

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-5/SVKM/AO/82-86/2017-18]

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, 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/82/2017-18
2	Smt. Shilpa Amit Kotia	AHEPK2567R	2/B, State Bank Staff Colony, Near Navrang School, Naranpura, Ahmedabad – 380013	EAD-5/SVKM/AO/83/2017-18
3	Smt. Shwetha Dhaval Kotia	AHEPK2566Q		EAD-5/SVKM/AO/84/2017-18
4	Shri Ravi Rajiv Kotia	AUEPK3142K	A/73, Avani Complex, Near Naranpura Bus Stop, Naranpura, Ahmedabad – 380013	EAD-5/SVKM/AO/85/2017-18
5	Smt. Seema Rajiv Kotia	ABHPK6019M		EAD-5/SVKM/AO/86/2017-18

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted investigation into the alleged irregularities in the trading in the scrip of Sungold Capital Limited (*hereinafter referred to as “The Company/Noticee no. 1”*) and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as “SEBI Act”*) and Regulations made thereunder. During the course of investigation, the Investigating Authority (IA) issued summons to Sungold

Capital Limited, Smt. Shilpa Amit Kotia, Smt. Shwetha Dhaval Kotia, Shri Ravi Rajiv Kotia and Smt. Seema Rajiv Kotia (*hereinafter referred to individually as 'Noticee no. 1 to 5' and collectively as "Noticees"*) seeking informations such as details of off-market transactions, relationship with counterparty to the trades, date of acquisition of shares etc. as per annexure attached to each of the summons.

2. Noticee No. 1 i.e., Sungold Capital Limited a listed Company, vide summons dated December 09, 2014, was asked to furnish details regarding the relationship of the noticee no. 2 to 5 and another entity Mr. Dhaval Rameshchanda Kotia with the Company or Promoters/Directors of the Company and also asked to furnish reasons for not including these persons under the promoter group of the Company.
3. Noticee no. 2 to 5, vide various summons dated 16.09.14, 13.10.14, 31.10.14, 10.12.14 and 01.01.15 were called upon to file the following information with regard to their trading in the scrip of Sungold Capital Limited.
 - Details of off-market transactions done by them & details of counter parties thereof.
 - Reasons for trading in the scrip during the period April 01, 2009 to June 15, 2009.
 - Copies of demat and bank account statements during the period March 01, 2009 to July 31, 2009.
 - Details of shares of Sungold Capital Limited held by them.
 - Their relationships inter-se and also with the promoters of the Company.
4. As the noticees did not submit the information sought by the IA vide the aforesaid summons issued to the noticees, it is alleged that the noticees violated the provisions of Section 11C (3) read with 11 (2) (i) of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer (AO) vide Proceedings dated June 30, 2015 to inquire into and adjudge under Section 15A (a) of SEBI Act, 1992, the aforesaid

alleged violations of the provisions of Section 11C (3) read with 11 (2) (i) of SEBI Act, 1992, by the noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice dated September 30, 2015 (*hereinafter referred to as "SCN"*) was issued to the noticees in terms of 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 15A (a) of SEBI Act, 1992, for contravention of the provisions of Section 11C (3) read with 11 (2) (i) of SEBI Act, 1992 by the noticees as alleged in the SCN.
7. No reply to SCN was submitted by any of the noticees. They were granted opportunity of personal hearing. Shri Amit Rameshchandra Kotia, Authorized Representative who is also relative of the noticee no. 2 to 5 appeared on behalf of the noticee no. 2 to 5 on February 17, 2016 and made the following submissions:-
 - The authorized representative accepted that the various summons as stated in SCN were received by the Noticees. However, they had engaged a lawyer V. Mishra & Co. to reply to the summons. Unfortunately, the said Advocate expired in January 2015 before submitting any reply.
 - The information asked by SEBI in the various summons were submitted to their Advocate for giving a proper reply. But no reply could be submitted to SEBI due to the death of the Advocate.
8. Shri Rajiv R Kotia, Managing Director of Sungold Capital Limited appeared on March 08, 2016 and made the following submission on behalf of Sungold Capital Limited.

