BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Arian Resources Corp., 2022 BCSECCOM 55 Date: 20220222

Arian Resources Corp., Zahir "Zip" Sadrudin Dhanani and Robert James Naso

Panel	Gordon Johnson	Vice Chair
	George C. Glover, Jr.	Commissioner
	Marion Shaw	Commissioner
Hearing dates	October 26, 27 and 29, 2020	
Submissions completed	November 25, 2021	
Decision date	February 22, 2022	
Appearing		
Veda Kenda	For the Executive Director	
Zahir "Zip" Sadrudin Dhanani	For himself	

Decision and Orders

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act). The findings of the panel on liability made on October 5, 2021 (2021 BCSECCOM 391) (Findings) are part of this Decision, and we adopt all definitions used in the Findings.

[2] We found that:

a) During the period in and around 2015 and 2016, there were material changes in Arian's business which Arian failed to disclose in breach of sections 85(a) and 85(b) of the Act;

b) On several occasions in the period in and around 2014, 2015 and 2016, Arian delivered financial statements and MD&As which omitted material information in breach of section 168.1(1)(b) of the Act;

c) In information circulars filed by Arian in 2015 and 2017 Arian made false and misleading statements about executive compensation in breach of section 168.1(1)(b) of the Act; and

d) Dhanani and Naso authorized, permitted or acquiesced in Arian's conduct as described above and, as a result, Dhanani and Naso are liable for those breaches pursuant to section 168.2(1) of the Act.

[3] The executive director provided written submissions on the appropriate sanctions in this case. None of Dhanani, Naso or Arian made any submissions on sanctions.

II. Position of the executive director

[4] The executive director submits that accurate and timely disclosure is fundamental to the effective operation and integrity of capital markets. The executive director further submits that reporting issuers are subject to high disclosure standards for good reason, and that the investing public relies on the directors and officers of issuers to ensure that those high standards are met.

[5] The executive director emphasizes the following elements of the Findings:

- with respect to the Agreement, Arian was aware both that it had not arranged to make the payment to the Vendor that was due the next day and that the Vendor would not grant any extension to the due date. At that point, there was an objectively serious likelihood that the Vendor would quickly move to reclaim the shares from Arian;

- it was clear that immediately after the payments to the Promoter, Dhanani knew that the Promotor had no intention of providing any services or returning the $800,000 paid to the Promoter by Arian;

- Arian mischaracterized most of the Promoter Loss as payments for other services, which was patently false; and

- Arian mischaracterized the Related Party Payments as payments for travel, which concealed the true nature of the Related Party Payments.

[6] The executive director submits that the Respondents' transgressions were not isolated instances. The impugned disclosure occurred repeatedly over a period of approximately three years. As a result, the Respondents' misconduct is at the more serious end of the range of improper disclosure cases.

[7] The executive director identifies Dhanani's and Naso's misconduct in certifying Arian's inaccurate filings as an aggravating factor.

[8] The executive director points to *Re Mountainstar Gold Inc.*, 2019 BCSECCOM 123, and *Re Ironside*, 2007 ABASC 824, as the two authorities which are most helpful in the current context. Those authorities are relied on both in relation to their description of the

seriousness of conduct similar to that which occurred here and the types of sanctions which followed. Those authorities are discussed in additional detail below.

[9] The executive director seeks broad market prohibitions against Dhanani and Naso which will effectively remove them from the public markets permanently. The executive director seeks a permanent prohibition against Arian from trading in or purchasing any securities or derivatives. The executive director also seeks financial sanctions against Dhanani and Naso in the amount of $200,000 each.

III. Analysis

A. Factors

[10] In *Re Eron Mortgage Corporation et al.*, [2000] 7 BCSC Weekly Summary, the Commission recognized that it must consider the unique circumstances of each case to determine what orders are in the public interest:

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
>
> - the seriousness of the respondent's conduct,
> - the harm suffered by investors and the damage done to British Columbia's capital markets,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and capital markets posed by the respondent's continued participation in the capital markets,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need for specific and general deterrence; and
> - orders made by the Commission in similar circumstances.

