BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/DS/2020-21/ 7699-7704]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **Sungold Capital Limited** (PAN : AAJCS0998M) having address at House no. 7/13, Opp White Tower, Station Road, Rajpipla, Nandod, Narmada, Gujarat – 393145 and b/618, 6th Floor, Jaswanti Allied Business Off Ramchandra Lane Ext; Malad (W), Mumbai 400064.
2. **Rajiv R Kotia** (PAN : AEJPK0347C) having address at - 2/B, State Bank Staff Colony, Near Navrang School, Naranpura, Ahmedabad – 380013.
3. **Shilpa Amit Kotia** (PAN : PAN : AHEPK2567R) having address at - 2/B, State Bank Staff Colony, Near Navrang School, Naranpura, Ahmedabad – 380013.
4. **Shweta Dhaval Kotia** (PAN : AHEPK2566Q) having address at - 2/B, State Bank Staff Colony, Near Navrang School, Naranpura, Ahmedabad – 380013.
5. **Dhaval Ramesh Kotia** (PAN : ADUPK0459Q) having address at - 2/B, State Bank Staff Colony, Near Navrang School, Naranpura, Ahmedabad – 380013.
6. **Ravi Rajiv Kotia** (PAN : AUEPK3142K) having address at - A/73, Avani Complex, Near Naranpura Bus Stop, Naranpura, Ahmedabad – 380013.

In the matter of Sungold Capital Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***"), initiated adjudication proceedings under Section 15A(a), 15A(b) and 15H(ii) of SEBI Act, 1992 (hereinafter be referred to as, the "***SEBI Act***") against i) Sungold Capital Limited, ii) Rajiv R Kotia, iii) Shilpa Amit Kotia, iv) Shweta

Dhaval Kotia, v) Dhaval Ramesh Kotia and vi) Ravi Rajiv Kotia (hereinafter referred to as '**the Noticee No. 1 to 6** respectively or as "**the Noticees / You**" collectively). Adjudication proceedings have been initiated against the Noticees for the alleged violations as follows:-

a) Notice No. 1 for the alleged violation of Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations, 1997'**) read with Regulation 35(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011'**) for the year 2007-2008.
b) Noticee No. 2 for the alleged violation of Regulation 3(4), 7 and 10 of SAST Regulations, 1997 read with Regulation 35(2) of SAST Regulations, 2011.
c) Noticee No. 3 to 6 for the alleged violation of Regulation 11(1) read with Regulation 21(1) of SAST Regulations, 1997 read with Regulation 35(2) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") vide order dated March 18, 2019 to inquire into and adjudge under Section 15A(a), 15A(b) and 15H(ii) of the SEBI Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide order dated May 10, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD-5/MC/DPS/399/2020 dated January 03, 2020 (hereinafter be referred to as, the "**SCN**") was served upon the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A(a), 15A(b) and 15H(ii) of SEBI Act, 1992, for the aforesaid alleged violations.

4. The allegations levelled against the Noticees in the SCN are summarized as below:

5. An investigation was carried out by SEBI in the scrip of Sungold Capital Limited (hereinafter referred to as **'Sungold / Scrip / Company'**) for the period April 01, 2007 to March 31, 2008 (**investigation period**).

6. The company was incorporated on February 1993 as a public limited company in the name of M Touch Finance Ltd., and its name was later changed to Sungold Capital Limited., with fresh certificate of incorporation on September 05, 1997. The company operates in three distinct areas of media & entertainment, trading and finance. The scrip is listed only on BSE. Registered office of the company is at House No. 7/13, Opp White Tower, Station Road, Rajpipla, Nandod, Narmada, Gujarat, 393145.

Analysis of change in Shareholding – alleged violation of regulation 10 of SAST Regulations 1997 by Notice 2

7. The analysis was done based on the records available i.e. shareholding pattern on the BSE website and the replies received from the company dated December 10, 2018 and it was observed that:
   a. Noticee No. 2 vide letter dated July 20, 2016 informed that Noticee No. 3 to 6 and Seema R Kotia (Seema), are related to him.

Sr. No	Noticees	Relationship
1	Noticee No. 2 (Promoter and Managing Director)	Husband of Seema R kotia and father of Noticee No. 6
2	Seema R Kotia	Wife of Noticee No. 2
3	Noticee No. 6	Son of Noticee No. 2
4	Noticee No. 5	Brother of Noticee No. 2
5	Noticee No. 4	Wife of Noticee No. 5 and Sister-in-law of Noticee No. 2.

