

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/9401]

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

**In respect of:
Nirlon Limited
(CIN: L17120 MH1958PLC 011045)**

In the matter of Sharepro Services (I) Private Limited

BACKGROUND

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 **Nirlon 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) 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 PERSONAL 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 letter dated August 27, 2018 submitted its response to the SCN and *inter alia* made the following submissions:

1. *We refer to captioned Show Cause Notice dated August 7, 2018, which was received by us on August 13, 2018. As directed, we provide herein below our response to the Notice within 15 days of receipt.*

Allegation in the Show Cause Notice

2. *Succinctly, the limited allegation made in the Show Cause Notice, as stated at paragraph 4 thereof, is that the Noticee failed to submit the audit report to the Securities and Exchange Board of India ("**SEBI**"),*

as had been directed by an ex-parte ad interim order dated March 22, 2016 passed by the Whole-Time Member, SEBI ("**SEBI Order**").

3. By the SEBI Order, all the companies who are clients of Sharepro, were (i) directed to conduct an audit of the records and systems of Sharepro with respect to dividends paid and transfer of securities over at least the last 10 years, submit a report thereof to SEBI, and take appropriate action in cases of violation, and (ii) advised to switchover their activities related to a registrar and transfer agent ("**RTA**") to another RTA registered with SEBI.
4. There is no doubt that the Noticee did in fact comply with the SEBI Order and the allegation in the Notice pertains only to the limited aspect that the report pursuant to the audit of the records and systems of Sharepro was not submitted by the Noticee to SEBI. Further, from the extract of the investigation report as provided with the Show Cause Notice, we note that this allegation is stated to have been made based on the information received by SEBI from Sharepro, vide letter dated December 26, 2016.
5. Accordingly, we have been called upon to show cause as to why an inquiry should not be held against us in terms of Rule 4 of the Adjudication Rules read with Section 15-1 of the SEBI Act, 1992 ("**SEBI Act**"), and why a penalty, if any, should not be imposed under Section 15HB of the SEBI Act.

Preliminary Submissions

6. In this response, we have shown cause as to why an inquiry under Rule 4(3) of the Adjudication Rules is not required in the present matter. We respectfully submit that the same would be evident upon taking cognizance of the relevant facts in the matter, which appear to have been overlooked / omitted to be mentioned in the investigation

report of SEBI or placed before the Ld. Adjudicating Officer prior to issuance of the Show Cause Notice.

- 7. As the matter pertains to a limited allegation and the issue is simple, we considered it appropriate to provide our response and place all the relevant facts before the Ld, Officer at this preliminary stage of determining whether to hold an inquiry under Rule 4(3) in the matter, rather than undertaking an inspection of records. However, we reserve our right to seek inspection of all the records and documents which formed the basis of the present proceedings including the investigation report and the documents placed before the Competent Authority who decided to initiate the adjudication proceedings. Our request for inspection of such would be made in the event that the learned Adjudicating Officer is not convinced with the cause shown in the present response and decides to hold a further inquiry in the matter in terms of Rule 4(3) of the Adjudication Rules.*
- 8. We submit that the allegations of SEBI are unfounded and deserve to be dismissed by the learned Adjudicating Officer for the reasons explained below. The facts mentioned herein below show that all the directions contained at page 31 of the SEBI Order have been complied with by us, and that there is no cause for any regulatory intervention in the matter.*
- 9. As stated above, the SEBI Order contained a direction to all the companies who are clients of Sharepro to conduct a thorough audit as detailed therein and submit the report to SEBI. With this direction, there was also an advice to companies to switch over the services of RTA from Sharepro to another registered RTA. We state and submit that not only have we complied with the direction of SEBI and caused the detailed audit to be completed, but have also ensured that the*

advice of SEBI is complied with by us, which is evident from the facts narrated below.