[11] As noted above, the list of factors is not intended to be exhaustive. In addition, not all of the *Eron* factors are material in every case. Our analysis of how the factors apply here follows.

B. Application of the factors

Seriousness of the conduct

[12] This case is at the high end of the range of seriousness of misconduct relating to the failure to make required disclosure. That is the case for a number of reasons, some of which interrelate. At a key moment in its history, Arian's subsidiary owned the rights to the Perlat Project and Arian had funds in the bank to apply towards work on the Perlat Project and payments to the Vendor. The Promoter Loss left Arian with minimal funds.

That left Arian in a situation where Arian was unlikely to fulfil the development requirements arising from the Perlat licence and Arian was unlikely to fulfil its obligations to the Vendor. Once the Promoter Loss had occurred, the key events can be seen as the slow conversion of a likely disaster in the form of Arian's loss of its only material asset to the actual realization of that disaster. All of this would have been apparent to Dhanani and Naso, but the key information was kept from the investing public until the total impairment of Arian's only material asset was eventually disclosed.

[13] To put the point as simply as possible, at a point in time Arian had an asset which would be expected to support value to the market. The risks to the value of that asset continued until the risks were realized and no value remained. The public was not told of those risks until it was too late. That failure to make timely and accurate disclosure completely undermined the purpose of the continuous disclosure regime that lies at the heart of securities regulation.

[14] While the misrepresentations regarding compensation paid by Arian are not as serious as the disclosure failures related to the Promoter Loss and the total impairment of the Perlat Project, they reinforce the impression, which we find is well justified, that Arian and its officers and directors, Dhanani and Naso, did not take their disclosure obligations seriously.

Risk to investors and the markets and fitness to be a director or officer

[15] This case demonstrates clearly why disclosure is important to investors and to markets. Up until Arian disclosed that its primary asset was fully and permanently impaired, Arian appeared to have a material asset which justified assigning some value to Arian's shares. The events that led to the depletion of Arian's cash reserves were unknown to the market until revealed by later investigations. Every investor decision taken during the relevant period would likely have been different had the true facts been known in a timely fashion. Arian's misconduct caused risks of financial loss to investors in its shares and, more generally, caused risks that the public would lose faith in the integrity of the market.

[16] Dhanani and Naso have, by their misconduct, shown themselves unfit to be directors and officers of issuers or to otherwise participate in the public markets.

Past misconduct

[17] None of the respondents has a history of securities misconduct.

Harm to investors and the capital markets

[18] As was recognized in *Mountainstar*, false or misleading disclosure misleads investors regarding the facts relevant to their investment decisions, and may distort the fair trading price of an issuer's securities and undermine investor confidence in the integrity of the capital markets.

[19] We will not repeat here our comments above regarding the nature of the false picture left with investors and markets in this case due to Arian's disclosure failures and misrepresentations, but our conclusions on those issues are very much relevant to the question of harm to investors and to capital markets.

Enrichment amount

[20] The executive director did not provide any evidence or make any submissions regarding enrichment in this case.

Mitigating factors

[21] There are no mitigating factors in this case.

Aggravating factors

[22] Dhanani and Naso claimed to understand their obligations as senior officers and directors of a public company, but repeatedly, either deliberately or negligently, disregarded those obligations. The deliberate or negligent manner in which the Dhanani and Naso dealt with Arian's disclosure is an aggravating factor.

[23] In their compelled interviews, each of Dhanani and Naso admitted that he knew that it was his responsibility as an officer and director of Arian to review the disclosure and to take reasonable steps to ensure that it was accurate. Each of them signed certificates stating that he had exercised reasonable diligence to ensure that the disclosure did not contain any untrue statement. Each also admitted that that was not the case.

