

BETWEEN:

ONTARIO SECURITIES COMMISSION

(Applicant)

-and-

**KILIMANJARO CAPITAL LTD. now known as N1 TECHNOLOGIES INC.,
ASHMIT S. PATEL and ZULFIKAR HUSSEIN RASHID**

(Respondents)

APPLICATION FOR ENFORCEMENT PROCEEDING

(Subsections 127(1) and 127(4.0.2) of the *Securities Act*, RSO 1990, c S.5)

A. OVERVIEW

1. The Applicant, the Ontario Securities Commission (the **Commission**), requests that the Capital Markets Tribunal (the **Tribunal**) make an order in the public interest against the Respondents, reciprocating an order made by the Alberta Securities Commission (the **ASC**), without providing the Respondents an opportunity to be heard.
2. The ASC found that the Respondents, Kilimanjaro Capital Ltd. (now N1 Technologies Inc.) (**Kilimanjaro**), Ashmit S. Patel (**Patel**), and Zulfikar Hussein Rashid (**Rashid**) had breached Alberta securities laws by engaging in a market manipulation scheme designed to artificially inflate the price of Kilimanjaro's shares before the shares were sold onto the market.
3. The sanctions imposed by the ASC against the Respondents included prohibitions on trading or purchasing securities or derivatives, and removals of exemptions under Alberta securities laws. In addition, Patel and Rashid were prohibited from acting in various capacities, including as a director or officer of any issuer or as a registrant. The conduct sanctions in respect of Patel are permanent. Rashid is subject to a ban from acting as a director or officer of all companies except his family company until and including August 16, 2031. He is also subject to other conduct sanctions until and including August 16, 2029.

4. The Tribunal has jurisdiction to make an order in the public interest under ss. 127(1) and 127 (4.0.2) of the *Securities Act*, RSO 1990, c. S.5 (the **Act**), reciprocating an order made by a securities regulatory authority of another province that imposes sanctions, conditions, restrictions or requirements on a person or company.
5. The orders requested herein are in the public interest. They are necessary to restrain potential future misconduct by the Respondents that exposes Ontario investors to unacceptable risks and to deter others from engaging in market manipulation.

B. GROUNDS

6. On March 23, 2020, the ASC completed a hearing on the merits (the **Merits Hearing**) of the allegations brought by the ASC. Aside from an adjournment application brought by Patel, the Respondents did not participate in the Merits Hearing, despite being properly served and given the opportunity to participate.
7. On February 2, 2021, the panel of ASC adjudicators (the **ASC Panel**) released its decision following the merits hearing (the **Merits Decision**).
8. In the Merits Decision, the ASC Panel held that the Respondents breached the following provisions of the Alberta *Securities Act*, RSA 2000, c S-4 (the **Alberta Act**):
 - (a) Kilimanjaro, Patel, and Rashid breached s. 93(a)(ii) of the Alberta Act by engaging in various acts that contributed to an artificial price for the Kilimanjaro shares;
 - (b) Patel breached s. 93(a)(i) of the Alberta Act when he contributed to a false or misleading appearance of trading activity in Kilimanjaro shares;
 - (c) Rashid contravened s. 221.1(2) of the Alberta Act by making untrue statements to ASC investigators while under oath in a compelled investigative interview;
and

- (d) Patel and Kilimanjaro breached s. 93.1 of the Alberta Act by violating an ASC cease-trade order (the **CTO**).

Background

i. Kilimanjaro

9. On May 25, 2011, Kilimanjaro was incorporated as an international business company in Belize. At the time, the company was named Avatar Solutions Inc. Rashid was appointed director and was issued 50,000 shares.
10. On or around March 28, 2013, the company changed its name to Kilimanjaro and acquired an Alberta company, also named Kilimanjaro Capital Ltd. (**Kilimanjaro Canada**).
11. Kilimanjaro was a publicly traded company. From August 29, 2013 until June 11, 2014, Kilimanjaro's shares were listed on GXG Markets, a Danish-regulated microcap stock exchange. From around October 2013, Kilimanjaro's shares were also traded on the OTC Markets in the United States.
12. In 2013, Kilimanjaro was deemed a reporting issuer in Alberta pursuant to Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-The-Counter Markets*. The determination was made due to the company's significant ties to Alberta – including the company's Calgary address and the fact that Rashid, a control person of the company, was a resident of Alberta.

