.
- c. Reduction of staff of the Land Business Unit due to non-performing projects.
- d. Reduction of staff in the Marketing Dept.
- e. Reduction of staff in the Survey Unit.

2. Respondent avers that pursuant to its decision as mentioned above a letter was sent to the President of the Artisans and General Workers' Union on the same date as per section 39 B (3) of the Employment Rights Act.

3. Respondent avers that by letter dated the 19th June 2015 the Applicant was communicated of the decision whereby his employment would end on the 21st July 2015.

4. The Ministry of Labour and Industrial Relations delegated Mr Mahendrasingh Seeburruth, Senior Labour & Industrial Relations Officer to make an enquiry regarding the reduction of workforce to the SUGAR INVESTMENT TRUST (hereinafter called SIT) on 23 June 2015. He requested for the list of employees whose employment was to be terminated and other related documents.

5. A meeting was held at the Ministry of Labour and Industrial Relations on 9 July 2015. Mr Lall Dewnath from Artisans & General Workers Union was present in the meeting and requested Respondent to consider the reintegration of Mr Deepacksing Ramjeet and 3 other Team-Leaders which decision was not acceded to by the board of the Respondent during its meeting held on 28.08.15.

6. i. The Respondent avers that in the restructuring mode due to financial difficulties the services of the Applicant are not required as there are other qualified staff employed before him in the same line who are doing the same work.

ii. The Respondent avers that it has to minimize its costs and has respected in good faith the principle of last in first out. No one has been recruited after the Applicant.

7. The Respondent avers that the Applicant yearly remuneration is about Rs 1,3M which is equivalent to the monthly salary of Personnel of Respondent.

8. The details of the Respondent's financial crisis is listed as follows:

- Inability to pay Creditors (Colas Rs 132M Attachment Order).
- Urban Architect claiming Rs 6M.
- Bramer (NCB) Rs 100M since Jan 2015.
- Afrasia Rs 350M due since March 2015.

- DBM Rs 668M due since May 2015.
- Inability to pay loan interest.
- Other contractors claiming Rs 150M.
- Investment Alteo-Synove (already committed Rs 100M and paid out of borrowings).
- Salaries are being paid by overdraft.

9. Respondent avers that the money to be received from projects estimated about Rs 600 Million is not sufficient to repay its debt, thus SIT Board decided to restructure and reduce staff cost to mitigate financial burden and project cost overrun as such reduction is estimated at about Rs 16 million annually.

10. Respondent has already paid the sum of Rs 1,021,300.90 as Recycling fee for the workfare program as stipulated in the Employment Rights Act.

11. Respondent avers that in utmost good faith redundancy became inevitable and hence it could just only apply the rule of last in first out in good faith and consequently applicant was dismissed from his job in compliance with the law.

12. Respondent prays that the application be otherwise set aside.

The statement of Case of Complainant provides as follows:

1. Disputant denies paragraph 1(a) of the Respondent Statement of Case and avers that the company Sugar Investment Trust (SIT) is not facing any financial and economic downturn for the following reasons inter alia:
 - (a) The Respondent will derive revenue from Aurea Project to the tune of about MUR 744,448,140. (Morcellement permit for Aurea has already been delivered on 13th May 2015).
 - (b) Sale of one wing of The Core (state of art building) to University of Mauritius has generated an income of MUR 242 Million.
 - (c) Income actually derived from the rent of The Core (state of art building) amounts to MUR 38 Million annually. It has also been gathered that Mauritius Telecom and The State of Mauritius have already taken the remaining floors. The total income expected from The Core (state of art building) is MUR 48 Million.
 - (d) Income from rent of NG Tower amounts to MUR 11 Million annually.
 - (e) Income from Investee Companies amount to MUR 200 Million annually. (list of Investee Company is found at Page 22 of the Annual Report 2014)
 - (f) Government acquisition of 14 acres of land at the rate of MUR 10 Million per acre will generate total income of MUR 140 Million.
 - (g) The Company's profitability for the Year 2014 was MUR 115,597,000.-. The Company has always been profit making.

