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Citation: *Dhanani (Re)*, 2023 ONCMT 31  
Date: 2023-09-28  
File No. 2023-14

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

**REASONS AND DECISION**

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

**Adjudicator:** James D. G. Douglas

**Hearing:** In writing; final written submissions received July 31, 2023

**Appearances:** Vincent Amartey For Staff of the Ontario Securities  
Commission

No one appearing for Zahir "Zip" Sadrudin Dhanani or Robert James Naso

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## REASONS AND DECISION

### 1. OVERVIEW

- [1] On October 6, 2021, the British Columbia Securities Commission (**BCSC**) issued its Findings<sup>1</sup> in an enforcement proceeding brought pursuant to the BC *Securities Act*<sup>2</sup> by the Executive Director of the BCSC against Arian Resources Corp., Zahir “Zip” Sadrudin Dhanani and Robert James Naso. The BCSC found that, over the period of 2014 to 2017, Arian repeatedly failed to make disclosure of material changes regarding its sole material asset and made false or misleading statements (or omitted facts necessary to make the statements made not false or misleading) in required public filings, all contrary to the BC *Securities Act*.<sup>3</sup> The BCSC further found that Dhanani and Naso, as officers and directors of Arian, authorized, permitted or acquiesced in Arian’s disclosure breaches and therefore contravened the same provisions of the BC *Securities Act*.<sup>4</sup> On February 22, 2022, the BCSC issued its Decision and Orders<sup>5</sup> which, among other things, ordered that Dhanani and Naso each pay an administrative penalty of \$200,000, and further made various orders against them restricting their future market participation.
- [2] Staff of the Ontario Securities Commission brought this inter-jurisdictional enforcement proceeding against Dhanani and Naso seeking to impose non-monetary sanctions similar to those in the BCSC Decision and Orders, to the extent possible under the Ontario *Securities Act*<sup>6</sup> (the **Act**), restricting their future participation in the capital markets of Ontario.
- [3] OSC Staff sought no relief against Arian because Arian was dissolved on July 9, 2018, which is outside of the two-year limitation period to commence a

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<sup>1</sup> *Arian Resources Corp (Re)*, 2021 BCSECCOM 391 (**BCSC Findings**)

<sup>2</sup> *Securities Act*, RSBC 1996, c 418

<sup>3</sup> BCSC Findings at paras 39, 41, 43, 46, 49, 53 and 61

<sup>4</sup> BCSC Findings at paras 59, 60 and 61

<sup>5</sup> *Arian Resources Corp (Re)*, 2022 BCSECCOM 55 (**BCSC Decision and Orders**)

<sup>6</sup> *Securities Act*, RSO 1990, c S.5

proceeding against a dissolved company set out in s. 346(1) of the British Columbia *Business Corporations Act*.<sup>7</sup>

[4] For the reasons following, I conclude that:

- a. the respondents are subject to the BCSC Decision and Orders, which are an order of a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on them;
- b. the principles of comity and reciprocity do not govern or influence whether an order under s. 127(1) of the *Act* would be in the public interest; and
- c. it is in the public interest to make an order under s. 127(1) of the *Act* substantially on the terms sought by OSC Staff.

## **2. SERVICE AND PARTICIPATION**

[5] OSC Staff elected to proceed by way of the expedited procedure for a written hearing provided for by rule 11(3) of the Tribunal's *Rules of Procedure and Forms (Rules)*. The procedure allows a respondent who is served with the Notice of Hearing to file a responding hearing brief and written submissions, or to request an oral hearing.

[6] As is evident from the affidavit of Michelle Spain sworn June 20, 2023,<sup>8</sup> OSC Staff served Dhanani and Naso by courier with the Notice of Hearing, the Statement of Allegations, written submissions and other written materials<sup>9</sup> filed and relied upon by OSC Staff in this proceeding. I am satisfied that OSC Staff has complied with the service obligations prescribed in the *Rules*. Neither Dhanani nor Naso has filed written responding materials nor requested an oral hearing.

