

**PERMANENT ARBITRATION TRIBUNAL**

**Award**

**RN 945**

**Before:**

<b>Rashid Hossen</b>	-	<b>Ag President</b>
<b>Masseelamanee Goinden</b>	-	<b>Member</b>
<b>Bhinnod Ramburn</b>	-	<b>Member</b>

**In the matter of:-**

**Syndicat des Travailleurs des Etablissements Privés**

**And**

**Atics Ltd**

The present dispute has been referred by the Minister of Labour, Industrial Relations and Employment for compulsory Arbitration by virtue of **Section 82(1)(f) of the Industrial Relations Act 1973** as amended.

Mr D Ramano, of Counsel appears for the Applicant.

Mr M Sauzier, of Counsel appears for the Respondent.

The Terms of Reference read:-

***“Whether Management should grant a general salary increase of 12% with effect from July 2006 or otherwise”.***

The Applicant, in its Statement of Case, avers that:-

1. Atics Ltd is a scavenging company under contract with the Ministry of Local Government.
2. In addition, the Company has already been allocated contracts in the following regions:-
  - (i) Sable Noir
  - (ii) Albion
  - (iii) La Preneuse
  - (iv) La Prairie
  - (v) Belle Mare
  - (vi) Bain des Dames
3. Atics Ltd is governed by the Cleaning Enterprises Remuneration Order.
4. This Remuneration Order prescribes for the minimum wage to be paid and other conditions of employment.
5. Since 1995 this Remuneration Order has not been revised.
6. The Company has never granted a salary increase to its employees except payment of the yearly Cost of Living Allowance.

7. For the salary range of Rs5000 – Rs6000, the Cost of Living Allowance has been paid as follows during the last 6 years:-

YEAR	CPI %	PAID (Rs)	DUE (Rs)	BALANCE DUE (Rs)	%
2000-2001	5.5	175	302.50	127.50	2.32
2001-2002	5	180	275.00	95.00	1.73
2002-2003	6.5	250	357.50	107.50	1.95
2003-2004	5.1	220	280.50	60.50	1.1
2004-2005	4.5	190	247.50	57.50	1.05
2005-2006	6.2	280	341.00	61.00	1.11
			Total	509.00	9.25

(calculated on average salary for range 5000-6000)

8. The abovementioned table illustrates clearly that the loss in purchasing power of each employee is above 9.2%
9. The galloping rate of inflation which is estimated not below 10% by the Central Statistical Office and depreciation of our rupee bears a severe impact on the purchasing power of each employee.

The Applicant prays the Tribunal for an order that a general salary increase of 12% with effect from July 2006 be paid by the Respondent to each employee.

In its Statement of Case, the Respondent avers that:-

The request for a general salary increase of 12% with effect from July 2006 or otherwise should not be granted for the following reasons:-

1. The main contracts of Atics Ltd are of fixed duration and are agreed upon a fixed price for a specific period of time. These periods or terms vary from 12 months to 60 months and are mostly awarded through tender procedures by the Ministry of Local Government or the Local Authorities.
2. It is apposite to note that one contract is expiring on 30 September 2007 (cleaning and scavenging of Mahebourg Village) and two are expiring on 15 November 2007 (cleaning of GRSE beaches – from GRSE to Blue Bay and Lots 8 beaches from Sable Noir to La Preneuse).

New tenders will be called by the relevant authorities and although it is hoped that Atics Ltd will be able to be successful in the said ventures, no guarantee can be presently secured.

3. The Company has been facing losses for the last 4 years as follows:-

2003	-	Rs 311,000
2004	-	Rs 8,610,000
2005	-	Rs14,362,000
2006	-	Rs 8,927,000

4. The Company strictly adheres to the Cleaning Enterprises (Remuneration Order) Regulations 1995 (Salaries and other conditions/benefits) and as such the employee cannot in any way be held to be at a disadvantage and/or loss compared to the Industry as a whole.
5. Outstanding sick leave is refunded to all employees in January each year (not prescribed by law).

Mr Atma Shanto, for the Applicant, confirms to the correctness of the Applicant's Statement of Case.

He further affirms that:-

1. The Union – Syndicat des Travailleurs des Etablissements Privés – is recognised for the purpose of collective bargaining and there has been a deadlock following a demand for a 12% increase in salary.
2. There has been a loss in the purchasing power of workers from 1995 to 2000 which has not been mentioned in the table found in the Statement of Case of the Applicant.
3. The manual workers are accomplishing hard labour which requires much physical skill and their salary is their sole source of revenue to satisfy their needs.

In cross-examination, the witness deponed to the effect that:-

1. He agrees that there is a strong competition as regard tenders.
2. The Respondent's representatives have stated that the Company is in a difficult financial situation but this has not been justifiably determined.
3. Administrators are responsible for the Management of the Company and not the workers and the latter cannot be deprived of certain rights. Management has never explained the reasons losses have been incurred.
4. When workers are saying that justice must be done, it is not logical that the Company talks about its incapacity to pay.

