



## news flash July 2020



### **NO WAGES PAYABLE UNDER LOCKDOWN ORDERS, IF UNPAID BEFORE**

#### **Introduction**

The Bombay High Court (“**Bom HC**”) has, on 13 July 2020, passed a landmark order in the cases of *Premier Employees Union Vs. State of Maharashtra and others*<sup>1</sup> and *M/s. Premier Limited and another Vs. Premier Employees Union*<sup>2</sup>, *inter alia* ruling that the Ministry of Home Affairs order dated 29 March 2020 and Maharashtra Government order dated 31 March 2020 (collectively “**Govt. Lockdown Orders**”) directing employers to pay full wages during lockdown would not have effect unless the workers were actually on duty as on the day the lockdown was declared and had received wages for the month immediately preceding the lockdown.

#### **Brief Facts**

- M/s Premier Limited (“**Company**”) was facing financial constraints and had not paid wages of its employees/ workers since May 2019.
- On 3 March 2020 the Company suspended operations of workmen in accordance with the model standing orders.
- The Premier Employees Union (“**Trade Union**”) filed a complaint of unfair labour practice against the Company before the Industrial Court.
- Pursuant to order dated 20 March 2020, the Court directed the Company to pay wages to the workmen with effect from 1 March 2020 till the conclusion of the complaint and granted interim reliefs to the Trade Union.
- The Company failed to make payment as directed by the Industrial Court.
- Subsequently, two Writ Petitions were filed, one by the Trade Union against the Company *inter alia* seeking reliefs under the Govt. Lockdown Orders and enforcement of the order dated 20 March 2020 of the Industrial Court; and second by the Company against the Trade Union.

#### **Ruling of the Bom HC**

<sup>1</sup> Bombay High Court – WP-ASDB-LD-VC-59 / 20

<sup>2</sup> Bombay High Court – WP-ASDB-LD-VC-57 / 20

The Bom HC held as follows:

1. The Bom HC noted that wages of workers had not been paid since May 2019 and that an industrial dispute had been in existence before the lockdown. The Court noted that the Govt. Lockdown Orders had been issued to maintain the status quo with regard to payment of wages and employment.
2. Since neither the workers were working on the day the lockdown was called for nor did they receive wages for the month preceding the lockdown, the claim of the Trade Union could not be covered under the Govt. Lockdown Orders which would not apply to the workmen represented by the Trade Union.
3. When dealing with the Industrial Court Order dated 20 March 2020, the Court agreed with the contentions of the Company that on the basis of tentative/ prima facie findings, final reliefs could not be granted in an interim order. Therefore, the Court disagreed with the findings of the Industrial Court that the relief granted was required.
4. The Court stated that a balance would have to be struck between competing claims with survival of the industry being just as important for the workers as it is for the management. It therefore directed the management to pay 50% of the full monthly wages to the workmen with effect from 1 March 2020 till the conclusion of proceedings before the Industrial Court.
5. It disposed of both Writ Petitions with no order as to costs and a direction to the Industrial Court to dispose of the case before it within six months of receipt of a copy of the present order.

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