

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

Citation: Re Arian Resources Corp., 2021 BCSECCOM 391

Date: 20211006

**Arian Resources Corp., Zahir “Zip” Sadrudin Dhanani  
and Robert James Naso**

<b>Panel</b>	Gordon Johnson George C. Glover, Jr. Marion Shaw	Vice Chair Commissioner Commissioner
<b>Hearing dates</b>	October 26, 27 and 29, 2020	
<b>Submissions completed</b>	December 14, 2020	
<b>Decision date</b>	October 6, 2021	
<b>Appearing</b>		
Veda Kenda	For the Executive Director	
Zahir “Zip” Sadrudin Dhanani	For himself	

**Findings**

**I. Introduction**

- [1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act).
- [2] This proceeding was initiated by a Notice of Hearing dated April 3, 2020 (2020 BCSECCOM 89) naming Arian Resources Corp. (Arian), Zahir “Zip” Sadrudin Dhanani (Dhanani) and Robert Naso (Naso) as respondents.
- [3] In the Notice of Hearing, the Executive Director alleged that:
- a) between February of 2014 and September of 2014, Arian failed to make disclosure of a material change resulting from the loss of material payments to a promoter (Promoter) who failed to provide any services to Arian in exchange for the payments, contrary to sections 85(a) and (b) of the Act;

- b) between April of 2014 and April of 2017, Arian repeatedly failed to make disclosure of material changes regarding its sole material asset, contrary to sections 85(a) and (b) of the Act;
- c) between April of 2014 and April of 2017, Arian made false or misleading statements in its required public filings or omitted facts that were necessary to make the statements that were made not false or misleading, regarding:
  - i. the funds paid to the Promoter;
  - ii. payments made to a related party of Dhanani;
  - iii. the status of Arian's sole material asset; and
  - iv. executive compensation disclosure;contrary to section 168.1(1)(b) of the Act; and
- d) as officers and directors of Arian, Dhanani and Naso authorized, permitted or acquiesced in the contraventions by Arian and therefore, pursuant to section 168.2 of the Act, contravened the same provisions.

[4] During the hearing, the Executive Director called one witness, a Commission investigator.

[5] Dhanani participated in pre-hearing processes but did not attend the hearing until it was almost over. He did not tender any evidence or make any submissions. Although provided notice of the hearing, neither Arian, which was dissolved in 2018, nor Naso participated in the pre-hearing or hearing processes at all.

## **II. Factual Background**

[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 of 2012, each of Naso and Dhanani became a director of Arian, and Dhanani became its chief executive officer.

[8] On February 12, 2014, on directions from Dhanani, Arian wired \$300,000 to the Promoter with instructions to Arian's accountants to book the payment as relating to investor relations. On February 14, 2014, Arian entered into a written contract with the Promoter. While exactly what the Promoter was required to do for Arian was not clearly defined in the contract, contemporaneous emails between Dhanani and the Promoter demonstrate a mutual intention between the Promoter and Arian that the Promoter would seek investment funding for Arian. In the days which followed the execution of the written contract, Arian wired a further \$500,000 to the Promoter.

[9] By April of 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). These demands grew increasingly frantic over time.

- [10] 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] Arian's financial statements and management's discussion and analysis (MD&A) for the three and nine months ended February 28, 2014 and 2013, which were issued on April 29, 2014, did not disclose either the Promoter Loss or that the payments to Dhanani's mother were a related party transaction (Related Party Payments).
- [12] Arian continued to press the Promoter for repayment of the Promoter Loss. It is clear that Dhanani was heavily involved in Arian's efforts to reclaim the Promoter Loss, including through a series of email exchanges Dhanani had with the Promoter. Arian's concerns that the Promoter would not provide any of the services Arian had contracted for reached the point where Arian asked its accountants to write to the Promoter, a step which the accountants took in the form of an email on May 12, 2014 requesting return of the Promoter Loss to Arian.
- [13] On September 28, 2014, with Dhanani's approval, Arian's accountants reclassified \$500,000 of the Promoter Loss as a consulting payment for identifying potential acquisition targets. In September of 2014, Dhanani created and emailed an invoice, backdated to February 28, 2014, to support the Related Party Payments which had been made to his mother.
- [14] Arian's financial statements and MD&A for the years ended May 31, 2014 and 2013, which were issued on September 29, 2014, did not disclose either the Promoter Loss or that the Related Party Payments to Dhanani's mother were related party transactions.
- [15] By no later than 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 the 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] Naso was appointed the chief financial officer of Arian effective March 20, 2015.
- [17] 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. Notice of the arbitration was sent to the attention of Naso, who in turn sent it to Dhanani.
- [18] On August 28, 2015, Naso wrote to request Albanian authorities to provide a notice of temporary interruption to Arian's efforts to advance the Perlat Project. Based on email