Specific and general deterrence

[24] Orders of the Commission must be proportionate to the misconduct and the circumstances of each respondent. The sanctions must be sufficient to ensure that the Respondents and others will be deterred from engaging in similar conduct.

[25] In *Re Cartaway Resources Corp.*, 2004 SCC 26, when considering general deterrence in a Commission sanctions order, the Supreme Court of Canada found at paragraph 60 that "it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative." Further, the Court found that general deterrence was preventative.

[26] As the Commission stated in *Re Alexander*, 2007 BCSECCOM 773 (at para. 46):

> Part of the Commissions' mandate is to deter future misconduct by those against whom orders have been made. Any penalty which will effectively speak to all participants in the capital markets must be relatively severe to be meaningful. As the Alberta Securities Commission said in *Re Capital Alternative Inc.* 2007 ABASC 482 (at paras 29-30):

> … Stated simply, an administrative penalty sends the message to the particular respondent and to other market participants that future conduct similar to that being sanctioned is not tolerated and will come at a direct financial cost.

Prior Orders in Similar Circumstances

[27] As noted above, the executive director submits that the two most comparable precedents are the Commission's decision in *Mountainstar* and the Alberta Securities Commission's decision in *Ironside*.

[28] Mountainstar Gold Inc. was a mining company and reporting issuer under the Act. Brent Hugo Johnson (Johnson) was its president and CEO and a director. Mountainstar Gold Inc. made statements regarding its only material asset in its MD&As filed between December 2012 to December 2015.

[29] The panel found that:

(a) Mountainstar repeatedly contravened section 168.1(1)(b) of the Act by making disclosure in its required public filings concerning certain Chilean mining claims and related legal proceedings that was false or misleading in a material respect and at the time and in light of the circumstances in which the disclosure was made, or omitted facts necessary to make the disclosure not false or misleading; and

(b) Johnson authorized, permitted or acquiesced in Mountainstar's repeated contraventions of section 168.1(1)(b) and therefore Johnson repeatedly contravened the same provision.

[30] The false or misleading disclosure fundamentally misrepresented ownership of the mining interests that constituted Mountainstar's principal asset. The panel found that the misconduct was aggravated by the repetition of the false or misleading disclosure over a three-year period - even, in some instances, in the face of evidence establishing that the disclosure was clearly wrong.

[31] The panel was concerned that Johnson refused to accept the findings of the panel, confirming that Johnson's ongoing participation in our capital markets posed a serious risk. Johnson's disregard for the panel's findings was also relevant to their consideration of the appropriate specific deterrence required for Johnson.

[32] The panel ordered an administrative penalty against Johnson of $150,000 in addition to a permanent broad market ban.

[33] The *Ironside* decision related to the conduct of J. Gordon Ironside (Ironside) and Robert W. Ruff (Ruff), senior officers and, in the case of Ironside, a director of Blue Range Resource Corporation (Blue Range). The Alberta Securities Commission panel found

Ironside and Ruff contravened Alberta securities laws in two instances and acted contrary to the public interest when they prepared and disseminated materially misleading disclosure regarding Blue Range's operations and financial position.

[34] The panel issued a permanent market ban against Ironside and ordered him to pay an administrative penalty of $180,000. In determining the appropriate sanctions, the panel considered that Ironside remained unrepentant and unwilling to accept that he had acted improperly. The panel found that this conduct led them to conclude that Ironside presented an extremely serious threat to the integrity of the Alberta capital market and public confidence in that market in general.

[35] Ruff, whom the panel considered to have played a lesser role, received a seven-year market ban and an administrative penalty of $50,000. Ruff acknowledged both the seriousness of the allegations against him and his role in the misconduct. He represented that he had no intention of participating in the capital markets in the future.