Summary of Relevant Facts

10. The SEBI Order was passed on March 22, 2016 and was forwarded to us by the BSE Limited ("**BSE**") by an e-mail dated March 28, 2016. A copy of the said e-mail is enclosed herewith at **Annexure A**. By the said e-mail, BSE directed us to comply with the SEBI Order as follows:

"Vide this order, SEBI has directed the client companies of Sharepro vide Point 11 and Point 12 (Pg. 31 of the Order) to carry out the following activities

a) Conduct thorough audit of Records and sustems 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 audit shall be conducted for dividends paid/ transfers effected in the preceding 10 years and should be completed in a period of 3 months from the date of the order. The report of this audit shall be submitted to SEBI. In case of violations, action as required under the applicable laws shall be taken by the companies within 6 months from the date of the order and the same shall be informed to SEBI

b) Companies who are clients of Sharepro are 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 and share transfer agent registered with SEBI, Sharepro shall provide the requisite cooperation to these companies for the purpose.

Client companies of Sharepro Services (I) Pvt. Ltd. are required to take note of the above and carry out the action as directed by SEBI within the stipulated timelines and the same shall be intimated to the Exchange for information of the shareholders

[Emphasis supplied]

11. *The Board of Directors of our Company took note of the directions contained in the SEBI Order during a meeting held on April 28, 2016 and immediately decided to terminate the services of Sharepro and appoint Link Intime India Pvt. Ltd. ("**Link Intime**") as its new share transfer agent in place of Sharepro, The Company issued a notice of termination dated May 27, 2016 to Sharepro, terminating the share transfer agent agreement entered into between the parties, effective June 3, 2016. A copy of the notice of termination is enclosed herewith at **Annexure B**.*
 12. *Simultaneously, the Company informed the BSE, National Securities Depository Limited ("**NSDL**") and Central Depository Services (India) Limited ("**CDSL**") that the Company had, in compliance with the SEBI Order, decided to appoint Link Intime as its share transfer agent in place of Sharepro, with effect from June 3, 2016. A copy of the said letters to BSE, NSDL and CDSL, all dated May 27, 2016, are collectively enclosed herewith at **Annexure C (Colly.)**.*
 13. *Newspaper notices informing shareholders of the change in RTA were thereafter duly published in the Business Standard and Navakal and copies of the same were filed with the BSE, CDSL and NDSL. Copies of these communications are collectively enclosed as **Annexure D. (Colly.)**. The Company sought the approval of its members for the appointment of Link Intime as the new share transfer agent by a Postal Ballot Notice dated July 9, 2016, which was approved by the requisite majority of the shareholders. The Company informed the BSE of the same and published the Postal Ballot Results. Copies of the said communications are enclosed as **Annexures E (Colly.)***
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14. *Further, in terms of BSE's e-mail dated March 28, 2016 directing the Company to comply with the SEBI Order, the Company appointed Ragini Chokshi & Associates on or about June 6, 2016 to conduct an audit of the records as per the SEBI Order. We co-operated in the entire audit process and provided all the required information and data to the auditors. Upon receipt of the audit report, the same was examined to assess whether any action in respect of any violation was called for. However, the Audit did not disclose any major irregularities which required any action to be taken by us against Sharepro.*
15. *In the interim, we received an e-mail dated August 5, 2016 from the BSE, intimating us that the competent authority of SEBI had extended the time for completion of the audit and submission of the report till September 30, 2016. Further, BSE directed us to update the Exchange about filing of the audit report with SEBI along with a copy of the report. BSE also directed us that if the report had not been filed, the reason for the same was to be informed to the Exchange along with the date by which the report was expected to be submitted, so that the same could be informed to SEBI by the BSE. A copy of the said e-mail from the BSE is annexed hereto and marked **Annexure F**.*
16. *Upon review of the Audit Report, which was completed within the timelines as directed in the BSE e-mail, the Report was submitted to the BSE under cover of a letter dated September 27, 2016 and thereby the compliance was completed. A copy of the said letter dated September 27, 2016 (which contains a copy of the audit report) is enclosed as **Annexure G**. Further, the same was intimated to the shareholders on the same date through the BSE. A copy of the public announcement dated September 27, 2016 on the BSE website is enclosed as **Annexure H**.*

Submissions

17. *As seen from the facts mentioned above, not only did the Noticee comply with the directions of SEBI and BSE, but the same was done within the timelines directed by the BSE and SEBI. There was no non-compliance in this regard*
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and the facts of submission of the audit report to the BSE and termination of services of Sharepro as stated above clearly demonstrates our bona fides and compliance with the directions in question.

