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[/ Court of First Instance \(https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance\)](https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance) / CFI 033/2024 Nash v Niko

## CFI 033/2024 Nash v Niko

JULY 08, 2024 COURT OF FIRST INSTANCE - ORDERS

Claim No: CFI 033/2024

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

NASH

Claimant

and

NIKO

Defendant

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### ORDER WITH REASONS OF JUSTICE RENE LE MIERE

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UPON the Claimant's Part 8 Claim Form dated 15 May 2024 (the "Claim")

AND UPON the Defendant's Application No. CFI-092-2023/1 dated 28 June 2024 (transferred to CFI-033-2024 by way of an Order dated 28 June 2024) seeking an order that the hearing of the winding-up petition listed on 3 July 2024 be adjourned (the "Application" or "Adjournment Application")

AND UPON hearing Counsel for the Claimant and Counsel for the Defendant at a hearing held on 3 July 2024 (the "Hearing")

AND PURSUANT TO the Rules of the DIFC Courts (the "RDC")

IT IS HEREBY ORDERED THAT:

1. The Adjournment Application is dismissed.
2. Pursuant to Insolvency Regulation 6.3.1, the petition shall be advertised in an Appointed Publication not less than 6 business days after service of the petition on the company.
3. Order 2 takes effect from the date of the issue of the petition on 11 December 2023.
4. Advertising the petition in the Gulf News on 30 May 2024 is deemed to comply with RDC 54.62(2).
5. The Certificate of Compliance filed by the Petitioner is deemed to comply with RDC 54.66.
6. Niko is wound up pursuant to Article 81(b) of the Insolvency Law 2019.
7. Pursuant to Article 90(1) of the Insolvency Law 2019, Mr Noah is appointed liquidator (the Liquidator) of Niko.

8. The Petitioner's costs of the Adjournment Application, the costs of the winding up petition, and the costs of the application for the appointment of the Liquidator are to be paid as an expense of the liquidation.
9. The Petitioner's costs shall be determined by detailed assessment by the Registrar.

Issued by:  
**Delvin Sumo**  
Assistant Registrar  
Date of issue: 8 July 2024  
At: 3pm

#### SCHEDULE OF REASONS

1. The Petitioner, Nash ("Nash") has petitioned for the winding up of the Respondent, Niko ("Niko").
2. Niko is a DIFC company, Dubai. Niko is a financial institution regulated by the DFSA authorised to give financial advice and to manage assets from a credit and collective investment funds.
3. On the date of the hearing of the petition, 3 July 2024 (the "Hearing"), Niko is indebted to Nash in the sum of USD 836,270.55, being a judgment debt, post-judgment interest to the date of the hearing and costs payable under an order of Judicial Officer Maitha Al Shehhi dated 8 February 2024 in CFI-092-2023 (together "the Judgment Debt").
4. Nash obtained judgment against Niko in proceedings in the courts of the Cayman Islands. The background to this litigation is not relevant to these proceedings.
5. Nash then brought proceedings in this Court to enforce the Cayman Islands judgment. On 8 February 2023 Nash obtained default judgment in this Court in CFI-092-2023, resulting in the Judgment Debt.
6. Niko does not dispute the Judgment Debt.
7. Niko has not paid any of the Judgment Debt.
8. Nash served a statutory demand for the Judgment Debt which Niko has not satisfied. Accordingly, Niko is deemed by Article 82(1) of the Insolvency Law 2019 (Insolvency Law) unable to pay its debts.
9. By petition presented to the Court on 15 May 2024, Nash seeks the winding up of Niko in accordance with the Insolvency Law, the Insolvency Regulations 2019 (insolvency Regulations or Regulations) and Part 54 of the rules of the DIFC Court 2014 (the "RDC").
10. By Application No. CFI-092-2023/1 dated 28 June 2024 (the "Application" or "Adjournment Application"), Niko applied for an order that the hearing of the winding-up petition be adjourned. The Application was transferred to CFI-033-2024 by way of an Order dated 28 June 2024.
11. Niko appeared at the Hearing and applied for an adjournment of the Hearing to give it more time to pay and alternatively submitted that the petition should not be granted due to the Petitioner's noncompliance with the procedural requirements of RDC 54.64.
12. The Court will order:
  - (1) The Application is dismissed;
  - (2) pursuant to Insolvency Regulation 6.3.1, the petition shall be advertised in an Appointed Publication not less than 6 business days after service of the petition on the company;
  - (3) order 2 takes effect from the date of the issue of the petition on 11 December 2023;
  - (4) advertising the petition in the Gulf News on 30 May 2024 is deemed to comply with RDC 54.62(2);
  - (5) the Certificate of Compliance filed by the Petitioner is deemed to comply with RDC 54.66;
  - (6) Niko is wound up pursuant to Article 81(b) of the Insolvency Law 2019;
  - (7) pursuant to Article 90(1) of the Insolvency Law 2019, Mr Noah is appointed liquidator (the Liquidator) of;
  - (8) the Petitioner's costs of the Adjournment Application, the costs of the winding up petition, and the costs of the application for the appointment of the Liquidator are to be paid as an expense of the liquidation; and
  - (9) the Petitioner's costs shall be determined by detailed assessment by the Registrar;

