REDUNDANCY BOARD

RB/RN/32/2024

ORDER

Before:	Rashid Hossen	-	President
	Saveeta Deerpaul (Ms)	-	Member
	Yashwinee Chooraman (Ms)	-	Member
	Feroze Acharauz	-	Member
	Christ Paddia	-	Member

Harel Mallac Technologies Ltd

and

Mr. Chowrimootoo Owen Nathaniel and Os

In a notice of intention to reduce workforce under Section 72(5) of the Workers' Rights Act 2019, as amended, Harel Mallac Technologies Ltd, hereinafter referred to as the "Employer", has on 21st March 2024, informed the Redundancy Board (the Board) that for economic reasons, it will terminate the employment of 11 employees in its cabling department. It has annexed a statement of case detailing the reasons behind its move, the substantial part of which is that: -

- no agreement on compensation was reached;
- it is a wholly owned subsidiary of Harel Mallac & Co. Ltd and forms part of the Harel Mallac group of companies;
- it employs 110 persons, including the 11 employees in the cabling department;
- it is to install network cabling and with the advent of commercial wireless technologies, the demand for physical networks has dwindled;
- no regular work could be provided to the employees for the past five years;
- a profit was registered in the year 2021 as a consequence of increased demand following the Covid-19 pandemic;
- alternatives to redundancy were explored but to no avail.

The 11 impacted employees hereinafter referred to as "the Employees", filed a statement of case in response to the Employer's case, averring in substance that:-

(i) the Employees' wages have a minimal impact in the Employer's overall economic performance;
(ii) there has been a growing demand for cabling services in Mauritius and Harel Mallac group has been recording a profit;
(iii) at no time did the Employer's auditors draw the attention of any sign of financial difficulties and furthermore, the employer has bypassed its own manpower and hired subcontractors; the Employer's current ratio does not show signs of liquidity problems;
(iv) the Employer had no intention of making the department profitable in failing to provide new equipment and consider alternatives to redundancy;
(v) the offer of compensation by the Employer is well below the expectation of the Employees;
(vi) the cabling department cannot become redundant in spite of the advent of new wireless technologies;
(vii) matters regarding contracts with other stakeholders need to be investigated, and
(viii) the Employees are willing to discuss further and pray that the notification of intention to reduce workforce be set aside.

In its reply to the Employees' Statement of Case, the Employer brought in a correction to Mr Khemarajen Ragoo's gross salary; and avers amongst others, that

(i) the impact of the employees' wages on the economic performance of the employees ought not to be viewed in isolation;

(ii) the pay packets of the senior manager is irrelevant to the present case;

(iii) the Employer does not undertake any maintenance of cabling network facilities which would be billable;

(iv) it is not the function of auditors to opine on the laying off of workers;

(v) the department has sufficient existing materials and new equipment were duly purchased; and

(vi) the financial performance of the group is irrelevant for the present purposes.

Miss N.Behary Paray, of Counsel appeared for the Employer. Mr G.Bhanji Soni, of Counsel and Mrs H.Gunesh, of Counsel, appeared for the Employees.

Testimonies

For Employer

The Human Resources and Talent Manager at the Employer, Mr Prithvy Roy Teeluck, deponed to the effect that the Employer has been in existence for 35 years and operate the business of IT Technology and employs some 110 workers. The activities effected by the Employees in the cabling department are now being redundant. Financial difficulties have started since 2019 and in 2021, an internal study showed that the department could not go into a merger. An interview was held in 2022 for redeployment of the Employees but the move was not fruitful. The Employer started talks with the Employees in 2023 with a view to reach a settlement. With regard to alternative solutions to avoid redundancy, no reduction of overtime could be envisaged as there was no overtime. No recruitment was being done and none of the Employees were of retirement age. The Employees are been paid their dues in the meantime. The manpower utilisation for the last 3 years is 20% roughly. The cabling department has been operating at a loss and the accumulated impact the employees' salaries has on an overall company is significant.

Mr. Ahmad Madarun, Accountant and Finance Business Partner of the Employer, stated that he looks after the Employer's finance and that the Employer has been making huge losses from 2019 to 2023 and things are getting worse in 2024. All the lines of businesses of the Employer are profitable with the exception of the cabling department. As such, the cabling department has wiped out the profits. Over the course of the said 5 years, the Employer has sustained a total loss of Rs 12.39 M. The cabling department represents less than 1% of turnover and 1/5 of the losses of the Employer. According to the witness, the Employer would have made a profit of Rs 17.46 M had there been no cabling department in the Employer's books. The losses are due to the fact that there has been no sufficient business activity in the department. A failure to turn the situation around may result in the closing down of the Employer.

Mr. Jean Claude Thomas, a Manager at the Employer stated that the various departments at the Employer are the Technology and Operations Department which englobes the cabling activity, the Human Resources Administration Department, the Sales and Marketing Department and the Finance Department. The type of work that the Employees does is network cabling which involves copper of fiber optic cabling in business offices. The Cabling Department has incurred losses for the past five years and the utilization of Employees has had an average of 20%. Technology evolution and competition have brought down the amount of network cabling. Providing training to the Employees to do wireless cabling would take between 3 to 5 years in all and there is no guarantee of having staff to provide technical support after 3 years.

As HR Manager of Archemics, a company forming part of the Harel Mallac Group, Mr. Richard Cadou confirmed that he was employed since 2019 and at Novengi since 2021. He was instructed by management to effect an interview together with one Mr. Asmed Bolaky who was the Project and Technical Manager at that time. The purpose of the interview was to consider the hopping over of the eleven impacted Employees to Novengi. This took place on the 14th

February 2022 and the witness produced the interview report. Only six of the Employees were shortlisted and they were subject to training by Novengi. There was a change of strategy at the level of Novengi and it was decided not to go further to embark the impacted Employees.

Mr. Ajay Nunkoo, Team Lead at the Employer, deponed with regard to an attempt to merge the Cabling Department and the Building Technologies and Solutions Department to take over the 11 Employees. The purpose of the transfer was based on the amount of projects that they were subcontracting to companies outside Harel Mallac Technologies. However, this exercise could not be carried out as many electrical and civil works such as trenching, setting up of CCTV poles and construction of manhole had to be subcontracted to other parties. Furthermore, the earnings when subcontracting to other parties would not be enough to meet the salaries of the Employees that would be transferred to the Department.

