



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF  
ELECTROVAYA INC. AND SANKAR DAS GUPTA**

Philip Anisman, Commissioner and Chair of the Panel  
William Furlong, Commissioner  
Frances Kordyback, Commissioner

June 30, 2017

**ORDER**  
**(Subsection 127(1) of the**  
***Securities Act, RSO 1990, c S.5***)

**THIS APPLICATION**, made jointly by Staff of the Commission and Electrovaya Inc. (“Electrovaya”) and Dr. Sankar Das Gupta (“Das Gupta” and, together with Electrovaya, the “Respondents”) for approval of a settlement agreement dated as of June 29, 2017 (the “Settlement Agreement”), was heard on June 30, 2017 at the offices of the Commission, at 20 Queen Street West, 17th Floor, Toronto, Ontario;

**ON READING** the Statement of Allegations dated June 28, 2017, the Settlement Agreement, an undertaking of the Respondents dated as of June 29, 2017 attached as Annex I to this Order and the terms of consultant review attached as Annex II to this Order, and on hearing the submissions of the representatives of the Respondents and Staff;

**IT IS ORDERED THAT:**

1. the Settlement Agreement be approved;

2. Electroveya submit to a review by Hansell LLP (the “Consultant”) of: (a) Electroveya’s corporate governance framework, including the position and role of the Chair of its Board of Directors and the composition of its Disclosure Committee; (b) Electroveya’s disclosure policies; and (c) the policies, processes, reports and systems related to Electroveya’s disclosure controls and procedures; and institute such changes as may be recommended by the Consultant and accepted by Staff in accordance with the process set forth in Annex II to this Order, pursuant to paragraph 4 of subsection 127(1) of the Act;
3. Das Gupta be reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act;
4. Das Gupta be prohibited from becoming or acting as a director or officer of any reporting issuer, other than Electroveya or an affiliate, for a period of one year commencing on the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act; and
5. Das Gupta exclusively pay an administrative penalty in the amount of \$250,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act.

*“Philip Anisman”*

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Philip Anisman

*“William Furlong”*

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William Furlong

*“Frances Kordyback”*

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Frances Kordyback

**ANNEX I**

**UNDERTAKING**

**IN THE MATTER OF  
ELECTROVAYA INC. and SANKAR DAS GUPTA**

**UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION**

1. This Undertaking is given in connection with the settlement agreement dated as of June 29, 2017 between Electrovaya Inc. and Dr. Sankar Das Gupta and Staff of the Commission (the “Settlement Agreement”). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.
2. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute a requirement that the Board have an independent director as Chair for a period of 20 months commencing from the date of the Order.
3. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, institute the following requirements with respect to Electrovaya’s Disclosure Committee, which requirements shall be effective for a period of 20 months commencing from the date of the Order:
  - (a) the Disclosure Committee shall be composed of four members, at least two of whom shall be independent directors of Electrovaya;
  - (b) one of the independent members shall be the Chair;
  - (c) all public disclosure made by Electrovaya shall be approved by the Disclosure Committee by majority vote;
  - (d) where there is an equality of votes, the Chair shall cast a second or casting vote;  
and

(e) notwithstanding subparagraph (c) above, where immediate disclosure is required and one of the independent members cannot reasonably be reached, the other three members may vote on the disclosure proposed to be made by Electrovaya, which shall be approved only if the remaining independent member votes in favour of it.

4. Das Gupta undertakes to exclusively pay the costs of Consultant's review, which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be between \$85,000 and \$100,000.

5. Das Gupta undertakes to participate in, and exclusively pay for, a corporate governance course on disclosure issues acceptable to Staff, the costs of which (without limiting Das Gupta's liability to pay the entirety of the costs) are estimated to be \$2,500.

6. For greater certainty, Das Gupta undertakes to pay all of the amounts payable by him under the Settlement Agreement, the Order and this Undertaking from his personal assets, without recourse to any insurance, indemnification or similar provision.

7. Electrovaya undertakes to, and Das Gupta undertakes to cause Electrovaya to, disseminate and file a news release acceptable to Staff regarding the Settlement Agreement.

