IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2024-404-2525
[2025] NZHC 1375

BETWEEN	JUDY KANG (NGOC GIAU KANG) Applicant
AND	MOHAMMED TAZLEEN NASIB JAN Respondent

Hearing: 20 May 2025

Appearances: G Jindal for Applicant
A Ho for Respondent

Judgment: 29 May 2025

JUDGMENT OF ASSOCIATE JUDGE LESTER

This judgment was delivered by me on 29 May 2025 at 2.30pm
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

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[1] Ms Kang, by resolution dated 27 September 2024, placed three companies of which she was sole director and shareholder into liquidation, appointing Mr Jan as liquidator.

[2] Ms Kang's application to remove Mr Jan as liquidator was commenced by a document referred to as an application. Associate Judge Gardiner on 24 October 2024 directed that the application be treated as an originating application. Neither party required deponents to be cross-examined. Significantly, Ms Kang did not file an affidavit in reply to Mr Jan's only affidavit in opposition. I suspect the reason there was no reply from Ms Kang is that the focus of her application is not so much on the actions of Mr Jan (save in respect of his conduct concerning a creditors' meeting), but rather his association with a Mr Imran Kamal, or at least Mr Kamal's company, called Liquidation Management Limited (**LML**).

[3] Neither party sought an order for discovery under r 19.11 of the High Court Rules 2016.

The companies in liquidation

[4] EZ Foods Limited (in liq) (**EZ Foods**) and B&R Group (2020) Limited (in liq) (**B&R**) have substantial liabilities to the Inland Revenue Department (**IRD**). On 29 August 2024, the IRD issued a statutory demand against EZ Foods for approximately $938,000. In addition, EZ Foods owes approximately $635,000 to other creditors. B&R has preferential debt to the IRD of approximately $600,000. It was not trading when liquidated. J&K Luxury Beauty Limited (in liq) (**J&K**) had ceased trading at the time of liquidation and apparently has no assets.

[5] Ms Kang, in her evidence, accepts her companies had no way of meeting their liability to the IRD, at least not by a payment plan acceptable to IRD. That reality made liquidation inevitable for EZ Foods and B&R.

[6] One of the main planks of Ms Kang's application is that, prior to liquidation, she says she took advice from Mr Kamal as to the financial position of the companies and the desirability of liquidation. Ms Kang is highly critical of that advice.

[7] Ms Kang's focus on the conduct of Mr Kamal is confirmed by the following passages from the application seeking Mr Jan's removal:

> 2. The grounds on which each order will be sought are as follows:
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> …
>
> (b) Give[n] the historic issues with the fitness, conduct and character of Mr Kamal, the balance of convenience lies in continuing the status quo.[1]
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> (c) The creditors of the companies will be better served by [an] Auckland based liquidation practi[c]e which does not have any association with unlicen[s]ed insolvency practitioners like Mr Imran Kamal. The present liquidation practi[c]e is headed by Mr Kamal as its sole director, and this creates an unwarranted risk.
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> …
>
> (e) Leave ought to be granted on the grounds that:
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> i. the liquidation was entered on the advice of Mr Imran Kamal who is a disqualified insolvency practitioner. Mr Kamal does not hold a practising certificate as a chartered accountant. He is unfit to give any advice on an important issue of placing three companies into liquidation.

[8] The only direct reference to Mr Jan in the application is:

> 2. …
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> (d) The creditors meeting held by Mr Jan on 7 Nov 2024 was held improperly and prejudiced the interests of the creditors.

Section 284 Companies Act 1993 (the Act)

[9] The power to remove a liquidator falls within the power to "give directions in relation to any matter arising in connection with the liquidation under s 284(1)(a)."[2] Under s 286 of the Act, orders may be made to enforce a liquidator's duties.

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1 On 24 October 2024, an order restraining Mr Jan from progressing the liquidation other than holding a creditor's meeting was made by way of Minute. The order was to remain in effect for 15 working days. It was not renewed. The reference to continuing the status quo appears to be a hangover from the original application.

2 *Commissioner of Inland Revenue v Livingspace Properties Ltd (in rec and liq)* [2020] NZHC 1434, [2021] 2 NZLR 252 at [177].