- That the SEBI summons was received on 15/12/2014 at 04:30 PM whereas the last date to submit the information was on the same day and therefore they could not submit the information. The same was informed to SEBI on 19/01/2015 by email of the Company.
 - It was also submitted, in the said email that Smt. Seema Rajiv Kotia & Shri Ravi Rajiv Kotia are living separately and are not dependent on Rajiv R Kotia. The Company has not received any disclosures from Smt. Shilpa Amit Kotia, Shri Dhaval Ramesh Kotia, Smt. Shweta Dhaval Kotia, Shri Ravi Rajiv Kotia and Smt. Semma Rajiv Kotia and were not filed the same with the Stock Exchange.
9. Vide letter dated April 26, 2017, noticees were given opportunity of making additional written submissions, if any. Vide separate letters dated 10.05.2017 noticees filed response to the said letter dated April 26, 2017. But no relevant additional submissions on merits of the case was made by any of the noticees.

ISSUES FOR CONSIDERATION & FINDINGS

10. I have carefully examined the written submissions made by the noticees, the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:
- 1) Whether the noticees have violated provisions of Section 11C (3) read with Section 11 (2) (i) of SEBI Act, 1956?
 - 2) Whether the noticees are liable for monetary penalty under Section 15A (a) of SEBI Act, 1992?
 - 3) If yes, then what should be the quantum of monetary penalty?
11. The allegation levelled against the noticees vide SCN dated September 30, 2016 is that they have failed to submit the information sought by the IA in respect of the investigation

into alleged irregular trading in the scrip of Sungold Capital Limited. Noticees are therefore charged for violation of Section 11C (3) read with Section 11 (2) (i) of SEBI Act, 1992.

12. It is useful to refer to the relevant provisions of Section 11C (3) and 11 (2) (i) of SEBI Act, 1992, which read as under:-

Section 11C:- Investigation

(3) “The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.”

Section 11:- Functions of Board.

(2) “Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(a) to (h).....

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organizations in the securities market;”

13. 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 11C (3) read with Section 11 (2) (i) of SEBI Act, 1992?

14. It is observed that while conducting investigation into the trading activities of certain entities in the scrip of Sungold Capital Limited, the Investigating Authority (IA) issued

various summons to noticee no. 2 to 5 seeking information such as off-market transactions, relation with counterparty to the trades, relationship between/among the entities, date of acquisition of shares etc. as detailed in the annexure attached to each summons. Following summons dated September 16, 2014 were issued to noticee no. 2 to 5:

Name of the Noticee	Details of the Summons
Ravi Rajiv Kotia	IVD-ID05/PJ/NR/27099/2014 dated September 16, 2014
Seemaben Kotia	IVD-ID05/PJ/NR/27096/2014 dated September 16, 2014
Shwetaben Kotia	IVD-ID05/PJ/NR/27057/2014 dated September 16, 2014
Shilpa Amitbhai Kotia	IVD-ID05/PJ/NR/27095/2014 dated September 16, 2014

15. Vide aforesaid summons dated September 16, 2014 each of the noticee no. 2 to 5 were called upon to file the following information with regard to their trading in the scrip of Sungold Capital Limited:

- Details of off-market transactions done by them & details of counter parties thereof.
- Reasons for trading in the scrip of Sungold Capital Limited during the period April 01, 2009 to June 15, 2009.
- Copies of demat and bank account statements during the period March 01, 2009 to July 31, 2009.
- Details of shares of Sungold Capital Limited held by them.
- Their relationships inter-se and also with the promoters of the Company.

16. As no response was received from the noticee no. 2 to 5, another summons dated October 13, 2014 was issued to them by hand delivery through the Western Regional Office (WRO) of SEBI, Ahmedabad. The details of the said summons are as under:-

Name of the Noticee	Details of the Summons
Ravi Rajiv Kotia	IVD-ID-5/PJ/NR/29657/2014 dated October 13, 2014
Seemaben Kotia	IVD-ID-5/PJ/NR/29637/2014 dated October 13, 2014
Shwetaben Kotia	IVD-ID-5/PJ/NR/29659/2014 dated October 13, 2014
Shilpa Amitbhai Kotia	IVD-ID-5/PJ/NR/29660/2014 dated October 13, 2014