ii. Patel

13. Between approximately November 2012 through October 2014, Patel held himself out as legal counsel or chief operating officer of Kilimanjaro. At this time, Patel was a resident of the United States and was a licensed lawyer in the State of Illinois.
14. At the time of the Merits Decision Patel was a resident of Ontario.

iii. Rashid

15. Rashid was a director, chief executive officer, and control person of Kilimanjaro during the material times. Rashid claimed to have resigned as director, president and CEO

of Kilimanjaro on either August 25 or September 8, 2024, but his signature appeared on corporate documents which were dated after these apparent resignation dates.

16. Rashid incorporated Kilimanjaro Canada, and was its director, CEO and shareholder.

17. Rashid is a resident of Calgary, Alberta.

Summary of Events

i. Formation of Companies

18. In the fall of 2012, Patel and Rashid began working together to arrange for Kilimanjaro Canada to purchase future contingent gas, oil, and mineral rights in Africa (**FCAs**). The FCAs were contingent on the self-determination of various de facto African states, such as the Republic of Cabinda and Biafra.

19. Rashid provided Kilimanjaro Canada as the shell company, while Patel was responsible for taking the company public. Once this agreement was made, Kilimanjaro Canada then published news releases describing several FCA transactions with various entities. Rashid, Patel, and Levy then began raising capital.

20. On March 28, 2013, Kilimanjaro acquired all the outstanding shares of Kilimanjaro Canada. As such, Kilimanjaro Canada became a wholly owned subsidiary of Kilimanjaro.

21. In April 2013, Kilimanjaro's directors authorized audited financial statements for the year ended December 2011 and 2012 (the **Audited Financial Statements**).

22. The Audited Financial Statements included claims that a private placement had been conducted by Kilimanjaro Canada. The company claimed that in 2012, it had received US\$8,116,000 in exchange for the issuance of 89,775,000 Kilimanjaro Canada Shares (the **Kilimanjaro Canada Private Placement**).

23. Kilimanjaro then applied for a listing on the GXG. The company's prospectus included the Audited Financial Statements and a valuation report. The valuation report had been prepared by a geologist who provided an expert evaluation of the FCAs held by

Kilimanjaro Canada. He was retained by Patel, who held himself out as Kilimanjaro Canada's COO.

24. In August 2013, Kilimanjaro announced that it was listed on the GXG.

25. In October 2013, Kilimanjaro filed disclosure which confirmed that Kilimanjaro was trading on the OTC at this time, although it is unclear when the company began trading on the OTC.

26. On November 18, 2013, ASC staff contacted Rashid to inquire about Kilimanjaro's status as an Alberta reporting issuer, since Kilimanjaro had been trading on the OTC for a few weeks.

27. The next day, on November 19, 2013, Kilimanjaro Canada was dissolved, and Rashid was listed as the holder of corporate records post-dissolution. During an investigative interview with ASC staff, Rashid claimed that the timing was merely coincidental.

ii. Tout Campaign and News Releases

28. Between March 27, 2014, and August 20, 2014, various stock promoters disseminated 97 promotional touts for Kilimanjaro (the **Tout Campaign**). The Tout Campaign included emails with blatantly promotional and sometimes hyperbolic language.

29. During the same period as the Tout Campaign, Kilimanjaro issued a series of promotional news releases.

30. The news releases contained blatantly promotional language and discussed topics such as developments with Kilimanjaro's FCAs and announcements that Kilimanjaro was entering into a letter of intent with another company.

iii. Manipulative Trading

31. During the period that the Tout Campaign and news releases were being disseminated to artificially increase the Kilimanjaro share price, Patel engaged in manipulative trading of Kilimanjaro's shares. Specifically:

- (a) From March 7 through to September 2, 2014, Patel sold all the Kilimanjaro shares in his brokerage account, with gross proceeds of approximately US\$100,000;
- (b) On May 12, 2014, Patel purchased 100,000 shares of Kilimanjaro at a total cost of US\$868.50, with acquisition costs for the shares ranging from \$0.007 to \$0.0095 per share (**Patel Share Purchase**); and
- (c) During this period, other than the Patel share Purchase, nearly all of Patel's trading activity involved sales of Kilimanjaro shares.

iv. Cease Trade Order

32. On April 3, 2014, the ASC issued the CTO on Kilimanjaro securities, pursuant to s. 33.1 of the Alberta Act because Kilimanjaro had breached its obligations as a reporting issuer by failing to file its annual information form for the year ended December 31, 2013, contrary to s. 146 of the Alberta Act.

33. The next day, on April 4, 2014, Patel was informed via email of the CTO by Kilimanjaro's transfer agent.

34. Despite being informed of the CTO, Patel facilitated the transfer of Kilimanjaro shares from Canadian brokerages to American brokerages. In violation of the CTO, he began transferring large blocks of shares to brokerage accounts in the United States.

Breaches of Securities Law

i. Patel's Liability

Market Manipulation

35. The Merits Decision includes the following factual findings about Patel's control over Kilimanjaro, which he exercised to artificially boost the company's share price:

- (a) Patel held himself out as Chief Operating Officer of Kilimanjaro and was responsible for making nearly all the important decisions for Kilimanjaro during the material time. He was the guiding mind of Kilimanjaro.

- (b) Among other duties, Patel was responsible for overseeing the drafting and dissemination of the company's news releases. Kilimanjaro's news releases provided misleading information to the market about its projects, the value of its assets, and management's perspective on the company's business.
- (c) Patel worked with different promoters to coordinate the publication of Kilimanjaro news releases with the dissemination of touts to stimulate demand for Kilimanjaro's shares and artificially increase the company's share price.
- (d) Once news releases and the Tout Campaign artificially boosted Kilimanjaro's share price, Patel profited by selling his Kilimanjaro shares into an unsuspecting market.

36. As a result of these actions, the ASC Panel determined that Patel had breached s. 93(a)(ii) of the Alberta Act.

Breach of Cease Trade Order

37. On April 3, 2014, the ASC issued the CTO.

38. On April 4, 2014, Kilimanjaro's transfer agent emailed Patel a copy of the CTO to Patel.

39. The ASC Panel found that Patel knew about the CTO by April 4, 2014.

40. Despite having knowledge of the CTO, Patel acted in furtherance of a trade in contravention of the CTO by taking the following actions:

- (a) Directing the incorporation of a holding company;
- (b) Obtaining a compensation agreement and corporate documents (including resolutions) to remove resale restrictions on shares;
- (c) Assisting Zang in opening a brokerage account for the holding company in the United States;

- (d) Instructing Kilimanjaro's transfer agent to transfer shares from Canadian brokerage accounts to holding company's brokerage account in the United States; and
- (e) Obtaining trading authority over the holding company's and Zang's brokerage account.

41. Accordingly, the ASC Panel found that Patel breached s. 93.1 of the Alberta Act.

ii. Kilimanjaro's Liability

42. As Kilimanjaro's guiding mind, Patel's conduct and knowledge are attributable to Kilimanjaro:

- (a) Kilimanjaro issued several misleading news releases as part of the coordinated promotional campaign. This was done under the direction of Patel.
- (b) Some of Patel's actions in contravention of the CTO were on behalf of Kilimanjaro, including the directions he gave to the transfer agent and the resolution authorizing the agreement which led to a transfer of shares.

43. Accordingly, the ASC Panel found that Kilimanjaro breached s. 93(a)(ii) and s. 93.1 of the Alberta Act.

i. Rashid's Liability

44. Rashid's conduct contributed to an artificial price for Kilimanjaro shares, Rashid's actions helped create the impression that Kilimanjaro was a legitimate business and lent an air of legitimacy to a company that was essentially a shell.