[10] This application is made under s 284 of the Act. Leave is required, which operates as a gatekeeper to ensure only appropriate applications proceed. The key issue in determining leave is whether there is a credible factual basis for the proposed substantive application, and a reasonable likelihood that the Court will grant some, or all of the relief sought.[3]

[11] This is not a case where there is an application to set aside or disturb a decision of the liquidator where an applicant has to show that the decision is tainted by fraud, lack of good faith or unreasonableness. Unreasonableness means acting in a way no reasonable liquidator could have acted. Serious and obvious lapses in judgement must be shown before the Court will interfere with a liquidator's decision.[4]

The requirement that administrators/liquidators be impartial

[12] It is well-established that the principal requirement for appointment as a liquidator is independence. Liquidators are required to be independent and be seen to be independent.[5] The Court has a duty, in the wider public interest, to ensure that the interests of persons concerned in the winding up are best served by the appointment.[6]

[13] Hansen J in *Jacobsen Creative Surfaces Ltd v Smiths City Ltd* said in relation to the jurisdiction to replace liquidators under s 235(c) of the Companies Act 1955, that the first factor to be considered in the exercise of the discretion was independence. His Honour said; "[T]here must be on the part of the liquidator the ability to make informed and unbiased decisions in the interests of all groups."[7]

[14] In *Re Trafalgar Supply Co Ltd (in liq)*, Wylie J said:[8]

> I take the view that where there is a body of suspicion, whether in the end justified or not, but with some factual foundation on which suspicion may be built, then it is undesirable that a liquidator should be appointed. There will be left in the minds of creditors a sense of dissatisfaction that an appointee of

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3 *Trinity Foundation (Services No. 1) Ltd v Downie* (2006) 3 NZCCLR 401 (CA) at [23] and [31].
4 *Jindal v Liquidation Management Ltd* [2024] NZHC 2969 at [38].
5 Paul Heath and Michael Whale (eds) *Heath and Whale on Insolvency* (online ed, LexisNexis) at [20.15].
6 *Re Anthony Stevens Holdings Ltd (in liq)* HC Auckland CL3/87, 5 April 1989.
7 *Jacobsen Creative Surfaces Ltd v Smiths City Ltd* [1994] 1 NZLR 128 (HC) at 6.
8 *Re Trafalgar Supply Co Ltd (in liq)* [1991] MCLR 293 at 296.

> the Court may not have been totally impartial in the performance of his duties. I have endeavoured to express those views in a recent decision of my own, *Re Halford Ornowski and Associates Ltd*, 15/2/91, Wylie J, HC Auckland M666/90 this year where the circumstances were rather different, but where nevertheless the anxiety on my part to ensure that total independence and impartiality were seen to be exercised was a prime consideration.

[15] There must be a factual foundation for the suspicion that the liquidator cannot carry out their duties and show the requisite objectivity and independence. Asher J in *WHK (NZ) Ltd v Retail Media Ltd (in rec and liq),* said: *"*That objectivity and independence is important where [the liquidators] will have, as here, the role of a watchdog over the activities of the receiver." [9]

[16] In *Hyndman v Newson*, Associate Judge Osborne adopted the following submissions of counsel as describing the source and character of the requirements of liquidator's impartiality:[10]

> A liquidator is a creature of statute [whose] primary duty is to take possession of and realise the company's assets or the proceeds of the realisation of the assets, and distribute them to the company's creditors in accordance with the legislation and to distribute any surplus assets or the proceeds according to the legislation. It is the liquidator's duty to carry out these tasks in a reasonable and efficient manner.
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> The liquidator owes a duty to all of the creditors, shareholders and members of the company.
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> As was said in *Gooch's* case:
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> > In truth, it is of the utmost importance that the liquidator should, as the officer of the court, maintain an even and impartial hand between all of the individuals whose interests are involved in the winding up. He should have no leaning for or against any individual whatever … It is for the Judge to see that he does his duty in this respect.
>
> A liquidator is entitled to and often does accept financial assistance or information from a creditor, however it is incumbent on the liquidator that he or she does not place in jeopardy his independence in the discharge of his or her duties. The duty of independence goes further than actual and in substance independence, because a liquidator must at all times be manifestly <u>seen</u> as independent and impartial.