Sr. No	Noticees	Relationship
6	Noticee No. 3	Wife of Amit Ramesh Kotia and Sister-in-law of Noticee No. 2.

b. Notice No. 2 is the Managing Director of Sungold Capital Ltd and as mentioned above, Noticee No. 3 to 6 and Seema are his relatives. In terms of regulation 2(1)(e)(2)(iii) "persons acting in concert" comprises of directors and their associates, wherein, the term associate means any relative of that person within the meaning of the section 6 of the Companies Act 1956 or family trust and Hindu undivided families. Therefore, in terms of regulation 2(1)(e)(2)(iii) of SAST Regulations, 1997 r/w section 6 of the Companies Act 1956 the abovementioned entities are deemed PACs.

c. During investigation it was observed that the shareholding of the promoter Noticee No. 2, in the scrip of Sungold Capital Limited, increased from 11.96% to 15.22% on acquisition of 2,00,100 shares during the quarter ended June 2007. It was also observed that the total shareholding of two other promoters Janak S Kotia and Sanjay I Shah decreased by exactly 2,00,100 shares. The shareholding of Rajiv R Kotia in Sungold Capital Limited further increased from 15.22% to 16.53% between quarter ended June 2007 and quarter ended September 2007.

d. No data with respect to the above acquisition of shares by Rajiv R Kotia, is reflected in the demat statements for the period April 01, 2007 to September 30, 2007. Futher, the demat statement of the deemed PACs was also examined and it was observed none of the PACs held any shares of Sungold capital limited during the period April 01 2007 – September 30, 2007.

e. The company / Noticee No. 2 vide its reply dated December 10, 2018 informed that since the records regarding register of members sought were very old (11 years), the same is not available with them. With respect to the change in shareholding of promoter Noticee No. 2, the company in the aforesaid letter provided copies of the annual disclosure document submitted to BSE u/s 8(3) of SEBI (SAST) Regulations 1997, for the dates April 19, 2007 and April 19, 2008.

f. The company/ Noticee No. 2 vide email dated December 18, 2018 informed that the 2,80,300 shares of Sungold Capital Limited, were transferred to Noticee No. 2 from the other promoters of the company on the following dates –

i. 2,00,100 shares of the company on 01.04.2007

ii. 80,200 shares of the company on 01.07.2007

g. In view of the above reply and based on the quarterly shareholding pattern available on BSE, it was observed that the promoter Noticee No. 2 bought shares from other promoters i.e. 2,00,100 shares on April 01, 2007 from two other promoters Janak S Kotia and Sanjay I Shah. Further, Noticee No. 2 also bought 80,200 shares on July 01, 2007 from two other promoters Sharad M Gandhi and Devyani Kotia.

h. The scrip was suspended for trading for the period May 19, 2004 to February 18, 2008 as seen from BSE Notice dated May 8, 2004 and February 18, 2008.

i. In terms of regulation 10 of SEBI (SAST) Regulations 1997, *"No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations"*.

j. The acquisition of shares by promoter Rajiv R Kotia on April 01, 2007 (already held: 11.96% + acquired: 3.27%) 15.23%, along with shares held by PAC (0%), breached the threshold limit of 15% and triggered the requirement for open offer under regulation 10 of SAST Regulations, 1997.

k. Considering that the promoter Noticee No. 2 bought the shares from other promoters, in terms of regulation 3(1)(e)(iii) of SEBI (SAST) Regulations 1997, such inter se transfer of shares amongst the qualifying promoters *was exempted from the requirement to make an open offer to acquire shares in terms of regulation 10* of SAST Regulations, 1997, provided, that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition and subject to compliance with regulation 6, 7 and 8 of SAST Regulations by the transferor(s) as well as the transferee(s). In terms of regulation 3(4) & 3(5) of SAST Regulations 1997, in respect of acquisitions under regulation 3(1)(e) of SAST Regulations, 1997, the acquirer i.e. Noticee No. 2 was also required to submit a report with SEBI along with a fee of Rs 25000, within 21 days of the acquisition.

l. It was verified that for the period April - May 2007, there was no receipt of fee amounting to Rs 25,000/- by SEBI, as required under Regulations 3(5) of the SAST Regulations, 1997. In view of this, it was alleged that no report had been filed by the Noticee No. 2 under regulation 3(4) of SAST Regulations, 1997.

m. Acquisition by Noticee No. 2 of 2,00,100 shares on April 01, 2007, which breached the threshold of 15% shareholding of the company, from the other promoters was an inter se transfer among promoters, Noticee No. 2 failed to make the necessary disclosures required under regulation 7 and submit a report to SEBI under 3(4) of the SAST Regulations, 1997.