18. *From the extracts of the investigation report provided with the Show Cause Notice (which are provided in redacted form), it appears that SEBI has not taken cognizance of the indisputable facts stated above, namely that we had made the requisite submission to BSE within the stipulated time and that the same was publicly disseminated on the same date. It appears that neither was any inquiry made by SEBI with BSE regarding the status of submission of the audit report by us (even though all prior communication and coordination in the matter between SEBI and us was routed only through via exchange); nor did SEBI address any communication to us in this regard (either via BSE or otherwise) during the course of its investigation. Rather it appears that the allegation has been made merely based on a generic tabulation on the status of compliance at para 3.4 of the investigation report, without any specific investigation in the matter. Moreover, it appears that the status of compliance was ascertained on the basis of the letter dated December 26, 2016 submitted by Sharepro; whereas, in this letter, Sharepro has claimed to have been unaware of the status of the audit conducted by its client companies.*
19. *Therefore, it appears that SEBI had not looked into all the relevant facts prior to alleging non-compliance in the case of our Company in the investigation report, which was ultimately placed before the competent authority and the Ld. Adjudicating Officer for initiation of the present proceedings. It is humbly submitted that had SEBI inquired into the facts and become aware of our compliance, as explained above, it would have been abundantly clear that there was no cause for initiation of proceedings against our Company in this regard.*
20. *Without prejudice to the above, it appears that the only disconnect between the factum of our compliance and how SEBI may perceive the matter, lies in the words "report shall be submitted to SEBI" in the SEBI Order. In our respectful*

submission, our submission of the audit report to the BSE itself demonstrates our compliance. It is humbly submitted that it would be improper to arrive at a finding of any non-compliance merely because the report was submitted by us to the BSE (through whom all the communication in the matter was exchanged) and not directly to SEBI. This is particularly so given that the audit report was completed, submitted and publicly disclosed within the timelines prescribed. Given that the report was submitted to BSE and also informed to the shareholders, there was no reason for us not to submit the audit report to SEBI. In view of these facts, it is respectfully submitted there cannot be any reasonable apprehension of mala fides on our part in our compliance with the SEBI Order.

21. *The contents of the SEBI Order were communicated to us by the BSE. Further the SEBI Order at para 13 directed that the stock exchanges shall ensure that the directions of SEBI are strictly enforced. With this backdrop, we request the learned Officer to consider the bona fides of the Company, whereby the submission of audit report to the BSE was considered to be an appropriate step as BSE was coordinating between us and SEBI and also enforcing the directions of SEBI. BSE, too, did not raise any issues, when the audit report was submitted by us. We therefore bona fide believed that the said submission of the audit report was compliant with the actions required by us. There was therefore no reason for us to consider that there was any other compliance pending at our end.*
22. *Without prejudice to the foregoing and strictly in the alternative, it is humbly submitted that the fact that the audit was completed and submitted to BSE within the timeframe as required by SEBI clearly shows inapplicability of the charging provision. There cannot be any allegation to the contrary merely because the report was not filed with SEBI as it was our bona fide belief that the audit report would be submitted to SEBI by the BSE, given that BSE was directed to enforce the directions of SEBI and was acting as the intermediary in communications between us and SEBI. There is no loss caused to anybody nor any gain made*

therefrom. No investigation or proceeding has been hampered or delayed on account of the same. Moreover, there were clearly no mala fides on the part of the Company, given that the audit report was submitted to BSE as well as placed before the public shareholders within the prescribed time. As such, the factors mentioned in Section 15J too favour us.

23. Further, it is submitted that it has been SEBI's own position that absent any mala fides or improper motives, no penalty can be imposed on a noticee. In this context, we refer to the decision of the learned AO in the case of ICICI Securities Limited (Order dated March 3, 2010), wherein the Ld. Adjudicating Officer held as follows:

"5.7 In the factual background of the present case, I find that the noticee never consciously or deliberately avoided to comply with the obligations under clause A (2) and A (5) of the Code of Conduct specified in Schedule II of the Regulations and the lapse / default in Question was inadvertent and due to bona fide conduct / belief of the noticee and the defect or breach is venial and technical. [...]"

