

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. AK/AO- 16-17/2014]**

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**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

**K. Radhakrishna Reddy** (PAN: AITPR0554K)

**K. Navaneethamma** (PAN: AQLPK5358E)

In the matter of ERP Soft System Limited

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigation in trading in the scrip of M/s. ERP Soft System Limited (hereinafter referred to as '**company**') and observed certain off-market transaction between the promoters of the company, which required them to make necessary disclosures under 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**'). The shares of the Company at the relevant point of time were listed on Bombay Stock Exchange Ltd (hereinafter referred to as '**BSE**').
2. Investigation *inter alia* observed that Shri K. Radhakrishna Reddy and Ms. K Navaneethamma, promoters of the company and hereinafter collectively referred to as the '**Noticees**', bought/ sold shares among themselves in the off-market transactions, details of which are given below:

Date of Transaction	Transferor			Shares transferred	Transferee		
	Name	Pre-transfer holding	Post-transfer holding		Name	Pre-transfer holding	Post-transfer holding
28/09/2012	K Radhakrishna	1,00,000 (2.53%)	Nil	1,00,000 (2.53%)	K Navaneethamma	1,00,000 (2.53%)	2,00,000 (5.05%)

3. From the above it was observed that that vide transaction dated September 28, 2012, Shri K Radhakrishna Reddy transferred 1,00,000 shares (amounting to 2.53% of the share capital of the company) to Ms. K Navaneethamma in off-market transaction as a result of which her shareholding In the company increased from 2.53% to 5.05% and shareholding of Shri K Radhakrishna Reddy reduced to nil. It was observed that Noticees had not made the necessary disclosures as required under PIT and/ or Takeover Regulations. Consequently, Shri K Radhakrishna Reddy was alleged to have violated Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations and Ms. K Navneethamma was alleged to have violated Regulation 13(1) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(1) read with 29(3) of the Takeover Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as Adjudicating Officer vide order dated August 07, 2013 under Section 15 I 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 and Takeover Regulations.

#### **SHOW CAUSE NOTICE, HEARING AND REPLY**

5. Show Cause Notice No. EAD-6/AK/VS/25009/2013 and EAD-6/AK/VS/25008/2013 dated September 30, 2013 (hereinafter referred to as '**SCN**') was issued to the Noticees 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. The said SCN was delivered and acknowledged by the Noticees. The Noticees made the following submissions:

**Submission of K Radhakrishna Reddy and K Navaneethamma vide letter dated October 11, 2013:**

- a. *That they were not aware of the disclosures to be made for transfer of shares between wife and husband without any consideration;*
  - b. *That after receiving SEBI's notice they came to know that they had to make a disclosure to the Stock Exchange and the company and the same were not furnished as per SEBI Regulations/Guidelines;*
  - c. *That the said transfer of 1,00,000 shares was made to his wife Ms. K. Navaneethamma, who is the legal Nominee of such shares, and where no consideration was involved as the transaction took place between him and his wife and no third party was involved;*
  - d. *That they had both crossed the age of 70 years and to avoid future complications only the transfer was done;*
  - e. *That it was an honest omission out of ignorance, but, not deliberate violation or non-compliance of SEBI Regulations/ guidelines and that they had not made any profit in the transaction or caused loss to anyone.*
6. In the interest of natural justice an opportunity of hearing was provided to the Noticees on November 20, 2013 vide hearing notice dated October 18, 2013. Mr. Sarveswar Reddy, Authorized Representative (AR) appeared on behalf of the Noticees and submitted that the shares transferred between Shri K. Radhakrishna Reddy and Ms. K. Navaneethamma was to avoid future complications as both were over 70 years of age and the said transfer was without any consideration. During the hearing, AR produced a gift deed executed between the Noticees wherein the Donor i.e. Shri K Radhakrishna Reddy out of his natural love and affection and also out of his free will, transferred and conveyed 1,00,000 equity shares free from all

encumbrances to his wife, Ms. K Navneethamma, the Donee. AR also submitted that the demat account is registered in Noticees own individual names, respectively, as they did not have joint accounts. Documents showing that Shri K. Radhakrishna Reddy and Ms. K Navneethamma were single holder of their demat accounts were sought from AR and time till November 25, 2013 was given to submit the same. However, no such evidence was provided.

### **CONSIDERATION OF ISSUES AND FINDINGS**

7. I have carefully examined the documents available on record. The allegations against the Noticees are as follows:
  - Noticees did not disclose to the stock exchanges and/or to the company of their buy/sell of the share of the company as required under the PIT and Takeover Regulations.
8. In view of the above, it was alleged that Shri K. Radhakrishna Reddy has violated Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations and Ms. K. Navneethamma has violated Regulation 13(1) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(1) read with 29(3) of Takeover Regulations.
9. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 13(1), 13(4A) read with Regulation 13(5) of the PIT Regulations and Regulation 29(1) read with 29(3) of Takeover Regulations, which reads as under:

#### **Regulation 13(1), 13(4A) read with Regulation 13(5) of the PIT Regulations:**

**13(1).** *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:*

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

**13(4A).** *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

**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.*

#### **Regulation 29(1) read with 29(3) of Takeover Regulations**

**29(1).** *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such 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.*

10. The issues that arise for consideration in the present case are:

- a. Whether Shri K. Radhakrishna Reddy has informed about the change in his shareholding to the company and to the stock exchange as required under Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations?
- b. Whether Ms. K. Navneethamma has informed about the change in their shareholding to the company and/ or stock exchange, as applicable, as required under Regulation 13(1) and 13(4A) read with Regulation 13(5) of PIT Regulations; and to the company and stock exchange as required under Regulation 29(1) read with 29(3) of Takeover Regulations?
- c. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b) of SEBI Act?
- d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

**FINDINGS:**

11. I now proceed with the alleged violations of PIT and Takeover Regulations.

- i. It is observed that that vide transaction dated September 28, 2012, Shri K. Radhakrishna Reddy transferred 1,00,000 shares (amounting to 2.53% of the share capital of the company) to Ms. K Navaneethamma in off-market transaction, as a result of which her shareholding In the company increased from 2.53% to 5.05% and shareholding of Ms. K Radhakrishna Reddy reduced to nil. Hence, Shri K. Radhakrishna Reddy was required to make necessary disclosures to the company and stock exchange as required under Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations. Ms. K Navneethamma was required to make necessary disclosures to the company under Regulation 13(1) of PIT Regulations, to the company and stock exchange under 13(4A) read with

Regulation 13(5) of PIT Regulations and to the company and the stock exchange under Regulation 29(1) read with 29(3) of the Takeover Regulations.

- ii. I find that Shri K. Radhakrishna Reddy has filed reply for himself and on behalf of Ms. K. Navaneethamma and submitted that the transfer of 1,00,000 shares was made to his wife K. Navaneethamma, who is the legal Nominee of such shares, and no consideration was involved as the transaction was between husband and wife. He has further submitted that he was not aware of the disclosures to be made for transfer of shares between husband and wife. He also submitted one gift deed which states that Shri K. Radhakrishna Reddy has out of his natural love and affection and also out of his free will, transferred 1,00,000 shares, free from all encumbrances, to his wife Ms. K. Navaneethamma. However, I note that the said gift deed is neither notarized, nor dated, and thus, cannot be considered as evidence for the purpose of proving innocence. In *Mrs Vandana Devi Heda vs Indian Oil Corporation*, Chattisgarh High Court on 5 September, 2011 held that:

*"Admittedly, the petitioner applied for RGGLV on 22-11-2010 along with certain documents. Subsequently, the details of land bearing khasra No.213/18 were supplied. The said land was in the name of mother-in-law of the petitioner. One upharnama dated 12-2-2010 has been filed by the respondent from which it appears that the land bearing khasra No.213/18 has been gifted by the mother-in-law of the petitioner to the petitioner, which was not duly notarised document, according to Shri Shukla. Since the upharnama was not duly notarised, it cannot be said that the upharnama was genuine."*

Thus, since gift deed submitted by Shri K Radhakrishna Reddy and Ms. K. Navaneethamma is not notarized, it cannot be considered as a genuine document.

- iii. I note that the object of the PIT and Takeover Regulations mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and to protect their interests. I further note that SEBI PIT and Takeover Regulations does not exempt transfers between family members, not involving payment of consideration, from making disclosures under the said Regulations. Thus, I conclude that Shri K. Radhakrishna Reddy and Ms. K. Navaneethamma were required to make necessary disclosure under the PIT and Takeover Regulations.
12. I find that the Noticees have admitted that the non-compliance of the concerned regulations was an honest omission out of ignorance. In view of the above, I conclude that Shri K Radhakrishna Reddy has violated Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations and Ms. K Navneethamma has violated Regulation 13(1) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(1) read with 29(3) of the Takeover Regulations.
13. 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..."*
14. 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."
15. 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.*

16. 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.”*

17. 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 the SEBI Act and stated as above. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who are 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 main objective of the PIT Regulation in respect of the disclosure norms is to bring about the transparency in the market

and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. 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 decisions. Besides, continual disclosure under PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. Thus, the cornerstone of both - the Takeover Regulations and PIT Regulations is investor protection.

18. 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. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticees. Further from the records, I do not find the default to be repetitive.
19. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on BSE, where the shares were listed, during the relevant period; c) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of the Takeover Regulations and/ or PIT Regulations.
20. I find that the market capitalization of the company during the said period was about Rs. 25 crore. I further note from the BSE website that there were about 255

shareholders in public shareholding category holding approx. 19,39,300 shares representing approx. 48.97% of total paid-up capital of the Company for the quarter ended September 2012. I find that the shares of the company were infrequently traded on BSE during the period. I further find that Shri K Radhakrishna Reddy has violated Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations on 1 occasion and Ms. K Navneethamma has violated Regulation 13(1) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(1) read with 29(3) of the Takeover Regulations on 1 occasion each respectively. It is not under dispute that the Noticees have failed to make the relevant disclosure under Takeover and PIT Regulations.

21. I find that the Noticees have *inter alia* claimed that the violation was an honest omission out of ignorance. However, 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 were 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**

22. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 3,00,000 (Rupees Three Lakh only) under Section 15A (b) of SEBI Act, jointly and severally on the Noticees which will be commensurate with the violations committed by them.

23. 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 Shri. K. Sarvanan, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
24. 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: **February 26, 2014**

Place: **Mumbai**

**Anita Kenkare**

**Adjudicating Officer**