for the following reasons.

#### Adjournment application - principles

13. On 28 June 2024, by application CFI-092-2023/1, Niko applied for an order adjourning the Hearing.
14. RDC 54.27 provides that the Court may adjourn the hearing of an application on such terms as it thinks fit.
15. The principles governing the exercise of the court's discretion to adjourn the hearing of a creditor's petition are well established in England and Wales and other common law jurisdictions with similar statutory regimes for winding up companies that are unable to pay their debts on the application of a creditor.
16. Many relevant authorities arise in personal insolvency (bankruptcy) proceedings. Relevant bankruptcy authorities apply to corporate insolvency (winding up) proceedings: see eg *Maud v Aabar Block Sar* [2016] EWHC 2175 Ch, [78] and [82].
17. The practice that has evolved in England in relation to the grant of adjournments of bankruptcy petitions where the debtor asks for time to pay was referred to by Lewison LJ, with whom Underhill LJ and Lord Dyson MR agreed, in *Sekhon v Edginton* [2015] EWCA Civ 816, [2015] 1 WLR 4435. The starting point is that, if the petitioning creditor establishes that the statutory conditions are fulfilled, he is prima facie entitled to a bankruptcy order. The court will only adjourn the petition if there is credible evidence that there is a reasonable prospect that the petition debt will be paid within a reasonable time.
18. The same principles were applied in the cases referred to by the respondent – *Bank of Baroda v Mallya* [2020] EWHC 96 and *Moorgate Industries UK Limited v Mittal* [2020] EWHC 1550 (Ch) (Mittal). In *Mittal* the debtor sought adjournment of the creditor's petition for 17 to 18 weeks in order to conclude an agreement at mediation of a substantial claim and thereafter to allow for the payments to be made. The court found that the outcome of the mediation was entirely speculative and therefore the debtor had not persuaded the court that there was a reasonable prospect of the debt being paid as a result of a negotiated settlement of the claim.
19. The principles outlined by Lewison LJ in *Sekhon v Edginton* are relevant to the exercise of the Court's discretion.
20. Niko accepts that it bears the burden to provide credible evidence that it has a reasonable prospect of paying the petition debt within a reasonable time.
21. The parties disagreed as to what is a "reasonable period" and what amounts to "reasonable prospects" of the petition debt being paid in full within a reasonable period.
22. Niko submitted that the reasonable prospect test is generally not a high bar to overcome, it does not require the respondent to demonstrate to the court on the balance of probabilities that the petition will be paid in full.
23. Nash submitted that, in the circumstances, three months is not "a reasonable period" and the Niko has not demonstrated a sufficient likelihood that the petition debt will be paid within three months to amount to "reasonable prospects".
24. What is a reasonable period, and reasonable prospects involves an evaluation of all the circumstances. The longer the period, the greater the likelihood of payment required to amount to reasonable prospects.
25. When assessing reasonable prospects for a debtor's ability to pay a debt, several factors are relevant:
  - (1) Financial situation: The debtor's current financial health is important. What is its income, assets, liabilities, and overall solvency?
  - (2) Negotiations: If the debtor is in discussions with a third party (e.g., negotiating a transaction), the terms and likelihood of success matter. Is there a concrete agreement or just preliminary talks?
  - (3) Timeframe: The reasonable period within which the debt can be paid matters.
  - (4) Historical payment behaviour: What is the debtor's track record?
  - (5) Time of application: Did the debtor apply promptly for an adjournment of the hearing of the petition?