communications from that time, it appears that Naso took that step in order to pause certain obligations which Arian had to advance work on the Perlat Project, failing which the licensee's exploration licences might be terminated by Albanian authorities.

- [19] 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.
- [20] 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.
- [21] 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.
- [22] In November of 2015, Arian filed an information circular which included information regarding executive compensation. As is discussed in further detail below, the information circular misstated both the amounts and the recipients of the executive compensation, including the amounts paid to Dhanani.
- [23] Arian's difficulties escalated during late 2015 and early 2016. In November of 2015, the Vendor delivered a formal notice of civil claim in connection with its efforts to recover the Shares. That notice was transmitted to Naso by Dhanani after it was translated into English. 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. In February of 2016, Albanian authorities confirmed in writing to Arian that the revocation of the exploration licence was in effect. In March of 2016, Arian applied for judicial review. By June of 2016, an Albanian court had upheld the revocation.
- [24] 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.
- [25] 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.

- [26] 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 (September 29, 2016 Financial Statements).

### **III. Legal Context**

#### **A. Standard of Proof Required**

- [27] Whether or not respondents participate in a hearing, the onus is on the Executive Director to prove the allegations in the Notice of Hearing against each of the respondents on a balance of probabilities: see, for example, *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

#### **B. Statutory Framework**

- [28] The allegations against Arian can be divided into two general categories of deficient disclosure: the first is that Arian omitted information from, or misstated information in, its required periodic disclosure; and, the second is that Arian failed to make timely disclosure of material changes in Arian's business and affairs. The statutory and regulatory framework regarding those two categories is summarized below.

- [29] The Act includes the following provisions:

##### **Continuous disclosure**

- 85 A reporting issuer must, in accordance with the regulations,
- (a) provide prescribed periodic disclosure about its business and affairs,
  - (b) provide disclosure of a material change, and
  - (c) provide other prescribed disclosure.

##### **False or misleading statements prohibited**

- 168.1 (1) A person must not
- ...
  - (b) make a statement or provide information in any record filed, provided, delivered or sent under this Act, or in relation to a service provided by the commission, that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

- [30] For purposes of section 85(a) of the Act, the prescribed disclosure is that stipulated by National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107).

- [31] As a reporting issuer, Arian was required to make the following filings under NI 51-102:

- a) comparative audited annual financial statements and accompanying MD&A; and
- b) unaudited interim financial statements and accompanying MD&A.

[32] Further, NI 51-102 requires a reporting issuer to immediately issue and file a news release if there is a material change in its affairs. The news release must be authorized by an executive officer and disclose the nature and substance of the material change. The reporting issuer must also, as soon as practicable and in any event within 10 days of the date on which the change occurred, file a material change report.

[33] The term “material change” is defined in section 1(1) of the Act as follows:

“material change” means . . . if used in relation to an issuer . . . a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer. . .

#### **IV. Analysis**

##### **A. Perlat Project—Material Change**

[34] Until the filing of Arian’s September 29, 2016 Financial Statements, all of Arian’s disclosure to the public since early 2014 had indicated that Arian was in the business of developing the Perlat Project and that Arian’s rights to the Perlat Project through the Shares of the licensee were the sole material asset of Arian. As set out in more detail below, there is no doubt that the permanent impairment of the Perlat Project constituted a material change in the business, operations and capital of Arian, and we so find. What remains is the analysis required to identify when before September 29, 2016 Arian should have disclosed to the public the material changes which eventually led it to disclose the permanent impairment of the Perlat Project in the September 29, 2016 Financial Statements.