[7] Pursuant to the *Statutory Powers Procedure Act*<sup>10</sup> and the *Rules*,<sup>11</sup> the Tribunal may proceed in the absence of a party where satisfied that the party has been given adequate notice of the proceeding. I am satisfied that each of Dhanani and

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<sup>7</sup> *Business Corporations Act*, SBC 2002, c 57

<sup>8</sup> Exhibit 1, Affidavit of Service of Michelle Spain, Sworn by videoconference on June 20, 2023

<sup>9</sup> Exhibit 2, Hearing Brief of the Ontario Securities Commission, June 6, 2023

<sup>10</sup> RSO 1990, c S.22, s. 7

<sup>11</sup> *Rules*, r. 21(3)

Naso has received adequate notice of this proceeding and that I may proceed in their absence.

### **3. THE BCSC FINDINGS AND SANCTIONS**

[8] The liability hearing of the BCSC enforcement proceeding against Arian, Dhanani and Naso was held over three days in October 2020, with submissions completed in December 2020. Of the respondents, only Dhanani participated during the pre-hearing stage and later attended the liability hearing when near its conclusion.<sup>12</sup> Neither Dhanani nor Naso provided any submissions on sanctions.<sup>13</sup>

[9] For the purposes of this proceeding, the relevant liability findings of the BCSC may be summarized as follows:

- a. Over the period from June 2015 to June 2016, Arian repeatedly failed to file material change reports as required by the BC *Securities Act* in respect of events that had a material adverse impact on its sole material asset, which was a mining claim in Albania;<sup>14</sup>
- b. Over the period from June 2015 to September 2016, Arian repeatedly breached the BC *Securities Act* by filing prescribed financial statements and MD&A that were false and misleading in that they failed to disclose the events referred to in paragraph a. above relating to the Albanian mining claim;<sup>15</sup>
- c. Arian also failed to file a material change report<sup>16</sup> and made misleading disclosure in interim and year-end financial statements in 2014<sup>17</sup> in respect of a loss suffered in relation to payments made under a contract with a promoter who failed to provide the agreed upon services;
- d. Arian failed to make prescribed disclosure in interim and year-end financial statements in 2014 in respect of related party payments (i.e., payments to Dhanani's 76-year-old mother with whom he resided and

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<sup>12</sup> BCSC Findings at para 5

<sup>13</sup> BCSC Decision and Orders at para 3

<sup>14</sup> BCSC Findings at paras 34-39

<sup>15</sup> BCSC Findings at paras 40-41

<sup>16</sup> BCSC Findings at paras 42-43

<sup>17</sup> BCSC Findings at paras 44-46

from whom he held a power of attorney) which rendered those financial statements false and misleading and in contravention of the BC *Securities Act*;<sup>18</sup>

- e. In 2015 and 2017 Arian filed information circulars provided to shareholders that contained false and misleading statements regarding executive compensation paid to Dhanani and others for the year ended May 31, 2015, which filings were in contravention of the BC *Securities Act*;<sup>19</sup> and
- f. As officers and directors of Arian during the relevant period, Dhanani and Naso authorized, permitted or acquiesced in Arian's contraventions as set out above, thereby committing those same contraventions.<sup>20</sup>

[10] Having made the findings of liability set out above, the BCSC concluded that each of Dhanani and Naso posed "a significant risk to the integrity of the capital markets"<sup>21</sup> and made orders against them effectively barring them permanently from all future participation in the capital markets, except as to limited specified "carve outs" which allow them to trade in personal accounts through a registered dealer or registrant, provided that the registered dealer or registrant is given a copy of the BCSC Decision and Orders. The BCSC also ordered each of Dhanani and Naso to pay an administrative penalty of \$200,000.<sup>22</sup>

#### **4. ANALYSIS**

[11] The issues I must address are:

- a. Whether the respondents are subject to an order of a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on them?
- b. Do the principles of comity and reciprocity govern or influence whether a s. 127(1) order would be in the public interest?

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<sup>18</sup> BCSC Findings at paras 47-49

<sup>19</sup> BCSC Findings at paras 50-53

<sup>20</sup> BCSC Findings at paras 59 and 60

<sup>21</sup> BCSC Decision and Orders at para 36

<sup>22</sup> BCSC Decision and Orders at para 40

c. Is it in the public interest to make the order requested by Staff?

