



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

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**IN THE MATTER OF  
ZAHIR “ZIP” SADRUDIN DHANANI AND ROBERT JAMES NASO**

**STATEMENT OF ALLEGATIONS  
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

**A. OVERVIEW**

1. An inter-jurisdictional enforcement order using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Capital Markets Tribunal’s (the **Tribunal**) *Rules of Procedure* is sought based on a finding by the British Columbia Securities Commission (**BCSC**) that the Respondents (as defined below) failed to disclose information, concealed financial losses and made false or misleading statements.

**B. FACTS**

Staff of the Enforcement Branch of the Ontario Securities Commission (**Enforcement Staff**) (the **Commission**) makes the following allegations of fact:

2. On February 22, 2022, the BCSC issued its sanctions decision (the **Sanctions Decision**) and an order (the **BCSC Order**) that imposed sanctions on Arian Resources Corp. (**Arian**), Zahir “Zip” Sadrudin Dhanani (**Dhanani**) and Robert James Naso (**Naso**) (together, the **Respondents**), including permanent prohibitions on trading or purchasing securities or derivatives, and removals of exemptions under British Columbia securities laws. In addition, Dhanani and Naso were permanently prohibited from acting in various capacities, including as a director or officer of any issuer or as a registrant. Dhanani and Naso were also each ordered to pay an administrative penalty of \$200,000.

3. In its decision on the merits (the **Merits Decision**) dated October 6, 2021, a panel of the BCSC (the **BCSC Panel**) held that in and around 2015 and 2016, there were material changes in Arian's business which Arian failed to disclose; on several occasions in the period in and around 2014, 2015 and 2016, Arian delivered financial statements and MD&As which omitted material information; and in information circulars filed by Arian in 2015 and 2017 Arian made false and misleading statements about executive compensation.
4. Arian repeatedly breached sections 85(a) & (b) and section 168.1(b) of the British Columbia *Securities Act* (the **BC Act**). As directors and officers of Arian, Dhanani and Naso also repeatedly breached sections 168.1(1)(b) and 85 of the BC Act as they authorized, permitted or acquiesced in Arian's conduct. As a result, Dhanani and Naso were liable for those breaches pursuant to section 168.2(1) of the BC Act.
5. The Merits Decision followed a hearing on the merits (the **Merits Hearing**) of the allegations brought by the BCSC. The Merits Decision includes the following findings:
  - (i) **The Respondents**
    6. Arian was in the mineral exploration business. At all relevant times, the shares of Arian were listed on the TSX Venture Exchange and Arian was a reporting issuer in British Columbia.
    7. In November 2012, each of Naso and Dhanani became a director of Arian and Dhanani became its chief executive officer (**CEO**). On March 20, 2015, Naso was appointed the chief financial officer (**CFO**) of Arian.
    8. Neither Arian, Dhanani, nor Naso have ever been registered with the Commission in any capacity.
  - (ii) **Failure to Disclose Promoter Loss and Related Party Payments**
    9. In February 2014, on directions from Dhanani, Arian wired two payments totaling \$800,000 to a Promoter with instructions to Arian's accountants to book the payment as relating to investor relations. The wired payments were made pursuant to a written contract with the Promoter whereby they would seek investment funding for Arian.

10. By April 2014, the Promoter had failed to provide the contracted services, and Arian began writing to the Promoter to demand the return of the \$800,000 (**Promoter Loss**). On April 28, 2014, Arian's directors passed a resolution authorizing payments to the Promoter for "shareholder communications" and also authorizing payments totalling \$285,715 to Dhanani's mother.
11. On April 29, 2014, Arian's financial statements and management's discussion and analysis (**MD&A**) for the period ending February 28, 2014 and 2013, did not disclose either the Promoter Loss or that the payments to Dhanani's mother were a related party transaction (**Related Party Payments**).
12. On May 12, 2014, Arian advised its accountants to write to the Promoter in the form of an email requesting return of the Promoter Loss to Arian.
13. In September 2014, Dhanani approved Arian's accountants to reclassify \$500,000 of the Promoter Loss as a consulting payment for identifying potential acquisition targets and created and emailed an invoice, backdated to February 28, 2014, to support the Related Party Payments which had been made to his mother.
14. On September 29, 2014, Arian issued its financial statements and MD&A for the years ended May 31, 2014 and 2013. Contrary to its continuous disclosure obligations, Arian did not disclose the existence of the Promoter Loss or the Related Party Payments to Dhanani's mother.