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9 *WHK (NZ) Ltd v Retail Media Ltd (in rec and liq)* HC Auckland CIV-2009-404-3157, 16 July 2009 at [25].

10 *Hyndman v Newson* [2014] NZHC 2513 at [31].

In regard to the perception of independence, the test has been said to be:

> [w]hether it would be perceived by a reasonable observer that the liquidators have manifested tendency to favour certain interests at the expense of others;
>
> and,
>
> [that] for those who have a particular perception, that perception is the reality.

(footnotes omitted)

[17] Associate Judge Osborne also noted the observation of Allan J in *Mason v Lewis*, where his Honour identified the duties of independence and impartiality are owed to the Court, creditors and shareholders alike: "The liquidators certainly owe a duty to shareholders and creditors and also to the Court to act impartially and independently."[11]

[18] Associate Judge Osborne adopted the observations of Street J in *Re Allebart Pty Ltd (in liq)*, as adopted by Allan J in *Mason*:[12]

> It is indispensable that in point of substance the liquidator's independence should be preserved; and it is undesirable that a liquidator should permit a situation to develop in which it might appear that he has yielded up in any degree whatever his exclusive independent control in the decision-making processes and administration of a winding up.

[19] As already outlined, where the challenge to a liquidator's position is based on a lack of independence or an allegation that they lack impartiality, the test is whether there is evidence upon which a reasonable person could conclude that the liquidator lacks impartiality or independence.

[20] As the extracts from the application set out at [7] and [8] above show, the allegation against Mr Jan is, in plain terms, that he is a front for Mr Kamal. In reality, this is an allegation that Mr Jan is not the liquidator at all but is an amanuensis for Mr Kamal. The challenge to Mr Jan's independence is not therefore based on it appearing he may favour a creditor or a shareholder, but that he is not independent from Mr Kamal.

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11 At [32], citing *Mason v Lewis* HC Auckland CIV-2010-404-8, 21 December 2010 at [27] per Allan J.

12 At [32], citing *Re Allebart Pty Ltd (in liq)* [1971] 1 NSWLR (NSWSC) 24 at 28.

Leave required under s 284 of the Act

[21] On 24 October 2024, on a without notice basis, Associate Judge Gardiner granted Ms Kang leave to bring her proceeding under s 284 of the Act, essentially to allow Ms Kang to apply for interim relief on a without notice basis for orders preventing Mr Jan selling the assets of EZ Foods. The Associate Judge made a holding order for 15 days. Recognising that Mr Jan had not been heard on leave, a direction was made on 5 February 2025 that Mr Jan could address, at this hearing, any prejudice through leave being granted on a without notice basis. Given the parties addressed the substance of Ms Kang's application, and given, strictly speaking, Mr Jan was not given leave to revisit the granting of leave, I do not address the issue of leave in this judgment.

Ms Kang's complaints as to pre-liquidation involvement of Mr Kamal

[22] Before addressing the discussions between Ms Kang and Mr Kamal pre-liquidation, it is necessary to explain the role of LML, Mr Kamal's company. Mr Jan described himself as being an independent contractor to LML. Just what Mr Jan is contracted to do for LML is not explained. The nature of the relationship seems to be that Mr Jan says he personally acts as liquidator when appointed and acts independently of Mr Kamal, who has no authority to override his decisions. Mr Jan says:

> 26 While I am the decision maker, I delegate work to other staff members including Mr Kamal to ease my workload. These tasks typically involve operations and administrative tasks such as liaising with secured parties, investigation work and securing assets.

[23] Mr Jan says that any work undertaken by Mr Kamal is under his supervision. The above passage reads as if it is Mr Jan who contracts LML to act for him, that is, he contracts the company to carry out tasks for him rather than Mr Jan being a contractor to the company. However, as I have said, there is no affidavit in reply to Mr Jan's evidence and no request to cross-examine Mr Jan as to the nature of his relationship with LML.

[24] In practice therefore, the uncontradicted evidence before me is that in relation to liquidations:

(i) Mr Jan makes his own decisions in respect of the liquidation;

(ii) Mr Kamal has no authority to override Mr Jan's decisions as liquidator; and

(iii) LML only supplies operational and administrative support to Mr Jan.

