

An appeal

- by -

Aditya Sood, a Director or Officer of Adityas Dance School Ltd.  
(“Mr. Sood”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**TRIBUNAL MEMBER:** David B. Stevenson

**FILE No.:** 2015A/101

**DATE OF DECISION:** September 11, 2015

## DECISION

### SUBMISSIONS

Aditya Sood on his own behalf as a Director or Officer of Adityas Dance School Ltd.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Aditya Sood, a Director or Officer of Adityas Dance School Ltd. (“Mr. Sood”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on June 30, 2015.
2. The Determination concluded that Mr. Sood was a director or officer of Adityas Dance School Ltd. (“Adityas”), an employer found to have contravened provisions of the *Act*, at the time wages owed were earned or should have been paid to Priya Girish Mehta (“Ms. Mehta”) and as such was personally liable under section 96 of the *Act* for an amount of \$1,355.85.
3. In this appeal, Mr. Sood alleges the Director failed to observe principles of natural justice in making the Determination and that new evidence has become available that was not available when the Determination was being made.
4. On July 28, 2015, the Tribunal notified the parties that an appeal had been received from Mr. Sood, requested production of the section 112(5) “record” (the “record”) from the Director and notified the parties, among other things, that no submissions were being sought from the other parties pending review of the appeal by the Tribunal and that following such review all, or part, of the appeal might be dismissed.
5. The “record” was provided by the Director to the Tribunal and a copy was sent to Mr. Sood, who was advised of his right to object to the completeness of the “record”. No objection has been received from Mr. Sood and, accordingly, the Tribunal accepts the record as being complete.
6. I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. At this stage, I am assessing this appeal based solely on the Determination, the appeal and written submission made by Mr. Sood, my review of the “record” that was before the Director when the Determination was being made and any additional evidence allowed to be included in the appeal. Under section 114 of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing of any kind, for any of the reasons listed in subsection 114(1), which states:

114 (1) *At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:*

- (a) *the appeal is not within the jurisdiction of the tribunal;*
- (b) *the appeal was not filed within the applicable time limit;*
- (c) *the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;*
- (d) *the appeal was made in bad faith or filed for an improper purpose or motive;*
- (e) *the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;*
- (f) *there is no reasonable prospect that the appeal will succeed;*

- (g) *the substance of the appeal has been appropriately dealt with in another proceeding;*
- (b) *one or more of the requirements of section 112(2) have not been met.*

7. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, Ms. Mehta will, and the Director may, be invited to file further submissions. On the other hand, if it is found the appeal is not meritorious, it will be dismissed under section 114(1) of the *Act*.

## ISSUE

8. The issue to be considered at this stage of the proceeding is whether the appeal should be dismissed under section 114 of the *Act*.

## THE FACTS

9. The facts relating to this appeal are brief.
10. Ms. Mehta filed a complaint with the Director alleging Adityas had contravened the *Act* by failing to pay her all wages owed. The Director investigated the complaint and, on April 8, 2013, issued a Determination against Adityas (“the corporate determination”) which found Adityas liable for wages to Ms. Mehta in the amount of \$1,274.94. A copy of the corporate determination, which included a notice explaining the potential liability for directors and officers, was sent to the business address of Adityas, to its registered and records office and to Mr. Sood, who is listed as a director of Adityas.
11. Adityas appealed the corporate determination. The appeal was dismissed: see BC EST # D088/15.
12. BC On-line searches conducted by the Director on September 28, 2012, and April 1, 2015, showed Adityas was incorporated on May 6, 2010. The information in the searches showed Mr. Sood was a director of Adityas between June 29, 2012, and July 29, 2012, which covers the period during which Ms. Mehta’s wages were earned or should have been paid.
13. Based on the information acquired and the findings made, the Director concluded Mr. Sood was liable under section 96 of the *Act* for the amount of the Determination being addressed in this decision. Mr. Sood was not found liable for the administrative penalties imposed on Adityas.
14. The Determination was sent to Mr. Sood by registered mail to the address shown for him in the corporate records. A copy of the Determination was also sent to the registered and records office of Adityas listed in the corporate records on file.

## ARGUMENT

15. The appeal does not specifically address Mr. Sood’s personal liability as a director or officer of Adityas under section 96 of the *Act*, but rather repeats the arguments made in the appeal of the corporate determination. As noted later in this decision, it is unnecessary to review the arguments made against the corporate determination in this appeal.
16. Mr. Sood does not challenge the Director’s finding that he was a director or officer of Adityas when the wages of Ms. Mehta were earned or should have been paid; nor does he argue the amount found owing exceeds the limit for personal liability of a director or officer under section 96 or that the circumstances described in section 96(2) of the *Act* apply to relieve him from personal liability.

## ANALYSIS

17. As a result of amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are statutorily limited to those found in subsection 112(1) of the *Act*, which says:
- 112 (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*
- (a) *the director erred in law;*
- (b) *the director failed to observe the principles of natural justice in making the determination;*
- (c) *evidence has become available that was not available at the time the determination was being made.*
18. There are two aspects to this appeal that compel its dismissal. The first relates to the effect of the result of the appeal of the corporate determination. The second relates to the allowable scope of an appeal of a section 96 Determination. The two are related.
19. On the first matter, I have already noted this appeal is a mirror of the appeal by Adityas of the corporate determination. That appeal was dismissed in BC EST # D088/15.
20. Second, it is well established that a person challenging a director/officer Determination is limited to arguing those issues which arise under section 96: whether the person was a director/officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limit for which a director/officer may be found personally liable; and whether circumstances exist that would relieve the director/officer from personal liability under subsection 96(2) of the *Act*. The director/officer is precluded from arguing the corporate liability: see *Kerry Steineman, Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST # D180/96. Accordingly, the arguments that question the correctness of the corporate determination may not be raised in this appeal. More specifically, Mr. Sood may not question the validity of the finding made by the Director in the corporate determination that Adityas is liable for wages owing to Ms. Mehta or the amount of the wages found owing.
21. The natural justice allegations and the “new” evidence sought to be admitted in this appeal seek to support the appeal of the corporate determination. They have no application or relevance to the question of director/officer liability under section 96 of the *Act*.
22. As noted above, Mr. Sood does not argue the correctness of the Director’s conclusion about his status as a director of Adityas during the relevant period of time. Nor does the record show there are circumstances described in section 96(2) of the *Act* that would apply to relieve Mr. Sood from personal liability.
23. There is no possibility this appeal can succeed and it is dismissed under section 114(1)(f) of the *Act*. It would be inconsistent with the purposes and objectives of the *Act* to allow the appeal to proceed.

**ORDER**

24. Pursuant to section 115 of the *Act*, I order the Determination dated June 30, 2015, be confirmed in the amount of \$1,355.85, together with any interest that has accrued under section 88 of the *Act*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**