**(iii) Failure to Disclose Material Changes Related to the Perlat Project**

15. By March of 2014, Arian's operational attention was focused on its sole material asset, its interest in a mineral exploration project in Albania (the **Perlat Project**). Arian entered into a share purchase agreement dated March 25, 2014 with a vendor (**Vendor**) from which Arian acquired the shares (**Shares**) of an Albanian company which was the licensee of the Perlat Project. Under the share purchase agreement, Arian accepted certain obligations, including to advance the Perlat Project and to make a \$2,000,000 payment to the Vendor on June 30, 2015.
16. On June 29, 2015, the Vendor advised Arian that it would not grant an extension to Arian's obligation to pay the \$2,000,000 due the following day. Arian failed to make any payment to

the Vendor. On August 24, 2015, the Vendor commenced arbitration against Arian seeking, among other things, the return of the Shares. As CFO of Arian, notice of the arbitration was sent to the attention of Naso, who in turn sent it to Dhanani.

17. On August 28, 2015, Naso wrote to Albanian authorities to request the authorities provide a notice of temporary interruption to Arian's efforts to advance the Perlat Project. Naso did this to pause certain obligations related to the Perlat Project, failing which the licensee's exploration licences might be terminated by Albanian authorities.
18. On September 15, 2015, the Vendor informed Arian's accountants that it had commenced arbitration with respect to the Perlat Project. The following day, Dhanani advised Arian's accountants that the arbitration had not been initiated.
19. On September 16, 2015, Albanian authorities issued the requested notice of temporary suspension of exploration activity (**Stop Work Order**), preventing further activities on the Perlat Project until the Stop Work Order was lifted.
20. Neither Arian's annual financial statements and MD&A for the year ended May 31, 2015 nor its interim financial statements for the three-month period ended August 31, 2015 disclosed either the arbitration or the Stop Work Order, both of which directly affected Arian's sole material asset.

**(iv) Omissions and Misstatements in Arian's Public Filings**

21. In November of 2015, Arian filed an information circular which included information regarding executive compensation. The information circular misstated both the amounts and the recipients of the executive compensation, including the amounts paid to Dhanani.
22. Arian's difficulties escalated during late 2015 and early 2016 in the following manner:
  - (a) in November of 2015, the Vendor delivered a formal notice of civil claim in connection with its efforts to recover the Shares;
  - (b) in December of 2015, Albanian authorities sent Arian a notice of revocation of the licensee's exploration licence, specifying that the revocation would take effect in 30 days;

- (c) in February of 2016, Albanian authorities confirmed in writing to Arian that the revocation of the exploration licence was in effect;
  - (d) in March of 2016, Arian applied for judicial review; and
  - (e) by June of 2016, an Albanian court had upheld the revocation.
23. Throughout late 2015 and into 2016, Arian's financial statements and MD&A continued to omit any mention of the Vendor's efforts to reclaim ownership of the Shares, the cessation of work on the Perlat Project or the revocation of the licensee's exploration licence. In addition, a further information circular filed by Arian in March of 2017 contained the same misstatements as were contained in the November 2015 information circular.
24. Dhanani purported to resign as a director of Arian and as its chief executive officer on January 12, 2016. However, numerous records show that he continued to be intimately involved in the affairs of Arian, including directing Arian's response to the civil claim by the Vendor and, ultimately, in approving the conclusion reached by Arian's accountants that Arian's interest in the Perlat Project was fully impaired and, therefore, without value.
25. Arian's acknowledgement that its interest in the Perlat Project was fully impaired was made public only upon the filing of Arian's financial statements and related MD&A for the years ended May 31, 2016 and 2015, which were issued on September 29, 2016.

### **C. JURISDICTION**

26. Pursuant to paragraph 4 of subsection 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the BCSC Order, being an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

27. It is in the public interest to make an order against the Respondents.

**D. ORDER SOUGHT**

28. Enforcement Staff requests that the Tribunal make the following orders:

a) against Dhanani that:

- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Dhanani cease permanently, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, who has first been given a copy of this Order;
- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Dhanani cease permanently, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, who has first been given a copy of this Order;;
- iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Dhanani permanently;
- iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Dhanani resign any positions he holds as a director or officer of an issuer or registrant, including an investment fund manager;
- v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act, Dhanani is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager; and

- vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dhanani is prohibited permanently from becoming or acting as a registrant, including as an investment fund manager or promoter.
- b) against Naso that
- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Naso cease permanently, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, who has first been given a copy of this Order;
  - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Naso cease permanently, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, who has first been given a copy of this Order;
  - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Naso permanently;
  - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Naso resign any positions he holds as a director or officer of an issuer or registrant, including an investment fund manager;
  - v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act, Naso is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant, including an investment fund manager; and
  - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Naso is prohibited permanently from becoming or acting as a registrant, including as an investment fund manager or promoter; and
- c) such other order or orders as the Tribunal considers appropriate.

**DATED** at Toronto this 6<sup>th</sup> day of June, 2023.

**ONTARIO SECURITIES COMMISSION**  
20 Queen Street West, 22nd Floor  
Toronto, ON M5H 3S8

**Vincent Amartey**  
Litigation Counsel  
Enforcement Branch

Email: [vamartey@osc.gov.on.ca](mailto:vamartey@osc.gov.on.ca)  
Tel: (416) 593-8174