



into the agreement. The respondent claims that its trading position is dire and that it can not afford to make any significant inroads into the sums owing.

[4] At the investigation meeting I ordered, pursuant to clause 10 of Schedule 2 of the Act, that any evidence relating to the respondent's financial position shall not be published except as in this determination.

[5] I accept that the respondent is in a difficult financial position as evidenced by its accounts and ongoing rent issues. These factors are reasons why the Authority may order monies otherwise owing to be paid in instalments (see s.138(4)).

[6] While the respondent has indicated that it will struggle to meet payments of more than \$100 per week, the applicant considers that at least \$500 per week should be paid. I conclude that it is appropriate to set instalment payments at the rate of \$200 per week. While the turnover of the respondent might indicate it could afford a greater amount, that turnover fluctuates greatly and therefore the respondent may need, rather than getting behind, to put aside extra money in weeks where it can afford to do so, in order to meet its repayment commitments to the applicant later.

[7] I note that this is a lesser payment than the weekly payment agreed to in the record of settlement and without any lump sum payments, except an initial payment of \$1,000, which the respondent indicated at the investigation meeting it could pay in the first week, but that is because of the nature of the finances of the respondent. I acknowledge that this will mean that the applicant will have to wait an unnecessarily long time to receive his monies due, but the alternative may be that the respondent is forced to cease trading and then the applicant might well get nothing. However, I hold that if a sale of the respondent's business takes place then it must, within one month of the date the sale takes effect, pay the applicant the balance remaining in full. Furthermore, the applicant will be protected by an order that should the respondent fail to meet any payment by any due date then the total sum owing shall be repayable forthwith.

[8] Usually such a failure to meet the terms of a mediated settlement would warrant a substantial penalty. However, as the respondent is unable to pay all the monies it already owes, to add a penalty would simply impose a greater burden on the respondent, leading to a greater likelihood of it ceasing trading and the applicant not

receiving the money he is justly owed. Furthermore, in the ordinary course of events such penalties are paid to the Crown and would thus not directly assist the applicant.

### **Costs**

[9] Costs are reserved.

### **Determination**

[10] I therefore make the following compliance orders.

[11] I order the respondent, Shree Shiv Shakti Ltd, to pay the following amounts to the applicant, Vijay Kumar:

- \$10,000 in compensation in terms of s.123(1)(c)(i) of the Act; and
- \$1,600 plus GST to Employment Contract Services Ltd (the applicant's representative).

[12] The above sums are to be paid in the following instalments, to Vijay Kumar (who shall be responsible for passing on to Employment Contract Services Ltd either what is agreed between it and him, or its share on a pro rata basis), and subject to the following conditions:

- \$1,000 on or before 7 May 2010;
- Instalment payments of \$200 on or before 14 May 2010 and each following Friday until the sums are fully met;
- Provided that if the respondent sells its business it shall be liable to pay any remaining sums owing in full, within one month of receipt of the sale funds, and is required to inform the Authority and the applicant's representative within 7 days of the sale funds being received;
- Provided further that should the respondent fail to make any of the payments referred to above by any due date then it will be liable to repay the full balance of monies owing to the applicant forthwith; and

- Provided that the parties may, if they reach a mutually agreed variation to these orders, revert to the Authority to have it order any such variation.

**G J Wood**  
**Member of the Employment Relations Authority**