17. In response to the summons dated October 13, 2014, M/s V. Mishra & Co, Advocates, the legal counsel of the aforesaid noticee no. 2 to 5, vide letter dated 30.10.2014 intimated the IA that his clients (noticee no. 2 to 5) were ready to co-operate with the Investigation and that they need 8 week's time for filing the required information. It was also informed that all future correspondence in this respect may be made to the Advocate.
18. In the absence of any response on part of the noticee no. 2 to 5 even after seeking time for submitting the required information, another summons dated October 31, 2014 was issued to all the 4 noticees (noticee no. 2 to 5). It was sent through their legal counsel M/s. V. Mishra & Co.
19. Again, no response to the summons were received from the noticee no. 2 to 5. Again Reminder summons dated December 10, 2014 was sent through their legal counsel M/s. V. Mishra & Co.
20. As no response was received, another set of reminder summons dated January 01, 2015 were sent to the noticee no. 2 to 5 through their legal counsel M/s. V. Mishra & Co. The said summons were returned undelivered with the endorsement 'unclaimed'.
21. During the personal hearing on February 17, 2016 the authorized representative of the noticee no. 2 to 5 accepted that the various summons as stated in SCN were received by them. The Advocate Mr. V. Mishra engaged by them has expired in January 2015 before submitting any reply. The Summons dated January 01, 2015 could have been returned unclaimed due to the death of their Advocate. The information asked by SEBI in the various summons were also submitted to their Advocate for giving a proper reply.
22. I note that there is no dispute that the noticee no. 2 to 5 have been served various summons. In the personal hearing dated February 17, 2016, the authorized representative admitted that the summons as stated in the SCN were received by the noticees.

23. The main contention of the noticee no. 2 to 5 is that the information asked by SEBI in the various summons was submitted to their Advocate for giving a proper reply but due to death of Mr. V. Mishra, Advocate of noticee no. 2 to 5 in January 2015, they could not submit reply to the summons. In the letter dated 30.10.2014, Advocate M/s. V. Mishra & Co. merely stated that his clients (noticee no. 2 to 5) were ready to co-operate with the Investigation and that they need 8 week's time for filing the required information. It was also stated that all future correspondence should be addressed to him.
24. There is no dispute that the first two summons dated September 16, 2014 and October 13, 2014 were received by the noticees 2 to 5 after that they seemed to engage an Advocate to file a reply. The summons only seek factual information relating to inter se relationship of noticees 2 to 5, their trading details in the scrip of Sungold Capital Limited which are all in the nature of personal information. Noticees can't abdicate their responsibility by stating that the information was given to the Advocate for drafting reply. Since non-compliance with the summons will be visited with a penalty on them, the noticee 2 to 5 should ensure that the information as sought by SEBI is sent to SEBI as demanded in the summons. They have to pursue with Advocate. They cannot be heard to say that since the Advocate has not drafted the reply, for whatever reasons, they cannot be held responsible. It is the statutory duty of a person who receives a summons from a Statutory Authority to respond to the said summons, failing which he has to suffer the consequences thereof. The subsequent summons dated October 31, 2014, December 10, 2014 and January 01, 2015 were addressed to the Advocate, since the Advocate in his letter dated 30.10.2014, addressed to SEBI requested that he should be addressed for all future requirements. There is no material to suggest that the Advocate has in turn brought to the noticees' attention the receipt of further summons. It is stated that the Advocate Mr. V. Mishra has expired in January 2015. Therefore, noticee no. 2 to 5 can't be held for non-compliance of the subsequent summons which were not even addressed to them. However, they did not comply with the first two summons dated September 16, 2014 and October 13, 2014 as stated earlier which is in violation of Section 11 (2) (i) and 11C (3) of SEBI Act, 1992.