- (h) The comments on the unaudited Abridge Interim Financial Statement for the nine months ended 31/03/2015 at Page 3 thereof states that the SIT (the group) has recorded a net profit for the current quarter.
- (i) He has been occupying the post of Team Leader Corporate Affairs and Project Administrator since 8 years and there has been no mismanagement in his department. There is neither any adverse report against him whatsoever in respect of mismanagement in the department of Corporate Services Department.
- (j) Disputant further avers that before he joined SIT, the MCB Registry was hired to manage the following:-
 - (i) The Share Registrar of SIT and SIT Land Holding which have two different shareholder's base. (SIT 55,000 shareholders and SIT Land Holding 15,000 shareholders).
 - (ii) The election of SIT delegates and directors as well as election of directors of SIT Land Holding were conducted by the MCB Registry.
 - (iii) All transfers of shares and amendments in shares were being conducted by MCB Registry.
 - (iv) Dividend cheques and AGM for SIT and SIT Land Holding were also being managed by MCB Registry.

MCB Registry was charging SIT and SIT Land Holding the sum of MUR 2.5 Million to manage the above. Disputant avers that since he has joined in, the Company has made a saving of MUR 2.5 M annually.

(v) Disputant also draws the attention that he was managing a portfolio of 55,000 shareholders of SIT and 15,000 shareholders of SIT Land Holding.

2. In reply to Paragraph 1B of the Respondent's Statement of Case, disputant avers that Directors could sit on Board of Directors only up till 12 August 2015 and as such the said Board had no right to decide on any future project whatsoever for the forthcoming 5 years.

3. In reply to Paragraph 1C to 1E of the Respondent's Statement of Case, disputant avers that same is not applicable to Corporate Services Department where the latter was the Team Leader.

4. Disputant takes note of paragraph 2 of the Respondent's Statement of Case and draws attention to the fact that the letter addressed to the President of Artisans and General Workers' Union (GWU) confirms that the Corporate Services Department was not one of the departments concerned with the issue of redundancy. Same is being confirmed by letter which was addressed to the President of AGWU). Disputant further avers that the above is also confirmed by a letter emanating from the President of AGWU.

5. Disputant admits Paragraph 3 of the Respondent's Statement of Case.

6. In reply to Paragraph 6 of the Respondent's Statement of Case, disputant avers that at no time he was recruited as the Company Secretary of the Sugar Investment Trust (SIT). It is the SIT Corporate Secretarial Services which is the Company Secretary of SIT. Consequently, disputant further avers that he is the Team Leader of Corporate Affairs and Project Administrator as defined in the job description.

Disputant further avers that he has all the relevant qualifications as required for this post.

Disputant further avers that he has always been an employee of SIT and not SIT Corporate Secretarial.

7. Disputant takes note of Paragraph 7 of the Respondent's Statement of Case.

8. Disputant denies paragraphs 8 & 9 of the Respondent's Statement of Case and avers that respondent is not facing any financial crisis. Respondent as a going concern has never received any adverse Audit Report from its auditors and the Audited Account shows that the Respondent is solvent. Respondent has a total asset worth MUR 7 Billions. The Respondent has an Audit Committee which comprises of Directors and at no time, the Audit Committee has flagged out that there is a financial crisis within the Group. In the case of Synove, a money-market line amounting to MUR 250 Million has been taken by Respondent. A money market line is a short term facility and

de facto it will exert a pressure on the financial aspect. The Synove Investment will generate return in the medium and long term whereas repayment of same is being done on a short-term basis which is a wrong decision taken by the Board recently.

The loan is in respect of investment of group and not in relation to operation of the Company. The loan was not taken to run the day to day management. All loans are in respect to projects and they are long-term loans (over 10 years).

All these projects were made on the basis of a due diligence, which was carried out to the satisfaction of the Board. Disputant further avers that these due diligence were carried out by independent professionals and were approved by the same Board.

Disputant avers that the reason invoked by the Respondent to enable the latter to repay its loan i.e. making the Disputant redundant is not a fair, reasonable and justifiable one.

Disputant further avers that the reduction of workforce on the purported ground of "Economic Downturn" is unfounded and baseless in light of the figures available mentioned above which speak for themselves. Disputant has reason to believe that his dismissal has been effected in utter bad faith and ulterior motives and more so the fact that there has been an increase in salary

amount to 27% across the board since February, 2015 clearly shows that SIT was not facing any financial crisis.

Further the Respondent is wasting a monthly sum of about Rs 450,000.- in respect of payment being effected to the employees of the Water Park Ltd although the Water Park closed down two years back.