[35] A leading decision on how to identify and characterize material changes is *Re Canaco Resources Inc.*, 2013 BCSECCOM 310 (*Re Canaco*). In that decision, the Commission noted:

The definitions of . . . **material change** measure the **materiality** of a fact or event solely by the expected effect that fact or event would have on the market price or value of the issuer’s securities. A fact or event is **material** only if it would reasonably be expected to have a significant effect on the market price or value of the issuer’s securities. [emphasis added]

[36] The Commission in *Re Canaco* also set out the principles, derived from several earlier Commission decisions, relevant to a determination of what is a material change. In summary, the principles in *Re Canaco*, as cited at para. 84, include:

- a) The test for materiality is objective – would the fact or event reasonably be expected to significantly affect the market price or value of the securities?

- b) The test for materiality is a market impact test. As stated in *YBM*, “The investor is an economic being and materiality must be viewed from the perspective of the trading markets, that is, the buying, selling or holding of securities”.
- c) The reasonableness of market impact is assessed from the point of view of the reasonable investor, that is, would a reasonable investor expect that the market price or value of the securities would be affected by the fact or event?
- d) Materiality is assessed in the context of the issuer’s industry and the market.
- e) Issuers are not held to perfection nor is the expectation of the market impact assessed with the benefit of hindsight.

[37] The dates suggested by the Executive Director for when a material change first occurred include, from latest to earliest:

- a) June 16, 2016, the date when the Albanian court upheld the revocation of the exploration licences;
- b) December 15, 2015, the date when Albanian authorities sent Arian the Notice of Revocation of the exploration licences with effect in 30 days;
- c) November 12, 2015, the date when the Vendor sued for the return of the Shares;
- d) September 16, 2015, the date when Albanian authorities agreed to Arian’s request for a temporary suspension of exploration activity and issued the Stop Work Order;
- e) August 24, 2015, the date when the Vendor commenced arbitration in relation to its efforts to recover the Shares; and
- f) June 29, 2015, the date when the Vendor informed Arian that it would not grant any extension to the due date for the \$2,000,000 payment required to be made by Arian on June 30, 2015.

[38] Applying the principles established in *Re Canaco*, we have no difficulty concluding that a material change occurred on June 29, 2015. As of that date, Arian was aware both that it had not arranged to make the payment 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. Arian’s sole material asset was at risk of total loss and the evidence shows that Arian had no solutions at hand. Arian’s managers had been working for over a year to advance work on, and find funding for, the Perlat Project. Anyone considering buying or selling shares in Arian would reasonably expect the market price or value of Arian shares to be significantly adversely affected by those circumstances. We find that Arian breached section 85(b) of

the Act by failing to disclose as required the material changes that occurred by June 29, 2015.

- [39] We also conclude that each of the subsequent events listed in paragraph 37 significantly imperilled the future of the Perlat Project for Arian and constituted, therefore, additional material changes in Arian's business, operations or capital. Our conclusion in this regard reflects the singular importance of the Perlat Project to Arian and to the market price or value of its shares. With the Perlat Project in development, Arian had potential which the market would value. Without the Perlat Project in development, Arian was at best an empty shell. We find that because Arian had failed to disclose the material change that occurred by June 29, 2015, Arian also breached section 85(b) of the Act by failing to disclose as required each of the other specific events set out in paragraph 37.

**B. Perlat Project—Omitted Disclosure of Material Information from Financial Statements and MD&A**

- [40] Both sections 85(a) and 168.1(1)(b) of the Act required that Arian make certain disclosures in its financial statements and MD&A. Each of the events listed above in paragraph 37 was not only a material change in Arian's business but also an event which was required to be disclosed in some or all of Arian's financial statements and MD&A. The absence of the disclosure clearly made those documents false and misleading.
- [41] All of the financial statements and MD&A filed by Arian during the period beginning on June 29, 2015 until delivery of the September 29, 2016 Financial Statements were false and misleading in that they failed to disclose the events summarized above regarding the status of the Perlat Project.