- [12] Subsection 127(1) of the *Act* empowers the Tribunal to make various orders against an individual if in the Tribunal's opinion it is in the public interest to do so. Section 127(10)4 of the *Act* provides that an order may be made under s. 127(1) where a person is subject to an order of a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person. The BCSC Decision and Orders meet this criterion. Accordingly, I now turn to consider whether it is in the public interest to make the order sought under s. 127(1) of the *Act* and the applicability, if any, of the principles of comity and reciprocity to that decision.
- [13] In their written submissions, OSC Staff argue that the principles of comity and reciprocity apply in the context of inter-jurisdictional enforcement proceedings. These principles of common law form the basis of inter-jurisdictional recognition of foreign judgments and orders by our courts.<sup>23</sup> In the absence of the party against whom the foreign judgment or order was obtained demonstrating that there was no substantial connection between it and the originating jurisdiction or that the original order was procured by fraud or that there was otherwise a denial of natural justice in the foreign jurisdiction, the foreign judgment or order will be adopted and enforced by the domestic court.
- [14] While some previous Tribunal cases have cited comity and reciprocity as the basis for making an order under s. 127(1) of the *Act* where s. 127(10) applies,<sup>24</sup> I asked OSC Staff to provide me with judicial authority for their submission that comity and reciprocity apply in the context of an inter-jurisdictional enforcement proceeding brought pursuant to s. 127(10), or otherwise in the context of comparable administrative proceedings. OSC Staff were unable to provide any such authority.
- [15] In my view, while the principles of comity and reciprocity may have been among the animating factors that led to the Legislature's decision to enact s. 127(10) of the *Act*, their direct application in the context of inter-jurisdictional enforcement

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<sup>23</sup> *Morguard Investments Ltd v De Savoye*, 1990 CanLII 29 (SCC); *Beals v Saldanha*, 2003 SCC 72

<sup>24</sup> *JV Raleigh Superior Holdings Inc (Re)*, 2013 ONSEC 18 at paras 21, 24 and 26; and *New Futures Trading International Corporation (Re)*, 2013 ONSEC 21 at paras 23, 25 and 27

proceedings would effectively oust the public interest jurisdiction of the Tribunal under s. 127(1) of the *Act*. On a plain reading of the section, this was clearly not the intention of the Legislature. Moreover, while the Supreme Court of Canada recognized in *McLean* that inter-provincial enforcement proceedings facilitate cooperation amongst provincial securities regulators and avoid inefficient parallel and duplicative proceedings, it also held that the decision-maker in such proceedings cannot “abrogate its responsibility to make its own determination as to whether an order is in the public interest”.<sup>25</sup>

- [16] In other words, the principles of comity and reciprocity do not apply to make inter-jurisdictional enforcement orders pursuant to s. 127(10) of the *Act* an automatic reciprocation of the order in the original jurisdiction. Such orders require a two-step analysis: (1) a determination of whether one or more of the criteria in s. 127(10) apply in the circumstances; and (2) a decision whether the Tribunal should, on the basis of the facts of the case before it, exercise its jurisdiction to make an order in the public interest under s. 127(1) of the *Act*.
- [17] As indicated above, I am satisfied that the first step in the analysis has been met in this case. As to the second step, the scope of the Tribunal’s public interest jurisdiction under s. 127(1) is not punitive or remedial, but rather protective and prospective.<sup>26</sup> The Tribunal’s public interest jurisdiction is informed by the purposes of the *Act* set out in s. 1.1, which include protection of investors and fostering capital market integrity. Among the principles the Legislature has directed the Tribunal to have regard to when pursuing those purposes is “the sound and responsible harmonization and co-ordination of securities regulation regimes”,<sup>27</sup> which is particularly applicable in the context of inter-jurisdictional enforcement proceedings.<sup>28</sup>
- [18] Furthermore, in deciding whether to exercise the Tribunal’s public interest jurisdiction to make one or more orders pursuant to s. 127(1) of the *Act* against Dhanani and Naso, I accept and adopt the following guidance from past Tribunal

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<sup>25</sup> *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 (**McLean**) at para 54.

<sup>26</sup> *Mithras Management Ltd (Re)*, (1990) 13 OSCB 1600; *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37

<sup>27</sup> *Act*, s. 2.1 paragraph 5

<sup>28</sup> *McLean* at paras 54, 59, 76 and 77



decisions: firstly, that I should not look behind or attempt to second-guess or re-litigate the evidentiary findings made and legal conclusions reached by the adjudicative authority in the original jurisdiction;<sup>29</sup> and, secondly, while it is a factor to be considered, a connection to Ontario on the part of the individual respondents or in the factual matrix that gave rise to the proceedings before that adjudicative authority is not a prerequisite to the engagement of the Tribunal's jurisdiction.<sup>30</sup>