9. Disputant denies Paragraph 11 of the Respondent's Statement of Case. The rule of "last in first out" has not been applied in good faith. There are other staff who joined the SIT after the Disputant. Disputant also avers that the Team Leader HR and the Team Leader Finance who have signed termination letters/and letters addressed to the Ministry have themselves joined the Company after the appointment of the disputant which shows clearly that the rule of "last in first out" has not been applied in good faith.

Besides the Team Leader HR and the Team Finance of the Respondent who joined the company after the appointment of the Disputant another executive under the Team Leader was appointed recently and is earning a monthly sum of about Rs 45,000.- and enjoys the benefit of a Company car. In this case also the Rule of 'last in first out' is not being applied.

Disputant also avers that Section 39B(3)(a) of the Employment Rights Act 2008 has not been respected.

In fact, the Corporate Secretarial Department still exists and without which SIT and SIT Land Holding cannot function. Disputant also avers that the current function and profile of the latter is in line with the qualification required to perform the function of Team Leader Corporate Services. There is no other person who presently satisfies this requirement. SIT has got 55,000 shareholders and the department SIT Corporate Services is an essential arm in the whole structure.

The Disputant prays that the Application be granted.

And for other reasons to be given in due course.

One of the representatives of the Respondent, Mr Dayanund Koobrawa, Team Leader Administration Human Resource at the SIT deponed as follows:-

The Respondent decided to reduce its workforce due to financial and economic reasons and informed the Permanent Secretary of Ministry of Labour of its decision by a letter dated 14th of June 2015. This followed a decision of the Board at the SIT at its meeting on the 2nd of June 2015. He referred to financial and economic downturn for the last 9 years and no further project were to be envisaged for the next 5 years. The company has to reduce its workforce in the Land Business Unit, Quantity Department and the Quantity Surveying Team. On the 18th of June 2015 the Board issued a list of certain staff whose employment are to be terminated. On the 19th of June 2015 the Complainant was informed that his employment was being terminated and was given one month notice. On the 23rd of June 2015 the

representative of the Ministry of Labour, Industrial Relations, Employment and Training requested the Respondent for the dates of entries and other details of 13 persons whose employment were being terminated. 13 persons were taken off their job including the Complainant whose particular job was Team Leader for the Company Secretary Unit. Most Team Leaders and Management Teams were in that list and for the post of Team Leader in the Company Secretary Unit the Complainant was the only one who was holding this post. Complainant joined the company on the 18th June 2008 as Admin & HR and the witness joined as Admin HR on 9th of June. On 30th June 2008 Complainant became the Team Leader Corporate and Project Administrator and was the only one in that post. The Board decided that there was no need for a Team Leader in the Company Secretary Department. There are other persons who are working in that department and who hold a similar degree in that department. Currently there is one lady who is sitting for her final examination of the Institute of Chartered Secretary and Administration and another who is reading his degree in law. The Complainant's salary inclusive of his car benefit and medical scheme as well as pension contribution comes to around Rs 1.3Million a year and this is the monthly salary of a workforce of some 40 persons at the Respondent. Mr Lall Dewnath, the union representative requested for the integration of the Complainant amongst others but his request was turned down. The witness learned that an Attachment Order has been received from one of the Respondent service providers namely Colas which is a contractor in a project called AUREA and it is a claim of Rs 132,709,964.27. There are other various creditors claiming for money. The witness further added that the Board was agreeable to pay

them compensation for 15 days per year of service but same was refused by the workers.

The other representative of the Respondent, Mr Pravesh Sookaye, Team Leader Finance and currently the Ag Officer in Charge at Respondent Group stated that Complainant cannot perform the duties that he Mr Sookaye is currently doing. As a qualified Accountant he has signing authority for the company Secretary Department which duty the Complainant cannot do. As regards the financial difficulties the company is facing, the latter has been selling land for the past 9 years and making profits which in turn for capital gain has been dissimulated. The purpose is to mitigate the loss in operating activities and to pay out dividends. The company has been making profits in respect of dividends emanating from the power generating company, an associated company known as Omnicane and also from other milling companies. In view of the current situation in the sugar sector dividends have decreased. As at end of June 2015 the company has a loss of Rs 60,791,000. According to the witness the financial situation of the company is negative and the company is indebted at around Rs 1.3 Billion. These are current liabilities where the loan from bank is being matured within 12 months. The Banque des Mascareignes has claimed Rs 722,795,640 and there are claims from the National Commercial Bank. There are loan arrears from HSBC of some Rs 14,730,000. He thinks HSBC will probably put the Respondent into receivership in October for non-payment of loan and the Respondent is currently negotiating with banks. The Attachment Order from Colas has worsened matters within the company and although sale of land within