[25] Ms Kang argues that her discussions with Mr Kamal pre-liquidation are such that I should not accept Mr Jan's evidence.

[26] Ms Kang says that having received the IRD's statutory demand and not being able to reach a repayment plan with the IRD, a friend suggested that she might have to put her companies into liquidation. Ms Kang found LML on the internet and called its 0800 telephone number. The company's website says it provides pre-liquidation assessment advice — not that it acts as liquidators. She said Mr Kamal rang her and asked her to send the IRD letter of demand, which she did.

[27] Ms Kang deposed: "I was made to believe that Imran Kamal was a professional who had good knowledge and was licensed to practice". This is an inadmissible statement of opinion, as Ms Kang does not give the basis of this belief. Ms Kang does not say Mr Kamal said he would be the liquidator. Ms Kang says that all pre-liquidation discussions were with Mr Kamal, albeit that the discussions did not last more than 30 minutes in total.

[28] Ms Kang recounts a telephone discussion on 26 September 2024 which lasted a little over 15 minutes. She says Mr Kamal was professional during the telephone call and said he had done over 200 company liquidations and had 20 years of experience. Ms Kang deposed that Mr Kamal said that he had a professional team and requested that Ms Kang provide the financials for the companies, which Ms Kang provided.

[29] Ms Kang was concerned at this point about the need to pay suppliers and employees. She says she asked Mr Kamal to discuss a liquidation plan before he took any action.

[30] Ms Kang says Mr Kamal did not tell her he was not going to be the liquidator, nor that he had been disqualified from acting as a liquidator. Ms Kang also claims that Mr Kamal told her that the company names would not be advertised during liquidation and that company assets could be sold internally, that is by private sale. Ms Kang never spoke to Mr Jan.

[31] Ms Kang says:

> 9. Now I realise it is Imran managing the liquidation business and only using another person's name to get documents uploaded to company office website (MBIE) as he does not want to put his own name due to tax frauds and disqualification. Imran is advising people on liquidations when he is not licensed to do so; this is very concerning.

[32] Ms Kang says Mr Kamal created a sense of urgency and panic in her mind, making numerous requests on her to sign the liquidation resolutions. Ms Kang says that she signed the resolutions, but she understood the liquidation would not begin without a plan and explanation being sent to her and approved by her.

[33] Ms Kang says that on 27 September 2024 (a Friday) at 4.00 pm, she sent a text to Mr Kang telling him not to process the liquidation until he had sent her the pre-liquidation plan. However, on 30 September 2024 (the following Monday), Ms Kang received an email from the Companies Office notifying her that "an insolvency administrator" is what Ms Kang states in her affidavit, had been appointed.

[34] Ms Kang refers, post-liquidation, to people visiting the premises of EZ Foods on 1 October 2024 who took photographs of the factory and vehicles. Ms Kang says these people were sent by Mr Kamal, but she does not specify how she knows that is the case. Mr Jan says it was him who instructed a licensed private investigator to undertake this visit and again, Mr Jan's evidence is not contradicted. On 2 October 2024, Mr Kamal flew from Wellington to Auckland to see Ms Kang and to check on the factory and trucks. Mr Kamal made enquiries about the finance

outstanding on the vehicles, and according to Ms Kang, said that he was the one doing the work, as Mr Jan did not travel or take active parts in liquidations.

[35] Ms Kang says that she always thought Mr Kamal would be the liquidator, as he was the one who was communicating with her. She says she never received any written communications from Mr Jan before liquidation. However, Ms Kang does say that from 3 October 2024, Mr Kamal did not answer her calls or texts, passing them on to Mr Jan. Ms Kang does not say Mr Kamal sent her correspondence post liquidation. That Mr Kamal ceased having correspondence with Ms Kang post liquidation and thereafter referred her communication to Mr Jan, supports Mr Jan's evidence that he is in control of the liquidation.

[36] The forms signed by Ms Kang putting the companies into liquidation named Mr Jan as the liquidator.

Insolvency Practitioners Regulation Act 2019 (IPRA)

[37] Mr Jindal, counsel for Ms Kang, submits that: "Mr Kamal cannot be said to have the necessary skill, qualification, or authority in giving out liquidation advice." Ms Kang, in her evidence, set out at [31], refers to Mr Kamal as not being licensed to advise people on liquidations.