<u>For Employees</u>

Mr. Seeshan Nobin, Managing Director at Rescue Work Services, stated that he had been at the Cabling Department at the Employer from 1998 to 2006. His company does copper and fiber optic cabling and there is another department that does electrical works. He has received some subcontractual work for the Employer. He gave a letter to the Employees in which he stated that the Employer does not have the necessary equipment and tools to do cabling works. He had left the Employer as he found that the cabling work to be quite profitable. He agrees that there are many network cabling companies on the market and that the profit he is making would have been to the benefit of the Employer had he remained at the Employer. The projects he receives are normally one off. He also added that the fact that the Employer lacks equipment does not mean that it cannot undertake cabling work. Wireless work decreases cabling work by some 20%.

Mr. Parmesh Pallannee, System Engineer deponed to the effect that he has been in the IT Sector for almost 25 years and according to him there is a lot of scope in terms of wiring projects regarding cabling. The Employees should be able to do electric cables once they get necessary tools and knowledge, the more so as cabling technology feed the wireless technology. He worked at the Employer from 2018 to 2020.

Mr. Kamalsingh Nemchand, a Chartered Certified Accountant, solemnly affirmed that his services have been retained by the Employees to assess the financial strength of the Employer based on the latter's Audited Financial Statements dated 31st December 2020 and 31st December 2022, the Financial Summary for Financial Year 31st December 2023 and a Statement of Profit and Loss Account for the Cabling Department of the company. His observations are based on 3 performance indicators, notably, the liquidity, solvency and profitability side. He has produced a document to that effect (Marked S). The current ratio in technical terms assesses whether the company can meet the shorter terms obligations and this is done by comparing the current assets of the company with the current liabilities. Current assets are stock, trade, debtors, cash in hand and at bank, and current liabilities refer to bank overdraft, trade creditors and taxation, amongst others. According to the witness, the Employer's figures for the last 5 years show a ratio of almost 1 to 1 and this is a very comfortable ratio in accounting terms. This shows that the Employer has the ability to pay its short terms debts as they fall due in the foreseeable future, within a period of 12 months. With regard to the document showing financial loss in the Cabling Department, the witness stated that it does not form part of the Audited Financial Statement. There is a famous ratio called EBITDA and it stands for Earnings Before Interest, Tax, Depreciation and Amortisation. It is another way of looking at the performance of the company. The financial performance of the Employer is sound according to the witness. The Cabling Department represents 3.8% of the total salary of the Employer.

Mr. Santosh Jassoodanand, an IT Manager stated that he is aware about the issue of his colleagues, the Employees and he has put up a statement to that effect. He was himself an employee at the Employer since 2017 and he took charge of the Cabling Department in 2021. He was to follow current projects involving cabling. According to the witness, the Cabling Department has had its ups and downs prior to taking a downfall. It has started picking up in 2024. New technologies still require cabling. Training is however necessary to keep pace with technological evolutions.

Mr. Yajyanand Purboo, Senior Technician, stated that he joined the Employer in 1996 as Technician and has been a Senior Technician for the last 9 years. He confirmed to the correctness of the contents in the Employees statement of case, whom he represents before the Board. A proposal of 1 month compensation per year of service was made to the Employees in December 2023 and the same was reiterated in the month of July 2024. The offer for compensation has been turned down. In 2020, works started improving slightly in the Cabling Department.

Mr. Murvin Ragoo, Pre Sales Executive testified to the effect that he joined the Employer in 1990 as Electrician and eventually Senior Technician prior to being appointed Pre Sales Executive. He initially started at IBL before the latter merged with Harel Mallac. He recognised that he does not have the competence of the post label attributed to him. He was to give assistance regarding sales including quotations preparation. According to the witness, there is a huge demand for cabling works on the market.

SUBMISSIONS

Employees

Counsel for the Employees submitted that ex-facie the Financial Statements provided by the Employer, the Cabling Department is not the primary cause of the alleged poor financial performance of the Employer's overall business. The testimonies of professionals and experts in the IT and cabling industry above demonstrate that the Cabling Department has solid prospects for the future. Accordingly, it is submitted that the department is not redundant. The challenges facing the Employers Cabling Department stem from operational and managerial inefficiencies rather that redundancy. Management should have appointed a dedicated and competent sales person to attract new businesses. Additionally, the Employer has outsourced cabling work despite having the Employees capable of performing the same task. Excluding the non-operating income offers a clearer view of the Employer's financial performance. EBITDA is a powerful performance indicator which shows the profitability of the company and its ability to generate cash income. The Employer has incurred a total aggregated loss of Rs 74M over the past 5 years. The difficulties do not rest solely with the Cabling Department and it would be unjust for the 11 impacted Employees to bear the consequences of the company's overall financial performance. Since other departments reflect losses in 4 out of the 5 financial years, this casts doubt on the claim that the Cabling Department is solely responsible for the company's poor financial performance. With regard to the training issue, it is submitted that not enough consideration has been given to allow the Employees to develop more skills. The attempt to redeploy the Employees was merely a sham. The Employer must show economic difficulties and losses. Terminating the Employees employment would be unjust.

Employer

Counsel for the Employer submitted that there are real and serious economic reasons underlying the present notification for an Order from the Board for the termination of the employment of the impacted Employees. She based herself on the evidence adduced by the Accountant of the Employer which has not been seriously challenged. The Employer has been making huge losses and the situation has been worsening in 2024. The costs and expenses of the Cabling Department wipe out any profit which the company may otherwise make and without the Cabling Department, the company would actually register a profit. As such the dire economic situations being faced by the Employer as a whole, and the Cabling Department specifically, is not being contested by the Employees. The Employer has taken all reasonable steps with the view to avoiding termination of the Employees and has duly engaged in meaningful negotiations with them and that includes an internal restructuring by merging, attempt towards redeployment and consideration for overtime and recruitment issues. The only alternative left was discussion and negotiation over a possible compensation package and no agreement has been reached regarding same. The EBITDA and current ratio are not being used to challenge the averment of the Employer regarding its difficult economic situation, but only to claim that this difficulty does not exist. The Employer is accordingly moving for an Order from the Board allowing it to proceed with termination of the employment of the Employees on economic grounds.

Board's Analysis

Procedural Aspect

Section 72(1) of the Workers' Rights Act 2019, as amended, makes it mandatory for an employer to fulfill certain obligations if he intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise.

In its notification to the Board, the Employer confirmed the absence of trade union within its enterprise. Witnesses Mr. Yajyanand Purboo and Mr. Murvin Ragoo stated during cross-examination that the latter was appointed as the workers' representative despite the fact that there was no appointment document as such. However, official proof of discussions held with the representative of the impacted employees in terms of notes of meeting was produced.

With regard to exploring the possibility of avoiding the reduction of workforce, the following issues were hardly contested:

- restrictions or recruitment;
- retirement of workers who are beyond the retirement age;
- reduction in overtime; and
- shorter working hours to cover temporary fluctuations in manpower needs.