AUREA will bring about Rs 650 Million, this will not be at one go. Clients are deferring payment for the project given that their money is blocked as a result of the ex-Bramer and BAI closing down. There is also an invoice from Gibb to the tune of Rs 46 Million and there are Rs 5 Million that eventually will be claimed as arrears for consultancy fees. The Independent Commission Against Corruption is currently enquiring on certain contracts within the company to the value of Rs 80 Million and this claim has not yet reached the company. It is in relation to work effected on the AUREA site. There is also the short term loan borrowed from Afrasia Bank and this is due by 31st December 2015. The Core project is a landmark building of 28,000 square metres which has been built in Ebene and financed from borrowing from HSBC. 7,000 square metres were to be sold to University of Mauritius but an issue on parking has cropped up and this matter is being delayed. According to the witness restructuration is downsizing and cost minimization. The company has to reduce its costs which were on the high side whereby the company could not repay its debt. There has been a reduction across the Team Leaders and only himself and the H R Manager who remain on site are now looking after the company. He denies any bad faith on the part of the company.

Mr Lall Dewnath for the Complainant stated that he is the President of Artisans and General Workers Union and which union is recognized by the Respondent. The latter wrote to him on the 4th June 2015 and delivered the letter personally to him. The representative of the Respondent informed him that the Board has decided on a restructuring program and are therefore

terminating the contract of 4 Heads of Department. The witness learned from the newspaper that some 13 or 14 officers were laid off. No explanation was given regarding the economic downturn and restructuring in 3 departments. There was no discussion regarding the possibility of avoiding reduction of workforce. Mr Pravesh Sookaye who signed the letter said to him that he had the blessing of the Minister of Agro Industry to terminate the contract of those people.

Mr Gowtamsingh Dabee, Fellow of the Certified Accountant also deponed on behalf of the Complainant. He has been practising as an Accountant since 1991 up to 2002. He was then called upon to attend the duty of Chief Financial Officer for a large multinational before resuming practice in 2011. He has gone through the account of the Sugar Investment Trust and was given the interim financial statement 2015 and from which he has been referring to the publicly available information on the Sugar Investment Trust which is the public accounts and the annual reports published as from 2012. The first conclusion he reached is that Respondent is a capital rich asset and when one looks at the total equity of the company, it is Rs 4.2 Billion rising to Rs 4.4 Billion in 2014 and it reached Rs 4.5 Billion at 31st June 2015 as per the abridged financial statement. The equity has kept on increasing and so have earnings that arose from Rs 750 Million in 2012 to Rs 1.2 Billion in 2015. This total equity which is the shareholders' funds covers most of the borrowing by nearly three times. It represents an increase of 25%. He pointed out that at the Stock Exchange some companies have 1 to 1 whereas the Sugar Investment Trust has 1 to 3. This means that the company would

have no difficulty in repaying its debts. It has substantial assets that it can dispose of to bring in cash flow and other assets for development which is the reason behind taking loans. There are also deposits on the sale of land which will be released ultimately with other deposits that have been received up to 30th June 2015 as explained in the Director's Report in 2014 and the abridged statement of March 2015 where it says that there are incomes coming from projects which will boost the profitability of the company. This has not been reflected in the financial statement at 30th June. The auditors of the Respondent made no reference to any going concern issue regarding the company. There is nothing in their report that indicates that the Sugar Investment Trust is in need of a particular attention regarding its financial affairs. The witness would give a gearing of 2 to 1 to the company and this is a reflection that it is in very good health. The gearing ratio measures the indebtedness of the company. The Sugar Investment Trust is a company in which people were investing. One cannot talk of any mismanagement when one looks at the last 5 years of the company's accounts. The Respondent is a company with transparency and various committees. All the disclosures that are required by the international financial standard as a corporate governance has been included in the annual report and readers of those accounts have sufficient information. The witness added that given the financial situation of the company there was no reason for declaring the Head of Department redundant. The company in fact needs an extra management team.