[38] Under s 8 of the IPRA, a person who acts as an insolvency practitioner must be licensed.

[39] Section 5(1) of the IPRA, defines an "insolvency practitioner" as meaning:

> (a) an administrator or a deed administrator (as those terms are defined in s 239B of the Companies Act 1993);
>
> (b) an insolvent company liquidator;
>
> (c) a receiver (as defined in section 2(1) of the Receiverships Act 1993);
>
> (d) a trustee Provisional professional trustee appointed under subpart 2 of Part 5 of the Insolvency Act 2006

[40] The IPRA does not require that someone giving advice about whether to place a company into liquidation be registered under the IPRA. The IPRA controls the

conduct of liquidators, not those giving financial or business advice to companies. Such advice may be given, for example, by accountants, lawyers, bankers or business mentors.

[41] Accordingly, the fact that Mr Kamal was giving pre-liquidation advice to Ms Kang does not put him in breach of the IPRA.

[42] Whether the advice Ms Kang asserts she was given by Mr Kamal was accurate or reasonable is not a matter for this hearing. Mr Kamal is not a party to this proceeding. Mr Jan's evidence is that he cannot comment on the pre-liquidation discussions between Ms Kang and Mr Kamal, as he was not party to those discussions. It follows that Ms Kang's evidence as to those discussions is uncontradicted.

[43] Accordingly, what remains for discussion in this application is the fact of a connection between LML, Mr Kamal and Mr Jan. However, the fact of that connection is of itself not enough to disqualify Mr Jan. Essentially, this application is based on "guilt by association" with Mr Kamal, who is considered not to be of good character by the Restructuring Insolvency and Turnaround Association of New Zealand (RITANZ).[13]

[44] Mr Jindal, counsel for Ms Kang, relies on a decision of the New Zealand Institute of Chartered Accountants Disciplinary Tribunal (**the Tribunal**) of 5 September 2024.[14]

[45] In that decision, a Ms Nayacakalou was disqualified from being an insolvency practitioner, in part because of her association with an unnamed unlicensed insolvency practitioner. Mr Jindal, in his oral submissions, intimated the unnamed person was Mr Kamal. There is no evidence that is the case. The complaint that resulted in Ms Nayacakalou losing her registration was that she had allowed an unlicensed practitioner to conduct a liquidation. The grounds for Ms Nayacakalou losing her

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13 See *Kamal v Restructuring Insolvency and Turnaround Association of New Zealand Inc* [2021] NZCA 514 at [2] and [5]-[9] for discussion of Mr Kamal's background, and the grounds for which RITANZ declined him membership.

14 *Re Nayacakalou* Determination of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants, 5 September 2024.

insolvency practitioner appointment included that: there was no written agreement between her and the unlicensed insolvency practitioner's firm as to the fees to be charged by that firm; there was little or no evidence that Ms Nayacakalou supervised the unlicensed insolvency practitioner; and she failed to adequately document the terms by which the unlicensed person would assist her. There was also a finding that Ms Nayacakalou failed to keep proper working papers in a number of liquidations and complete liquidations in a timely manner, among a number of other breaches of duty.

[46] Ms Nayackalou's involvement with the unlicensed practitioner without more is not what led to her becoming disqualified. Such a connection of itself is not grounds to remove Mr Jan here. Guilt by association is not evidence. Had Mr Jan obtained liquidation support from say, a firm of chartered accountants, there would be nothing left in this application concerning Mr Jan's conduct as liquidation (save for the issue of the creditors' meeting which I deal with separately).

Evidence of a lack of independence

[47] Mr Jindal submits that despite Mr Jan's awareness of the RITANZ disqualification decision of 5 September 2024 and the judicial criticism of Mr Kamal, Mr Jan has failed to explain what steps he has taken to ensure Mr Kamal does not hold himself out as liquidator or provide liquidation advice. Mr Jindal submits this shows a lack of supervision by Mr Jan over Mr Kamal.

[48] However, this submission is not supported by the evidence. Ms Kang's own evidence is that post-liquidation, Mr Kamal referred Ms Kang's correspondence to Mr Jan. Pre-liquidation, Mr Kamal was not acting as liquidator or in a role that required registration under the IPRA. It is not for Mr Jan to disprove Ms Kang's allegations. I note there is no evidence from Ms Kang that post-liquidation Mr Kamal held himself out as liquidator, nor is it Mr Jan's role to control Mr Kamal's company.