According to the Human Resources and Talent Manager at the Employer, no new employee has been recruited in or transferred to the Cabling Department since 2014. No impacted Employee is beyond retirement age and given that the impacted Employees did not have any work to perform during the working hours, they were not performing any overtime, with the result that no reduction in overtime could be considered. Also, the fluctuation in manpower needs was not temporary, with the result that shorter working hours was not an option.

It is a matter of regret that no agreement could be reached on the issue of compensation in spite of a series of negotiations. A 50% compensation that equals to 6 weeks salaries triggered by the President of the Board through conciliation was rejected by Counsel representing the interests of the Employees.

We therefore note that negotiations have been ongoing ever since the Employer formed the intention to go for redundancy. Witness Mr Yajyanand Purboo confirmed a 1 month compensation offer made in December 2023 and reiterated in July 2024.

Financial Aspect

The Employer has submitted its audited financial statements for financial years ending December 2019 to 2022 and indicative figures for Unaudited Financial Statements for year 2023. A summary of the last 5 years' financial statements is shown in the table as below:

	Dec-19	***Dec-20***	***Dec-21***	***Dec-22***	***Dec-23 Unaudited***
	Rs m	***Rs m***	***Rs m***	***Rs m***	***Rs m***
Statement of Financial Position					
Assets					
Non-current assets	103.5	97.5	90.1	73.2	88.3
Current assets	255.4	246.1	240.6	246.4	274.2
Total assets	**358.9**	**343.6**	**330.7**	**319.6**	362.5
Liabilities					
Non-Current liabilities	66.9	61.2	43.6	54.9	55.8
Current Liabilities	232.9	242.6	233.7	213.4	252.8
Total Liabilities	**299.9**	**303.8**	**277.4**	**268.4**	**308.5**
Statement of Profit or Loss					
	Dec-19	***Dec-20***	***Dec-21***	***Dec-22***	***Dec-23 Unaudited***
	Rs m	***Rs m***	***Rs m***	***Rs m***	***Rs m***
Sales	501.7	533.7	653.3	681.1	614.8
Cost of sales	(341.7)	(419.9)	(504.4)	(543.9)	(481.9)
Gross Profit	**160.0**	**113.7**	**148.9**	**137.2**	**132.9**
Profit/(loss) before tax	**2.4**	**(27.9)**	**6.1**	**(-3.1)**	**7.1**
Tax	2.2	6.8	0.2	1.4	0.05
Profit /(loss) after tax	**4.6**	**(21.2)**	**6.3**	**-1.7**	**7.15**

Being given the Unaudited figures do not provide a proper assessment of the financial position, the analysis has been made based only on the figures of the Audited financial statements of the Employer for the last four financial years i.e. 2019 to 2022.

Ratios	*Dec-19*	*Dec-20*	*Dec-21*	*Dec-22*	Definition
Net Profit Margin	1%	-4%	1%	0%	Net profit measures the Profitability of a Company after taking into account all expenditures including tax, interest, depreciation and amortization.
Gross Profit margin	32%	21%	23%	20%	Gross profit margin measures the Operating Profit of a Company. This ratio is calculated by taking only the cost of sales and excludes other expenditures like tax, interest, depreciation and amortization. The interpretation is similar to EBIDTA as both measure operational efficiency.
Current ratio (current assets/current labilities)	1.10:1	1.01:1	1.03:1	1.15:1	This ratio measures whether short term assets are sufficient to meet short term liabilities. Minimum acceptable ratio is 1:1 which shows short term assets are just sufficient to meet current liabilities.
Net assets (Total assets - total liabilities)	Rs59m	Rs40m	Rs53m	Rs51m	The Net assets measures the long term solvency of a Company. A positive figure indicates that there are enough assets to pay long term debts.

On the basis that a ratio of 1:1 is the minimum acceptable ratio where a Company is at equilibrium in terms of short term assets and liabilities indicating that the short term assets are just enough to meet current liabilities, the current ratio of an average of 1.10:1 in the present matter indicates a minimum acceptable ratio for meeting short term debt obligations. There is therefore, no short term liquidity issue. However, any unforeseen increase in current liabilities or reduction in current assets like default of payment from a major debtor would compromise the financial ability of the Company to meet its short term liabilities. This was admitted by the witness of Employees namely Mr Kamalsing Nemchand, the Accountant:

*"**Mrs. N. Behary Panray**: Which means Sir, if I have on major debtor that defaults on payment of any sum owed to me during that 12 months, you agree I would be tied up to pay any debts?*

***Mr. K. Nemchand**: Yes ....If we suspect any bad debts coming into the current assets, the Directors and the Auditors do make provision for impairment."*

The net assets of the Company appear quite stable as they are greater than total liabilities over the last 4 years. This indicates that the Company is not critically unsound in terms of meeting its long term debt obligations as it has an acceptable level of assets to meet its long term liabilities. As such, the Employer is not considered insolvent. Be that as it may, solvency is not an issue in the present matter.

EBIDTA

As regard profitability, various scenarios come into play. Gross profit margin is the gross profit as a percentage of sales and measures operational profit/efficiency. Similar to gross profit margin, EBIDTA (Earnings Before Interest, Depreciation, Tax and Amortisation) is another calculation which also measures operational profit of a company. On the other hand, the net profit margin is measured as net profit as a percentage of sales and it shows the overall health of a company by accounting all the company expenses, interests, depreciation/amortisation and taxes.

Mr Nemchand has elaborated on the fact that EBIDTA was the best ratio to determine profitability of a Company. However, although this ratio is considered to measure operational profitability of the Company, it does not indicate whether the Company is sustainable especially where a company has huge expenses in terms of tax, interest, depreciation and amortisation. He further added that EBIDTA is particularly of interest to bankers and other financial institutions. Admittedly, shareholders are more interested in net profits to determine whether it is worth investing in a Company. Therefore, the net profit margin is the ultimate measure of profitability considered by investors to determine the overall financial viability of a Company. This ratio is usually considered by investors and management for decision making purposes regarding investment and restructuring.

The following extracts reveal that EBIDTA may not be the reliable reference as it does not assist the Board to understand the financial strength of the Company. It is earnings before interest, taxation, depreciation and amortization and therefore does not take into account expenses that the Company has to incur and whatever the Company has to pay:-

Mrs N Behary Paray: Thank you. Now, let's go to the next document that you have produced which is document…., ok, the EBITDA. You've repeated in fact, on several occasions, that EBITDA is a widely used well know performance indicator. Have you taken cognizance of the IFRS paper meeting of December 2018 on EBITDA?

Mr K Nemchand: No.

Mrs N Behary Paray: Non. Let's see what the regulator, the International Financial Reporting Standards Board has to say on EBITDA. So, you will see on the document, which is publicly available, that this paper *has been prepared for discussion at a public meeting of the International Accounting Standards Board, correct. You are a Chartered Accountant?*

Mr K Nemchand: *Yes.*

Mrs N Behary Paray: *You are part of that? You are a member of that body?*

………………..

Mr K Nemchand: *Yes.*

Mrs N Behary Paray: *Page 5, so it starts by saying is that "Users use EBITDA for different purposes and there does not appear to be a single underpinning concept of EBITDA." Correct?*

Mr K Nemchand: *Yes.*

Mrs N Behary Paray: *So, what it is saying is that this indicator means different things to different people.*

Mr K Nemchand: *Yes.*

Mrs N Behary Paray: *There is no way of singular way of calculating it.*

Mr K Nemchand: *Yes.*

Mrs N Behary Paray: *So, the calculation that you have made is one way of doing it. Correct?*

Mr K Nemchand: *Yes.*

Mrs N Behary Paray: *Page 11, sorry page 16, it speaks by the diversity in EBITDA and labeling and definitions, right. And last page, page 20, "Many members said that EBITDA is widely used by Investors, Analyst and Lenders. However, members have expressed mixed views on the usefulness of EBITDA as performance measure. Some members say that it is a useful starting point but they have said, some members have said that it has significant shortcomings as a performance measure. Some GEF members said that EBITDA is a poor proxy for operating cash flows and will become a worst proxy as a result of IFRS 15 revenue from contracts with customers and IFRS 16 leases." Correct?*

Mr K Nemchand: *Yes.*

…………………

Mrs N Behary Paray: *Now, let's look at the EBITDA. The only thing that this document shows, your document (U), is that if the Net Profit or Loss after tax was Rs 7 million odds, the earnings of the company before tax was Rs 25.7 million.*

Mr K Nemchand: *Yes.*

Mrs N Behary Paray: *But based on this figure, we don't know whether the company is performing well or the company is not performing well, correct, in the market.*

Mr K Nemchand: *I don't have this information.*

…………………

<u>Mrs N Behary Paray:</u> And you would agree with me that if year on year, the company has been making losses, it is not operating as a company should, it is not making profits. Correct?

<u>Mr K Nemchand:</u> Yes.

…………………

<u>Mrs N Behary Paray:</u> My question to you is, if you have to take this figure and you have to take into account all the other stuff that the company has to pay, for example, gratuity, pension, loan repayment and interest on loan, this figure goes down considerably.

<u>Mr K Nemchand:</u> Yes.

…………………

<u>Mrs N Behary Paray:</u> A company has as liabilities, pension, gratuity, interest on loan and the capital on loan. Correct?

<u>Mr K Nemchand:</u> Yes.

<u>Mrs N Behary Paray:</u> For you to understand whether a company is able to survive or not economically, you need to understand the whole of its liability? Correct?

<u>Mr K Nemchand:</u> Yes.

<u>Mrs N Behary Paray:</u> You can't, because if IFRS allows you or any other accounting metric allows you to calculate EBITDA, you take the EBITDA and you say well, the company has a positive figure so it means it can survive. Because the EBITDA ignores other liabilities that the company has, for example paying pension. Because if the company can't pay pension, it's a problem.

<u>Mr K Nemchand:</u> Yes.

…………………

The answers of Mr Kamalsingh Nemchand speak for themselves.

<u>Training</u>

The Employer in the present matter highlighted the fact that the continuation of the Cabling Department would entail heavy investment in equipment, materials, huge maintenance costs and re-training of employees in new technology required in the business. The witness of the Employer, Mr. Jean Claude Thomas who is a Manager, averred that it requires knowledge and experience on wireless to be in this service sector where there is a need for employees with IT background. Training of the impacted employees on the required technology would be very costly and may take 3 to 5 years depending on the capacity of the said employees. The Employer, therefore, considers that contracting out the services of the Cabling Department would be more economical than maintaining the department which is heavily loss making and causing the profitability of the whole Company to drop further. The representative of the company has demonstrated during his testimony that, without the Cabling Department, the overall profitability of the Employer would be better off as shown in the last row of the table below.:

Statement of Profit/Loss

	Dec-19	**Dec-20**	**Dec-21**	**Dec-22**	**Dec-23 Unaudited**
	Rs'm	**Rs'm**	**Rs'm**	**Rs'm**	**Rs'm**
Harel Mallac Technologies Ltd	4.6	-21.2	6.3	-1.7	7.1
Cabling Department	-10	-5.4	-7.4	-2.9	-4
Harel Mallac Technologies Ltd without Cabling Department	14.6	-15.8	13.7	1.2	11.1

Outsourcing

It is the contention of the Impacted Employees that this economic situation is due to alleged managerial inefficiencies rather than redundancy and the Impacted Employees are relying on the fact that there are some works in the cabling department which are outsourced. However, it is in evidence before the Redundancy Board that:

- The person who assesses the need for subcontractors and whether there is any internal capability to do any aspect of a job that the Employer quotes for is Mr Ragoo, and his predecessor before him;

- The amount of work which has indeed been subcontracted do not make up for the important losses of the cabling department and even if these works were performed in house by the Employer, the cabling department would still be recording losses;

- Any income from subcontracted projects are accounted for as the turnover from the cabling department.

We consider it entirely normal for a firm to look into outsourcing as an option, particularly when internal costs may exceed expectations. Embracing outsourcing should be a strategic move towards efficiency and cost-effectiveness. It allows the business to remain competitive while maximizing resources effectively and we believe this to be the main purpose of the Employer in the present matter. Indeed, the suppression of any department of a company to cut off costs of production for restoring the situation and for the survival of the company may render reduction of workforce indispensable leading to the abolition of the position occupied by a worker. *Re:* ***Poste Lafayette Ltd.*** (TCSB/667/85) depicts the picture where the employer '*has during the past years incurred severe financial difficulties and has recently been compelled to sell about 150 Arpents of land under cane cultivation out of 520 Arpents, and to discontinue its transport department'.* When any department has been discontinued the services of subcontractors are often instead turned to and this was pointed up in *Re:* ***General Construction*** (TCSB/481/82) where it was exposed that subcontractors have been appointed to undertake the excavation work as they were specialized labour and their appointment avoided the spending of valuable time and money to train employees for that work. Whenever there is a waste of resources, it is legitimate for the employer to reorganize its business and that may entail the suspension of posts. The present matter does not raise the issue of restructuring as such. It is more a phasing out of a department to allow other departments to survive.

Redeployment

The attempt to redeploy the impacted employees to Novengi Ltd, a sister company within the Harel Mallac Group, has not been successful. They were interviewed by a Technical person and a Human Resource person whose task were to assess whether there was any prospect of taking on board of some of the employees. In spite of a few being shortlisted, Mr Santosh Jassoodanand who was responsible for that department at that time testified that the shifting was not possible due to economic implications in particular because the impacted employees have a defined benefit pension requiring frequent injection of money and that Novengi Ltd was not prepared to effect it. In our judgment, there is no basis for saying that the attempt towards redeployment was a sham.

The Cabling Market

It is the Employees' contention that the Employer is envisaging the phasing out of the cabling department when the market for cabling is doing well. We fail to understand how a company would consider such a move if business is really booming. We have not been convinced of those witnesses for the Employees who are now engaged in cabling work on their own. The following extracts of witnesses Seeshan Nobin and Parmesh Pallanee are quite revealing:-

Mrs N Behary Paray: Ça veut dire combien ou paye ça huit (8) employés qui employé par ou là, par an combien ou paye zot à peu près, allé par mois ?

Mr S Nobin: Li arrivé dans les Rs 200,000 ça.

Mrs N Behary Paray: Rs 200,00 par mois ?

Mr S Nobin: Avant qui salaire vine salaire minimum.

Mrs N Behary Paray: Donc, Rs 200,000 par mois, si nous compte 12 mois, li faire Rs 2.4 million. Si ou revenue qui ou ine déclaré Rs 2.3 million, ou pas pe capave faire profit.

Mr S Nobin: Non, couma mo dire ou, travailleur là li pas tous les l'année pareil. Parce que arrive ene moment donné cot mo aussi mo ena banne sub-contractor qui mo donne travail, parce qui mo préfère faire li coumsa, quand travail là baissé mo perna ça quantité employé là.

…………………

Mrs N Behary Paray: The question I asked you since you have set up your company, how many times have you actually gone to Harel Mallac and granted them a contract for cabling?

Mr P Pallanee: No.

Mrs N Behary Paray: You have never done it.

Mr P Pallanee: No.

Mrs N Behary Paray: And the question that I am putting to you is that even though you said in 2010 that Harel Mallac Technologies was the leader in cabling.

Mr P Pallanee: Among the leaders, yes.

Mrs N Behary Paray: So, you would agree with me that you are not in a position to stipulate whether Harel Mallac Technologies has a justification or not based on its figures and its experience to lay off these eleven employees.

Mr P Pallanee: No.

Furthermore, we fail to see how Mr Murvin Ragoo, a confessed incompetent officer for the work attributed to him in the cabling department, could speak about increasing demand for cabling on the market.

Mismanagement

A lot of emphasis has been put on mismanagement by the Employer. In Re: **Entreprise de Construction de Batiments Ltée**, TCSB 291/79 (Venchard 2nd Edition):

" The case for the company is a fairly clear one. It avers that, after five good years, it began to lose money on its contracts and the banks refusing further credit, it was bound to abandon three contracts risking actions in damages for the breach thereof.

The evidence of the witnesses who deponed for the Company was not contradicted in any way and Counsel for the workers, surprisingly called no evidence and in argument stated very fairly that he did not doubt the bona fides of the Company, but nevertheless argued that the workers should not be made the scapegoats of the misfortune which had befallen the Company but that they should be paid severance allowance from the profits made during the good years.

This argument cannot in any way be accepted by the Board for the reason that the primary duty of the Board is to decide whether or not the dismissals are justified. On the evidence available, which is not only contradicted but accepted by the workers, it is evident that the Board has no alternative but to decide that they are justified."

It is aptly enunciated in Re: **Société The Glen, TCSB 379/81**, where the TCSB therein questioned the gross mismanagement of the applicant company. In response it was held that *"there has long been a misconception regarding the true powers of the Board under the Labour Act, this is despite of several judgments of the Board setting out the limits of those powers as indicated in s39 of the Labour Act. These are, briefly, to consider the reasons put forward in applications when employers seek to reduce the number of workers in their employment and determine whether the Board finds such reduction justified or unjustified. No more no less……….even if there is gross mismanagement, as appears to be the case here, such mismanagement cannot 'faire l'objet de censure judiciare' to warrant the punitive award provided by the Labour Act".*

Dr. D. FOK KAN in the 'Introduction Au Droit Du Travail Mauricien' 2nd Edition, writes at page 393 : "*S'il est vrai que le TCSB n'a pas à porter un jugement de valeur sur la bonne ou mauvaise gestion d'une entreprise, rien par contre dans la loi ne semble lui interdire de procéder à une investigation quant au caractère sérieux du motif invoqué afin de déterminer s'il y a juste motif de licenciement. Ne doit-il pas comme le suggère A. Supiot vérifier que* "les faits économiques invoqués par l'employeur sont bien de nature à justifier la décision de licenciement qu'il a prise, autrement dit, que cette décision correspondait bien à l'un des choix de gestion envisageables par un chef d'entreprise normalement prudent et diligent, à la fois soucieux de la prospérité économique de son entreprise et de la meilleure sauvegarde possible des emplois? *" Il demeure toutefois que même en France le contrôle judiciare des motifs économiques est limité, le licenciement étant justifié dès lors que la décision a été prise dans l'intérêt de l'entreprise.* »(Le contrôle prud'homal des licenciements économiques, A. Supiot, Dr. Soc. 1987 p.268).

This Board therefore, considers that it is not its business to look and probe into any alleged mismanagement. In legislating for more protection for workers who may be subject to abusive redundancy, we do not believe that the Legislator intended for the Board to investigate into issues involving managerial inefficiencies. This could be a matter before a different forum. The Board is limited to look into consideration of good and acceptable causes for redundancy or closure and conclude whether the reasons advanced are justified.

Losses

The Board's analysis of figures shows on the one hand that the gross profit margin has a falling trend from 32% in 2019 to 20% in 2022, although at that percentage the Company still has a sound operational profitability. On the other hand, the Company has recorded a net profit margin from -4% to 0% during 2019 to 2022, whereby the -4% being due to the impact of COVID in the year 2020. The falling trend of Net Profit Margin from years 2019 to 2022 indicates that the overall profitability of the Company is deteriorating.

There seems to be no hard and fast rule to have a standard proportion of profit to continue a business although a Net Profit Margin of more than 10% and a Gross Profit Margin above 20% would appear desirable. Each business targets, according to the wishes of shareholders or the financial state of the company, its own profits level even though there is a minimum level which sets the red signal. In the case of the Employer, the red signal has started with Net Profit Margin of around 0%-1% and thus, the Employer has initiated measures it considers appropriate.

We bear in mind what Dr Fok Kan referred to in his 'Introduction au Droit du Travail Mauricien' at page 218 regarding 'justification':-

"Le TCSB dans In Re: ***Maurifood Ltd*** *souligne cette absence de critère et decide finalement d'utiliser la définition donnée par le Shorter Oxford directory: « to show or to maintain the justice of, or reasonableness, to find adequate grounds for, to warrant ". Le TCSB conclut également à juste titre dans cet arrêt que " redundancy by reason of the financial losses incurred by an employer is not the only test for justification of dismissal".*

We find it apt also to quote an extract from the judgment of the Industrial Court in **Nunkoo v Mauritius Biscuit Making Company Ltd (In Receivership) 2015 IND 54:**

"*It is not enough for an employer to claim that his business is facing economic or financial downturn. He has to adduce sufficient objective proof of economic difficulties to such an extent that it could no longer keep a particular employee or employees without affecting its competitiveness. Therefore, statement of accounts and expert evidence has to be adduced. The mere fact that the plaintiff has conceded that the company was facing economic difficulties is not in itself sufficient proof that it was facing economic difficulties that the post occupied by the plaintiff should be made redundant."*

In the same breath, it is also relevant to quote an extract from **Précis Dalloz, Droit du travail, 26e édition, Jean Pélissier, Gilles Auzero, Emmanuel Dockès, Note 458, p. 495:**

"Lorsqu'un employeur supprime ou modifie des emplois en l'absence de difficulltés économiques ou d'innovations technologiques pour sauvegarder la compétitivité de l'entreprise, les licenciements décidés à cette occasion seront des licenciements pour motif économique. ***Soc. 10 mai 1994, RJS 6/94, no 674, Soc. 8 juin 1994, Bull. civ. V, No 193."*** (emphasis added)

At pages 391,392 of the same Book, the learned author, **Dr. D. Fok Kan**, wrote the following:

"Pour déterminer l'éligibilité à l'indemnité de licenciement de l'employé, il convient ainsi d'examiner d'une part la validité du motif "economic, technological, structural or of a similar nature" invoqué part l'employeur et d'autre part son application à l'égard de l'employé licencié. L'approche adoptée par l'arrêt La Bonne Chute Ltd v Termination of Contracts of Service Board [1979 MR 172. Voir également Madelen v Termination of Contracts of Service Board 1981 MR 289: "…it would be the Board's duty firstly to satisfy itself that the reduction was justified in terms of numbers and then that the dismissal of each particular worker was justified."] par rapport à l'application du LA est à notre sens encore plus pertinente aujourd'hui;

(…)

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. (…)

Quant aux considérations économiques, il convient de faire ressortir que le législateur mauricien, contrairement au législateur français, ne se réfère pas ' à des difficultés économiques' (…).

Il suffit qu'il y ait une motivation économique même si l'entreprise serait rentable." ***(emphasis added)****.*

The falling trend of overall profitability for Harel Mallac Technologies Ltd from financial years 2019 to 2022 can be due to different factors including low demand of services of any departments, lack of marketing strategies, no investment in new technologies, general price increases and other external factors. The Employer has identified that the Cabling Department is the most low-performing and loss making department being given that the demand of its services have greatly reduced. This is due to a general movement towards new wireless technologies. Mr Kamalsingh Nemchand, the Accountant who deponed on behalf of the Employees did not contest the accuracy of the Audited Financial Statements of the Employer.

It is thus noted in the **Fiches D'Orientation – Licenciement pour motif economique (Cause reelle et serieuse)** that :

« La cause économique du licenciement se définit par l'existence de deux séries d'éléments successifs ***: le licenciement doit résulter d'une suppression ou transformation d'emploi ou d'une modification, refusée par le salarié, du contrat de travail, elles-mêmes consécutives notamment à des difficultés économiques ou à des mutations technologiques, ce à quoi ont été ajouté par la jurisprudence la réorganisation de l'entreprise nécessaire à la sauvegarde de sa compétitivité et la cessation d'activité.*** *Ce deux dernières causes dégagées par la jurisprudence ont été intégrées par la loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels dans la liste – non-limitative – des causes de licenciement pour motif économique établie par le code du travail (C. trav., art. L. 1233- 3 mod.).*

Les éléments matériels entraînant le licenciement trouvent leur cause dans la situation économique ou l'évolution de l'activité de l'entreprise. » (emphasis added).

In the present case, the evidence of Mr Ahmad Madarun, Finance Business Partner at the Employer, has not been seriously challenged. It is his evidence that:

- For the past 5 years, between 2019 and 2023, the Employer has been making huge losses, and the situation got even worse in 2024;

- The only way to save the company is to make some tough decision, to analyse in details all lines of business of the Employer;

- In 2019, the Employer sustained losses of about MUR 1.3 million;

- In 2020, the Employer sustained losses of MUR 25 million;

- In 2022, the Employer made a loss of MUR 2.1 million;

- The costs and expenses of the cabling department wipe out any profit which the Company may otherwise make and without the Cabling department, the Company would actually register a profit. This is also confirmed by the evidence of Mr Kamalsingh Nemchand, the expert witness who deponed on behalf of the Impacted Employees;

- The activities of the Cabling department do not generate sufficient revenue and profits in order to cover its own expenses; and

- If the situation is not turned around, the whole company would suffer with all its employees.

To the extent that these figures emanate from the audited financial statements of the Employer, the expert witness who deponed on behalf of the Employees, namely Mr Kamalsingh

Nemchand, did not challenge same and he admitted that these statements are in compliance with the IFRS Standards 20. In fact the evidence of Mr Kamalsingh Nemchand was that:

- The cabling department is making a total loss of MUR 29 million over the last 5 years and if we substract from the company's accounts the cabling department, there is a total net profit of MUR 25 million;

- The Employer, as a whole, is incurring losses, with all departments allegedly making very important losses, and not only the Cabling department.

In their written submissions, the Impacted Employees have inserted tables with calculations from the gross profit margin of the Cabling department, comparing same with that of the subcontractors of the Employer who also operate in the cabling business. It is to be noted that these tables were not adduced in evidence through the witnesses including experts who deponed before the Board. In any event, these tables show that the Employer is in a considerably worse situation compared to its competitors.

We observe a main witness notably Mr Kamalsingh Nemchand for the impacted Employees deponing on the issue of financial losses of the Employer with an allure of touch and go. At times, he casts doubts on the preparation of the Financial Statements and at other times he claims not having sufficient information to come to a conclusion. He confessed at the end of the day that he does not doubt the losses incurred. Whatever be the case, the burden is on the Employees to satisfy the Board that the Employer has not incurred those losses. The overall evidence show that the Employees have not seriously challenged same but rather blame the mismanagement of the Employer for such losses.

There should be no confusion with regard to Harel Mallac Technologies Ltd, and Harel Mallac Group. We are presently dealing with the Employer, Harel Mallac Technologies Ltd. We cannot take into account the evidence and submission in relation to the financial performance of Harel Mallac Group as the latter is not the entity before the Board. There is indeed a distinct personality between the subsidiary and the parent company with the result that the financial performance of the holding company cannot be in any way attributed or impact on the financial performance of the subsidiary company. A company is created to generate profits out of the business and it makes no business sense to continue feeding a subsidiary company that is incurring losses year after year. To sell off or liquidate the company will result in the loss of 110 of its Employees.

We would further add that the affirmation by the Employees that other departments within the Employer's enterprise are also making losses and only the cabling department is targeted for redundancy is a legitimate business choice of the Employer.

By looking at the consistent operational losses of the Cabling Department from the years 2019 to 2022 as shown in the above table, it would be imperative that actions to redress the Company are required to prevent further negative impact on the overall profitability of the whole Company. In his statement, the Accountant of Harel Mallac Technologies Ltd namely Mr Ahmad Madarun stated that the Company would make good profits if the Cabling Department's losses did not wipe out all the profits of the Company. This has not been successfully challenged.

Averments have been made that the company's Auditors have not signalled any red flag. It is not for Auditors to opine on such matters.

While the falling profitability of the Cabling department was not challenged by Employees' representative, the latter averred that not only the Cabling department was making losses, but other departments as well are making losses. This was admitted by the representative of the Employer in its delivery who also stated that, being aware of the overall falling trend of profitability of the Company, the Board of Directors have taken the tough decision to close only one of the most vulnerable department to prevent the situation from getting worse and save other departments in addition to preventing other job losses. Their pay packet is irrelevant and they are in fact paid to manage the company including its survival.

We agree with Counsel for the Employees that under both French and Mauritian law, employers must demonstrate that any dismissal based on economic grounds is justified by concrete evidence of significant economic difficulties. These justifications must be serious, genuine, and substantial. The burden of proof lies with the employer to present these reasons before the Board. Given the inherent similarities between French and Mauritian laws concerning "economic justifications, " the following illustrates the relevant legal provisions from both jurisdictions and support this analysis with French jurisprudence.

Article L1233-3

Constitue un licenciement pour motif économique le licenciement effectué par un employeur pour un ou plusieurs motifs non inhérents à la personne du salarié résultant d'une suppression ou transformation d'emploi ou d'une modification, refusée par le salarié, d'un élément essentiel du contrat de travail, consécutives notamment:

« …………A des difficultés économiques caractérisées soit par l'évolution significative d'au moins un indicateur économique tel qu'une baisse des commandes ou du chiffre d'affaires, des pertes d'exploitation ou une dégradation de la trésorerie ou de l'excédent brut d'exploitation, soit par tout autre élément de nature à justifier de ces difficultés…..»

Reference is made to the following extract from the Cour de Cassation case, **Cass. soc., 18 October 2023, nº 22-18.852:**

" Il retient ensuite que pour justifier de sa situation économique, la société produit un tableau faisant apparaître, s'agissant du secteur d'activité en cause, l'existence, nonobstant un chiffre d'affaires en hausse, des pertes en 2015, 2016, 2017 et en déduit que les difficultés sont avérées en ce qui concerne le secteur de reference»

« *En se déterminant ainsi, par des motifs insuffisants à caractériser le caractère sérieux et durable des pertes d'exploitation dans le secteur d'activité considéré, sans rechercher si l'évolution de l'indicateur économique retenue était significative, la cour d'appel a privé sa décision de base légale*»

The Cour de Cassation's decision in **Cass. soc., 18 Octobre 2023, nº 22-18.852** sets a key legal precedent regarding the assessment of economic dismissals (licenciement économique). The case revolved around an employer justifying the dismissal on the grounds of persistent operating losses, despite an increase in the company's revenue.

The Cour de cassation clarified that economic dismissals must be supported by significant and objective financial indicators, such as substantial operating losses, over a sustained period. The court rejected a dismissal where the employer failed to demonstrate that the company's financial difficulties were sufficiently serious and long-lasting to justify the economic dismissal.

The financial difficulties cited by the Employer in the present matter and backed by sufficient evidence point towards substantial operating losses over a sustained period. This aligns with the French legal ruling referenced **(Cass. soc., 18 Octobre 2023, nº 22-18.852)**, establishing that prolonged and serious financial troubles should back economic dismissals.

Fluctuations in profits and losses are not just common in the world of business; they are expected. However, when consistent financial losses plague a company year after year, the situation becomes dire. It is crucial to realize that this pattern not only threatens the viability of the business, but can also lead to devastating consequences for all its employees.

We have to draw a parenthesis with regard to Counsel submission on the issue of reinstatement. The Employees in the present matter are still in employment so that reinstatement cannot be invoked.

Reference was made by Counsel for the Employees to Section 72 (5A) (b) of the Workers' Rights Act 2019, as amended, which reads:-
"The Board shall entertain a notification for an intended reduction given under paragraph (a) where it is satisfied that-

(i) the enterprise is over-indebted and not economically viable and any further debt would increase the risk of the enterprise being insolvent; and

(ii) the restructuring may enable the enterprise to manage the repayment of its debts without being insolvent and to dispose of adequate cash flow to continue its operations."

We consider this particular sub-section to find its applicability only during the prescribed Covid 19 virus period as it is subject to subsections (1) of the Act (supra), which in turn reads: *"Subject to paragraph (b), an employer shall, during such period as may be prescribed, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers or close down his enterprise."*

Notwithstanding the fact that retaining the impacted employees and marketing the services of the Cabling Department was the most desired option, it is Management's prerogative to identify various options and devise the most viable solutions to turn round the company and generate more profits to preserve not only the interest of the shareholders but also its employees. In general practice, any management has the right and prerogatives to make its business profitable by restructuring and focusing on its core competencies to operate. It was held in **Plaine Verte Co-operative Stores Society Ltd V. G. Rajabally** (1991 MR 240) that the Court should not substitute itself to the employer who keeps the last word as to how his business is to be run and managed.

In the present matter, the Employer has identified its Cabling Department to be not its core competency and not adding value to its profitability. The decision to close the department and make its 11 employees redundant was based on low cabling work availability in the market, the resulting underutilization of the existing human resources, i.e the 11 impacted employees and the low viability of training of impacted employees on new technology that requires high expertise.