#### Financial situation

26. Niko relies upon the witness statement of its chairman and chief executive officer, Nolan , who holds 75% of the share capital of the company.

27. Mr Nolan has produced a copy of the company's audited accounts for the year ended 31 December 2023. In his report accompanying the accounts Mr Nolan confirms that the financial statements are accurate and give a true and fair view of the affairs of the company. They do not. On 31 December 2023, Niko was indebted to Nash in the sum of USD 735,263.26 under judgments and orders issued in the Grand Court of the Cayman Islands. By the time Mr Nolan signed his report additional interest had accrued on those debts and the Cayman Islands judgment had been registered as a judgment of this Court. The financial statements make no reference to the debt owed to Nash under the Cayman Islands judgment or the judgment of this Court.

28. The financial statements show cash and bank balances of USD 130,512. 10. In his witness statement Mr Nolan says that on 2 July 2024 the company holds USD 153,292 in cash and has no "material debts" aside from the amount owing to Nash. Notwithstanding that statement, the financial statements show that the company's liabilities included "lease liability" of USD 90,958 and trade and other payables of USD 45,586.

29. The financial statements disclose a loss for the year of USD 2,369,508 from operating activities and accumulated losses of USD 1,756,947.

30. The principal asset listed on the balance sheet is USD 3,577,641 for "Amount due from related parties". An accompanying note discloses that the principal related party is Noelle, which Niko informed the Court is a wholly owned subsidiary of Niko. Niko further informed the Court that Noelle will only be able to pay Niko the amount due if it receives a fee from a potential transaction with a Russian company, Naomi (Naomi), which I will refer to later in these reasons.

31. A further note refers to the capital requirement applicable to the company in accordance with the DFSA Prudential Rulebook and that during the year the DFSA approved a reduction in the base capital requirement from USD 500,000 to USD 230,000. Niko informed the Court that it cannot pay the cash it holds to Nash because it is required by its license to hold a minimum cash reserve.

32. Considering the undisputed debt owed to Nash, Niko is insolvent – it is unable to pay its debts. Niko does not contend otherwise.

33. Further, the company has ongoing liabilities in relation to its lease and employees. Niko informed the Court that it intends use at least part of its remaining "working capital" to pursue the potential transaction with Naomi and pay its employees.

34. In summary, Niko has no income and no realisable assets. It proposes to trade insolvent in the hope of negotiating a transaction to restore its solvency and enable it to pay the debt.

#### **Negotiations - Reliable Investments**

35. Niko's prospects of paying the Judgment Debt rest on negotiating a transaction with Naomi.

36. Mr Nolan has produced a term sheet dated 26 June 2024 executed by Niko and Naomi ("Term Sheet"). Apart from boiler plate provisions, none of its provisions are binding on any party.

37. The Term Sheet states that Niko and Naomi executed it "to confirm the basis on which they are interested in pursuing further discussions concerning the purchase and sale of certain shares and assets" between them.

38. Insofar as the Term Sheet indicates that Naomi is interested in purchasing certain shares and assets, I observe that Naomi did not approach Niko about the potential investment, Mr Nolan approached Naomi. Mr Nolan has not provided any information about how or why he approached Naomi and what led him to believe that Naomi will complete the proposed investment or has the capacity to do so. The risk assessment to which I will refer later says that the client was introduced by one of SEO 's friend to the SEO. I have not ascertained who the SEO is. It may be an erroneous reference to the CEO.

39. Mr Nolan says that Niko's compliance team has conducted a risk assessment and has completed due diligence on Naomi. Mr Nolan has produced a copy of the customer risk assessment dated 14 June 2024 together with some of the documents that Niko received from Naomi as part of the due diligence and risk assessment process.

40. The first thing to note about the risk assessment is that it was completed only two weeks after Mr Nolan "started to identify a new investor".

41. The only documents produced in support of the due diligence exercise are two versions of the charter of Naomi, a page stating the three shareholders and an undated, unsigned, excerpt from the company's minutes, which appear to be the minutes of its first general meeting.

42. The risk assessment states that Naomi is a non-public joint stock company established on 26 October 2023 in Russia. It is currently a holding company and is not engaged in any other activities. It has made no profit to date. Its potential source of funds is its three directors who are also its shareholders. The assessment refers to income tax invoices of the directors' income for the year 2021 but no statement of their assets or liabilities. The assessment states that the client source of funds "will be from the shareholders personal investments and borrowings which will be verified during closer to investments."

