

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2023] NZERA 597  
3226720

	BETWEEN	HARMANDEEP SINGH Applicant
	AND	NIKHIL HIMALAYA TAIHAPE LIMITED First Respondent
	AND	RAVINDER KUMAR ARORA Second Respondent
Member of Authority:	Geoff O’Sullivan	
Representatives:	John Wood advocate for the Applicant No appearance for the Respondents	
Investigation Meeting:	On the papers	
Submissions Received:	Up to and including 21 September 2023	
Date of Determination:	13 October 2023	

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] In a Determination issued on 4 April 2023, the Third Respondent, Nikhil Himalaya Taihape Limited (NHTL) was ordered to pay Harmandeep Singh \$10,080 in wage arrears together with the sum of \$15,000 as compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act).

[2] NHTL has not made any of the ordered payments, nor has it advanced a challenge to the Court concerning the determination.

[3] Mr Singh now seeks to enforce the orders by obtaining a compliance order against NHTL. He also requests interest and costs together with reimbursement of his filing fee. NHTL was Mr Singh's employer and is the entity in which the orders of the Determination concerned. The Companies Office register records the Second Respondent, Ravinder Kumar Arora, as the sole director of NHTL and Mr Singh asks the Authority to lift the corporate veil and make an order that NHTL complies with the Authority's orders and that Mr Arora is required to ensure it complies with the orders made.

[4] At issue is whether there are grounds to issue a compliance order against any or all of the cited Respondents. Mr Singh was previously represented by other counsel and during a case management conference call it had been agreed that any compliance would only be against NHTL. Mr Wood, however, now asks that any compliance order should not only be made against NHTL, but also against Mr Arora, as the sole director.

#### **The Authority's investigation**

[5] The general rule is that it is for the Applicant to decide whom he or she will sue. Any person named as the Respondent may oppose being joined to proceedings by applying for a strike out if they consider there is no arguable case to answer.

[6] Neither NHTL nor Mr Arora have taken any part in this matter. Counsel for NHTL and Mr Arora, advised the Authority that NHTL was not trading and was not in a position to meet the awards made. I am satisfied, however, that NHTL and Mr Arora were aware of the matter and the potential consequences of a failure to engage.

#### **Are there grounds to issue a compliance and if so against whom?**

[7] Section 137(1)(b) provides the Authority with the discretionary power to order compliance against any person who has not complied with a determination issued under the Act by the Authority.

[8] The Authority does not have a financial indicia, profit and loss statements, cashflow records, balance sheets or bank account statements which would allow it to properly assess NHTL's financial position at the time it ceased trading. Accordingly, although Mr Wood submits that NHTL was just one of a number of companies operated by Mr Arora and that the corporate veil should be lifted due to the persistent sham or fraudulent actions taken on behalf

of NHTL. Mr Wood is asking the Authority to infer the truth of that statement without furnishing any real evidence.

[9] There does not appear to be any reason as to why a compliance order should not be made against NHTL. It remains on the Companies Office register and has not been wound up. Accordingly, compliance will be ordered against NHTL.

[10] I also conclude that it is unnecessary to look behind the corporate veil in order to resolve Mr Arora's involvement with NHTL. The judgment of the Labour Court in *Northern Clerical Workers Union v Lawrence Publishers Co. of New Zealand Limited* provides a precedent as regards the obligations of Mr Arora.<sup>1</sup> In that case the Labour Court noted in discussing compliance, that the focus should be on "*Who is responsible to carry out the act*" [*the employer*] *has been ordered to perform*" but has not done so. It referred to a number of similar cases and said:

In each of those cases third persons were bound by compliance orders, not to make payment of a respondent's debts from their own pockets, but to take the steps which were in their power to ensure the liability was met by the person upon whom the liability fell.<sup>2</sup>

The Court found that the director and the holding company in that matter had complete control over the employer company. It held it was well within the power of each of them to put the employer in a position where it could pay the moneys owed. To this end the Court concluded it had jurisdiction to make orders to have all three respondents ensure the employer made the payment, including that the holding company advance whatever funds necessary to the employer company, whether from its own resources or not will be a matter ... for the three respondents.

## Orders

[11] Pursuant to s 137 of the Act, within 14 days of this determination:

- (a) Nikhil Himalaya Taihape Limited must comply with the orders contained in the Determination dated 4 April 2023 and pay Mr Singh:
  - (i) \$15,000 in compensation under s 123(1)(c)(i) of the Act; and
  - (ii) \$10,080 in wage arrears; and
  - (iii) Costs of \$500.

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<sup>1</sup> Northern Clerical Workers Union v Lawrence Publishers Co. of New Zealand Ltd[1990] 1 NZLR 717  
<sup>2</sup> Above N8 at 722.

- (b) Ravinder Kumar Arora as director of Nikhil Himalaya Taihape Limited is ordered to advance to Nikhil Himalaya Taihape Limited whatever funds may be necessary (if any) to enable the company to comply with the orders above.
- (c) Nikhil Himalaya Taihape Limited must pay interest from 4 April 2023 on the judgment sum in accordance with the civil debt interest calculator under the Interest on Money Claims Act 2016.
- (d) A Ravinder Kumar Arora is ordered to take whatever action necessary to ensure the interest payment is made.

[12] Interest on all orders will continue to accrue until the date of payment.

**Costs**

[13] Costs of \$500 associated with this application are to be paid to Mr Singh plus the filing fee of \$71.56.

Geoff O'Sullivan  
Member of the Employment Relations Authority