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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1612/14 - 2009 ජූලි 29 වැනි බදාදා - 2009.07.29

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(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T23/CO/30/2003.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. D. R. Warawita, No. 14, Templer's Avenue, Mt. Lavinia of the one part and (01) Fentons Limited, No. 350, Union Place, Colombo 02, (2) Fentons Computers (Private) Ltd., No. 350, Union Place, Colombo 02 (3) Global InforTech (Pvt.) Ltd. No. 151, Kynsey Road, Colombo 08 (4) Fencom Technologies (Pvt) Ltd, No. 211, Hospital Road, Kalubowila, Dehiwala of the other part was referred by Order dated 12.07.2004 under Section 4(1) of the Industrial Disputes Act, Chapter 131, (as amended) and published in the *Gazette of Democratic Socialist Republic of Sri Lanka Extraordinary* No. 1352/16 dated 03.08.2004 for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

W. J. L. U. WIJAYAWEERA,
Commissioner General
of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
20th July, 2009.

In the Matter of an Industrial Dispute Between :

Mr. D. R. Warawita,
No. 14, Templer's Avenue,
Mt. Lavinia,

Case No.:
A-3047

Applicant

and

- (1) Fentons Limited,
No. 350, Union Place,
Colombo 02.
- (2) Fentons Computers (Private) Ltd.,
No. 350, Union Place,
Colombo 02.
- (3) Global InforTech (Pvt.) Ltd.
No. 151, Kynsey Road,
Colombo 08.
- (4) Fencom Technologies (Pvt) Ltd,
No. 211, Hospital Road,
Kalubowila,
Dehiwala.

Respondent

THE AWARD

Honourable Athauda Seneviratne, Minister of Labour Relations and Foreign Employment by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act,

Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts, Nos. 14 of 1957, 4 of 1962 and 39 of 1968, (Read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me to be the Arbitrator by his order dated 12.07.2004 and referred the following dispute to me for settlement by Arbitration.

The matters in dispute between the aforesaid parties are :-

“Whether the non payment of the balance of sales commission is respect of the period from 1998 to 2002 as was agreed in terms of the letter dated 12.11.1997 issued by Fentons Computers (Private) Ltd. to D. R. Warawita who was in service of the said company which was a subsidiary of the principal company named Fentons Ltd., is justified and if not, to what relief he is entitled.”

The Parties to the Dispute other than D. R. Warawita have been cited as -

- (1) Fentons Limited
- (2) Fentons Computers (Pvt) Ltd,
- (3) Global InferTech (Pvt) Ltd,
- (4) Fencom Technologies (Pvt) Ltd.,

For purpose of clarity in this award I refer to D. R. Warawita as complainant and to the others as Respondents.

The letter dated 12.11.1997 had been issued by Fentons Computers (Pvt) Ltd., the 2nd Respondent. It is said to be a fully owned subsidiary of the 1st Respondent, Fentons Ltd.

The Second Respondent Fentons Computers (Pvt) Ltd, the employer of the Complainant had changed in name under Section 20(1) of Act, No. 17 of 1982 to Fencom Technologies (Pvt) Ltd., which is the 4th Respondent.

Thus the 2nd and 4th Respondent are one and same party and the 2nd Respondent by change of name cannot get out of the liabilities by a mere change of name. Fenton Ltd., the 1st Respondent had sold its shares in Fentons Computers (Pvt) Ltd., the third Respondent.

The above facts are borne out by the evidence led before me.

The counsel for the 3rd Respondent on 11.07.2005 did not appear for the third Respondent and withdrew representing it on the basis that he had no instructions and there was no appearance on 26.10.2008 for the 3rd and 4th Respondent though notice had been sent by the Registrar.

The evidence of the complainant is that he was an employee of the Fenton Computer (Pvt) Ltd. as is established of by A1 and that he was entitled to the paid a commission on sales as is established by A2.

It is also established that there had been a part payment of the said commission, I accept the document A42, A 49, A 5, A7, A7(a), A7(b), A7(c), A7(d), A7(e), A7(f), A7(g), A7(h), A7(j), A14, A16 (a), A17 and other documents tendered by the complainant. It appears that by A17 and A18 he had complained that his commission had not been paid and his suggestion to settle it in a different manner as suggested by A20 was not replied to. There was no reply to his letter dated A21 too.

I Accept the evidence of the complainant D. R. Warawita that the commission due to him after settling off what was paid amounts to Rs. 3,503,472.70. I make award that the said sum of Rs. 3,503,472.70 shall be paid by Fenton Computers (Pvt) Ltd. the 2nd Respondent and its successor Fenton Computers (Pvt) Ltd. the 4th Respondents together with interest at the rate of 8% per annum from the date of reference to me namely 13.07.2004 till paid in full. I have decided to award interest in view drop in the value of money and also taking into consideration the conduct of the said Respondent prior to this arbitration and subsequent to it. They had at every opportunity neglected to pay the complainant what is due and did not make use of the opportunity to show otherwise.

I discharge Fentons Ltd. & Global InferTech (Pvt) Ltd. as their are not liable for the acts of Fentons Computers (Pvt) Ltd. and Fencom Technologies (Pvt) Ltd., and also because the complaint has admitted at page 123 and 124 (Proceeding of 06.12.2005 that the party liable to pay his balance of commission is the 2nd Respondent. The award shall take effect from the date of publication of this award in the Government Gazette. The said sum of Rs. 3,503,472.70 together which interest at 8% from 13.07.2004 shall be deposited with the Assist. Commissioner of Labour, District Labour Office, Colombo South, Labour Secretariat, Colombo 05.

A. SRI NAMMUNI,
Arbitrator.

12th June, 2009.

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