25. Noticee No. 1 i.e., Sungold Capital Limited, vide summons dated December 09, 2014, was asked to furnish details regarding the relationship of the noticee no. 2 to 5 and another entity namely Mr. Dhaval Rameshchanda Kotia with the Company or Promoters/Directors of the Company. Reasons for not including these persons under the promoter group of the Company was also sought.
26. Further, in addition to the aforesaid summons dated December 09, 2014, the Company was also asked, on January 14, 2015, further information as to 1) whether Seema Rajiv Kotia and Ravi Rajiv Kotia were dependent of Mr. Rajiv R Kotia CMD of the Company and 2) Status of filing of disclosures under SEBI PIT Regulations, 1992 by noticee no. 2 to 5 & Mr. Dhaval Rameshchanda Kotia to the Company and also by the Company to the Stock exchange.
27. It was submitted that the summons dated 09th December, 2014 was received on 15.12.2014 i.e. the last day for submission of information and therefore, it was not possible for the Company to revert on the same. Even if this is accepted, that doesn't help the noticee no. 1 because, the information was again asked on 14.01.2015 and the Company vide e-mail dated 19.01.2015 confirmed the receipt of the summons.
28. I note that the noticee no. 1, was asked to furnish vide summons dated December 09, 2014 (i) Relationship of the noticee no. 2 to 5 and another entity Mr. Dhaval Rameshchanda Kotia with the Company or Promoters/Directors of the Company and (ii) Reasons for not including these persons under the promoter group. The noticee no. 1 vide email dated January 19, 2015 confirmed the receipt of the said summons but the above informations as required in the summons dated December 09, 2014 were not furnished. Therefore, noticee 1 has violated Section 11C (3) read with Section 11 (2) (i) of SEBI Act, 1992 and become liable for penalty under Section 15A (a) of SEBI Act, 1992.
29. It is the responsibility of every person from whom information is sought vide summons to fully co-operate with Investigating Authority and promptly produce all documents, records, information, etc., to the Investigating Authority. If persons are allowed to flout the

summons issued to them during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. The information was sought from the noticees against the background of serious irregularities in the trading in the scrip of Sungold Capital Limited. The Hon'ble Securities Appellate Tribunal (*hereinafter referred to as "SAT"*) in its Order dated 22.10.2013, in the matter of *Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal Vs SEBI* observed that-

"We note that requisite information and relevant records are pre-requisites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."

30. In this context, I would like to also refer to the judgment of the Hon'ble SAT in the case of *Asian Films Production and Distribution Ltd. (earlier known as K.C. Bokadia Films vs. SEBI (Appeal No.203 of 2010, Date of Decision:19.01.2011)* wherein it has been held that:

"Non-compliance with the summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market."

31. Further, the Hon'ble SAT in the matter of *Mr. Jalaj Batra vs. SEBI (Appeal no. 184 of 2010, date of decision dated December 06, 2010)* wherein it observed “.....We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him.”
32. The Hon'ble SAT in Appeal No.95/04 in *Mayfair Paper & Board Pvt. Ltd. V SEBI* observed that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act.
33. In view of the above, I find that the noticees are liable for monetary penalty under Section 15A (a) of the SEBI Act, for violation of provisions of Section 11C (3) read with Section 11 (2) (i) of SEBI Act, 1992. Provisions of Section 15A (a) of SEBI Act, 1992, are reproduced hereunder:-

Penalty for failure to furnish information, return, etc.

Section 15A

“If any person, who is required under this Act or any rules or regulations made there under-

(a) to furnish any document, return or report to the Board, fails to furnish the same, 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;”

34. While determining the quantum of penalty under Section 15A (a), 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.”

35. 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."*
36. I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the noticees and the loss suffered by the investors as a result of the noticees’ default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the noticees as a result of default. Needless to say that the information relating to the classification of ‘Promoter’ under public category, inter-se

relationship of the noticees, copies of Demat and Bank statements, reasons for trades is very important from the stand point of investigation while looking into the irregularities. Non-furnishing of details to the summons in the above background particularly with reference to the Bank statement and Demat statement would show the movement of the funds and securities accounts and provides an audit trail, hampers the investigation. Any delay or hurdle in investigation due to non-cooperation by any entity is detrimental to the interest of investors in securities market and the same shall be visited with a penalty under Section 15A (a) of SEBI Act, 1992.

ORDER

37. After taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose, the following penalties under Section 15A (a) of the SEBI Act, 1992, for the violation of Section 11C (3) read with Section 11 (2) (i) of SEBI Act, 1992 by the noticees.
- i) Penalty of ₹ 5,00,000/- (Rupees Five Lakhs Only) on noticee no. 1 i.e. Sungold Capital Limited.
 - ii) Penalty of ₹ 2,00,000/- (Rupees Two Lakhs Only) payable by each of the noticee no. 2 to 5 namely Smt. Shilpa Amit Kotia, Smt. Shwetha Dhaval Kotia, Shri Ravi Rajiv Kotia and Smt. Seema Rajiv Kotia, aggregating to ₹ 8,00,000/- (Rupees Eight Lakhs Only).
38. 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 – 4 A, “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)	

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

Date : July 19, 2017
Place : Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer