BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-8/KS/AA/AO/200/2018-19]

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

Advance Lifestyles Limited
(CIN: L45309MH1988PLC268437)

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 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. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that Advance Lifestyles 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 observed 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 either in-house or through another registrar to an issue and share transfer agent 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.

6. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due and via a digitally signed email. The Noticee vide email dated September 05, 2018 submitted a scanned copy of letter dated August 23, 2018 as its response to the SCN and *inter alia* made the following submissions:
   (i) The Company has not declared / paid any Dividend in last so many years and in fact not even once after the data of our Members was handed over to M/s SHAREPRO Services (I) Private Limited;
   (ii) M/s Sharepro Services (I) Private Limited were appointed as RTA w. e. f. from 2011 only. So as far as Audit of Paid / Unpaid Dividends for the last 10 Years is concerned, it was not required in view of the above facts.
   (iii) As regards transfer of security is concerned, the promoters till 2013, held more than apprx. 81 % of total Equity Capital and the remaining apprx. 19 % were held by more than 5800 Shareholders spread across the country. The Promoters' Holding was reduced to 75 % as per SEBI requirements in 2013. A unique Shareholding pattern/ Distribution of Shareholding of the Company as on 30.06.2018 is annexed and marked as Annexure "A";
   (iv) The Equity Shares of the Company are listed at BSE only. The Equity Shares of the Company are very thinly traded as could be observed from the data of Volume of transactions at BSE during 2014 & 2015, as extracted from BSE Portal and attached herewith as Annexure "B";

(v) The number of transfer transactions of Equity Shares based on and backed up by actual transactions recorded at BSE is / was minimal due to thin trading and lower volume of transactions.

(vi) The RTA only received/ receives mostly DMAT request (From Physical to Demat Form) or transmission cases, which are / were dealt by the concerned RTA properly. More than 81 % holding is in DMAT form, in which there are very few chances of any manipulation.

(vii) The Number of Complaints at SCORE portal of SEBI or Direct Complaint as received from Members to RTA or the Company is minimal or rather NIL, as could be verified from the Complaint History at the SCORE portal or reports filed by the Company to BSE / SEBI from time to time.

(viii) There was no reason, therefore, to doubt the integrity of the management of RTA viz. M/s SHAREPRO Services (I) Private Limited, during our association ship with them;

(ix) The Company received information from Listing Department, BSE on 28.03.2016 on the directives from the Whole Time Member of SEBI dated 22.03.2016. The Company has taken immediate steps to shift our Members' data from M/s SHAREPRO Services (I) Private Limited to another SEBI registered RTA;

(x) Necessary Steps were taken to identify new RTA, their Financial Quote, their Capabilities, Prestige in Market, Other assignments handled by them and within three months of the SEBI (WTM) Directives, the RTA work was assigned to M/s Bigshare Services Pvt. Limited, w.e.f. from 1st July, 2016. Copy of Resolution passed by the Board of Directors of the Company is annexed and marked as Annexure - " C "

(xi) Mr. Dushyant B Dholakia, Company Secretary in Practice was engaged to verify and reconcile Members' Records and to ensure smooth transfer of data from M/s SHAREPRO to M/S BIGSHARE, the new RTA. Only after, his audit/ examination and certification, the process was complete and M/s SHAREPRO as RTA were discontinued, so as to avoid any hardship to any Members. A copy of the Certificate issued by him is enclosed and marked as Annexure "D ". Due Newspaper Advertisement was given for change of RTA and necessary Members' Resolution was passed to keep Shareholders' Records at M/s Big

Share Services Pvt Limited, Ahmedabad Office in place of M/s Sharepro Services P Limited at the AGM held on 30.09.2016.

(xii) More than 26 months have passed since then and there is no single complaint from any of the Members in respect of any pending Transfer or any other request or past transaction relating to Equity Share, which shows that as far as this Company is concerned, M/s Sharepro has not made any manipulation, lapse in service or any other type of irregularity in respect of transfer of Security.

(xiii) Thus it would be observed that all necessary actions as contemplated in the Order dated 22.03.2016 were taken by the Company. However, the same were not reported to SEBI, within three months as directed.

7. In the interest of natural justice, an opportunity of hearing was provided to the Noticee on September 19, 2018 vide hearing notice dated September 05, 2018. Shri Dushyant B. Dholakia, Practicing Company Secretary, appeared as the Authorized Representative ('AR') on behalf of the Noticee in the hearing on September 19, 2018. During hearing, the AR reiterated the contents of the reply dated August 23, 2018 submitted by the Noticee. The AR admitted that audit in terms of SEBI order dated March 22, 2016 was not conducted by the Noticee.

CONSIDERATION OF ISSUES

8. 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?

9. 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.

10. 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 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.

11. It was alleged in the SCN that the Noticee had failed to submit the audit report to SEBI and therefore, had failed to comply with the directions in the SEBI order dated March 22, 2016. The client companies of Sharepro were directed in the SEBI order dated March 22, 2016 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 Noticee has submitted a copy of certificate dated July 05, 2016 from Shri Dushyant B. Dholakia, Practicing Company Secretary, which certifies the shareholding in the shares of the Noticee as on June 30, 2016. I note that the said certificate does not deal with the directions given in the SEBI order dated March 22, 2016. I further note that the AR of the Noticee during the hearing has admitted that the Noticee did not conduct the audit of the records and systems of Sharepro in terms of SEBI order dated March 22, 2016. The Noticee has stated that it had not declared dividend during its association with Sharepro and as a result audit was not required. The Noticee has further stated that the promoters till 2013 held nearly 81% of equity share capital and remaining (approx. 19%) shares were held by more than 5800 shareholders spread across the country. The promoters' holding was subsequently reduced to 75% in the year 2013. The Noticee has also stated that more than 81% shares were in demat form, which implies that the remaining nearly 19% shares were in physical form. I note from the copy of the certificate dated July 05, 2016 submitted by the Noticee that 5,80,514 shares out of total 31,12,875 shares issued by the Noticee were in physical form. The Noticee has admitted that Sharepro had handled requests related to physical

shares including demat requests and transmission requests. The transfer transactions handled by Sharepro had to be audited in terms of the SEBI order dated March 22, 2016 to ensure that they were carried out as per law, which was not done by the Noticee.

12. In view of the foregoing, I find that the Noticee had failed to comply with the directions in the SEBI order dated March 22, 2016 by not conducting an audit of the records and systems of Sharepro. As the audit was not conducted by the Noticee, no audit report was submitted to SEBI by the Noticee. 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…".*

13. 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.)*

14. 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:-

[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.*

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 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.

15. 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

16. 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. 1,50,000 (Rupees One Lakh and Fifty Thousand only) on the Noticee viz. Advance Lifestyles Limited under the provisions of Section 15HB of the SEBI Act.

17. 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.

18. 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)	

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

Date: October 26, 2018

Place: Mumbai

K SARAVANAN

GENERAL MANAGER &

ADJUDICATING OFFICER