[49] Mr Jindal submits that the use of LML undermines Mr Jan's independence. However, assuming that the Tribunal decision just referred to involved Mr Kamal, it was not the fact of that connection that was determinative. In an event, the connection between Mr Jan and LML that does exist is not a basis to disregard, without more,

Mr Jan's sworn evidence. Again, Mr Jan was not required for cross-examination for which leave is *not* required.[15]

[50] Despite Mr Jan's sworn evidence that he is independent, Mr Jindal submits that he "cannot be independent, nor can Mr Jan appear to be independent."

[51] Mr Jindal's submissions come down to the following paragraph from his submissions:

> 55. Ms Kang has provided detailed, reliable evidence of her pre-liquidation interactions with Mr Kamal. The liquidation process is vitiated by the fact that Mr Kamal, a disqualified person, was acting unsupervised in providing legal and technical advice.

[52] No authority is given for the above proposition. If Ms Kang *personally* believes she has a claim against LML or Mr Kamal in respect of the advice she received, then that is a matter for her. That said, if a solicitor, accountant or banker gave erroneous advice that liquidation was the only option open, or applied pressure to a shareholder to place a company in liquidation, such would not, without more, taint the liquidator subsequently appointed.

[53] As noted at [43], Ms Kang's application can be reduced to the proposition that it is the fact of Mr Jan's connection with LML/Mr Kamal that warrants his removal.

[54] I accept the submission of Mr Ho, counsel for Mr Jan — the claim that Mr Jan is merely a proxy for Mr Kamal, allowing Mr Kamal to operate as an insolvency practitioner, does not rise above a bare allegation.

[55] Mr Ho notes that in addition to this application, Ms Kang has complained to the Institute of Chartered Accountants about Mr Jan.

[56] A hearing/meeting was held by the Professional Conduct Committee (**the Committee**) on 18 February 2025, with its decision being issued on 26 March 2025. The Committee commented that it appeared unusual that Mr Jan had no direct interaction with Ms Kang when assessing whether to accept the position as liquidator.

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[15] See High Court Rules 2016, r 19.4.

However, the Committee noted Mr Jan's statement that Mr Kamal had appraised him of the relevant information. There were file notes to that effect produced in the proceeding. The Committee queried whether that was sufficient for Mr Jan to satisfy himself that he could take on the role.[16] The Committee noted the short timeframe between the complainant making enquiries of Mr Kamal, and Ms Kang signing the appointment documents. That EZ Foods and B&R between them owed the IRD something in the range of $1.5m, which they had no way of paying, puts the timeframe in context.

[57] The Committee was concerned that Mr Jan may have relinquished too much responsibility to Mr Kamal and queried the extent to which Mr Jan adequately supervises Mr Kamal. However, I am not aware on what evidence those concerns are based. I assume any material put before the Committee that would support Ms Kang's present application would have been produced to me.

[58] The Committee made the following observation:[17]

> Based on the information before it, it appeared to the Committee that, once appointed, Mr Jan did communicate with the Complainant and was actively involved in the liquidation of the Companies. The Committee noted that there were numerous emails and calls from Mr Jan to the Complainant from as early as 30 September 2024, within three days of his appointment.
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> It was apparent to the Committee that the Complainant was dissatisfied with Mr Jan's actions as liquidator. The Committee noted that it is not uncommon for disputes to arise between a company's liquidator and its director. A liquidator's duty to act for the benefit of creditors does not always align with a director's wishes or interests. The Committee did not identify any issues of concern in relation to Mr Jan's handling of the liquidations but noted that the High Court has inherent jurisdiction over the actions of liquidators. It acknowledged that the Complainant has taken steps to address her concerns via legal action. Should adverse findings be made against Mr Jan by the Courts in relation to his performance of the Companies' liquidations, those issues could be remitted back to the Committee for consideration.

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16 While a matter for the Committee, I observe this Court routinely appoints liquidators on a creditor's winding up application who will only have access prior to the winding up hearing to the publicly available information concerning the company they consent to be appointed to — I recognise that in a voluntary liquidation there is greater opportunity for discussion between the proposed liquidator and shareholders.