- [19] Bearing in mind that guidance and accepting the factual findings and legal conclusions in the BCSC Findings, I have no hesitation in concluding that, had Dhanani and Naso engaged in the same conduct in Ontario that led the BCSC to conclude that they had contravened the identified securities laws of British Columbia, it would have constituted a breach of the same or similar provisions of Ontario securities law such that the Tribunal would have made one or more orders in the public interest against them pursuant to s. 127(1) of the *Act*. Accordingly, I am satisfied that an inter-jurisdictional enforcement order as requested by OSC Staff is warranted in the public interest of Ontario as against Dhanani and Naso.
- [20] Deciding the appropriate terms of the order to be made against Dhanani and Naso requires me to consider the applicable sanctioning factors. The list is non-exhaustive and their individual relevance in any particular case depends upon the circumstances of the case. They have been catalogued in a number of previous decisions of the Tribunal<sup>31</sup> and I do not propose to repeat them here. Suffice it to say that the sanctioning factors that the BCSC took into account in deciding the appropriate orders to be made against Dhanani and Naso, as articulated in the BCSC Decision and Orders, are the same or similar in all material respects to sanctioning factors that the Tribunal has referred to in past cases when making one or more orders in the public interest pursuant to s. 127(1) of the *Act*. Specifically, the factors relied on by the BCSC included the

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<sup>29</sup> *Black (Re)*, 2014 ONSEC 16 at paras 24 and 34

<sup>30</sup> *Cook (Re)*, 2018 ONSEC 6 at para 9; *Hable (Re)*, 2018 ONSEC 11 at para 8; *Nickford (Re)*, 2018 ONSEC 24 at para 13

<sup>31</sup> *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746-7747; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at 1136

seriousness of the conduct, the risk to investors and the market, investor harm, fitness to be an officer or director and the aggravating factor that Dhanani and Naso claimed to understand their obligations as directors yet either deliberately or negligently disregarded those obligations.<sup>32</sup> Accordingly, I adopt the sanctioning factors and supporting reasoning as articulated in the BCSC Decision and Orders in relation to Dhanani and Naso. In addition, I refer back to the principle of “sound and responsible harmonization and co-ordination of securities regulation regimes” which informs the purposes of the *Act* and therefore informs my exercise of the Tribunal’s public interest jurisdiction in the context of this inter-jurisdictional enforcement proceeding.

## 5. CONCLUSION

[21] I am accordingly of the view that it is appropriate to make an order substantially on the terms sought by OSC Staff and that would take into account the minor differences in the orders authorized by the *Act* versus the *BC Securities Act*.<sup>33</sup> As is the case with the BC Decision and Orders, the overall effect of my order is that Dhanani and Naso shall be permanently barred from all future participation in the Ontario capital markets, except as to limited specified “carve outs” which allow them to trade in personal accounts through a registered dealer,<sup>34</sup> provided that the registered dealer is given a copy of my order.

[22] I therefore order:

- a. against Dhanani:
  - i. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Dhanani cease permanently, except

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<sup>32</sup> BCSC Decision and Orders at paras 12-16, 18-19 and 22

<sup>33</sup> The following differences exist between the BC and Ontario legislation: the prohibitions concerning “investor relations activities” or “acting in a management or consultative capacity” do not exist in the Ontario legislation, however, many, but not all, of these activities are covered by the prohibitions under the Ontario legislation against acting as a director or officer of an issuer, or as a registrant or promoter in Ontario; and the *BC Securities Act* uses the term “purchasing” securities, while in Ontario the *Act* uses the term “acquisition” instead.

<sup>34</sup> I note that the BCSC Decision and Orders uses the terms “registered dealer or registrant”; however, in my view it is sufficient to use the term registered dealer as registered dealers (listed in part 7 of *National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations*) are registrants and have the obligation to ensure that individuals engaged by them are registered as appropriate.

that he may trade securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my 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 acquire securities for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my 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;
  - v. pursuant to paragraphs 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; 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 or promoter; and
- b. against Naso:
- 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 securities or derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my 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 acquire securities for his own account (including one

- RRSP account, one TFSA account and one RESP account), through a registered dealer, who has first been given a copy of my 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;
  - v. pursuant to paragraphs 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; 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 or promoter.

Dated at Toronto this 28<sup>th</sup> day of September, 2023

*"James D. G. Douglas"*

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James D. G. Douglas