

ALBERTA SECURITIES COMMISSION

Citation: Re Modi, 2019 ABASC 60

Docket: ENF-011243

Date: 20190409

NOTICE OF HEARING

To: Jay Rasik Modi
Arti Rajeev Singh, also known as Arti Rajeev Modi
Rajeev Jagdish Singh
OmniArch Capital Corporation, also known as 1502770 Alberta Ltd.
982 Media House Inc.
1611385 Alberta Ltd.
OmniArch Capital Group Inc.
OmniArch Ventures Inc., also known as New Wave Ventures Inc.
LendingArch Financial Inc.
OmniArch Global Bond Corp., also known as OmniArch Global Secured Corporation, also known as Calasset Bond Corp.
1505106 Alberta Ltd.
1502631 Alberta Ltd.
(Respondents)

Notice: The Alberta Securities Commission (the **Commission**) will convene at 3:00 p.m. on Wednesday, May 22, 2019 (**Set Date**), at Calgary, Alberta, to set a date for a hearing regarding the allegations in this Notice. At the hearing, the Commission will consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c. S-4, as amended (**Act**).

Location: Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Tom McCartney, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.355.4480, email: tom.mccartney@asc.ca.
2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence.
3. If you or your counsel fail to attend on the Set Date, or as otherwise directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See attached sections 29, 198, 199, and 202 of the Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings, as amended.

Reciprocation: Take notice that orders or settlements made by the Commission may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to you. If an order is made or a settlement agreement is reached in relation to this Notice, you should contact the securities regulator of any other jurisdiction in which you may intend to engage in any securities related activities.

Allegations

Parties and Related Entities

1. OmniArch Capital Corporation, also known as 1502770 Alberta Ltd., (**OmniArch**) was incorporated in Alberta on November 20, 2009, and maintained its registered office in Calgary, Alberta. It was incorporated by Jay Rasik Modi (**Jay Modi**), Arti Rajeev Singh, also known as Arti Modi (**Arti Modi**) and Rajeev Jagdish Singh (**Singh**) for the purpose of soliciting, accumulating and utilizing investment funds for indirect investment into downgraded and discounted Residential Mortgage Backed Securities (**RMBS**) in the United States. RMBS are asset-backed bond securities that represent a claim on the cash flows from a pool of underlying residential mortgages
2. The directors of OmniArch included Jay Modi, Arti Modi, and Singh. Its shareholders were 1502631 Alberta Ltd. and 1505106 Alberta Ltd.
3. 1502631 Alberta Ltd. was incorporated in Alberta on November 19, 2011, and maintained its registered office in Calgary, Alberta. Jay Modi and Arti Modi were its directors and shareholders.
4. 1505106 Alberta Ltd. was incorporated in Alberta on December 2, 2009, and maintained its registered office in Calgary, Alberta. Its sole director and shareholder was Singh.
5. Jay Modi was the chief executive officer, president, and a director of OmniArch. Jay Modi and Arti Modi are siblings.
6. Arti Modi was a director of OmniArch, and served as its president and chief executive officer in 2015.
7. Singh was the secretary and a director of OmniArch. He is the spouse of Arti Modi.
8. 982 Media House Inc. (**982 Media**) was incorporated in Alberta on May 25, 2015, and maintained its registered office in Calgary, Alberta. 982 Media was owned and controlled, directly and indirectly, by Jay and Arti Modi. 982 Media was ostensibly the marketing company for the OmniArch Group of Companies. The OmniArch Group of Companies is not an entity, but refers to all of the companies under the direction of Jay Modi or Arti Modi, or both.
9. 1611385 Alberta Ltd. was incorporated in Alberta on June 7, 2011, and maintained its registered office in Calgary, Alberta. Its sole director and shareholder was Jay Modi. 1611385 Alberta Ltd. was a personal holding company for Jay Modi.

10. OmniArch Capital Group Inc., (**OmniArch Capital**) was incorporated in Alberta on November 21, 2007, and maintained its registered office in Calgary, Alberta. Its directors and shareholders were Jay Modi and Arti Modi. OmniArch Capital owned a parcel of land in Sylvan Lake, Alberta.
11. OmniArch Ventures Inc., also known as New Wave Ventures Inc. (**OmniArch Ventures**) was incorporated in Alberta on March 28, 2014, and maintained its registered office in Calgary, Alberta. OmniArch Ventures was owned and controlled, directly and indirectly, by Jay and Arti Modi. OmniArch Ventures was ostensibly a venture capital company.
12. 982 Media, 1611385 Alberta Ltd., OmniArch Capital and OmniArch Ventures all received loans from OmniArch.
13. OmniArch Ventures then made loans to LendingArch Financial Inc. (**LendingArch**) and OmniArch Global Bond Corp. also known as OmniArch Global Secured Corporation, also known as Calasset Bond Corp. (**OmniArch Global**).
14. LendingArch was incorporated in Alberta on July 24, 2015, and maintained its registered office in Calgary, Alberta. LendingArch was owned and controlled, directly and indirectly, by Jay Modi, Arti Modi and Singh. It operated an online lending platform.
15. OmniArch Global was incorporated in Alberta on May 5, 2015, and maintained its registered office in Calgary, Alberta. Its directors were Jay Modi and Arti Modi. Its shareholders are unknown.

