BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-8/KS/AA/AO/224/2018-19]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of

Anand Credit Limited

Address – 11, Krishna Apartments,

Bhudarpura Road, Ambawadi, Ahmedabad – 380006

In the matter of Sharepro Services (I) Private Limited

BACKGROUND OF THE CASE

1. The Whole Time Member of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') vide ex-parte ad-interim order dated March 22, 2016 gave the following directions to the companies, who were clients of the Registrar and Transfer Agent - M/s Sharepro Services (I) Private Limited (hereinafter referred to as '**Sharepro**'):

   "….11. Companies who are clients of Sharepro are directed to conduct a thorough audit of the records and systems of Sharepro with respect to dividends paid and transfer of securities to determine whether dividends have been paid to actual/beneficial holders and whether securities have been transferred as per the provisions of law. This audit should cover the dividends paid/transfers effected within the preceding at least 10 years. The audit

directed above shall be completed by the companies within a period of three months from the date of this order and thereafter a report shall be submitted to SEBI by the companies in that regard. Further, within a period of six months from the date of this order, the companies shall take appropriate action, in cases where violations are observed, in accordance with the provisions of law and inform SEBI accordingly.

12. Companies who are clients of Sharepro are also advised to carry out / switchover their activities related to a registrar to an issue and share transfer agent, either in-house or through another registrar to an issue or share transfer agent registered with SEBI. Sharepro shall provide the requisite cooperation to these companies for the purpose….."

2. SEBI observed that Anand Credit Limited (hereinafter referred to as the '**Noticee**') failed to comply with the directions issued by Whole Time Member of SEBI vide order dated March 22, 2016. In view of same, SEBI initiated adjudication proceedings against the Noticee under the provisions of Section 15HB of the SEBI Act, 1992 (hereinafter referred to as the '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide communique dated June 19, 2018 under Section 15-I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated August 07, 2018 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to

show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon it under Section 15HB of the SEBI Act for its alleged failure to comply with the directions issued by Whole Time Member of SEBI vide order dated March 22, 2016.

5. It was alleged in the SCN that the Noticee was one of the clients of Sharepro. In terms of above referred directions of Whole Time Member of SEBI, the Noticee was required to conduct a thorough audit of the records and systems of Sharepro within a period of three months from the date of the above referred order and thereafter a report was to be submitted to SEBI by the Noticee in this regard. The Noticee was also advised vide the aforesaid order dated March 22, 2016 to carry out/ switchover its activities related to a registrar to an issue and share transfer agent (hereinafter referred to as '**RTA**') either in-house or through another RTA registered with SEBI. It was alleged that the Noticee failed to submit the audit report to SEBI in terms of the directions in the SEBI order dated March 22, 2016 and also failed to shift the operations related to RTA from Sharepro.

6. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due ('SPAD') and via a digitally signed email. The SCN was duly delivered to the Noticee, but no reply was received from the Noticee in respect of the SCN. In the interest of natural justice, it was decided to provide an opportunity of personal hearing to the Noticee. Hence, a reminder cum hearing notice dated September 14, 2018 was sent via SPAD and digitally signed email to the Noticee granting an opportunity of personal hearing on October 08, 2018. The Noticee was also granted a final opportunity to submit its reply to SCN on or before September 21, 2018 vide the said reminder cum hearing notice. The said reminder cum hearing notice was duly delivered to the Noticee. However, the Noticee failed to submit its reply to the SCN.

7. The Noticee did not avail of the hearing opportunity on October 08, 2018. In view of the same, the Noticee was granted a final opportunity of hearing in the matter on November 14, 2018 vide hearing notice dated November 01, 2018. However, it was noted from postal records that the said hearing notice dated November 01, 2018 was delivered to the Noticee after the scheduled date of hearing. In view of the same, a hearing notice dated December 05, 2018 granting final opportunity of hearing on December 17, 2018 was issued to the Noticee. I note from available records that the said hearing notice was duly delivered to the Noticee. However, the Noticee failed to avail of the final hearing opportunity on December 17, 2018.

