

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-5/SVKM/AO/49-57/2017-18]

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 AND UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956, READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005, IN THE MATTER OF SUNGOLD CAPITAL LIMITED.

In respect of

Sr. No.	Name of entity	PAN	Address	Order No.
1	Sungold Capital Limited	AAJCS0998M	House no. 7/13 Opp White Tower, Station Road, Nandod, Rajpipla Narmada – 393145	EAD-5/SVKM/AO/49-50/2017-18
2	Shri Rajiv R Kotia	AEJPK0374C	2/B, State Bank Staff Colony, Near Navrang School, Naranpura, Ahmedabad – 380013	EAD-5/SVKM/AO/51-53/2017-18
3	Shri Ashok Modi	ACAPM5833H	A/10, Terrace Apartment, Near Commerce Six Road, Navrangpura, Ahmedabad – 380007	EAD-5/SVKM/AO/54-55/2017-18
4	Shri Sharad Gandhi	ADBPH9278J	3 Alankar Building, Darbar Road, Rajpipla, Gujarat - 393145	EAD-5/SVKM/AO/56-57/2017-18

**BACKGROUND**

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted investigation into the irregular trading activities of certain entities in the scrip of Sungold

Capital Limited (*hereinafter referred to as “The Company/Noticee 1”*). It was alleged that, the Company had filed false and misleading disclosures regarding shareholding pattern of promoter group to the stock exchange. The shareholding of the ‘promoter group’ was wrongly shown as ‘public holding’ from the quarter ending March 2008 onwards. It was also alleged that the Company had filed wrong shareholding of Shri Ravi Rajiv Kotia Son of Rajiv R Kotia, Promoter, Chairman & Managing Director (**CMD**) of Sungold Capital Limited, (noticee no. 2) for quarter ending June, 2009. All the aforesaid acts are in alleged violation of provisions of Section 21 of Securities Contracts (Regulation) Act, 1956 (*hereinafter referred to as ‘SCRA’*) read with Clause 35 of Listing Agreement and Regulation 3 (a) to (d), 4 (1), 4 (2) (f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating Securities Market) Regulations, 2003 (*hereinafter referred to as ‘PFUTP Regulations’*) by Sungold Capital Limited and its executive Directors namely Shri Rajiv R Kotia, Shri Ashok Modi and Shri Sharad Gandhi (*hereinafter referred to individually as ‘Noticee no. 1 to 4’ and collectively as “Noticees”*).

2. Further, noticee no. 2 i.e. Shri Rajiv R Kotia, Promoter, Chairman & Managing Director of Sungold Capital Limited allegedly failed to disclose to the Company and to the stock exchange, the change in the shareholding of his dependents namely Ravi Rajiv Kotia (son) and Seema Rajiv Kotia (wife) during the quarter ending June 2009 in violation of the provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as ‘PIT Regulations’*).

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned was appointed as Adjudicating Officer (**AO**) vide Proceedings dated June 30, 2015 to inquire into and adjudge under Section 23E of SCRA, 1956, Section 15HA of Securities and Exchange Board of India Act, 1992, (*hereinafter referred to as ‘SEBI Act’*) and Section 15A (b) of SEBI Act, 1992, the aforesaid alleged violations by the noticees.