Circumstances

Funds Raised and Use of Funds

16. Between 2010 and 2015, OmniArch raised about \$127 million through nine offering memoranda. OmniArch's last offering memorandum (**OM**) was issued on May 9, 2014, pursuant to which it raised \$45,525,520.
17. Each of the Offering Memoranda (**OMs**) were signed by Jay Modi, Arti Modi and Singh, and each contained a certificate stating that "[t]his Offering Memorandum does not contain any misrepresentations."
18. OmniArch raised these funds by distributing three classes of bonds: A, B and C. Each class paid interest at 10% per annum, but had different terms. The maximum term of the bonds was five years.
19. About \$110 million of the funds raised from investors was paid through a series of corporations controlled by Arti Modi, Jay Modi and Singh (the **OmniArch Corporations**) to American RMBS Equity Fund IV LP (**Equity Fund IV LP**) to invest in RMBS.
20. Between January 2010 and July 2016, the portfolio of RMBS generated \$31.5 million. \$59,599,441 was paid back to OmniArch in returns. Of this amount, \$41,710,744 was paid to bondholders (investors).

21. Equity Fund IV LP was a limited partnership that was registered in the state of Delaware on January 21, 2010. It was created by OmniArch, in conjunction with fund managers from the United States, to manage the RMBS portfolio. The general partner for Equity Fund IV LP was ABS Investment Group, LLC (**ABSIG**).
22. ABSIG was the general partner of Equity Fund IV LP. It was incorporated in California, USA on February 13, 2008, and maintained an agent's address in La Mesa, California.
23. Between 2013 and 2015, OmniArch and other corporate entities owned and controlled by Jay Modi, Arti Modi and Singh, also paid \$4,326,390 in dividends and distributions to 1611385 Alberta Ltd., 1505106 Alberta Ltd., and 1502631 Alberta Ltd. (together the **Numbercos**).

Fraud

Related Party Loans

24. The OmniArch OMs dated January 24, 2014, May 9, 2014, and August 26, 2013, all stated that the proceeds raised from the offerings, and any excess cash flows, would be used to acquire downgraded and discounted RMBS bonds.
25. Between December 31, 2014 and June 10, 2016, contrary to the business purposes stated in OmniArch's OMs, rather than using all excess cash flows paid by Equity Fund IV LP to OmniArch to purchase RMBS bonds or pay returns to investors, Jay Modi and Arti Modi caused OmniArch to fraudulently transfer:
 - 25.1 \$778,456 to 982 Media between July 10, 2015 and May 30, 2016;
 - 25.2 \$2,575,571 to 1611385 Alberta Ltd., between December 31, 2014 and May 30, 2016;
 - 25.3 \$405,978 to OmniArch Capital, between February 17, 2016 and June 10, 2016; and
 - 25.4 \$6,270,301 to OmniArch Ventures, between July 10, 2015 and June 10, 2016.(together the **Related Party Loans or RPLs**).
26. Of the \$6,270,301 paid by OmniArch to OmniArch Ventures, \$4,097,155 was loaned to LendingArch and \$1,363,474 was loaned to OmniArch Global.
27. In exchange for the RPLs, 62 promissory notes were issued:
 - 27.1 12 notes were issued by 982 Media;
 - 27.2 10 notes were issued by 1611385 Alberta Ltd.;
 - 27.3 3 notes were issued by OmniArch Capital Group; and
 - 27.4 37 notes were issued by OmniArch Ventures.