17 *Re Jan* Minute of Decision of the Professional Conduct Committee of the New Zealand Institute of Chartered Accountants, 26 March 2025 at 4.

[59] The Committee acknowledged that it is not unusual for the licenced insolvency practitioner to have the support of other staff to communicate with parties in a liquidation and assist with administrative tasks.

[60] The Committee resolved to convene a case conference, which Mr Jan was to attend, to confer with him in relation to the complaint, particularly in relation to the appointment process, his relationship with Mr Kamal and how Mr Jan manages any threats to his objectivity and independence.

[61] What emerges from this decision is that Mr Jan's connection with Mr Kamal was not of itself a ground for the Committee to go beyond the steps described.

[62] Suspicion on the part of Ms Kang, and it would seem Mr Jindal, is not enough. There must be evidence to support the allegation that Mr Jan is a front for Mr Kamal. I refer to Mr Jindal's suspicion as it is clear that there is animosity between Mr Jindal and Mr Kamal.[18]

[63] There is no legitimate criticism of Mr Jan's conduct of the liquidation save in respect of the first creditors' meeting, which I address below. All three liquidations are relatively straightforward. The assets of EZ Foods and B&R are subject to charges. The only likely step to be taken by Mr Jan is to seek to recover Ms Kang's current account in EZ Foods.

Ms Kang requires a creditors' meeting to be held

[64] Mr Jan gave notice to all known creditors pursuant to s 245(1)(b) of the Act that he did not consider a creditors' meeting should be held and he set out his reasons for that view.

[65] Section 245(1)(b)(iii) of the Act provides that if the liquidator gives such notice, then a creditors' meeting will not be held unless a creditor gives written notice

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[18] Mr Jindal submitted I could not have regard to his history of disputes with Mr Kamal, which has resulted in extensive litigation between them or their companies. Mr Jindal relied on *Saxmere Company Ltd v Woolboard Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35 at [8] for the proposition that in deciding cases counsel are not judged. However, Mr Jindal's views of Mr Kamal has influenced the tenor of his submissions.

to the liquidator within 10 working days after receiving the liquidator's notice, requiring the meeting to be held.

[66] Ms Kang, for herself and on behalf of a number of employees who say they are creditors, gave notice requiring a meeting within the required timeframe. That notice indicated that a resolution would be proposed that an alternative liquidator be appointed, but it did not name the proposed replacement.

[67] On 31 October 2024, Mr Jan gave notice to creditors of the creditors' meeting. Because he had not been advised of the identity of the replacement liquidator, as foreshadowed in the notice requiring the creditors' meeting, Mr Jan included resolutions for the meeting that if his appointment was not confirmed creditors could opt for one of the two alternative liquidators proposed. There is no suggestion from Ms Kang that the proposed alternative liquidators named by Mr Jan are not well qualified and independent.

[68] In accordance with s 243 of the Act, Mr Jan gave notice of the resolutions to be submitted at the meeting, and included the relevant voting papers. The voting paper proposed the following resolutions:

(a) that Mr Jan's appointment be confirmed and if not, the first named proposed alternative liquidator be approved; and

(b) if that named liquidator was not approved, then the second named alternative liquidator proposed be approved.

[69] Notice of the meeting was advertised in the Gazette on 31 October 2024 and in New Zealand Herald on 1 November 2024. The advertising in the New Zealand Herald was one day late and while Mr Jan accepts this was an irregularity, he does not consider it is material. I agree. All known creditors received direct communication of the meeting and it is not suggested there are creditors who missed out on the meeting because of the slight delay in the newspaper advertising.

[70] Clause 11 of sch 5 of the Act, which governs the holding of creditors' meetings, provides:

> An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by a meeting of creditors, unless the court orders otherwise.

Clause 11(2) provides that such an order will only be made if the court is satisfied that substantial injustice would be caused if the order was not made.

[71] On 1 November 2024, Messrs Pronk and Farquhar, two experienced liquidators, provided their consent to appointment as replacement liquidators. 1 November 2024 was a Friday. The meeting was scheduled for 7 November 2024 at 4.00 pm, to be held by Zoom. On 6 November 2024 in the evening, Mr Jan by email advised creditors of his decision not to include the names of Messrs Pronk and Farquhar as possible replacement liquidators as the voting papers had already been sent out.