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

4. Show Cause Notice dated September 30, 2015 (*hereinafter referred to as "SCN"*) was issued to the noticees in terms of Rule 4 of Securities Contracts (Regulation) (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 (*hereinafter referred to as 'SCR Adjudication Rules'*) read with Section 23I of SCRA, 1956 and under Rule 4 of SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as 'SEBI Adjudication Rules'*) read with Section 15I of SEBI Act, 1992, to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 23E of SCRA, 1956 and Section 15HA of SEBI Act, 1992, for the aforesaid alleged contravention of the provisions of Section 21 of SCRA read with Clause 35 of Listing Agreement and Regulation 3 (a) to (d), 4 (1), 4 (2) (f) of SEBI (PFUTP) Regulations, 2003 by Sungold Capital Limited and its executive Directors namely Shri Rajiv R Kotia, Shri Ashok Modi and Shri Sharad Gandhi. Further under Section 15A (b) of SEBI Act, 1992, for contravention of the provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 by Shri Rajiv R Kotia noticee no. 2 herein.
5. No replies to SCN was submitted by noticee 1, 2 and 4. Vide letter dated October 20, 2015 noticee no. 3, Shri Ashok Modi, submitted reply to SCN. Relevant portion of the said reply of Shri Ashok Modi is reproduced hereunder:-
- *During the tenure of my directorship in the company, all the compliances of law and listing agreement and all day to day affaires of the company were managed by Mr. Rajiv R. Kotia. At all the time during my tenure as directorship Compliance was never being area of my work.*
  - *For the change in shareholding of dependents of Shri Rajiv R. Kotia MD of the Company, it is their responsibility to disclose the same to the Company and Stock Exchange.*
  - *I am not educated and also do not understand the statutory compliances. Other directors and company secretary are responsible for all compliances and they failed to disclose to the Company and Stock Exchanges.*

6. Noticees were granted opportunity of personal hearing. Shri Rajiv R Kotia, CMD of Sungold Capital Limited appeared in person for himself on February 17, 2016 and also on behalf of Shri Sharad Gandhi & Sungold Capital Limited on February 18, 2016 & March 08, 2016 respectively and made the following submissions:-

**Submissions on behalf of Sungold Capital Limited i.e. noticee no. 1 herein.**

- With regard to the allegation of wrong classification of shareholding of 'Promoter Group' it was submitted that Mr. Rajiv R Kotia is only promoter of the Company and others are not promoters. Smt. Seema Rajiv Kotia is his wife and Shri Ravi Rajiv Kotia is his son but due to estranged relationship they are living separately. Hence, shown as 'public category'.
- Shri Dhaval Ramesh Kotia and Smt. Shweta Dhaval Kotia are the step brother & wife of the step brother of the Managing Director and Smt. Shilpa Amit Kotia is the wife of the brother of Managing Director. With them also he does not share good relationship hence, they are also shown as in 'public category'.
- For the allegation of wrong disclosure of shareholding of Shri Ravi Rajiv Kotia it was submitted that Ravi Rajiv Kotia had 90,000 shares in physical form and 8,400 shares in Demat form, the total being 98,400 shares. On 29.06.2009 he lodged 90,000 shares for dematerialization. After Dematerialization, his holding of shares were shown as 90,000 ignoring the 8,400 shares already in demat form, from the quarter ended June 30, 2009. This continued in the quarter ended September 30, 2009 also. However the same was rectified by the RTA in the quarter ended December 2009.

**Submissions made on behalf of Shri Rajiv R Kotia Noticee no. 2:-**

- On the charge of the filing of false and misleading disclosures regarding shareholding pattern of 'promoter group' to the stock exchange, it was admitted that

entities mentioned at para 5 of the SCN are his relatives including son & wife. On the allegation of their shareholding being shown in the public shareholding category, it was submitted that there was family disputes due to which he lives separately from his wife & son. Accordingly they were not shown in the promoter group. However, it was admitted that they are not judicially separated.

- It was further submitted that all the relatives mentioned in the para 5 of the SCN were not shown as promoters in the IPO of the company in the year 1995. Copy of the Offer Documents will be submitted.
- As regards the allegation of wrongly showing the shareholding of Ravi Rajiv Kotia for the quarter ended June 2009, it was submitted that there was some correspondence between RTA, Company and the stock exchange and copies of the same will be submitted.
- As regards the allegations of failure to disclose the change in shareholding of his dependents namely Ravi Rajiv Kotia (son) & Seema Rajiv Kotia (wife) during quarter ended in 2009 to the stock exchange, it was submitted that he was not aware of their trading on the dates mentioned in para 9 of SCN as they have not informed him or the company.
- Hence, the company could not inform the stock exchange. Further as already submitted due to family disputes their trades were not shown to him.

