

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-84/2015]

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
M/s. G-Tech Stone Ltd. (PAN: AAACG1179K)

In the matter of
M/s. ERP Soft Systems Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that M/s. G-Tech Stone Ltd. (hereinafter referred to as '**the Noticee**') was holding more than 5% of the share capital in the Company viz. M/s. ERP Soft System Ltd. (hereinafter referred to as '**the company**') during the quarter ending December 2011, and that the Noticee's holding had reduced by more than 2% during the quarter ending March 2012. It was further observed that the Noticee had failed to make the necessary disclosures under the applicable provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**Takeover Regulations**'). Hence, adjudication proceedings were initiated against the Noticee under Section 15 A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') to inquire into and adjudicate the alleged violation of PIT Regulations and the Takeover Regulations in the matter. The shares of the Company at the relevant point of time were listed on Bombay Stock Exchange Ltd (hereinafter referred to as '**BSE**').

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer vide order dated August 07, 2013 under Section 15I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the alleged violations of PIT Regulations and Takeover Regulations.

SHOW CAUSE NOTICE, HEARING ANDREPLY

3. Show Cause Notice No. EAD-6/AK/VS/25007/2013 dated September 30, 2013 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15A(b) of SEBI Act for the alleged violation specified in the said SCN.
4. SCN observed that the Noticee was holding 3,45,100 shares amounting to 8.71% of the share capital of the company during quarter ended December 2011, which decreased to 2,14,700 shares amounting to 5.42% of the share capital of the company during quarter ended March 2012. The decrease in holding was by 1,30,400 shares amounting to 3.29% of the share capital of the company. Details of transactions are as under:

Date of Transaction	Entity	Pre-holding No. of shares	Purchased / Sold (No. of shares)	Post Holding No. of shares
31/01/2012	G-Tech Stone	3,45,100 (8.71%)	-1,30,400 (3.29%)	2,14,700 (5.42%)

It was observed that for the aforesaid transactions the Noticee had not made disclosures under Regulation 13(3) read with 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) of Takeover Regulations.

5. The Noticee vide letter dated November 04, 2013 submitted its reply to the SCN denying the alleged charges *inter alia* as follows:

- a. *that as per their books of account, they had at no point of time invested in the company called M/s. ERP Soft Systems Ltd. and to the best of their knowledge and belief they did not hold, nor, hold any shares in the said company;*
 - b. *that they do not have any relationship with the said company in any manner, nor, have they invested in the said company;*
 - c. *that in the above stated circumstances, the alleged transaction dated January 31, 2012 i.e. sale transaction of 1,30,400 shares in the company M/s. ERP Soft Systems Ltd. was not done by them, since they did not hold any shares in the above said company at any point of time;*
 - d. *thatsince the alleged transaction dated January 31, 2012 was not done by them, the need to make disclosures under Regulation 13(3) read with 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) of the Takeover Regulations did not arise;*
 - e. *that in view of the aforesaid facts, the show cause notice issued may be cancelled.*
6. In the interest of natural justice, an opportunity of personal hearing was provided to the Noticee on December 18, 2013 vide hearing notice dated December 10, 2013. The Noticee vide email and letter dated December 13, 2013 requested the hearing to be adjourned on medical grounds, to any time after first week of January 2014. Accordingly, another opportunity of personal hearing was provided to the Noticee on January 06, 2014 vide hearing notice dated December 30, 2013. Mr Suresh Chandak, Authorized Representative (hereinafter referred to as 'AR') appeared on behalf of the Noticee and reiterated the submissions made by the Noticee vide reply dated November 04, 2013. During the hearing, the AR submitted a copy of letter dated January 02, 2014 issued by the Noticee to the company viz. M/S. ERP Soft Systems Limited requesting them to provide the Noticee with copies of the transfer deeds and proof of investment in company.
7. During the course of adjudication proceedings vide email dated January 06, 2014, details in respect of transferor and transferee from whom the shares were transferred/ received to/ from along with the documentary proof i.e. copy of share transfer deed duly signed by the transferor/ transferees, copy of the underlying share certificates etc. was called from the Registrar of the Company viz. M/s. Cameo Corporate Services Limited (hereinafter referred to as 'CCSL'). CCSL vide email dated January 11, 2014 submitted that as per the shareholders data handed over by the company during their appointment, 3,45,100 shares were held by the Noticee in the company and that the said shares

were allotted to them in the IPO of the company (formerly known as M/s. Yashasvee Securities Ltd.).CCSL further informed that subsequent to their appointment as Registrar of the Company, the following transfers were affected by the Noticee:

S.No.	Date of transfer	Name of Transferee	Number of shares
1	31.01.2012	S. Mohan	30,100
2	31.01.2012	S. Brindha	34,100
3	31.01.2012	R. Kamala Mohan	34,100
4	31.01.2012	R Mohan	32,100

CCSL further informed that as on that date, the Noticee was holding a balance of 2,14,700 shares in the company. CCSL also provided scanned copies of the transfer deeds in respect of the above transfers.

8. Thereafter, a supplementary show cause notice Ref: EAD-6/AK/VS/6660/2014 dated March 03, 2014 was issued to the Noticee based on the above information received from CCSL. The supplementary SCN *inter alia* clarified that the transaction made by the Noticee on January 31, 2012 obligated the Noticee to make necessary disclosures under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the Takeover Regulations. However, the Noticee had failed to make such disclosures in the matter.
9. The Noticee vide letter dated March 17, 2014 *inter alia* made the following additional submissions in response to the supplementary SCN:
 - a. *That they were not aware that M/s. ERP Soft Systems Ltd. is the same company which was earlier named as M/s. Yashasvee Securities Limited;*
 - b. *That Mr. D V Sivakumar Reddy, son of Sri Duvvuru Sinivasulu Reddy, one of the promoters of the company (the erstwhile M/s. Yashavee Securities Ltd.) was introduced to them by one of their common friends. That this Mr. Sivakumar Reddy had come to them seeking for loan in connection with his company's (the erstwhile Yashavee Securities Ltd.) IPO and had assured them of offering certain securities for the loan extended for the said purpose;*
 - c. *That accordingly they had agreed to finance Mr. D V Sivakumar Reddy to the tune of Rs.37,00,000/-, and to secure the repayment of the above sum, it was proposed to them that they subscribe to the*

equity shares for the then upcoming public issue of the company (the erstwhile M/s. Yashasvee Securities Ltd.) and hold the equity shares allotted as security till repayment of the above loan amount. The Noticee in business interest had agreed to the above proposal. Subsequently the above sum of Rs.37,00,000/- was repaid to the Noticee on June 14, 1995 and the Noticee had returned back the securities given for the purpose and the matter had ended there;

- d. That further, even though the said Mr. D V SivaKumar Reddy took the signature of the Noticee's Managing Director on the share application form for allotment of shares in their upcoming public issue of the company (the erstwhile M/s. Yashasvee Securities Ltd.), no share certificates for the allotment of 3,45,100 equity shares of the above said company alleged to have been allotted in the Noticee's name was ever sent to the Noticee. On June 14, 1995, the said loan amount of Rs. 37,00,000/-, which was given by the Noticee by way of subscription to the IPO of the above company, was returned to the Noticee and the said Mr. D V Sivakumar Reddy had got the signature of the Noticee's Managing Director on some blank transfer deeds for the purpose of transferring back the shares allotted to the Noticee in the company's IPO;
- e. that the Noticee presumes that they are the said transfer deeds bearing the date of Presentation under section 108(1A)(a) of the Companies Act, 1956 bearing Presentation date seal of 23.V.95;
- f. That the said Transfer deeds having presentation date of 23.V.95 signed in blank have been misused by the transferees by signing the transfer deeds on January 26, 2012, making one to believe as though the said transfer was done by the Noticee, which in fact was not, as the Noticee did not hold any shares in the company. The execution of the transfer deeds after a gap of nearly 17 years on transfer deeds bearing presentation date 23.V.95 itself shows the suspicious nature of the transfer and the evil designs of the transferees who have colluded with the promoters and the management of the company. It has been submitted that one of the transferees viz. R. Kamala Mohan (folio no. 1417) is on the Board of the company and another transferee Mr. R Mohan (Folio No. 1415) appears to be her husband. Similarly, the Noticee presumes that the other two transferees viz. S Mohan (Folio No.1414) and S. Bridha (Folio No.1416) who are husband and wife should also be related to the promoters of the company and that all the four transferees have colluded along with the said company and put the Noticee in an embarrassing situation;
- g. The Noticee has denied having carried out any transfer of shares and has stated that the same is evident from the fact that the amount of Rs.37,00,000/- extended by them as loan to Mr. D V Sivakumar Reddy by way of subscription to his company's IPO at his request, was returned to the