8. In view of the above, I am compelled to proceed in the matter against the Noticee *ex parte*. I am of the view that principles of natural justice have been complied with since sufficient opportunities have been provided to the Noticee to submit reply and to appear for hearing, which the Noticee has failed to avail of. Therefore, the present proceedings against the Noticee are undertaken *ex-parte* on the basis of available documents and information.

CONSIDERATION OF ISSUES

9. I have carefully perused the charges levelled against the Noticee, its reply and the documents / evidence available on record. The issues that arise for consideration in the present case are :
   (a) Whether the Noticee had failed to comply with the directions issued by the Whole Time Member of SEBI vide ex-parte ad-interim order dated March 22, 2016?
   (b) Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act?
   (c) If yes, what should be the quantum of penalty?

10. The first issue for consideration is whether the Noticee had failed to comply with the directions issued by the Whole Time Member of SEBI vide ex-parte ad-interim order dated March 22, 2016. The said order dated March 22, 2016 was passed by Whole Time Member of SEBI against Sharepro and other related entities restraining them from buying, selling or dealing in the securities market or associating themselves with securities market, either directly or indirectly, in any manner till further directions. I note that the investigation in the matter of Sharepro was initiated on the basis of complaints received by SEBI against Sharepro and its management, which *inter alia* alleged irregularities in transfers of shares and dividends. During the course of investigation, various violations were observed in the operations of Sharepro.

11. In the above referred SEBI order dated March 22, 2016, the Whole Time Member of SEBI had also *inter alia* directed companies, who were clients of Sharepro, to conduct a thorough audit of the records and systems of Sharepro with respect to dividends paid and transfer of securities to determine whether dividends have been paid to actual/beneficial holders and whether securities have been transferred as per the provisions of law. The said companies were also directed to take appropriate action, in cases where violations were observed, in accordance with the provisions of law. The said audit had to be conducted by the companies within three months from the date of said order. The Competent Authority of SEBI had subsequently granted time till September 30, 2016 to companies, who had failed to submit audit report to SEBI, to conduct the audit of Sharepro and submit the audit report to SEBI. I note from documents available on record that no format was prescribed by SEBI for preparation and submission of the audit report. I also note that it is stated in the investigation report that the findings of the client companies forwarded to SEBI for information have not been examined in the report and that the companies have been directed to take appropriate action based on the findings of their audit. Considering the above, I am of the view that the

examination of the quality and thoroughness of the audit report is beyond the scope of the present adjudication proceedings. I further note that the companies were given direction in the above referred SEBI order dated March 22, 2016 to carry out / switchover their activities related to a registrar to an issue and share transfer agent, either in-house or through another registrar to an issue or share transfer agent registered with SEBI.

12. It was alleged in the SCN that the Noticee failed to submit the audit report to SEBI in terms of the directions in the SEBI order dated March 22, 2016 and also failed to shift the operations related to RTA from Sharepro. I find that sufficient opportunities were granted to the Noticee to submit its reply to the SCN and to appear for personal hearing. However, despite service of the SCN and hearing notices, none of the given opportunities were availed of by the Noticee. The Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) *inter alia* held that – "…*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".*

13. The Hon'ble SAT also made such proposition in case of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. *"…..appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices".*

14. In light of the facts mentioned above, I find that the Noticee had failed to comply with the directions in the SEBI order dated March 22, 2016 by not submitting the audit report in respect of the records and systems of Sharepro and by not shifting the operation related to RTA from Sharepro. Thus, the allegation against the Noticee that it failed to comply with the directions issued by Whole

Time Member of SEBI vide order dated March 22, 2016 is established. The Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

15. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15HB of the SEBI Act, which reads as under:

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [1](liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.)*

16. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to

[1] *Substituted for the words —"liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

17. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the non-compliance committed by the Noticee.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 3,00,000 (Rupees Three Lakh only) on the Noticee viz. Anand Credit Limited under the provisions of Section 15HB of the SEBI Act.

19. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

20. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051":

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

21. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Anand Credit Limited and also to the Securities and Exchange Board of India.

Date: December 21, 2018

Place: Mumbai

K SARAVANAN

GENERAL MANAGER &

ADJUDICATING OFFICER