**Submissions made on behalf of Shri Sharad Gandhi i.e. noticee no. 4 herein.**

- As regards the allegation that the promoter's relatives shareholding were shown under the "public category" as alleged in para 6 of SCN and for incorrect reporting of shareholding of Shri Ravi Rajiv Kotia, it was submitted that Shri Sharad Gandhi was a Director of the company from 1995 to 2015. He retired from the directorship

of the company due to his old age. He is not aware of the legal provisions regarding regulatory requirements of SEBI. He does not have any control over the day to day conduct of the company.

7. Noticee no. 3, Shri Ashok Modi appeared in person on January 13, 2016 and reiterating the contents of his reply dated October 20, 2015, he further submitted that he was working in a petrol pump in Ahmedabad which was adjacent to automobile shop belonging to Shri Rajiv Kotia, promoter of Sungold Capital Limited and because of his acquaintance with him he had agreed to become Director of Sungold Capital Limited. He is one of the promoter Directors of the company and holds 13,36,200 shares. As regards the allegation of submitting false information to the Stock Exchanges in respect of Promoter holdings in the company since quarter ending March 2008, noticee submitted that he was not aware of the same. Further he stated he is not aware of the wrong shareholding reported to Stock Exchanges in respect of Ravi Rajiv Kotia for the quarter ending June 2009.
8. Vide letter dated April 26, 2017, noticees were given another opportunity of making additional written submissions, if any. Vide separate letters dated 02.05.2017, 10.05.2017 & 11.05.2017 noticees filed responses to the said letter dated April 26, 2017. But no new additional submissions on merits were made by the noticees.

### **ISSUES FOR CONSIDERATION & FINDINGS**

9. I have carefully perused the replies and submissions of the noticees and the documents available on record. The issues that arise for consideration in the present case are:
  - 1) Whether the noticees have violated provisions of Section 21 of SCRA, 1956, read with Clause 35 of Listing Agreement and Regulation 3 (a) to (d), 4 (1), 4 (2) (f) of SEBI (PFUTP) Regulations, 2003 by wrongly showing the shareholding of the 'promoter group' as 'public holding' from the quarter ending March 2008 onwards and for filing of wrong shareholding of Shri Ravi Rajiv Kotia (Son of Rajiv R Kotia, CMD of Sungold Capital Limited), for quarter ending June, 2009?

- 2) Whether noticee no. 2 Shri Rajiv R Kotia, CMD of Sungold Capital Limited violated provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 for failure to disclose to the Company and to the stock exchange, the change in the shareholding of his dependents i.e, Ravi Rajiv Kotia (son) and Seema Rajiv Kotia (wife) during the quarter ending June 2009?
  - 3) Whether the noticees are liable for monetary penalty under Section 23E of SCRA, 1956 and Section 15HA of SEBI Act, 1992?
  - 4) Whether the noticee 2, Shri Rajiv R Kotia CMD of Sungold Capital Limited is liable for monetary penalty under Section 15A (b) of SEBI Act, 1992?
  - 5) If yes, then what should be the quantum of monetary penalty?
10. It is pertinent to refer to the relevant provisions of SCRA, Listing Agreement, PFUTP Regulations and PIT Regulations, which reads as under:-

**Section 21 in The Securities Contracts (Regulation) Act, 1956**

*Conditions for listing.* — “Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”

**Clause 35 of Listing Agreement**

*“The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-*

- a. *One day prior to listing of its securities on the stock exchanges.*
- b. *On a quarterly basis, within 21 days from the end of each quarter.*
- c. *Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital”*

**Regulation 3 (a) to (d), 4 (1), 4 (2) (f) of SEBI (PFUTP) Regulations, 2003**

***Regulation 3:- Prohibition of certain dealings in securities.***

*No person shall directly or indirectly—*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

***Regulation 4:- Prohibition of manipulative, fraudulent and unfair trade practices***

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
  - (a) .....*
  - (b) .....*
  - (c) .....*
  - (d) .....*
  - (e) .....*



- (f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

**Regulation 13 (4) & (5) of SEBI (PIT) Regulations, 1992**

***Regulation 13:- Disclosure of interest or holding in listed companies by certain persons - Continual disclosure.***

*(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.*

*(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.*

11. On perusal of the material available on record and having regard to the submissions made by the noticees, I record my findings hereunder.