Noticee on June 14, 1995. A copy of the City Union Bank Ltd., T. Nagar, Madras current account statement of the company (the erstwhile M/s. Yashasvee Securities Ltd.) has been provided by the Noticee in support of its claim;

- h. Further, the Noticee has stated that the share application signed by them for the allotment of shares in the IPO of the company (the erstwhile M/s. Yashashvee Securiteis Ltd.) was only for security arrangement, and not for actual allotment of shares, and that the blank transfer deeds bearing date of presentation as 23.V.95 signed by the Managing Director of the Noticee was handed over to Mr. D V Sivakumar Reddy, which proves that they had no intention of subscribing to the shares of the company, except as a security for the amounts extended as loan to the said D V Sivakumar Reddy, Promoter of the company;*
- i. Further, that if they had held 3,45,100 equity shares of the company, the same would have got reflected in their balance sheet for the year 1995-96, but, it is not so, since in reality they did not hold any shares of the company, as they had got back the entire loan amount. A copy of the audited balance sheet for the financial year 1995-96 has been provided by the Noticee in support of its claim;*
- j. That in the aforesaid circumstances and actual facts explained as above, it has been submitted that the Noticee never held any shares in the company, that the alleged transfer of 1,30,400 equity shares on January 31, 2012 was not done by them, as such, they have not violated Regulation 13(3) read with 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) of Takeover Regulations.*

10. It was noted that the date of presentation on all the four transfer deeds was 23.V.95, but, the transfer deeds were executed on January 26, 2012. As per Section 108 (1A)(a) of the Companies Act, 1956 "a transfer is valid for a period of one year from the presentation date indicated in the stamp affixed by the Registrar of Companies (RoC) on the upper portion of the deed or closure date of Register of Members immediately after the presentation date, whichever is later". Hence, vide e-mail dated May 19, 2014, clarification was sought from CCSL in the matter.

11. CCSL vide their email dated May 28, 2014 enclosed scanned copy of the reverse side of the transfer deed, wherein the same was revalidated by ROC, Chennai on January 24, 2012. CCSL vide the said email further stated that since the transfer deed is considered as valid, if the same is submitted with

the company / Registrar & Transfer Agents (RTA) within a period of one month from the date of revalidation, hence, the deed was considered as valid and the transfer was affected accordingly.

12. Vide letter Ref: EAD/AK/VS/16198/2014 dated June 6, 2014, scanned copy of the reverse side of the transfer deeds received from CCSL, which revealed that the transfer deeds were revalidated by the ROC on January 24, 2012, were forwarded to the Noticee. It was pointed out therein that as per the available records, the Noticee had transferred 1,30,400 shares (3.29% of the paid-up capital of the company) on January 26, 2012, by executing four transfer deeds on January 26, 2012, after the transfer deeds were revalidated by RoC on January 24, 2012, without making any disclosures under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the Takeover Regulations.
13. In response, vide letter dated June 26, 2014, the Noticee *inter alia* made the following additional submissions:
 - a. *That the transfer deeds having the presentation date of May 23, 1995 and signed in blank, have been misused by the transferees to get the transfer deed revalidated by ROC, by misusing the signature signed in blank;*
 - b. *That they did not have any knowledge of the revalidation, that they did not know any of the transferees, nor, did they receive any payment from them. It has been submitted that there is no reason for anyone to execute the transfer deeds on January 26, 2012, with the transfer deed presentation dated as May 23, 1995 and to get them revalidated, unless it is a fraudulent transaction/ motive;*
 - c. *That the amount of Rs.37,00,000/- was repaid much before the allotment of shares, that the share certificates were not issued, that they had no intention of subscribing to the shares of the company, except as a security for the amounts extended as loan to the said Mr. D V Sivakumar Reddy, promoter of the company;*
 - d. *That they have already filed a criminal complaint in Tamil, No. CSR/123/E3X/14 against the promoter and as well as the transferees. A copy of Police complaint filed (including translation done in English) and a copy of CSR issued by the Police Department was provided.*
14. In view of various correspondence had with CCSL and the Noticee after the first hearing, another opportunity of hearing was provided to the Noticee on October 14, 2014 vide hearing notice dated