**DATED** at Toronto, Ontario as of the 29th day of June, 2017.

***"Brad Moore"***

Witness: Brad Moore

***"Sankar Das Gupta"***

**SANKAR DAS GUPTA**

**ELECTROVAYA INC.**

By: ***"Sankar Das Gupta"***

Sankar Das Gupta  
President and Chief Executive Officer

## ANNEX II

### CONSULTANT'S REVIEW

All terms shall have the same meanings herein as in the settlement agreement dated as of June 29, 2017 between Electrovaya Inc. and Dr. Sankar Das Gupta and Staff of the Commission.

#### **A. Consultant's Mandate**

1. To conduct a review of, and to deliver reports addressing: (a) Electrovaya's corporate governance framework, including the position and role of the Chair of the Board and the composition of its Disclosure Committee; (b) Electrovaya's disclosure policies; and (c) the policies, processes, reports and systems related to Electrovaya's disclosure controls and procedures.

#### **B. Consultant's Obligations**

2. The Consultant shall issue a report to Electrovaya's Board, Audit Committee and Disclosure Committee and Staff within three months of the date of the Order, provided that the Consultant may seek to extend the review period for one additional three-month term by requesting an extension from Staff. Staff, after consultation with Electrovaya, may grant the extension if Staff deems it reasonable and warranted.

3. The Consultant's report shall address the Consultant's review of the areas specified in Part A hereof and shall include a description of the review performed, the conclusions reached, the Consultant's recommendations for any changes or improvements as the Consultant reasonably deems necessary to conform to the law and best practices and a procedure for implementing the recommended changes or improvements.

4. Electrovaya shall adopt all recommendations contained in the Consultant's report, provided that within 30 days of receipt of the report, it may in writing advise the Consultant and Staff of any recommendation it considers unnecessary or inappropriate. Electrovaya need not adopt that recommendation but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

5. Electrosvaya and the Consultant shall attempt in good faith to reach an agreement on the recommendations Electrosvaya has notified the Consultant of its disagreement with in accordance with paragraph 4. In the event Electrosvaya and the Consultant are unable to agree on an alternative proposal within 60 days of the issuance of the Consultant's report, Electrosvaya shall abide by the Consultant's determination.

6. Electrosvaya shall retain the Consultant for a period of twelve months from the date of the Order. After the Consultant's recommendations become final pursuant to paragraph 4 or 5 above, the Consultant shall oversee the implementation of the recommendations.

7. Twelve months after the date of the Order, the Consultant shall provide a report to Electrosvaya's Board, Audit Committee and Disclosure Committee and Staff concerning the progress of the implementation. If not all of the Consultant's recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters, Electrosvaya shall extend the Consultant's term of appointment until such time as all recommendations have been implemented in a manner satisfactory to Staff for at least two successive fiscal quarters.

8. At the conclusion of the 12-month period specified in paragraph 6 (or the extended period contemplated in paragraph 7), in addition to any requirements under applicable securities laws requiring disclosure related to this matter, Electrosvaya shall disclose in each of its next interim MD&A and next annual MD&A a summary of:

- (a) the Consultant's report specified in paragraph 3;
- (b) if Electrosvaya disagreed with any recommendations in the Consultant's report, the nature of the disagreement and its resolution, including the policy, procedure or system that was implemented; and
- (c) the implementation of the balance of the Consultant's recommendations.

9. In addition to the reports identified above, the Consultant shall provide Electrosvaya's Board, Audit Committee and Disclosure Committee and Staff with such documents or other

information concerning the areas specified in Part A as any of them may request during the pendency or at the conclusion of the review.

### **C. Terms of Consultant's Retainer**

10. The Consultant shall have reasonable access to all of Electrovaya's books and records and may meet privately with its personnel. Electrovaya shall instruct and otherwise encourage its directors, officers and employees to cooperate fully with the Consultant and inform its directors, officers and employees that failure to do so may be grounds for disciplinary action, dismissal or other appropriate actions.

11. The Consultant shall have the right, as reasonable and necessary in its judgment, to retain lawyers, accountants or other persons or firms, other than directors, officers or employees of Electrovaya, to assist in the discharge of its obligations. The reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant shall be borne exclusively by Das Gupta.

12. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of its responsibilities, and require all persons and firms retained to assist the Consultant to do so as well. The Consultant shall provide Staff with such notes and documents as Staff may request during the pendency or at the conclusion of the review.