**C. Promoter Loss - Material Change**

- [42] Based on the evidence produced in the hearing, and in particular the emails authored by Dhanani at the relevant time, we find that Arian's true purpose in paying \$800,000 to the Promoter was to compensate the Promoter for finding and bringing investment funds to Arian. It is also evident that, almost immediately after the payments to the Promoter, Dhanani knew that the Promoter had no intention of providing the services expected by Arian or returning the \$800,000 paid by Arian.
- [43] It was clear from Dhanani's evidence that Arian was relying on the Promoter to raise the funds that Arian needed in order to pay for exploration expenses on the Perlat Project and to meet its other obligations, and that the loss of both the money paid to the Promoter and the funds expected to be raised through the efforts of the Promoter had left Arian in crisis. Any reasonable investor would expect the market price or value of Arian's securities to be significantly affected by the Promoter Loss. We find that the Promoter Loss constituted a material change, the failure to make timely disclosure of which was a breach of section 85(b) of the Act.



**D. Promoter Loss – Omitted Disclosure of Material Information from Financial Statements and MD&A**

- [44] Instead of recognizing and disclosing the Promoter Loss, Arian misrepresented the purpose of \$500,000 of the payments to the Promoter as being related to efforts to identify potential acquisition targets, something which Dhanani acknowledged the Promoter was not expected to do.
- [45] National Instrument 52-107 requires that reporting issuers such as Arian prepare financial statements in accordance with international financial reporting standards, including a requirement to explain all events and transactions that are significant and all items that are unusual because of their nature, size or incidence. The applicable standard required a clear explanation of the Promoter Loss in notes to Arian's financial statements. Further, the mischaracterization of the majority of the Promoter Loss as relating to other services was patently a false statement.
- [46] The absence of full disclosure of the Promoter Loss and the inclusion of misleading descriptions of the purposes of the payments to the Promoter means that Arian's interim financial statements filed April 29, 2014 and consolidated year-end financial statements filed September 29, 2014 were false and misleading, contrary to section 168.1(1)(b) of the Act.

**E. Related Party Payments---Omitted Disclosure of Material Information from Financial Statements and MD&A**

- [47] At the time Arian made the Related Party Payments to Dhanani's mother, she was 76 years old and residing with Dhanani. Dhanani held a power of attorney executed by his mother which gave Dhanani authority to make all financial decisions on her behalf should she have a mental infirmity. These circumstances demonstrate that Dhanani could be expected to have influence over his mother and she could be expected to have influence over him. The fact that Arian characterized the payments as being related to travel by Dhanani's mother, when Dhanani admitted she did not travel on Arian's behalf, demonstrates that Arian sought to conceal the true nature of the payments in question.
- [48] We find that the Related Party Payments, made at a time when Arian had no material earned revenue, were material to Arian.
- [49] National Instrument 52-107 requires that reporting issuers disclose related party transactions. Related parties are defined as those falling into certain specified categories as well as those who are family members who might be expected to have influence over or be influenced by executives of a reporting issuer. Dhanani's mother met these criteria and details of the payments to her should have been disclosed in Arian's financial statements. The absence of this disclosure means that Arian's interim financial statements filed April 29, 2014 and consolidated year-end financial statements filed September 29, 2014 were false or misleading, contrary to section 168.1(1)(b) of the Act.

## **F. False Description of Executive Compensation**

- [50] Information circulars provided to shareholders of a reporting issuer in connection with an annual general meeting are required to disclose executive compensation paid by the issuer in the prior year.
- [51] For the year ended May 31, 2015, Dhanani received compensation from Arian totalling \$514,752 and other executive officers received compensation from Arian totalling \$83,940.
- [52] The information circulars filed by Arian on November 15, 2015 and April 27, 2017 falsely stated that, for the year ended May 31, 2015, Dhanani received compensation totalling \$162,500 and the other named officers received compensation totalling \$386,744.
- [53] The false and misleading statements contained in the information circulars in question constituted breaches of section 168.1(1)(b) of the Act.

## **V. Application of Findings to Naso and Dhanani**

- [54] Section 168.2(1) of the Act states as follows:

If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.