September 19, 2014. The Noticee vide letter dated October 01, 2014 requested to adjourn the hearing to anyday after October 14, 2014. Accordingly, another date of hearing was provided to the Noticee on October 17, 2014 vide hearing notice dated October 07, 2014. Mr.L R Shivaprasad, Managing Director of the Noticee and Mr Suresh Chandak Authorized Representative (hereinafter referred to as 'ARs') appeared and reiterated the submission made vide letter dated March 17, 2014 and sought to make further submission in the form of Affidavit by November 5, 2014.

15. Vide letter dated November 04, 2014, the Noticee has filed an Affidavit on plain paper signed by the Managing Director of the Noticee. The Managing Director of the Noticee Mr. L R Shivaprasad vide the affidavit on plain paper has reiterated the submissions made by the Noticee vide letters dated March 17, 2014 and June 26, 2014 and submitted that the execution of transfer deeds after a gap of 19 years, even though allowed under law, gives a strong presumption that it had been done fraudulently. It has been stated that if at all the third parties were known to the Noticee, they could have come to the Noticee and taken fresh transfer deed with the present date and done the transfer. It was *inter alia* further prayed in the said affidavit that taking into account all the facts and also the fact that the Noticee is a victim of circumstances as evident from the facts of the case, the adjudication proceedings in the matter may be dropped.

16. Vide email dated March 12, 2015 the Noticee was advised to furnish the following:

- a. Copy of Share Purchase Agreement, Share Subscription Agreement, Loan Agreement etc. entered by the Noticee or its promoters/ directors with the company (the erstwhile Yashasvee Securities Ltd.) or its promoters/directors, if any, highlighting the salient features of such agreement;
- b. In absence of receipt of shares as claimed, the reason for signing on the four transfer deeds as transferor of shares in respect of 30,100 shares, 32,100 shares, 34,100 shares and 34,100 shares held by the Noticee in the company.

17. Vide their letter dated March 17, 2015, the Noticee has *inter alia* submitted as below:

- a. *that there is no share purchase agreement/share subscription agreement, loan agreement etc. entered by the Noticee or its promoters/directors with the company (erstwhile M/s Yashasvee Securities Limited) or its promoters/ directors;*

- b. that the said Mr. D V Sivakumar Reddy, for the loan availed, had given pro notes and cheques as security for the loan amount advanced by the Noticee;*
- c. that even though the said Mr. D V Sivakumar Reddy took the signature of the Managing Director of the Noticee on the share application form for allotment of shares in their public issue of the company (the erstwhile M/s. Yashasvee Securities Limited), no share certificate for the allotment of 3,45,100 equity shares of the company, alleged to have been allotted in the Noticee's name was ever sent to the Noticee.*

18. In support of their claim of extending loan of Rs. 37,00,000/- to the company (the erstwhile M/s. Yashasvee Securities Ltd.), the Noticee vide e-mail dated May 15, 2015 was advised to furnish supporting documents, viz. bank account statement and details of interest paid, if any, by the company to the Noticee. The Noticee vide its reply letter dated May 20, 2015 has stated that the said amount was paid by them through a cheque drawn on State Bank of India, Thousand Lights Branch, Chennai, however, the connected books cannot be traced. As regards the interest portion, the Noticee has stated that interest at the rate of 18% p.a. from the date of the loan till the date of repayment was received by cash. The Noticee was not able to provide the exact date when the amount was given to the company along with documental proof, though bank entry reflecting the repayment made by the company as per the books of the company was produced by the Noticee.

CONSIDERATION OF ISSUES

19. I have carefully perused the written submissions made by the Noticee, the submissions made at the personal hearing and the documents available on record. It is observed that the allegation against the Noticee is that the Noticee has failed to make the relevant disclosure under the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of the Takeovers Regulations.

20. The issues that, therefore, arise for consideration in the present case are:

- a. Whether the Noticee has violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of the Takeovers Regulations due to sale of 1,30,400 shares of the company on January 31, 2012?

- b. Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act?
- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

21. Before moving forward, it will be appropriate to refer to the relevant provisions of the PIT Regulation and the Takeovers Regulations, which reads as under:

PIT Regulations

Continual disclosure

13(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

- (a) the receipts of intimation of allotment of shares, or
- (b) the acquisition or sale of shares or voting rights, as the case may be.

Takeover Regulations

29(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this subregulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.

FINDINGS

22. I now proceed to examine the alleged violations of PIT Regulations and Takeover Regulations by the Noticee. As per the BSE website, I observe that the Noticee was holding 3,45,100 shares amounting to 8.71% of the share capital of the company during quarter ending December 2011, which decreased to 2,14,700 shares amounting to 5.42% of share capital of the company during quarter ending March 2012. The decrease in holding was by 1,30,400 shares amounting to 3.29% of share capital of the company.
23. I note here that the Noticee has *inter alia* stated that no share certificate for the allotment of 3,45,100 equity shares of the company, alleged to have been allotted in the Noticee's name was ever sent to the Noticee. If so be it, in which case, I do not find any reason for the Managing Director of the Noticee to put his signature on four transfer deeds as transferors for sale of 30,100 shares, 32,100 shares, 34,100 shares and 34,100 shares (total of 1,30,400 shares) held by the Noticee in the company. I find from the replies of the Noticee that the Noticee has *inter alia* claimed that Mr. D V Sivakumar Reddy, son of Sri Duvvuru Sinivasulu Reddy, who was one of the promoters of the company and was introduced to the Noticee by one of the Noticee's common friends had approached the Noticee for seeking loan in connection with the company's IPO. Further that he had assured the Noticee of offering certain securities for the loan extended to them for the said purpose. I find that the Noticee has claimed that after mutual discussions, the Noticee agreed to finance to the tune of Rs.37,00,000/-, and to secure the repayment of the above sum had agreed to subscribe to the IPO of the company and hold the equity shares allotted as security till repayment of the above loan amount. The Noticee has stated that the sum of Rs.37,00,000/- was repaid by the company to the Noticee on June 14, 1995 and that the said Mr. D V Sivakumar Reddy had got the signature of the Noticee's Managing Director on some blank transfer deeds for the purpose of transferring back the shares allotted to the Noticee in the company's IPO. Vide the said reply, the Noticee, I find, has stated that they presume that the transfer deeds signed in blank by their Managing Director are the same transfer deeds which CCSL, the Registrar to the company has provided a scanned copy of vide email dated January 11, 2014.