***ISSUE 1: Whether the noticees have violated provisions of Section 21 of SCRA, 1956, read with Clause 35 of Listing Agreement and Regulation 3 (a) to (d), 4 (1), 4 (2) (f) of SEBI (PFUTP) Regulations, 2003 by wrongly showing the shareholding of the 'promoter group' as 'public holding' from the quarter ending March 2008 onwards and for filing of wrong shareholding of Shri Ravi Rajiv Kotia (Son of Rajiv R Kotia, CMD of Sungold Capital Limited), for quarter ending June, 2009?***

12. Shri Rajiv R Kotia is the Promoter, Chairman & Managing Director of Sungold Capital Limited. As per the KYCs of Demat Account opening forms Ravi Rajiv Kotia is son of Rajiv R Kotia, Seema Rajiv Kotia is wife of Rajiv R Kotia, Dhaval Ramesh Kotia is brother of Rajiv R Kotia, Shweta Dhaval Kotia, wife of Dhaval Ramesh Kotia, is sister-in-law of Rajiv R Kotia and Shilpa Amit Kotia, wife of Amit Ramesh Kotia, is sister-in-law of Rajiv R Kotia and the same is not disputed.
13. The aforesaid entities are closely related to the Promoter & CMD of Sungold Capital Limited (noticee no. 2) as above and accordingly form part of the promoter group of the Company. As per Shareholding pattern filed by the Company to BSE, these entities were holding shares of the company as shown in the table below.

Sr. No.	Name of the Entity	Shareholding % Quarter ending on						
		Mar-08	Jun-08	Sep-08	Dec-08	Mar-09	Jun-09	Sep-09
1	Shilpa Amit Kotia	4.74	4.74	4.74	4.74	4.74	4.04	4.04
2	Dhaval Ramesh Kotia	4.6	4.6	4.6	4.6	4.6	4.5	4.34
3	Shweta Dhaval Kotia	4.4	4.4	4.4	4.4	4.4	1.63	1.63
4	Ravi Rajiv Kotia		4.58	4.58	4.58	4.58	1.47	1.47
5	Seema Rajiv Kotia		4.07	4.07	4.07	4.23	1.94	1.94
	<b>TOTAL</b>	<b>13.74</b>	<b>22.39</b>	<b>22.39</b>	<b>22.39</b>	<b>22.55</b>	<b>13.58</b>	<b>13.42</b>

14. It is submitted by Shri Rajiv R Kotia, CMD of Sungold Capital Limited that Smt. Seema Rajiv Kotia is his wife and Shri Ravi Rajiv Kotia is his son but due to estranged relationship they are living separately. Further, Shri Dhaval Ramesh Kotia and Smt. Shweta Dhaval Kotia are his step brother & wife of the step brother and Smt. Shilpa Amit Kotia is the wife of his brother. He does not share good relationship with them. Hence, they are shown as in 'public category'. It was further submitted that all the relatives mentioned above were also not shown as promoters in the IPO of the company in the year 1995.
15. Further, for allegation of wrong disclosure of shareholding of Shri Ravi Rajiv Kotia it was submitted that Ravi Rajiv Kotia had 90,000 shares in physical form and 8,400 shares in Demat form, the total being 98,400 shares. On 29.06.2009 he lodged 90,000 shares for dematerialization. After Dematerialization, his holding of shares were shown as 90,000

ignoring the 8,400 shares from the quarter ended June 30, 2009. This continued in the quarter ended September 30, 2009 also. However the same was rectified by the RTA in the quarter ended December 2009.

16. As per Regulation 2 (zb) of (Issue of Capital and Disclosure Requirements) Regulations, 2009 (*hereinafter referred to as 'ICDR Regulations'*) "promoter group" includes an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse).
17. Considering the above definition of 'promoter group' in terms of ICDR Regulations, the Company should have included in the promoter group category Smt. Seema Rajiv Kotia (wife of promoter), Shri Ravi Rajiv Kotia (son of promoter). However, Shri Dhaval Ramesh Kotia (Step-brother of promoter) Smt. Shweta Dhaval Kotia and Shilpa Amit Kotia (sister-in-law of promoter) cannot be considered as belonging to the promoter group in terms of Regulation 2 (zb) of ICDR Regulations, 2009 and being regard to the fact that they were not shown as Promoters in the IPO also. But that does not hold good for other immediate relatives like Son and Wife of Promoter.
18. Therefore, I consider that even though these entities namely Smt. Seema Rajiv Kotia and Shri Ravi Rajiv Kotia wife and Son of the Promoter & CMD, were part of the promoter group, in terms of Regulation 2 (zb) of ICDR Regulations, 2009, the Company classified them under the category 'public shareholding' with more than 1%' in the quarterly shareholding pattern submitted to the stock exchange instead of showing them under 'promoter group shareholding.' It amounts to dissemination of false and misleading information to the general public. Showing the close relatives of the Promoter & CMD in the 'public category' instead of 'promoter category' is a serious irregularity.
19. Further, it is admitted that the shareholding of Shri Ravi Rajiv Kotia for the quarter ending June 2009 was 98400 (1.61%) shares. However, in the quarterly disclosure to the stock exchange, the Company had shown his holding as 90000 shares (1.47%) and it continued in the next quarter also.

20. Noticee no. 1 is a listed Company and was under an obligation in terms of section 21 of SCRA, 1956, to comply with the conditions of Listing Agreement. Specifically, Clause 35 of Listing Agreement mandates the listed companies to file, inter alia, its shareholding pattern including the shareholding of its promoters, with the exchanges on a quarterly basis. Needless to say, the Noticee was required to make true and correct disclosure regarding shareholding pattern. Periodic disclosures under Clause 35 of the listing agreement serve a very important purpose of informing the market and the investors about the shareholding pattern of the company i.e. names and holdings of the promoters and significant shareholders. The shareholding and names of promoters and significant shareholders form a very important criterion for the public to make their investment decisions. In terms of Section 21 of SCRA, 1956 and Clause 35 of Listing Agreement, the obligation for compliance is on the Company for such disclosures. Further in terms of Section 25E of SCRA, 1956 the penalty can be levied on the Company only for failure to comply with conditions of Listing Agreement. Hence, I find that the Noticee 1 i.e. the Company, Sungold Capital Limited violated provisions of Section 21 of SCRA read with 35 of the Equity Listing Agreement by wrongly classifying the shareholding of the ‘promoter group’ as ‘public holding’ since quarter ending June 2008 and by making wrong disclosures of the shareholding of Ravi Rajiv Kotia. All other noticees namely Shri Rajiv R Kotia, Shri Ashok Modi and Shri Sharad Gandhi are discharged to that extent.
21. In the SCN it was also alleged that the noticees have violated the provisions of Regulation 3 (a) to (d), 4(1), 4(2) (f) of PFUTP Regulations, 2003, for reporting false and misleading disclosures of shareholding pattern to the stock exchange by disclosing of promoters’ shareholdings under the category of public shareholding as mentioned above.
22. As per Regulation 2 (1) (c) of PFUTP Regulations, 2003 **“fraud”** includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
  - (2) a suggestion as to a fact which is not true by one who does not believe it to be true;
  - (3) an active concealment of a fact by a person having knowledge or belief of the fact;
  - (4) .....
  - (5) a representation made in a reckless and careless manner whether it be true or false;
  - (6) .....
  - (7) deceptive behaviour by a person depriving another of informed consent or full participation,
  - (8) a false statement made without reasonable ground for believing it to be true.
  - (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
- And “fraudulent” shall be construed accordingly;

23. In the instant case immediate relatives of the Promoter are hiding in the Public category instead of being shown in the Promoter category. Hence, wrongly classifying of promoters shareholding under public category to the stock exchange gives a false and misleading appearance of high liquidity under the ‘public category’ in the scrip which is ‘fraud’ in terms of the aforesaid Regulation 2 (1) (c) of PFUTP Regulations and accordingly would be in violation of Regulation 3 (d) of PFUTP Regulations, 2003. Therefore, I find that all the Noticees herein i.e. the Company, Sungold Capital Limited and its executive Directors namely Shri Rajiv R Kotia, Shri Ashok Modi and Shri Sharad Gandhi have violated provisions of Regulation 3 (d) of SEBI PFUTP Regulations, 2003.

***ISSUE 2: Whether noticee no. 2 Shri Rajiv R Kotia, CMD of Sungold Capital Limited violated provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 for failure to disclose to the Company and to the stock exchange the change in the shareholding of his dependents i.e, Ravi Rajiv Kotia (son) and Seema Rajiv Kotia (wife) during the quarter ending June 2009?***

24. As per Regulation 13 (4) read with 13 (5) of SEBI (PIT) Regulations, 1992, any person who is a director or officer 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 and **his dependents** (as defined by the company) from the last disclosure made under sub-regulation (2) 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 within two working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting rights, as the case may be.
25. It is observed that the dependents of the Noticee no. 2 namely Ravi Rajiv Kotia (son) and Seema Rajiv Kotia (wife) had traded in the shares of the Company and such trading as mentioned below resulted in change in their shareholding by more than 25,000 shares on various dates such as 09.04.2009, 11.04.2009, 29.04.2009, 04.05.2009, 06.05.2009, 12.05.2009, 08.06.2009 and 29.06.2009.

Name of dependent of Rajiv Kotia	Date of Purchase/Sale	Market (M)/Off-Market (OM)	Name of Counter Party	No of shares	Change as % of total share capital
RAVI	08-04-2009	M	Various Counterparties	-5000	0.08
<b>RAVI</b>	<b>09-04-2009</b>	<b>M</b>	<b>Various Counterparties</b>	<b>-26000</b>	0.42
<b>RAVI</b>	<b>11-04-2009</b>	<b>OM</b>	<b>Rahul Shah</b>	<b>-30000</b>	0.49
RAVI	13-04-2009	M	Various Counterparties	-15000	0.25
RAVI	15-04-2009	M	Various Counterparties	<b>-20000</b>	0.33
<b>SEEMA</b>	<b>29-04-2009</b>	<b>OM</b>	<b>Rahul Shah</b>	<b>-40000</b>	0.65
<b>SEEMA</b>	<b>29-04-2009</b>	<b>OM</b>	<b>Mukesh Kanjhirji Bhanushali</b>	<b>-40000</b>	0.65
RAVI	29-04-2009	OM	Jitendra Jaikisan Bohra	-10000	0.16
RAVI	04-05-2009	OM	Patel Chandrikaben Ramanlal	-8000	0.13
<b>RAVI</b>	<b>04-05-2009</b>	<b>OM</b>	<b>Patel Rajanikant Narsinghbhai</b>	<b>-8000</b>	0.13
RAVI	04-05-2009	OM	Sathavara Girishkumar Babulal	-8000	0.13
RAVI	04-05-2009	OM	Patel Minaben Rajanikant	-8000	0.13
RAVI	04-05-2009	OM	Manishaben Girishkumar Sathavara	-8000	0.13
<b>RAVI</b>	<b>05-05-2009</b>	<b>OM</b>	<b>Patel Jiviben Ambalal</b>	<b>-8000</b>	0.13
RAVI	05-05-2009	OM	Patel Narmadaben Kanubhai	-8000	0.13
RAVI	06-05-2009	OM	Jignesh Jitubhai Shah	-10000	0.16
<b>RAVI</b>	<b>06-05-2009</b>	<b>OM</b>	<b>Nikhil Gordhandas Shah</b>	<b>-10000</b>	0.16
RAVI	06-05-2009	OM	Reshma Atul Shah	-10000	0.16
RAVI	06-05-2009	OM	Kokilaben Indravadan Shah	-10000	0.16
<b>RAVI</b>	<b>06-05-2009</b>	<b>OM</b>	<b>Darshana Vipul Shah</b>	<b>-10000</b>	0.16

RAVI	06-05-2009	OM	Digant Ashokkumar Oza	-10000	0.16
RAVI	07-05-2009	OM	Vijaybhai Jagdishbhai Trivedi	-10000	0.16
<b>RAVI</b>	<b>12-05-2009</b>	<b>OM</b>	<b>Patel Sharda Gordhanbhai</b>	<b>-8000</b>	0.13
RAVI	12-05-2009	OM	Ashaben Ganeshbhai Patel	-8000	0.13
RAVI	12-05-2009	OM	Patel Gordhan Madhavlal	-8000	0.13
RAVI	12-05-2009	OM	Patel Ganeshbhai Ishvarlal	-8000	0.13
<b>RAVI</b>	<b>12-05-2009</b>	<b>OM</b>	<b>Patel Vomiben Ganeshbhai</b>	<b>-8000</b>	0.13
<b>SEEMA</b>	<b>08-06-2009</b>	<b>OM</b>	<b>Nimish Kanubhai Jhaveri</b>	<b>-50000</b>	0.82
<b>RAVI</b>	<b>29-06-2009</b>	<b>OM-Physical</b>	<b>Rina Gopalbhai Shah</b>	<b>40000</b>	0.65
<b>RAVI</b>	<b>29-06-2009</b>	<b>OM-Physical</b>	<b>Rajesh Shah</b>	<b>50000</b>	0.82

26. Noticee No. 2, i.e. Shri Rajiv R Kotia, being the Managing Director of the Company, is required to disclose the change in the shareholding of his dependents i.e. Ravi Rajiv Kotia (son) and Seema Rajiv Kotia (wife) to the Company and also to the Stock Exchange where the shares of the Company are listed within two days of the transaction in terms of Regulation 13 (4) read with 13 (5) of the PIT Regulations, 1992, which he has not complied with.
27. The main contention of the noticee no. 2 is that due to family dispute relations with his Wife Seema Rajiv Kotia and Son Ravi Rajiv Kotia were estranged and they are living separately and he was not aware of their trading on the dates as mentioned above. However, Shri Rajiv R Kotia has admitted that he is not judicially separated from his wife and son. The contention of the noticee no. 2 does not inspire confidence and appears to be an afterthought to distance himself from the requirement of disclosure of transactions of his wife and son.
28. In view of the above, I find that the wife and son of Shri Rajiv R Kotia, CMD of the Company, namely Ravi Rajiv Kotia and Seema Rajiv Kotia had traded in the shares of the Company and such trading resulted in change in their shareholding by more than 25,000 shares on various dates as mentioned above which is required to be disclosed to the Company and also to the Stock Exchange by Rajiv R Kotia, noticee no. 2 within two days of the transaction in terms of Regulation 13 (4) read with 13 (5) of the PIT Regulations, 1992, which he had not complied with and therefore noticee 2 had violated the provisions of Regulation 13 (4) read with 13 (5) of the PIT Regulations, 1992.

***ISSUE 3: Whether the noticees are liable for monetary penalty under Section 23E of SCRA, 1956 and Section 15HA of SEBI Act, 1992? Further, noticee 2, Shri Rajiv R Kotia is liable for monetary penalty under Section 15A (b) of SEBI Act, 1992?***

29. The provisions of Section 23E of the SCRA, 1956, Section 15HA of SEBI Act, 1992 and Section 15A (b) of SEBI Act, 1992 read as under:-

**Section 23 E [Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds]**

*“If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.”*

**Section 15HA [Penalty for fraudulent and unfair trade practices]:**

*“If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”*

**Section 15 A (b) [Penalty for failure to furnish information, return, etc.]:**

*“If any person, who is required under this Act or any rules or regulations made thereunder, 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.”*

30. Hon’ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} held that *“In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. .... Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.”*