28. The promissory notes were prepared by OmniArch's controller or accountant at the direction of Jay Modi. Jay Modi signed the promissory notes on behalf of OmniArch in all instances, and in some cases also signed on behalf of the related parties. Arti Modi signed 15 promissory notes on behalf of related parties. The funds were transferred or wired concurrently with the respective promissory notes.
29. Singh, as a director of OmniArch, and spouse of Arti Modi, ought to have known about the Related Party Loans.
30. As of August 31, 2016, the remaining bond portfolio held by Equity Fund IV LP was worth approximately \$13 million. The balance of the investors' principal appears to be lost.
31. The RPLs and payments to Numbercos were made during a time when OmniArch was experiencing year-over-year net losses, and was forced to sell off substantial portions of its RMBS portfolio, at a loss, in order to pay returns to investors.
32. On July 15, 2016, OmniArch and the OmniArch Corporations sought and obtained protection pursuant to the *Companies' Creditors Arrangement Act* RSC 1985, c. C-36.
33. On April 5, 2017, OmniArch and the OmniArch Corporations commenced an action against Equity Fund IV LP, ABSIG and others, claiming, among other things, fraud and breach of contract.
34. Jay Modi and Arti Modi caused OmniArch to pay the RPLs, without informing or seeking the approval of OmniArch's investors and without disclosing the RPLs in OmniArch's OM, or at all.
35. As a result of the RPLs, OmniArch lost the use of these funds, or its pecuniary interests were put at risk.
36. Jay Modi, Arti Modi, and OmniArch deliberately withheld this information from OmniArch's investors with the intent to deceive them about how investors funds were spent.
37. Acting through Jay Modi or Arti Modi, or both, each of 982 Media, 1611385 Alberta Ltd., OmniArch Capital Group, and OmniArch Ventures, accepted the RPLs in circumstances where they knew or ought to have known that OmniArch's investors would be deceived, OmniArch would be deprived of the use of these funds or OmniArch's pecuniary interests would be put at risk.

Misleading Statements

OmniArch's Fund Managers and Jay Modi's Experience

38. Clause 2.3 of OmniArch's OMs dated January 24, 2014, May 9, 2014, and August 26, 2013, stated that the "OmniArch Group of Companies and American RMBS Fund management teams and their fund managers have a long standing history and experience within national and international business management, raising and management of investor funds and multi-sector business development...The Corporation's (OmniArch's) fund managers have participated in the fundraising for four (4) other funds...American RMBS Fund is the fourth of five funds managed by the Corporation's fund managers for the purpose of purchasing RMBS at a discount."
39. Jay Modi is described in clause 3.2 of OmniArch's OMs dated January 24, 2014 and May 9, 2014, as providing "strategic leadership and guidance over all aspects of the firm's operations including investments and management and disposition of the assets acquired...Mr. Modi has experience and successes in the sstructure (*sic*), growth and management of both domestic and international business operations and hosts (*sic*) significant experience within key aspects of the finance sector particularly within private equity, investment banking and mergers and acquisitions."
40. These statements conveyed that OmniArch had fund managers on staff with the skill and acumen to manage and oversee the management of a portfolio of discounted RMBS. In fact, no one at OmniArch had any professional designations or formal education or training in finance, investing, securities, bonds, dealing, advising, portfolio management, investment fund management or RMBS.
41. Jay Modi had a high school education, and his business experience prior to starting OmniArch was limited to a company called Chef and O Inc., which made macaroni and cheese, and another informal venture which renovated and sold between seven and ten houses in Calgary, Alberta.

Rajeev Singh's Compensation

42. Section 3.1 of the May 9, 2014 OmniArch OM stated that: "[d]uring the year ended December 31, 2013, Mr. Singh did not receive any compensation from the Corporation or the Limited Partnership. As of the date of this OM, Mr. Singh has not received any salary, bonus or similar employment compensation and it is not anticipated that he will receive any compensation in the next fiscal year from the Corporation or the Limited Partnership."
43. Contrary to what was stated in OmniArch's May 9, 2014 OM, from 2013 to 2015, Singh's company, 1505106 Alberta Ltd. was paid \$1,273,482 in dividends and distributions by OmniArch (**Singh's Compensation**).
44. From 2013 to 2015, Singh and 1505106 Alberta Ltd. provided only nominal consideration, work, or services to OmniArch.

- 45. Staff allege that Jay Modi, Arti Modi, and Singh knew or ought to have known that the misleading statements described in paragraphs 38 through 44 were material, misleading, and would reasonably be expected to have a significant effect on the market price or value of OmniArch's securities, or an investor's decision to invest.
- 46. Staff further allege that Jay Modi, Arti Modi, and Singh authorized, permitted or acquiesced in the misleading statements described in paragraphs 38 through 45.

Breaches

- 47. As a result of the above, Staff allege that:
 - 47.1 Jay Modi, Arti Modi, Singh, OmniArch, 1502631 Alberta Ltd., 1505106 Alberta Ltd., 982 Media, 1611385 Alberta Ltd., OmniArch Capital, OmniArch Ventures, LendingArch and OmniArch Global breached section 93(b) of the *Act* when they engaged in a course of conduct that they knew or ought to have known perpetrated a fraud on OmniArch's investors, in relation to the Related Party Loans.
 - 47.2 Jay Modi, Arti Modi, Singh, OmniArch, 1502631 Alberta Ltd. and 1505106 Alberta Ltd. breached section 92(4.1) of the *Act* when they made misleading statements in OmniArch's OMs about:
 - 47.2.1 OmniArch's fund managers and Jay Modi's experience; and
 - 47.2.2 Singh's Compensation.

Calgary, Alberta, 9 April 2019.

) ALBERTA SECURITIES COMMISSION
)
)
) *“Original signed by”*
) _____
) David C. Linder, Q.C.
) Executive Director