The Complainant's version is that he was employed by the Respondent as Team Leader Corporate Project Administrator following an advertisement

and that since 2008. The post required a degree in Business Administration/B com and LLB which the Complainant satisfied and has produced documents to that effect. According to Complainant, it was only after the departure of the CEO and that of the Financial Director at Respondent that Mr Sookaye who is in the sixth position in the hierarchy came into the picture. It is since February that the Respondent finds itself with a liquidity problem. Complainant went to the office on the 19th of June 2015 where he was informed of the termination of his employment contract following a Board's decision and he was further told not to attend duties. Other Team Leaders were also sacked namely Mr Lautan from the Land Business Unit together with Mrs Bappoo and Mr Varma. Complainant referred to the Respondent's Minutes of Proceedings where it is written:

“Mr Sookaye further requested that in view of the above irregularities, the present Team Leader – Corporate Services be requested not to attend Board meetings/Committees and that all responsibilities with respect to Board/Committee minutes be delegated to him.”

The Complainant confirmed to the contents of his Statement of Case. He stated that he is the one who had set up the department that took over the services that were provided by the MCB Registry. During his 8 years as Team Leader, he has not received any warning or complaint. According to him the SIT Leisure Ltd that looks after the Waterpark is still paying its employees some Rs 450,000 when the Waterpark itself has closed down and

those employees have not been sacked. He added that reference has not been made to the 10 acres of land that have not been accounted and a proceed of Rs 150 Million is expected following compulsory acquisition by the government. Complainant received an increase of salary of some 27%. The increase is across the board and costs the company some Rs 300,000 per month. According to him there is currently mismanagement and when one ventures in a business one does not go for short term loan. As regards the Attachment Order from Colas this matter has already been discussed and payments were to be effected by instalment.

Mr Oozeer for the Complainant submitted that the reduction in workforce is not justified as it has not been done in good faith. There has been no evidence of financial and economic downturn during the past 9 years. Banks have not been paid only during the last 9 months. The Company has assets in billions and it owes 140 Million caused by a delay of 34 days. He further submitted that on the 4th of June 2015 the question of restructuring the Corporate Services did not arise. There is also the issue where Respondent has failed to consider the possibility of avoiding the reduction in workforce in consultation with the union.

Mr Jacques Panglose for the Respondent submitted that there was no sinister motive on the part of the Respondent. The representative of Respondent explained the reasons behind the reduction in workforce and insofar as the union is concerned, consultation did take place and it was for the union to come forward. The Aurea Project has not materialized yet and the Core

Building is only partly rent and all this is caused by a previous mismanagement which leads to such financial situation.

TRIBUNAL'S CONSIDERATIONS

After probing into the documentary and testimonial evidence adduced before us, we consider that:-

- (i) As per the annual reports of the Respondent, the evidence falls short of establishing any shortcoming with regard to the financial situation at the Respondent Company.
- (ii) We find that no substantial evidence as such on any mismanagement for the last 9 years as averred by the Respondent. According to the Officer in Charge of SIT, financial difficulties were only noticed as from February 2015.
- (iii) The company's assets are more than sufficient to meet its liabilities.
- (iv) It has been profitable and is solvent as per the very statement of the current Officer-in-Charge Mr Pravesh Sookaye himself.
- (v) We are unable to understand as to why disposing some of its assets has not been on board. It seems to us that the Company has not sufficiently explored other possibilities in reducing its liquidity issues.

- (vi) The banks' claims for payment of short term loan are only recent. Attachment Order from Colas claiming Rs 132,702,964.27 is unpaid dues as well as claims for outstanding balances from National Commercial Bank, Banques des Mascareignes and HSBC do not go far back. By all means the Attachment Order will be to the limit of Rs 132M and it would not affect the company which has a net asset of Rs 4.5B.

- (vii) The Aurea and Core projects are facing technical issues and as such their proceeds may not be expected to materialize so soon. It does not mean it has been put in a drawer. The Respondent is also exploring further opportunities in Mozambique and a visit was effected in July/August this year. Other opportunity like Aeolian Project is also underway.

- (viii) The duties of the Complainant who holds the required qualifications are now being carried out by people who are less qualified. His yearly remuneration including all benefits turned out to be approximately Rs 1.3 Million. This does not have a much impact on the profitability and liquidity of the company.

- (ix) The Waterpark (a project of the SIT) is now closed. Yet some Rs 450,000 go towards employees attached to it, evidence which has also remained unrebutted.

(x) The Company has made a constant profit for the last 4 years.

	Rs(000)
2014	115,597
2013	106,149
2012	104,526
2011	102,782

The Group has also concluded positively in the previous years.