[72] Ms Kang is critical of Mr Jan's notification on 6 November 2024. At the creditors' meeting, the IRD, which at that stage was owed $1,035,103.00, voted against confirming Mr Jan and the first alternative liquidator as liquidator, and in favour of the second alternative liquidator.

[73] There was nothing stopping Ms Kang proposing *at the meeting* a new resolution that Messrs Pronk and Farquhar be added to the list of alternative liquidators. Their consent had been provided to Mr Jan. However, there is no evidence that Ms Kang or any other creditor proposed such a resolution. That may have been because Mr Farquhar attempted to attend the meeting, but agreed to leave as he had not given prior notice that he was attending. His attendance was not required for the resolution I have referred to being proposed by Mr Kang.

[74] However, the short point is that unless the IRD voted in favour of Ms Kang's nominee as replacement liquidator, that resolution would have failed. This is because the size of the IRD debt means alternative resolutions could not meet the threshold in cl 5(1) of sch 5 of the Act to pass.

[75] Mr Jindal made an oral application for an order that I order a further creditors' meeting. ***I decline*** that application.

[76] It would be a counsel of perfection to say that Mr Jan should have advised Ms Kang that she could seek to put a resolution at the meeting itself when Ms Kang was in receipt of independent legal advice throughout this period.

[77] Accordingly, to the extent that there is any breach by Mr Jan in respect of this issue (which I doubt) it would be covered by cl 11(1) of sch 5 noted at [70] above. That is because unless IRD voted in favour of Ms Kang's nominee, that nominee was never going to be appointed. I note Mr Jan's letter of 6 November 2024 disclosed the names of Ms Kang's proposed liquidators. Such did not prompt IRD to take steps to revisit its vote.

Remuneration

[78] Mr Jan, in his liquidator's report, sets out the rates of remuneration as follows:

Staffing Level	**Hourly Rate (Excluding GST)**
Liquidator/Director	$450 - $500
Manager	$300 - $350
Analyst	$200 - $250
Administration	$150 - $175

[79] The above rates are within the normal rates charged by insolvency practitioners.

[80] Mr Jindal, however, focuses on the reference to liquidator/*director* and the hourly rate set out in the above table. Mr Jindal submits this shows that Mr Kamal, as director of LML, is charging at a liquidator's rate for his work.

[81] Mr Kamal has no such entitlement. The rates set out are those to be charged by the liquidator. The liquidator is a sole trader — there is no director. Mr Kamal is not a liquidator and therefore cannot charge at the liquidator's rate. I suspect this table is a copy and paste from another liquidation.

[82] To the extent that Mr Jan uses the services of staff of LML, it must be assigned by the company to the appropriate level of seniority of staff. That Mr Kamal may

undertake work of an administrative nature means he can only charge Mr Jan at the rate for an administrator, not a director. It is Mr Jan's obligation to ensure that the work that is undertaken is by staff with the appropriate level of skill and experience, or at least that the invoices he receives reflect the type of work he has contracted the company to undertake.

[83] I accept Mr Ho's submission that the issue of Mr Jan's fees as liquidator can be addressed by an order pursuant to s 284 of the Act, that upon the conclusion of the liquidation, Mr Jan is to apply for approval of his fees. I make an ***order*** in those terms. Mr Jan is to ensure, to the extent he utilises the services of LML, that his records establish that the work carried out by LML was undertaken by the person with the appropriate level of seniority and who charged at the correct level. Mr Jan is to require fully particularised invoices from LML for all work he asks the company to carry out.

Costs

[84] Ms Kang's application has failed. There is no reason why costs should not follow the event.

[85] I make an ***order*** that Ms Kang is to pay costs to Mr Jan. Unless memoranda as to costs are filed *within five working days* (of not more than five pages), the order of the Court is that Ms Kang is to pay to Mr Jan costs on a 2B basis, plus disbursements as fixed by the Registrar.

Associate Judge Lester

Solicitors:
Ormiston Legal, Auckland (for Applicant)
Crimson Legal, Auckland (for Respondent)