

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 165 & 166/2013]

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
Shri D.S. Reddy (PAN: Not Available)
Ms. D. Sarojanamma (PAN: AAVPS7320N)

In the matter of
M/s. ERP Soft System Limited

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**').
2. Investigation observed that Shri D.S. Reddy and Ms. D. Sarojanamma, both 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
19/06/2012	Shri D S Reddy	1,50,000 (3.79%)	Nil	1,50,000 (3.79%)	Ms D Sarojanamma	2,00,000 (5.05%)	3,50,000 (8.84%)

3. From the above it was observed that that vide transaction date June 19, 2012, Shri D.S. Reddy sold 1,50,000 shares (amounting to 3.79% of the share capital of the company) to Ms. D. Sarojanamma in the off-market transaction as a result of which her shareholding in the company increased from 5.05% to 8.84% and shareholding of Shri D.S. Reddy reduced to nil. It was observed that Noticees had not made necessary disclosures as required under PIT and/or Takeover Regulations. Consequently, Shri D.S. Reddy was alleged to have violated Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations and Ms. D Sarojanamma was alleged to have violated Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) of 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 under Section 15A(b) of the SEBI Act, the alleged violations of PIT and Takeover Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No. EAD-6/AK/VS/25006/2013 and EAD-6/AK/VS/25004/2013 dated September 30, 2013 (hereinafter referred to as '**SCN**') were 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. Ms. D Sarojanamma Vide letter dated October 07, 2013 made following submissions:

- a. *That during the period March 2012- June 2012, she received by way of operation of law, 1,50,000 shares from her late husband Shri D.S. Reddy;*
- b. *That she had not purchased the said shares and that it was only an internal transfer by way of operation of law, since her husband had expired on November 11, 2011, and, she being the legal nominee, the shares were transferred in her name/ account. The same numbers of shares were reflected in shareholding pattern for the quarter ended June, 2012;*
- c. *That she is 80 years old and was not aware of the provisions under which the disclosures are required to be made to the company and Stock Exchanges, as such, it was an unintentional mistake on her part, as the shares came to her account through operation of law.*

She provided a copy of her husband's death certificate along with the said letter.

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. Shri Sarveswar Reddy, Authorized Representative (AR) appeared on behalf of the Noticees and reiterated that the transfer between Shri D.S. Reddy and Ms. D. Sarojanamma was by way of transmission/operation of law, which happened due to death of Shri D.S. Reddy. AR submitted another copy of the death certificate of Shri D.S. Reddy.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the written submissions wherever submitted by the Noticees, the facts put forth during the hearing and 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 PIT and/ or the Takeover Regulations.

8. In view of the above it was alleged that Shri D.S. Reddy has violated Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations and Ms. D. Sarojanamma has violated Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) of Takeover Regulations.
9. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 13(3), 13(4A) read with Regulation 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of Takeover Regulations, which reads as under:

Regulation 13(3), 13(4A) read with Regulation 13(5) of the PIT Regulations:

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(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(2) read with 29(3) of 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.

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

- a. Whether Shri D.S. Reddy was required to disclose the change in their 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. D. Sarojanamma was required to disclose the change in shareholding to the company and stock exchange as required under Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations, and to the company and the stock exchange as required under Regulation 29(2) read with 29(3) of Takeover Regulations?

- c. If so, whether Shri D.S. Reddy has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations and whether Ms. D. Sarojanamma has violated the provisions of Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) of Takeover Regulations?
- d. Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15A (b) of SEBI Act?
- e. 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 was observed that that vide transaction dated June 19, 2012, Shri D.S. Reddy transferred 1,50,000 shares (amounting to 3.79% of the share capital of the company) to Ms. D. Sarojanamma in off-market transaction, as a result of which her shareholding in the company increased from 5.05% to 8.84%, and, shareholding of Shri D.S. Reddy reduced to nil. Hence, Shri D.S. 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 and Ms. D. Sarojanamma was required to make necessary disclosure to the company and to the stock exchange under Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations and to the company and the stock exchange under Regulation 29(2) read with 29(3) of Takeover Regulations. Ms. D. Sarojanamma in her reply to the SCN has submitted that she received 1,50,000 shares by way of operation of law from her late husband Shri D.S. Reddy. She also submitted the death certificate of her late husband. **I, therefore, note that the SCN EAD-6/AK/VS/25006/2013 dated September 30, 2013 issued to Shri D.S. Reddy becomes infructuous and adjudication proceeding cannot be proceeded with.**

- ii. I note from the submission of Ms. D. Sarojanamma that she had received shares from her late husband by operation of law. I, however, find that there is no exemption available under the PIT and Takeover Regulations from making the relevant disclosures under the applicable provisions of the said Regulations. Ms. D. Sarojanamma, I find has admitted to have contravened the applicable SEBI Regulations unintentionally. Thus, by not making the requisite disclosures Ms. D. Sarojanamma has violated the relevant provisions of PIT and Takeover Regulations.
12. In view of the above I find that Ms. D. Sarojanamma has contravened Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) of Takeover Regulations. I, thus, note that Ms. D. Sarojanamma had a responsibility in ensuring compliance to disclosure norms under the provisions of PIT Regulations and Takeover Regulations, as applicable. However, I find that the shares were transmitted to her from her late husband by way of operation of law. I further find that the Companies Act distinguishes transmission of shares from transfer of shares. Execution of transfer deed is not required in case of transmission of shares. Further, while transfer of shares relates to a voluntary act on the part of the shareholder, transmission is brought about by the operation of law. Taking the same into consideration, I am inclined to take a lenient view in the matter and thus conclude that transmission of shares, sans any voluntary act on the part of the promoter, is not a fit case for imposition of monetary penalty under Section 15A(b) and 15J of the SEBI Act and that Ms. D. Sarojanamma is exonerated from the charges leveled as per the SCN.
13. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee Ms. D. Sarojanamma and also to the Securities and Exchange Board of India.

Date: **November 29, 2013**

Place: **Mumbai**

ANITA KENKARE
ADJUDICATING OFFICER