43. The assessment states that the domestic partner of one of the director/shareholders is sanctioned by Czech Ministry of Foreign Affairs, UK sanctions list, Ukraine sanctions list, Australian Federal Register of legislation list, NZ Russia regulations sanctions list and Australian Department of Foreign Affairs and Trade - Russia financial sanctions list. The sanctions were related to the Russian- Ukraine war. The United Kingdom imposed sanctions freezing his assets and the UK and the US have sanctioned the company in which he holds shares.

44. The "Risk Summary" states the "Aggregate score count" is High Risk. The "Sign off by the Money Laundering Reporting Officer/ Compliance Officer" states the risk profile is high risk.

45. The terms of the Term Sheet reflect an investment discussion which has been underway for less than four weeks. It outlines a complicated transaction, or series of transactions by which, amongst other things, Naomi will acquire the shares in Noelle. The most important term of that potential agreement - the price that Naomi would pay - has not been agreed.

46. The proposed transaction is not a straight sale and purchase. It involves Niko and Reliable Investments entering a call option agreement by which Reliable Investments agrees to purchase all of the shares in Noelle, and Noelle purchasing a limited partner stake in certain fund assets in Singapore. That investment is to be determined in negotiations between Niko, Naomi and the current shareholders of the Fund. Also, Niko is to enter into a management agreement with the fund and its limited partners and a management agreement with Noelle. Thus, to complete the transactions will require the agreement of the shareholders in the Singapore fund as well as Niko and Naomi. The essential terms of the transactions – the size of the stake, the purchase price, and the terms of the management agreements - have not been agreed.

47. Niko says that it intends to pay the judgment debt from the fee payable to Niko under the Naomi transaction. The Term Sheet says that 50% of the transaction fee, that is USD 1m, will be paid to Niko "upon signing of all the Final Documentation by the parties thereto" and the parties shall use reasonable endeavours to execute the Final Documentation by 31 August 2024. Final Documentation means the Call Option Agreement, Fund Management Agreement, Noelle Management Agreement and SPA in relation to acquisition of the Stake and "other related agreements and instruments." Thus, the fee is not payable unless and until Niko, Naomi, and the holders of the fund assets in Singapore reach agreement on this complicated set of transactions and execute the instruments to give effect to them.

48. The Term Sheet evidences a nascent negotiation about a complicated set of transactions with a newly formed company with no apparent capital, no operating history and no apparent capacity to carry out the transactions. For the transactions to proceed agreement must be reached with other persons as well as Niko and Naomi. The most critical elements of the potential transactions have not been agreed.

49. Having regard to all of those matters, it is entirely speculative that Niko's discussions with Naomi and the holders of the "LP stake in certain fund assets in Singapore" will result in agreement, the execution of the Call Option Agreement, Fund Management Agreement, Noelle Management Agreement and SPA in relation to acquisition of the Stake and other related agreements and instruments which comprise the "Final Documentation" and that Niko will receive the USD 1 million transaction fee within three months or at all.

50. In summary, there is no concrete agreement, just preliminary talks. The successful negotiation and completion of the transactions is entirely speculative.

#### **Timeframe**

51. The reasonable period within which the debt can be paid matters.

52. Niko seeks an adjournment for three months. That is a long period where the company is trading while insolvent and it has no prospect of paying the debt other than by successfully completing a nascent negotiation with third parties.

#### **Track record**

53. Niko has made no payment, even a part payment of the debt, most of which has been outstanding for more than 18 months.

54. Niko previously represented to Nash that it would pay the Judgment Debt from an investment it was pursuing from Norah, a German company (Norah).

55. On 29 February 2024, Nash had served a statutory demand for payment of the Judgment Debt. Niko failed to pay the Judgment Debt.

56. In March 2024, Mr Nolan, indicated to Nash that Niko was looking to raise capital to pay the Judgment Debt.

57. On 18 March 2024, Mr Nolan asserted that a binding offer had been signed and that payment would be forthcoming “ASAP”. On 21 March 2024, payment was promised on 4 April. On 14 April, payment was promised in the week commencing 15 April. On 1 May, payment was promised in the week commencing 6 May. On 10 May payment was promised on 14 May. None of those promises were fulfilled.