C. Appropriate orders

[36] We agree with the executive director that each of Dhanani and Naso poses a significant risk to the integrity of the capital markets. Regulation of the securities industry in British Columbia is premised on accurate and timely disclosure of information to the public. The misconduct of Dhanani and Naso detailed in the Findings undermines both the integrity of the markets and the confidence of the investing public. Accordingly, we find it appropriate to impose broad permanent prohibitions on Dhanani's and Naso's future participation in the capital markets.

[37] In the present matter, given the nature of the misconduct, the multiple instances of improper disclosure and the period of time over which it elapsed, an administrative penalty greater than those imposed in both *Mountainstar* and *Ironside* is appropriate. In particular, the impugned disclosure at issue in *Mountainstar* related to a single issue involving legal proceedings in the company's MD&A, and in *Ironside*, the impugned conduct was less serious and took place over a much shorter period of time. We agree with the executive director that in the matter before us, an administrative penalty of $200,000 is warranted for each of Dhanani and Naso.

[38] Previous decisions of this Commission have allowed respondents the ability to trade securities in their own accounts, despite engaging in significant and serious misconduct. In this matter, there is no link between the misconduct of Dhanani or Naso and the trading of securities in a personal account. While it is in the public interest to broadly prohibit the respondents from participating in the capital markets, we do not see the merit in depriving Dhanani or Naso the benefit of a "carve-out" that would permit each of them to trade in securities in their own respective accounts, through a registered dealer or registrant who is provided with a copy of this Decision and Orders. On the contrary, it is in the public interest to allow them the opportunity to save or invest for their future. We have included that language in the order below.

[39] Finally, the executive director is seeking a permanent cease trade order against Arian as the company is no longer registered and such an order will ensure it will remain so. Given the foregoing, we agree that this order is in the public interest.

IV. Orders

[40] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

Arian

(a) Arian is permanently prohibited under section 161(1)(b)(ii) of the Act, from trading in or purchasing securities or derivatives;

Dhanani

(b) under section 161(1)(d)(i) of the Act, Dhanani resign any position he holds as a director or officer of an issuer or registrant;

(c) Dhanani is permanently prohibited:

(i) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives, a specific security or derivative or a specified class of securities or class of derivatives, 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, if he gives the registered dealer or registrant a copy of this Decision and Orders,

(ii) under section 161(1)(c) of the Act, from relying on any exemptions set out in this Act, the regulations or a decision,

(iii) under section 161(1)(d)(ii) of the Act, from becoming or acting as a director or officer of any issuer or registrant,

(iv) under section 161(1)(d)(iii) of the Act, from becoming or acting as a registrant or promoter,

(v) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets,

(vi) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity,

(vii) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on Dhanani's own behalf in respect of circumstances that would reasonably be expected to benefit Dhanani; and

(d) Dhanani pay the Commission an administrative penalty of $200,000 under section 162 of the Act;

Naso

(e) under section 161(1)(d)(i) of the Act, Naso resign any position he holds as a director or officer of an issuer or registrant;

(f) Naso is permanently prohibited:

(i) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives, a specific security of derivative or a specified class of securities or class of derivatives, 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, if he gives the registered dealer or registrant a copy of this Decision and Orders,

(ii) under section 161(1)(c) of the Act, from relying on any exemptions set out in this Act, the regulations or a decision,

(iii) under section 161(1)(d)(ii) of the Act, from becoming or acting as a director or officer of any issuer or registrant,

(iv) under section 161(1)(d)(iii) of the Act, from becoming or acting as a registrant or promoter,

(v) under section 161(1)(d)(iv) of the Act, from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets,

(vi) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity,

(vii) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on Naso's own behalf in respect of circumstances that would reasonably be expected to benefit Naso; and

(g) Naso pay the Commission an administrative penalty of $200,000 under section 162 of the Act.

February 22, 2022

For the Commission

Gordon Johnson
Vice Chair

George C. Glover, Jr.
Commissioner

Marion Shaw
Commissioner