	Rs(000)
2014	82,733
2013	192,860
2012	133,586
2011	205,976

The year 2015 was an exception when the Company realized a loss of Rs 60,791,000 and the Group completed with a positive profit of Rs 88,239,000.

Dividends have been paid to equity holders of the company for the year 2012, 2013 and 2014. Staff salary has been increased by 27%.

As at 30 June 2015, the Company holds assets at Rs (000) Rs 4,298,940 as compared to liabilities of Rs (000) 1,319,323.

As at 30 June 2015, the Group holds assets of Rs (000) Rs 5,335,540 (Rs 4,942,488 + 393,052) and liabilities at Rs (000) 2,942,224.

As at 30 June 2014, the Company holds assets Rs (000) 3,936,990 as compared to liabilities at Rs (000) 623,544.

As at 30 June 2014, the Group holds assets of Rs (000) 5,273,796 (5,030,425 + 243,371) and liabilities at Rs (000) 2,012,617.

The liquidity ratio which measures the ability of the Company to meet its debt as and when it falls due is thus:

$$\frac{\text{Company 2015} - \underline{1,536,142}}{1,219,323} = 1.16 : 1$$

$$\frac{2014 - \underline{974,053}}{623,544} = 1.56 : 1$$

$$\frac{\text{Group 2015} - \underline{393,052}}{294,224} = 0.13 : 1$$

$$\frac{2014 - \underline{243,371}}{2,012,617} = 0.12 : 1$$

As at 30 June 2014, the Company has borrowed only for Rs (000) 578,139 and for the Group Rs (000) 1,219,712.

This is approximately 20% (578,139 divide by 2,962,937) of the total assets of the Company and 24% (1,219,712 divide by 5,030,425) for the Group.

The cash flow position of the Company as at 30 June 2014 showed only an overdraft balance of Rs (000) 20,721 and Rs (000) 96,267 for the Group.

The year remuneration of the Disputant represents only 1% (1300 divide by 115,597) of the profit for year 2014.

The Company registered a steady profit for the last 4 years.

The Company has declared Dividend for previous years.

(xi) The Respondent is expecting about Rs 150 Million from Government of Mauritius for compulsory acquisition of 10 acres of land.

(xii) The notice given to the Minister is flawed.

Section 39B(2) of the Employment Rights Act 2008 provides:

“An employer who intends to reduce the number of workers in his employment either temporarily or permanently or close down his enterprise shall give written notice of his intention to the Permanent Secretary, together with a statement of the reasons for the reduction of workforce or closing down, at least 30 days before the reduction or closing down, as the case may be.”

The letter dated 4th June 2015 addressed to the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment & Training by the Respondent informing of its intention to reduce workers refers to restructuring the company and reduction of its workforce due to:

- “1. Financial and economic downturn due to mismanagement during past 9 years.*
- 2. No future projects for the next 5 years.*
- 3. Reduction of staffs in the Land Business Unit due to non-performing projects.*
- 4. Reduction of staffs in the Marketing Dept.*
- 5. Reduction of staffs in the Surveying Unit.”*

We note that the last three so-called reasons put forward by the Respondent relate to reduction of staffs in the Land Business Unit, Marketing Department and the Surveying Unit. We wonder how reduction of staffs can amount to a reason for reduction of workforce.

We are left with the first two reasons put forward i.e. financial and economic downturn due to mismanagement during past 9 years and no future projects for the next 5 years. We consider it insufficient that an employer simply gives notice of intention to reduce without some specificity regarding the reduction as this would allow an employer to terminate employment of workers without them having a chance to make representations before their redundancy actually takes effect. It would deprive the Permanent Secretary of the said Ministry of his duty to enquire into the complaint with a view to promoting a settlement between the parties (Section 39B(5)(c) of the Employment Rights Act 2008). Indeed in the present matter the list of workers whom the Respondent intended to terminate their employment was only communicated following the Board decision on the 18th of June 2015. It is on that list that Complainant's name appeared. The intention to reduce cannot be an ongoing process. We consider therefore that in the present matter the Respondent has failed to comply with the requirement of 30 days before reduction as provided by Section 39B(2) of the Employment Rights Act 2008. It was held in *La Bonne Chute ltd v Termination of Contracts of Service Board*:-