58. Mr Nolan’s assertion throughout had been that Norah had in March 2024 committed to invest EUR 18.5 million in Niko, which could be used to pay the Judgment Debt.

59. In an email of 9 May 2024 to Niko, Nash’s lawyers stated, as was the case, that Nash had agreed, on several occasions, to defer filing a winding up petition on the basis of representations made by Mr Nolan that Niko was in the process of closing a capital raise ( a reference to the potential investment by Norah), payment would be made to Niko by the investor imminently and this payment would be sufficient to cover the Judgment Debt, that Mr Nolan had given Nash written assurance that once Niko was in receipt of the funds from the capital raise, it would make immediate payment of the Judgment Debt in full to Nash but none of those assurances had been made good and the Judgment Debt remained unpaid in full.

60. Mr Nolan responded on 10 May 2024 that Niko had received the payment schedule from Norah, had been informed that the first payment would be made on 14 May and that the first payment would be sufficient to make payment to Nash in full. Mr Nolan provided no documents to support his representations and added that a winding up petition would be counterproductive, both to Nash and Niko and “Any damages which might result in an unnecessary winding up petition will certainly be held against your firm.”

61. There were further assurances of payment until on 30 May 2024 Norah withdrew its offer and terminated any agreement with Niko.

62. Niko has produced no reliable documentary or other evidence that payment by Norah was ever imminent.

63. Mr Nolan states that Niko “immediately started to identify a new investor, which had been found in Naomi.” Mr Nolan says that Naomi wants to acquire Noelle, a wholly owned subsidiary of Niko “in a first step” which “would allow Niko to make payment of the amount due to Nash.”

64. In summary, Niko has a track record of not paying any part of the debt and making representations that payment was imminent which did not eventuate.

#### **Lateness of application**

65. The adjournment application was made on 26 June 2024, four business days before the hearing of the petition.

66. The lateness of the Application is a relevant consideration. Delay is inimical to all forms of litigation and especially so in a collective enforcement process such as insolvency: *Sekhon v Edgington* at [20], [21].

67. The petition, with the date of the Hearing, was served on Niko on 22 May 2024.

68. Niko must have known that when the petition was listed for Hearing, the expectation of Nash and the Court would be that it would be finally disposed of at that Hearing. The first Cayman Islands judgment made on 15 December 2022 had remained unpaid for 18 months.

69. In his witness statement of 2 July 2024, Mr Nolan says that the reason for the late Application is that he was confident that the Petitioner would be paid the sums it was owed prior to the Hearing on 3 July 2024 for the reasons set out in his witness statement. Those reasons appear to be that Niko expected to receive payment from Norah. However, Norah terminated any agreement with Niko on 30 May 2024.

70. Niko did not apply for an adjournment of the Hearing for almost four weeks after Norah terminated any agreement with Niko, at which time, Niko had no reasonable prospect of paying the petition debt within a reasonable time and no grounds for applying for an adjournment. Mr Nolan “immediately started to identify a new investor”. On the same day Mr Nolan succeeded in having a new investor execute the Term Sheet, Niko applied for an adjournment of the hearing of the petition on the basis of the potential transactions outlined in the Term Sheet. I infer that Niko had no basis for an adjournment application until it executed the Term Sheet. As I have said the chances of the transactions outlined in the Term Sheet eventuating are entirely speculative.

#### **No credible evidence of a reasonable prospect the debt will be paid within a reasonable time**

71. In all the circumstances, I find that Niko has not discharged the burden of providing credible evidence that it has a reasonable prospect of paying the petition debt within a reasonable time.

72. The adjournment Application is refused.

### Winding up petition

73. Section 81(b) of the Insolvency Law provides that a Company may be wound up by the Court if the Company is unable to pay its debts. By paragraph 2 of Schedule 1 to the Insolvency Law, "Company" means a company incorporated in the DIFC. Niko is a company incorporated in the DIFC

74. Section 82(a) provides that a Company is deemed unable to pay its debts if a creditor to whom the Company is indebted in a sum exceeding USD 2,000 which is due and payable has served a written demand on the Company, by leaving it at the Company's registered office, requiring the Company to pay the sum due and the Company has for three weeks thereafter, neglected to pay the sum or agree terms relating to its payment to the reasonable satisfaction of the creditor.