5.3 In view of the above findings after inquiry, I am satisfied that the present case does not warrant imposition of penalty under Section 15HB of the SEBI Act Accordingly, the adjudication proceedings are disposed of"

[Emphasis Supplied]

24. We also refer to the judgment of the Hon'ble Supreme Court in the matter of *Bharjatiya Steel Industries v. CST, U.P.* (2008) 11 SCC 617, wherein the Hon'ble Supreme Court, while considering the decision in *SEBI v Shriram Mutual Fund* (2006) 5 SCC 361, has held that mens rea is a relevant factor to be considered in connection with the imposition of penalty by the adjudicating authority.

25. *As decided by the learned Adjudicating Officer in the matter of Nirmal Bang Securities Private Limited (Order dated April 13, 2017, bearing reference NP/JS/AO/31/2017), if sufficient cause is shown for not holding any inquiry, the proceedings may be disposed of and we most humbly request the learned Officer to consider our case on parity and dispose of the proceedings. There has been no regulatory intervention whatsoever against us till date and we have always been considered to be a fully compliant company.*
26. In the interest of natural justice, an opportunity of hearing was provided to the Noticee on September 05, 2018 vide hearing notice dated August 28, 2018. Subsequently, the Noticee, vide letter dated August 30, 2018 sought inspection of documents. The request was acceded to and vide letter dated August 31, 2018 an inspection opportunity was granted to the Noticee. However, the Noticee vide its email dated September 22, 2020 addressed to EFD, *suo moto*, waived its right to inspection of documents. The said waiver confirmation mail was forwarded by EFD. Therefore, in the interest of natural justice, vide hearing email notice dated September 23, 2020 a hearing opportunity was granted to the Noticee at 11 AM on October 8, 2020 on Subsequently, the Noticee elected to appoint M/s J Sagar Associates, Advocates as its authorized representatives. Owing to the present pandemic situation the hearing was granted on the scheduled date through video conferencing mode using webex platform. On the scheduled date of hearing, Mr. Vikram Raghani, Mr. Pulkit Sukhramani, Ms. Vidhi Jhawar and Mr. Jasmin Bhavsar, Advocates, appeared as the Authorized Representatives ('ARs') on behalf of the Noticee in the hearing. During hearing, the ARs reiterated the submissions made by the Noticee vide their reply dated August 27, 2018 and also submitted, vide their email dated October 08, 2020, copy of two Adjudication Orders.
27. In view of the above, I now proceed further in the matter based on merits.

CONSIDERATION OF ISSUES AND FINDINGS

28. 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?
29. 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.
30. 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. In view of the same, 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.

31. 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. I note that the Noticee in its reply has stated that in terms of BSE's email dated March 28, 2016, it had appointed M/s Ragini Chokshi & Associates, Company Secretaries, to conduct the above said audit. I observe from the documents submitted by the Noticee that the audit report is dated June 21, 2016. The Noticee has further stated that it had then submitted the audit report to the Bombay Stock Exchange ('BSE') vide letter dated September 27, 2016. The Noticee has also confirmed that a public announcement dated September 27, 2016 was filed with BSE and intimated the shareholders.
32. I note that the Noticee has not denied that it did not file the audit report with SEBI. However, I am of the view that the violation committed by the Noticee is technical in nature and devoid of any malafide intention for the following reasons:
 - (a) The Noticee had appointed M/s Ragini Chokshi & Associates, Company Secretaries, to conduct the audit of records and systems of Sharepro as directed in SEBI order dated March 22, 2016 and obtained an audit report dated June 21, 2016.

(b) The Noticee had submitted the said audit report to BSE

33. In the matter of SEBI v. Cabot International Capital Corporation, the Hon'ble Bombay High Court held that "... *though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc.*" In view of the above, I am inclined to take a lenient view and consider it not a fit case for imposition of monetary penalty.

ORDER

34. In view of my findings noted in the preceding paragraphs, I hereby dispose of the adjudication proceedings initiated against the Noticee vide Show Cause Notice dated August 07, 2018 without imposition of any monetary penalty.
35. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Nirlon Limited and also to the Securities and Exchange Board of India.

Date: October 15, 2020

Place: Mumbai

**K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**