24. I note from the same that the Noticee has admitted that their Managing Director had signed four blank transfer deeds for transferring a total of 1,30,400 shares of the company and handed over the same to the promoter of the company. The Noticee has claimed that the transfer deeds having presentation date of 23.V.95, signed in blank, have been misused by the transferees, who the Noticee claims are the relatives of the promoters. However, from the Noticee's own admission, I find that the Noticee by signing on blank transfer deeds and handing over to the promoter, had given implied authority to the promoter of the company to execute the same as and when the promoter wished to transfer the shares and to whosoever the promoter wished to transfer. Besides, this conduct of the Noticee of going ahead and signing on the blank transfer deeds as transferor of shares, negates the Noticee's claim of not receiving any shares pursuant to allotment in the IPO of the company. In case shares were not received as claimed by the Noticee, there was no reason for the Noticee to sign on blank transfer deeds as transferors. Also, without the underlying share certificates, either in physical or demat form, the transfer could not have been registered in the books of the company. Also, since the date of execution was left blank, the transferee could exercise their right to become a shareholder by getting their name on the register in place of the transferor, as and when they chose to. In the present case, it is noted from the scanned copy of the transfer deeds provided by CCSL that though the date of presentation on all the four transfer deeds was 23.V.95, but, the transfer deeds were executed on January 26, 2012 after getting the transfer deeds revalidated by ROC, Chennai on January 24, 2012. Though the Noticee has submitted that the execution of the transfer deeds bearing presentation date 23.05.95 after a gap of nearly 17 years, itself shows the suspicious nature of the transfer and the evil designs of the transferees viz. R. Kamala Mohan, Mr. R Mohan, S Mohan and S. Bridhawho have colluded with the promoters and the management of the company, for the reasons stated as above, I find that the transfer was done by following the due procedures under law.

25. At this juncture, I would like to rely on the ***Hon'ble SAT judgment in the matter of M/s. Helios and Matheson Information Technology Limited Vs. SEBI bearing Appeal No. 69 of 2011 decided on November 16, 2011***, wherein it was held that:

" It is by now well settled that in the case of transfer of shares held in the physical form, the transfer is complete the moment blank transfer deeds are executed by the sellers and delivered to the purchaser. Reference in this regard be made to a Division Bench judgment of the Madras High Court

in Commissioner of Income-tax vs. M. Ramaswamy (1985) 151 ITR 122 wherein it has been held that as between the transferor and the transferee, the transaction of sale of shares is complete when the blank share transfer forms are executed by the transferor and merely because the company has not recognised the transfer and made entries in the share registers, the transfer cannot be said to be incomplete. The learned Judges of the Madras High Court relied upon a judgment of the Supreme Court in Vasudev Ramchandra Shelat vs. Pranlal Jayanand Thakkar and Ors. AIR 1974 SC 1728 wherein it was held that ownership of shares stood transferred from the assessee to the purchaser upon the execution of blank transfer deeds notwithstanding the fact that the transfer of shares had not been registered in the company's books. It was held that if a transferor has transferred the right to get the share certificates from the company in the name of the transferee, then, as between the transferor and the transferee, the transfer is complete though the transferee cannot exercise his rights as a shareholder vis-a-vis the company until the transfer of shares is recorded in the register of shareholders in the company. In the present case, when the share certificates along with the transfer deeds were executed by the sellers, the deal regarding transfer of the shares as between the sellers and the appellant was complete and the adjudicating officer in our view was in error in holding otherwise."

26. In the given case, I find that the Noticee has admittedly signed the transfer deed as a transferor. This means that the Noticee had signed the transfer deed with the intention of effecting the transfer. No other reasonable construction can be put on this act of the Noticee. And if the Noticee has entrusted such signed transfer deed to the promoter of the company as per Noticee's own admission, I suppose that the Noticee had given the right to the promoter of the company to complete the transfer. However, to be duly executed by the sellers, besides signature of the transferors, payment of stamp duty, date of execution, attestation by witnesses etc. also had to be complied with. I note here that by not entering the date of execution on the transfer deed, the Noticee did not complete the execution process and left it to the transferee to complete the same at an appropriate time. As a practice, the transferor who executes the transfer in blank, confers on the holder of the documents for the time being an authority to fill in the name of the transferee, and each successive holder for the time being, as and when the documents pass through several hands, it passes on this authority. Thus, prima facie based on the facts before me, I do not see any mis-use of the transfer deeds by the transferees as claimed by the Noticee.

27. Thus, in the given case, I note that the Noticee by signing the transfer deed as a transferor, but, not entering the date of execution, had kept the execution process open at the hands of the transferees to complete the same as and when they desired. I find from record that the transferees after getting the transfer deed revalidated by RoC on January 24, 2012, have executed each of the 4 transfer deeds for 30,100 shares, 32,100 shares, 34,100 shares and 34,100 shares on January 26, 2012.
28. I note that as per regulation 13(3) of the PIT Regulations, any person who holds more than 5% shares or voting rights in any listed company is required to disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made and such change exceeds 2% of total shareholding or voting rights in the company. In the case in hand, the Noticee was holding 3,45,100 shares amounting to 8.71% of the share capital of the company during quarter ending December 2011, which decreased to 2,14,700 shares i.e. 5.42% of share capital during quarter ending March 2012, thus, the decrease in holding was by 1,30,400 shares i.e. 3.29% of share capital of the company. Hence the Noticee was required to disclose under Regulation 13(3) read with Regulation 13(5) of PIT Regulations to the company, the change in share holding within two working days from the sale of shares or voting rights. However, the Noticee failed to disclose the same.
29. Similarly, as per regulation 29(2) of the Takeover regulation, any person, who together with persons acting in concert, holds shares or voting rights entitling him to five per cent or more of the shares or voting rights in the target company, is required to disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holding from the last disclosure made and such change exceeds two per cent of total shareholding or voting rights in the target company. Hence the Noticee was also required to disclose to the company and to the stock exchange where the shares of the company were listed, the change in share holding within two working days from the purchase/sale of shares or voting rights under Regulation 29(2) read with 29(3) of the Takeover Regulations, however, the Noticee failed to disclose the same.

30. I note further from the shareholding patterns available on the BSE website that as on quarter ended June 2006, the Noticee's shareholding was 3,65,200 shares amounting to 9.22% of the share capital of the company and continued to be the same till quarter ended June 2009. At quarter ended September 2009, the Noticee's shareholding reduced to 3,64,300 shares amounting to 9.20% of the share capital and continued as such till quarter ended March 2010. Again at quarter ended June 2010, the Noticee's shareholding reduced to 3,45,100 shares amounting to 8.71% of the share capital and continued as such till quarter ended December 2011. Once again at quarter ended March 2012, the shareholding reduced to 2,14,700 shares amounting to 5.42% of the share capital. Thus, I note that there are changes in the shareholding of the Noticee on three occasions from the quarter ending June 2006 to quarter ending March 2012. Since the holding of the Noticee in the company and the changes thereto were available in the public domain on BSE website, I do not find merit in the Noticee's submission that it was not aware of the fact that the shares were allotted to them.

31. In view of all of the above, it stands established that the Noticee has violated Regulation 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the Takeover Regulations. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. 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..."*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "Once it is established that the mandatory provisions of takeover code was violated the penalty must follow."

32. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act, which reads as under:

15A(b).Penalty for failure to furnish information, return, etc.-

To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

33. While determining the quantum of penalty under Section 15A (b) of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

“15J - Factors to be taken into account by the adjudicating officer

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.”

34. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. The disclosures under Regulation 13 of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade and thereby serving as a deterrent. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover Regulations and PIT Regulations is investor protection.

35. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. From records, I do not find the default to be of repetitive nature.

36. I find that the Noticee has violated Regulation 13(3) read with Regulation 13(5) of the PIT Regulations on 1 occasion and Regulation 29(2) read with 29(3) of the Takeover Regulations on 1 occasion.

37. I find that any transaction which requires compliance of the Takeover and/ or PIT Regulations, if not complied, cannot be considered a mere "technical" violation, since other shareholders/ investors are deprived of the information. In this regard, I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that: *"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market"*.

ORDER

38. After taking into consideration all the facts and circumstances of the case, I impose the following penalty against the Noticee under Regulation 15 A(b) of the SEBI Act for the violation of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, 1992 and Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011, as applicable:

Sr. No.	Noticee	Regulation violated	Penalty Amount
1	M/s. G-Tech Stone Ltd.	Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, 1992	Rs.3,00,000/- (Rupees ThreeLakh only)
		Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011	

39. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

40. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Chief General Manager, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
41. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: September 24, 2015
Place: Mumbai

Anita Kenkare
Adjudicating Officer