75. Nash served a written demand under s.82(a) on Niko on 29 February 2024, by leaving the demand at Niko's registered address.

76. Niko did not, within three weeks or at all, pay the Judgment Debt or propose any terms for payment to Nash's satisfaction.

77. Accordingly, the Court's power to wind up Niko has arisen.

78. Whilst the power to wind up is discretionary, the starting point is that once a creditor has satisfied the procedural rules for petitioning, the unpaid creditor is entitled *ex debito justitiae* (as of right) to a winding up order unless good reason is shown to the contrary. No good reason to the contrary has been shown.

### Procedural matters

79. No other creditor, nor any other person claiming an interest, has given notice that they wish to appear on this petition. No other person appeared at the Hearing other than Nash and Niko.

80. I am satisfied that the procedural requirements of the Insolvency Regulations and Part 54 of the RDC have been complied with, except for one matter.

81. In accordance with Regulation 6.3 and RDC 54.61, Nash advertised the petition in English in the Gulf News on 30 May 2024; and in Arabic in Al Bayan on 31 May 2024.

82. Regulation 6.3.1 provides that unless the Court otherwise directs, the petition shall be advertised in an Appointed Publication not less than 7 business days after service of the petition on the Company.

83. RDC 54.62(2) requires that the advertisement appear not less than 7 business days after service of the petition on the Company.

84. Whilst the advertisement in Al Bayan was compliant, the advertisement in Gulf News appeared only six business days after service of the petition on the Company.

85. The Court has power under Regulation 6.3.1 to order retroactively (*nunc pro tunc*) that the petition be advertised in an Appointed Publication not less than 6 business days after service of the petition on the company and to waive noncompliance with RDC 54.62(2) under RDC 4.51, which provides that where there has been an error of procedure such as a failure to comply with a rule the error does not invalidate any step taken in the proceedings unless the court so orders and the court may make an order to remedy the error.

86. Further, RDC 54.189 provides that no insolvency proceedings shall be invalidated by any formal defect or by any irregularity, unless the Court before which objection is made considers that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

87. Nash submits the error is a minor defect, which in England would be waived: *Bailey & Groves*, ¶15.79. Nash submits the Court should exercise its power to remedy the error.

88. Niko agrees the Court has power to remedy the error but submits the Court should not exercise its power to do so. Niko submits that the rule is mandatory, and the Court should ensure that the rules are complied with. Niko submits the error is compounded by the corresponding error in the certificate of compliance filed by Nash in purported compliance with RDC 54.65.

89. RDC 4.51 empowers the Court to make an order to remedy mandatory procedural rules, see eg *DIFC investments LLC v Mohammed Zia* [2017] DIFC CFI 001 (11 April 2017).

90. In deciding whether to make an order to remedy a failure to comply with the rule, the Court should identify and assess the seriousness and significance of the non-compliance, consider why the breach occurred and evaluate all circumstances of the case including whether substantial injustice has been caused by the defect or irregularity.

91. The noncompliance is not serious. The advertisement appeared eight days but only six business days after service of the petition on the company. The purpose of seven business days between service and advertisement is to afford the company time to pay the debt or obtain an injunction to restrain advertisement, if the debt is disputed: Bailey & Groves, ¶15.77. The error does not have a practical effect. Niko does not dispute the Judgment Debt and there is no suggestion it would have paid the debt in the seven days.

92. The error in the certificate of compliance has not misled the Court or any party. Nash drew the Court's attention to the error in its skeleton argument.

93. There is no evidence how the error came about but there is no suggestion it was a deliberate act.

94. No injustice has been caused by the error and no injustice will be done by relieving the Petitioner from the consequences of its noncompliance. Niko has not been prejudiced. No other creditor of the company has been affected.

95. In the exercise of my discretion, I will order that advertising the petition in the Gulf News on 30 May 2024 is deemed to comply with RDC 54.62(2) and the Certificate of Compliance filed by the Petitioner is deemed to comply with RDC 54.66.

96. I will exercise the power under Regulation 6.3.1 to order retroactively that the petition be advertised in an Appointed Publication not less than 6 business days after service of the petition on the company.

#### Costs

97. The Petitioner's costs of the Adjournment Application, the costs of the winding up petition, and the costs of the application for the appointment of the Liquidator are to be paid as an expense of the liquidation.

98. The Petitioner's costs shall be determined by detailed assessment by the Registrar.

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