5. He does not know how many companies are competing for contracts. He is aware of only two which are Atics Ltd and Securiclean Mauritius Ltd. He has also heard of Maxi Clean.
6. The contracts appearing in the Statement of Case of the Applicant expires on 31 January 2008 and there is nothing that indicates the Company that is holding the tender will win or lose it.
7. The Company employs above 125 manual workers and he is not aware whether there has been a decrease in the number of employees during the last twelve months. There are many companies which decrease the number of their manual workers so that they may become more competitive.
8. The Company's workers are posted at (a) Mahebourg, (b) at Petite Riviere to Flic en Flac and (c) other regions. He has been informed that the first two contracts (a and b) mentioned here have expired but have been extended to January 2008.
9. He is not aware of the market share of Atics Ltd.
10. He does not agree that the Company being in a difficult financial situation cannot afford to entertain something more than what is prescribed by law. The Remuneration Order provides for the minimum conditions of employment.

In examination, Miss Daniella Donat, Human Resource Manager of the Company, testifies to the effect that:-

1. Contracts number 4 and 5 (La Prairie and Belle Mare) listed at paragraph 2 of the Statement of Case of the Applicant are not with Atics Ltd. As regard the other four contracts, they expire in January 2008.

2. As regard the financial situation of the Company, they expected budgeted loss for the year 2007 which amounts to Rs16 millions. For the last 2 years there is a cumulative loss of approximately Rs24 millions (Documents A and B).
3. At present there are around 253 employees in the Company. In 2005 there were around 370. This decrease is due to the loss of contracts.
4. The area where most of the employees of Atics Ltd are deployed are:-
  - (a) Airport of Mauritius – about 100 employees
  - (b) Mahebourg beaches from Blue Bay to GRSE
  - (c) La Preneuse to Sable Noir beaches
5. At the Conciliation Department of the Ministry, the Respondent advised parties that it could not grant a salary increase because of the precarious financial situation and contracts that are terminating.
6. Presently the Company is not in a position to entertain any additional remuneration to any of the employees.

The witness, in cross-examination affirms that:-

1. There is a procedure for contracts to be allocated to the Company by the Local Authority or the Government – one has to go through tenders.
2. It does not mean that contracts already allocated when coming to expiration will be renewed. Both options are open – the Company may get them or may lose them.
3. She agrees that since 1995 and up to 2007 there has been no revision of salary at Atics Ltd. The only increase in salary has been the annual C.O.L.A and this is only a partial compensation to the rise in the cost of living.

4. The workers of Atics Ltd may be in a desperate financial situation with the galloping inflation and with the depreciation of the rupee.
5. She agrees that the Company has a social responsibility towards its employees in order to help them to meet their needs. Outstanding sick leave is refunded at the end of the year although it is not prescribed by law.
6. The contracts on which the Company works are of fixed term and of fixed price. If the contracts are extended one more year, there is no review in prices.
7. During negotiations with the Union, Management was agreeable for an increase in salary when the figures were to improve. For the time being this cannot be done because the Company is in a difficult financial situation. If things get better and in a spirit of good relation with the Union, the Company is ready to consider an increase in salary but the quantum of 12% is not justified.

After considering the testimonial and documentary evidence adduced, the Tribunal notes and finds that:-

1. Atics Ltd is governed by the Cleaning Enterprise Remuneration Order which prescribes the minimum wages and other conditions of employment. Since 1995 this Remuneration Order has not been revised.
2. Many contracts of Atics Ltd are expiring and there is no guarantee that these contracts will be renewed and whether the Company will be given other contracts. The witness for the Respondent has under oath stated that there has been a loss of contracts and eventually the Company has had to decrease its labour force.



3. The Company has been facing losses during the recent years. With the support of documents (A and B), the Respondent has averred that there has been a loss of nearly Rs24 millions during the last two years (2005 and 2006) and for the year 2007 the loss is expected to be around Rs16 millions.
4. We view that no injustice is suffered by workers of Atics Ltd as the Company strictly adheres to the Cleaning Enterprises Remuneration Order 1995. The Company cannot afford to pay more if it does not have the means.

The Tribunal notes that the Company refunds any outstanding sick leave at the end of the year although – as the Respondent has averred it is not prescribed in law. The Company, on the other hand, has affirmed that if things get better and in a spirit of good relation with the Union, it is ready to consider an increase in salary. The Tribunal can but appreciate and encourage such laudable initiative.

5. The capacity to pay of the Respondent is of utmost importance and any further stretch from its purse may result in the loss of jobs.
6. The Applicant has not successfully contested the issue that the Company is making losses. Neither has it established that Atics Ltd is a buoyant or lucrative enterprise that can pay over and above to what has been recommended by the Remuneration Order.
7. We feel that the Applicant has not proved its case on a balance of probabilities.

For the reasons given above, the Tribunal is unable to award in favour of the Applicant.

The dispute is therefore set aside.

**Rashid HOSSEN**  
**Acting President**

**Binnodh RAMBURN**  
**Member**

**Masseelamanee GOINDEN**  
**Member**

**Date: 18th December 2007**