“When one considers that the Board’s composition is of a very special and specific nature, we think it was clearly the intention of the legislator ... to lay down that employers should cause every case of reduction in large undertakings to be carefully and indeed fully investigated by the Board. We cannot envisage that

the law meant that only the Board's decision regarding the number of workers to be dismissed was binding. Indeed we fail to see how the Board could be expected to restrict its operations to an arithmetical exercise: if an employer in a general undertaking wishes to lay off workers, surely it becomes material to know whether he intends to sack the cleaners, or the manual workers; even more so, in a business such as the applicant's for example, it may be necessary to cut losses by closing the snack bar and dismissing a couple of counter helpers without there being any need to sack cook or a gardener...We accordingly hold that, in determining whether an employer is justified in reducing his work force, the Board should not limit its exercise to a mathematical computation, but consider also whether the employer has shown good cause to lay off the particular worker or workers concerned. To hold otherwise would mean that, in giving notice, the employer could even fail to disclose the names of the workers destined for the axe, so that the proceedings before the Board would take place without the worker whose livelihood may be at stake being given a hearing."

- (xiii) The consultation with the union barely shows any desire to avoid redundancy. Notwithstanding Section 39B(2) of the Employment Rights Act 2008 subsection (3) of the same section reads:-

“an employer shall not reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise unless he has –

- (a) in consultation with the trade union recognized under section 38 of the Employment Relations Act, explored the possibility of avoiding the reduction of workforce or closing down by means of –*
- (i) restrictions on recruitment;*
 - (ii) Retirement of workers who are beyond the retirement age;*
 - (iii) reduction in overtime;*
 - (iv) shorter working hours to cover temporary fluctuation in manpower needs; or*
 - (v) providing training for other work within the same enterprise;”*

Mr Lall Dewnath, the union’s representative firmly denied any attempt on the part of the Respondent to consider the possibility of avoiding redundancy. The reason put forward by the Respondent that the latter did not attend any further meeting to discuss avoidance of redundancy does not impress us.

- (xiv) The company may currently be undergoing a cash flow if not a liquidity problem. But to hastily apply the axe on the employees does not seem warranted. It is fully solvent as illustrated by the liquidity

ratio calculated above. Its equity keeps rising and covers 3 times its borrowings, with a gearing ratio of 1 to 3.

In *Coprim Ltée v Yves Menagé [Privy Council Appeal No 42 of 2006]*, the Judicial Committee recalls “*the notification requirement in section 39(2) [of the now repealed Labour Act] is no mere formality, but is the key to the system under which the Termination of Contracts of Employment Board considers the proposals of an employer to reduce the size of his workforce.*”

The importance of abiding to the notification procedure has also been stressed in *Santaram Babboo & Ors and Sofitel Mauritius (Belle Rivière Hotel Ltd) (ERT/EPPD/RN 01/15)*.

- (xv) The principle of ‘last in first out’ is no more in dispute inasmuch as the Complainant was the only person in the post he occupied when he was declared redundant. We find it appropriate to refer to what was observed in *Concorde Tourist Guide Agency Ltd vs. Termination of Contracts & Others (Supra):-*

“*...it must stand to reason that the application of the “last in first out” principle requires a sufficient connexity in the specifics of particular posts, including their relative status, existing as between the workers concerned.*”

We conclude therefore that the Respondent was unjustified in declaring the Complainant redundant in the circumstances it did and for the reasons given above. An employer may declare an employee or employees redundant while still making a profit if a need to restructure is called for. But good faith should prevail.

We do not consider reinstatement to be the best course to adopt in the present matter in particular given the animosity that may now exist between the Complainant and the current Officer in Charge. We would therefore opt for the alternative course which is that of payment of severance in accordance with Section 46(5) of the Employment Rights Act 2008. The employer will pay the Complainant severance allowance as follows:-

- (i) for every period of 12 months of continuous employment, a sum equivalent to 3 months remuneration; and
- (ii) for any additional period of less than 12 months, a sum equal to one twelfth of the sum calculated under subparagraph (i) multiplied by the number of months during which the worker has been in continuous employment of the employer.

The Tribunal awards accordingly.

The Tribunal wishes to thank both Counsel for their understanding of the harsh time constraint imposed on the Tribunal to adjudicate on this matter.

We call upon the authorities to consider an extension of time in the conclusion of a matter before the Employment Promotion and Protection Division. Justice delayed is justice denied but too speedy a hearing may also depart from a sense of justice.

(Sd) Rashid Hossen
(President)

(Sd) Arassen Kallee
(Member)

(Sd) Ali Osman Ramdin
(Member)

22nd October 2015