By closing one department and making redundant the 11 impacted employees of the Cabling Department, the Employer would be able to sustain its profitability and thereby, maintain the employment of its other employees which are around 100, in other departments

The following extracts are telling:-

Mr G Bhanji Soni: …………. The Company has also provided as part of its case, that would be in the brief at page 8, Mr Chairman. There was a document annexed to the Statement of Case, but before the Financial Statement where we have a Statement of Profit or Loss for the Cabling Department for years ended 2019 to 2023. You have been given a copy of that document?

Mr K Nemchand: Yes

Mr G Bhanji Soni: Now, do you accept that this document shows for instance at the last line, loss for the year from Rs 10 million in 2019, it has gone down to Rs 4 million in 2023? What do you have to say on this document?

<u>Mr K Nemchand</u>: My observation on this document is that, first observation is that it does not form part of the Audited Financial Statement.

<u>Mr G Bhanji Soni</u>: What is the impact of this document, when it is putting to show that the Cabling Department is making losses, do you accept that?

<u>Mr K Nemchand</u>: The problem is that, when we look at the figures, there are big losses coming from the Direct Cost itself, we see Sales Revenue for the five years, and we see Material Cost, from my reading what I understand from Material Cost, is raw materials, unless the Company under this item has included some other costs, like Depreciation or Motor Vehicle Expenses, or any other costs relevant to that Department. <u>But so far as it is presented now, there is no information showing how the other costs, if ever there has been other costs added to the material costs, how these costs have been apportioned, or have been allocated to the Cabling Department. So, in the absence of this information</u> and because this document does not form part of the Audited Financial Statement, <u>which cast doubt on the validity of how this Statement of Profit and Loss for Cabling Department has been prepared.</u>

<u>Mr G Bhanji Soni</u>: Alright. Now, in the Statement of Case of the Employer of Harel Mallac, it says that, "exceptionally in the Financial.." , I am reading from page 5, paragraph 10 of the brief, Mr Chairperson and Members of the Board, it says that "exceptionally in the Financial Year ended 31st December, 2021 the Company managed to register a profit of Rs 13,525,433, and the profit is not attributable to a contribution from the Cabling Department." Then it goes on at the next paragraph to say that "giving the state of affairs, that is, the Covid and the increase in remote work, etc, it is not possible for the Company to ensure its economic survival whilst continuing to employ the impacted employees in their correct post."

So, what do you have to say on the financial strength of the Company from what you have just started to explain?..........First, do you accept that statement from the employer?

<u>Mr K Nemchand:</u> <u>Assuming that this statement has been drawn properly, let say assuming that it has been drawn properly, I do not doubt about the loss, accounting wise it sounds ok, but a loss is a loss, if it has been prepared correctly.</u>

…………………

<u>Mr G Bhanji Soni</u>: The Company, in light of figures that you have provided to this Board and based from the Financial Statement, can it continue to support the salaries of these employees which is amount to approximately Rs 3 million per year?

<u>Mr K Nemchand</u>: The question to support the Cabling Department also comes from the fact that the Company is a wholly owned subsidiary of Harel Mallac Company Ltd which is very big, powerful Company in terms of asset based.

We have already highlighted that the Employer is Harel Mallac Technologies Ltd and not Harel Mallac Group. There is no law that compels a holding company to finance its subsidiary. Harel Mallac Group cannot be compelled to chip in financially.

…………………

Mr K Nemchand: *I do accept that there have been losses in the Cabling Department.* *If that's statement has been prepared properly, the result of that statement, if they have been drawn properly, the loss is maintained.*

…………………

Mrs N Behary Paray: And you agree with me that the rational for excluding stocks is that a company cannot operate if it liquidates all its stocks to pay its debts. Correct?

Mr K Nemchand: No, the company needs to sell its stocks to pay the current liabilities.

Mrs N Behary Panray: But at the same time as selling stock, it needs to restock.

Mr K Nemchand: Of course.

…………………

Mrs N Behary Paray: This is why in accounting terms, there is something called current ratio but a better measure of the ability of the company to pay its short-term debt is the quick ratio.

Mr K Nemchand: Yes.

Mrs N Behary Paray: Yes, now the quick ratio excludes stock that needs to be replaced for the company to function, correct?

Mr K Nemchand: Yes.

Mrs N Behary Paray: So, when we take, if we have to calculate the quick ratio from these figures, you will have to take the current asset which is on top, remove the value of the stock, and then divide the current liabilities. And you will agree if we do that, the ratio goes down.

Mr K Nemchand: Yes.

…………………

Mrs N Behary Paray: Yes. Secondly, Harel Mallac Technologies Ltd is worse off than its competitors in terms of current ratio.

Mr K Nemchand: Yes.

…………………

Mr K Nemchand: We do not have the basis of how these depreciation and motor vehicles cost have been allocated to the Cabling Department. We need that information to be sure.

Mrs N Behary Paray: So, this is why I am telling you, you are not, you don't even have sufficient information to be able to make an informed opinion as a professional on this document.

Mr K Nemchand: On the Cabling Department, yes.

…………………

<u>Mrs N Behary Paray:</u> Now, in your third document that you have produced which was document (T). You agree with me that in document (T), what it shows is that the Cabling Department makes losses and have made losses for the past five years of 29 million, correct.

<u>Mr K Nemchand:</u> Yes.

<u>Mrs N Behary Paray:</u> And as you yourself said, there are two other things that we can find in this Statement. Firstly, that if we exclude the figures for the Cabling Department which means, if we eliminate the Cabling Department, the company would have been making profits over the past 5 years.

<u>Mr K Nemchand:</u> Yes.

Underlining is ours.

At the end of the day, we see Mr Kamalsingh Nemchand's answers in cross-examination to be substantially in accord with the Employer's case.

<u>CONCLUSION</u>

We consider that the dire economic situation being faced by the Employer as a whole, and the cabling department specifically, is not being contested by the Employees and reveals that the contemplated termination of the Impacted Employees on economic grounds is the *'motif reelle et serieux'* of the present notification for redundancy.

After considering the issues put before the Board by both parties, we consider that it is not possible for the Employer to ensure its economic survival whilst continuing to employ the Employees in their current posts and that the reasons put forward by the Employer for them to be made redundant are justified.

The Board orders accordingly.

SD

……………………………………………
Rashid Hossen
(President)

SD

……………………………………………
Saveeta Deerpaul (Ms)
(Member)

SD

……………………………………………
Yashwinee Chooraman (Ms)
(Member)

SD

……………………………………………
Feroze Acharauz
(Member)

SD

……………………………………………
Christ Paddia
(Member)

Date: 19 December 2024