45. Rashid allowed Kilimanjaro to publish news releases with misleading statements which were attributed to him.

46. Rashid enabled Kilimanjaro by paying for the company's expenses, including payment for some news releases drafted by Patel.

47. Rashid's conduct allowed Patel to sell large amounts of Kilimanjaro shares by:

- (a) providing Patel with unchecked control over Kilimanjaro's share capital, which Patel used to direct the forward-share split and instruct the company's transfer agent to issue and transfer shares to brokerage accounts controlled by Patel; and
- (b) allowing Patel to use his electronic signature on documents that were integral to Patel's market manipulation scheme, including a compensation agreement and numerous resolutions which removed resale restrictions from shares controlled by Patel.

48. Rashid allowed himself to be appointed president and CEO of Kilimanjaro and could not avoid the responsibilities associated with those positions by allowing Patel to have unsupervised authority over all of Kilimanjaro's affairs.

49. While Rashid claimed not to have knowledge of Patel's actual plans, the ASC Panel determined that Rashid knew or ought to have known that his conduct would create an artificial price for Kilimanjaro shares.

50. For the above-listed reasons, the ASC Panel found that Rashid had contravened s. 93(a)(ii) of the Alberta Act.

51. On August 16, 2021, the ASC Panel issued its sanctions decision (the **Sanctions Decision**) ordering the following sanctions against the Respondents:

- (a) Patel was subject to permanent market participation and director and officer bans and ordered to pay \$117,400 in disgorgement, a \$450,000 administrative penalty and \$120,000 in costs;
- (b) Rashid was subject to temporary market participation and director and officer bans and ordered to pay a \$75,000 administrative penalty and \$30,000 in costs.
- (c) Kilimanjaro was subject to permanent market participation bans.

Jurisdiction

52. Pursuant to paragraph 2 of subsection 127(4.0.2) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the Tribunal may make any of the orders described in paragraphs 1 to 8.5 of subsection 127(1) of the Act against the Respondents, without giving the Respondent an opportunity to be heard, where the Respondent is subject to an order made by a securities regulatory authority of another province or territory in Canada, imposing sanctions, conditions, restrictions or requirements.
53. The ASC, which is a “securities regulatory authority of another province or territory in Canada”, as defined in subsection 127(10) of the Act, issued an order imposing sanctions against the Respondents within the meaning of s. 127(4.0.2).
54. Section 127(4.0.4) of the Act expressly allows the Tribunal to make an order under s. 127(4.0.2) even though the ASC Decision predates the coming into force of s. 127(4.0.2).
55. It is in the public interest to make the requested orders. The Respondents pose a risk to Ontario investors. The requested order is necessary to protect the investing public and safeguard the integrity of Ontario’s capital markets.

C. ORDER SOUGHT

56. The Commission requests that the Tribunal make the following orders, pursuant to s. 127(1) and paragraph 2 of s. 127(4.0.2) of the Act:
 - a) against Patel:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Patel cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Patel cease permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Patel permanently;

- iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Patel resign any positions he holds as a director or officer of an issuer, registrant or an investment fund manager;
- v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act, Patel is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager permanently;
- vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Patel is prohibited from becoming or acting as a registrant, investment fund manager or promoter permanently; and
- vii. such other order or orders as the Tribunal considers appropriate.

b) against Rashid:

- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Rashid cease until and including August 16, 2029;
- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Rashid cease until and including August 16, 2029;
- iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Rashid until and including August 16, 2029;
- iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Rashid resign any positions he holds as a director or officer of an issuer, registrant or an investment fund manager;
- v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Rashid is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager until and including August 16, 2031, except that these orders do not preclude him from continuing to act as a director or officer (or both) of Rodeo Express Delivery Limited, provided

that it is wholly owned by one or more of him and his immediate family members, does not issue or propose to issue securities to the public, and does not engage in any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a sale or disposition of a security to the public; and

vi. such other order or orders as the Tribunal considers appropriate.

c) against Kilimanjaro:

- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Kilimanjaro cease permanently;
- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Kilimanjaro cease permanently;
- iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Kilimanjaro permanently; and
- iv. such other order or orders as the Tribunal considers appropriate.

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