- [55] Dhanani and Naso were officers and directors of Arian during the period relevant to the allegations in the Notice of Hearing. Although Dhanani purported to resign as a director of Arian on January 12, 2016, he remained listed as a director of Arian on the records of the Registrar of Companies until the dissolution of Arian. More importantly, the evidence shows that even after his purported resignation, Dhanani continued to make managerial decisions about the key issues facing Arian, including its response to the claims asserted by the Vendor, Arian's attempts to reverse the revocation of exploration licences, and Arian's eventual decision to recognize that the Perlat Project was permanently impaired. We conclude that, following his purported resignation and throughout the relevant period, Dhanani remained a *de facto* director of Arian based upon undisputed evidence including the following:
- a) When Dhanani emailed Arian's accountants to instruct them to write off the value of the Perlat Project in September of 2016, he did so without Naso's knowledge, even though Naso was at the time the chief executive officer of Arian;
  - b) Dhanani was often involved in discussions between Arian and its accountants and often gave guidance on behalf of Arian;

- c) Dhanani represented Arian in negotiations with a Chinese company about some form of financing or transaction;
- d) In April of 2016 when the Stop Work Order resulted in Arian being locked out of the Perlat Project, Dhanani provided guidance to Naso about how Arian should address the situation;
- e) In September of 2016 Dhanani provided guidance to Naso about how to deal with Albanian authorities; and
- f) In his interview with Commission staff, Dhanani admitted that during 2016 he assisted Arian with “running the show”.

[56] During the period up to his purported resignation, Dhanani was responsible for certifying Arian’s required filings. In his interview, Dhanani said that he certified the annual filings to be true but relied on the accountants to ensure the numbers were accurate, as he did not always review filings before they were filed.

[57] Naso was, during the relevant period, a director and, later in that period, chief financial officer of Arian and was responsible for certifying Arian’s required filings. He was also actively involved in management of Arian’s interests in the Perlat Project and in trying to address its manifold issues. In his interview with Commission staff, Naso stated that he certified Arian’s disclosure, even if he thought it was not accurate.

[58] In *Re Spangenberg*, 2016 BCSECCOM 72 the panel said:

[84] Under section 168.2, an officer or director of a corporate entity may be liable for the contraventions of that corporate entity if that director or officer “authorizes, permits or acquiesces” to the misconduct. There have been many decisions which have considered the meaning of the terms “authorizes, permits or acquiesces”. In sum, those decisions require that the respondent have the requisite knowledge of the corporate contraventions and have the ability to influence the actions of the corporate entity (through action or inaction).

[59] The evidence establishes that Naso and Dhanani had the requisite knowledge and ability to influence the actions of Arian as both were actively involved in all aspects of the business, affairs and management of Arian (in Dhanani’s case, even after his purported resignation as a director of Arian). Based on the evidence, both Naso and Dhanani knew of the difficulties with the Perlat Project, the financial crisis that Arian found itself in, the Promoter Loss and the Related Party Payments. As evidenced in the financial and corporate public disclosures made by Arian during the relevant period, Dhanani and Naso were responsible for certifying the impugned disclosure.

[60] We find that Dhanani and Naso authorized, permitted or acquiesced in Arian’s contraventions as set out above and, in doing so, contravened section 168.2(1) of the Act.

**VI. Conclusion**

[61] As detailed above, we find that Arian repeatedly contravened sections 85(a) and (b) of the Act, in particular by failing to make required disclosure related to the specific events outlined in paragraph 37, and to the Promoter Loss. Further, Arian repeatedly contravened section 168.1(b) of the Act by omitting to disclose the Promoter Loss and the Related Party Payments in its required disclosure, and by making false and misleading statements about executive compensation in its disclosure. Further, we find that Dhanani and Naso also repeatedly contravened sections 168.1(1)(b) and 85 of the Act by operation of section 168.2(1) of the Act, in that they authorized, permitted or acquiesced in Arian’s contraventions.

**VII. Submissions on Sanctions**

[62] We direct the executive director and the respondents to make their submissions on sanctions as follows:

By October 27, 2021                      The executive director delivers submissions to the respondents and the Commission Hearing Office.

By November 10, 2021                      The respondents deliver response submissions to the executive director and the Commission Hearing Office.

Any party seeking an oral hearing on the issue of sanctions so advises the Commission Hearing Office. The Hearing Office will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By November 17, 2021                      The executive director delivers reply submissions (if any) to the respondents and the Commission Hearing Office.

October 6, 2021

**For the Commission**

Gordon Johnson  
Vice Chair

George C. Glover, Jr.  
Commissioner

Marion Shaw  
Commissioner