31. Vide order dated April 26, 2013 the Hon'ble Supreme Court of India in the matter of *N Narayanan vs. SEBI* (Appeal Nos. 4112-4113 of 2013) observed as under :-
- “SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate market abuse and that we are governed by the Rule of Law. Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and market security is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard markets integrity.”*
32. As already observed, the Company, Sungold Capital Limited, noticee no. 1 herein, by wrongly classifying the shareholding of the 'promoter group' as 'public holding' since quarter ending June 2008 and by making wrong disclosures of the shareholding of Ravi Rajiv Kotia, violated provisions of section 21 of SCRA read with 35 of the Equity Listing Agreement is liable for monetary penalty under Section 23E of SCRA, 1956.
33. Further, all the noticees i.e. the Company, Sungold Capital Limited and its executive Directors namely Shri Rajiv R Kotia, Shri Ashok Modi and Shri Sharad Gandhi are liable for penalty under Section 15HA of SEBI Act, 1992 for the violation of Regulation 3 (d) of SEBI PFUTP Regulations, 2003, as observed in the preceding paras.
34. In addition to the above Shri Rajiv R Kotia Promoter & CMD of Sungold Capital Limited, noticee no. 2 herein, is liable for penalty under Section 15A (b) of SEBI Act, 1992 for

violation of the provisions of Regulation 13 (4) read with 13 (5) of the PIT Regulations, 1992, by not disclosing change in the shareholding of his Son and Wife namely Ravi Rajiv Kotia and Seema Rajiv Kotia to the Company and Stock Exchanges.

35. While determining the quantum of penalty, 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.*

***Explanation:***

*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”*

36. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the Investigation report has not quantified the profit/loss for the violations committed by the Noticees. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticees. Showing the close relatives of the Promoter & CMD in the ‘public category’ instead of ‘promoter category’ is a serious irregularity. Dissemination of wrong and misleading information to the general public at large should be viewed seriously in view of observations of Hon’ble Supreme Court in the case of *Narayanan vs. SEBI* cited earlier.

37. Further, noticee no. 2 i.e. Rajiv R Kotia CMD of the Company has failed to make disclosures with regard to the trading of his Wife and Son to the Company as well to the Stock Exchange under Regulation 13 (4) read with 13 (5) of PIT Regulations, 1992. The purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market. The obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. Default in respect of failure to disclose change in shareholding due to trading of wife & Son of Promoter & CMD is repetitive in nature as too many such instances as per para 25 above were not reported by noticee 2.

### **ORDER**

38. After taking into consideration the facts and circumstances of the case, the submissions made by the noticees, the nature and gravity of the charges established I, in exercise of the powers conferred under Section 23-I of SCRA 1956, read with Rule 5 of SCR Adjudication Rules, 2005 and under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose the following penalties:-

- i) ₹ 5,00,000/- (Rupees Five Lakhs Only) under Section 23E of the SCRA, 1956, for the violation of provisions of Section 21 of SCRA read with Clause 35 of Listing Agreement, on Sungold Capital Limited, noticee no. 1 herein for wrongly classifying the shareholding of the 'promoter group' as 'public holding' and making wrong disclosures of the shareholding of Ravi Rajiv Kotia.
- ii) ₹ 10,00,000/- (Rupees Ten Lakhs Only) under Section 15HA of the SEBI, 1992, for the violation of provisions of Regulation 3 (d) of SEBI PFUTP Regulations, 2003, payable jointly and severally by the noticees i.e. Sungold Capital Limited and its executive Directors namely Shri Rajiv R Kotia, Shri Ashok Modi and Shri Sharad Gandhi for providing false and misleading information to the stock exchanges by classifying the shareholding of the 'promoter group' as 'public holding'.

iii) ₹ 12,00,000 (Rupees Twelve Lakhs Only) under Section 15A (b) of the SEBI Act, 1992, for the violation of Regulation 13 (4) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992, on the noticee no. 2, Shri Rajiv R Kotia, Promoter, Chairman & Managing Director of Sungold Capital Limited for failure to disclose to the Company and to the stock exchange the change in the shareholding of his Wife and Son under the aforesaid PIT Regulations.

39. The amount of penalty shall be paid either by way of demand draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

40. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copies of this order are sent to the noticees and also to the Securities and Exchange Board of India.

**Date : June 30, 2017**  
**Place : Mumbai**

**S. V. Krishnamohan**  
**Chief General Manager &**  
**Adjudicating Officer**