n. Therefore, the acquirer Noticee No. 2 was required to make a public announcement for acquisition of shares under Regulation 10 of SAST Regulations, 1997. The stock exchange vide email dated January 03, 2019, informed that no notice of open offer under SAST Regulations, 1997, was received in the scrip of Sungold Capital Limited for the period April 01, 2007 – March 31, 2008.

o. In terms of regulation 7(1) of the SAST Regulations, 1997, the acquirer was required to disclose to the company and the stock exchange, in case his shareholding breached the threshold of, inter-alia, fourteen percent post acquisition of shares. The company/acquirer was advised to provide the compliance made with respect to regulation 7 of SAST Regulations 1997. However, the acquirer Noticee No. 2 vide email dated January 15, 2019, informed that the records pertains to the year 2007. Being about 11 years old records the same are unable to be recovered.

p. In order to ascertain if any disclosures were made by the acquirer (i.e. Noticee No. 2) under regulation 7 of SAST Regulations, 1997, information regarding disclosures was also sought from BSE. BSE vide email dated January 07, 2019 & January 10, 2019, informed that during the period January 1, 2007 to April 30, 2008, it had only received disclosure under regulation 8(3) of SAST Regulations, 1997 dated April 19, 2007.

8. In view of above, it was alleged that Noticee No. 2, violated regulation 3(4), 7 and 10 of SAST Regulations, 1997 r/w Regulation 35(2) of SAST Regulations, 2011, on acquisition of more than 15% in Sungold Capital Limited on April 01, 2007.

9. **Allegations in respect of Noticee No. 1**

   a. In terms of regulation 8(1) SAST Regulations, 1997 every person holding more than 15% and regulation 8(2) promoter having control, shall disclose to the company his shareholding within 21 days from the financial year ending March 31st. In terms of regulation 8(3) the company / Noticee No. 1 was required to make yearly disclosure to the stock exchange where it was listed, in respect of the change in the holdings of persons referred in sub-regulation 8(1) and 8(2), within 30 days from the financial year ending March 31.

   b. Noticee No. 1 vide letter dated December 10, 2018 had submitted copies of the annual disclosure under Regulation 8(3) of the SAST Regulations, 1997, which was submitted to BSE for the years 2006- 2007 and 2007-2008. BSE vide email dated January 07, 2019 & January 10, 2019, had informed that it had only received disclosure under regulation 8(3) of SAST Regulations, 1997 dated April 19, 2007, which was for the year 2006-2007, and not the disclosure for the year 2007-2008. Noticee No. 2 vide email dated January 15, 2019, informed that the records pertain to the year 2007. Being about 11 years old records the same are unable to be recovered.

   c. Based on the reply of BSE, it was alleged that the Noticee No. 1 failed to make the necessary disclosure to BSE under Regulation 8(3) of SAST Regulations,1997 for the year 2007-08.

10. In view of above, it was alleged that Noticee No. 1, violated Regulation 8(3) of SAST Regulations, 1997 r/w Regulation 35(2) of SAST Regulations, 2011 for the year 2007-08.

Analysis of change in Shareholding – alleged violation of regulation 11(1) of SEBI (SAST) Regulations 1997 by Noticees 3 to 6

11. The quarterly shareholding pattern filed by the company with the stock exchange and the submission by the company/RTA was analysed and it was observed that:

    a. Noticee No. 2 is the Managing Director of Sungold Capital Ltd / Noticed No. 1 and Noticee No. 3 to 6 and Seema are his relatives. In terms of regulation 2(1)(e)(2)(iii) of SAST Regulations, 1997 read with Section 6 of the Companies Act 1956 the abovementioned entities are deemed PACs.

b. From an analysis of the demat statement and based on the submission by the company/RTA (reply from Company December 10, 2018/ RTA dated August 27, 2018), the following is observed –

Table

Noticee	Original date of Purchase in Physical (A)	Date of Transaction (B)	Credit (Cr)/ Debit (Dr) (C)	Opening balance	No of Shares Credited	Closing Balance	%age of total shares	Description/ Particulars w.r.t Column (B)
Noticee No. 3	14/09/2007	26/03/2008	Cr	0	290000	290000	4.74%	By Dematerialization
Noticee No. 4	14/09/2007	26/03/2008	Cr	0	269400	269400	4.40%	By Dematerialization
Noticee No. 5	14/09/2007	26/03/2008	Cr	1371	280000	281371	4.60%	By Dematerialization
Noticee No. 6	14/09/2007	24/04/2008	Cr	0	529400	529400	8.65%	Demat Close-Cr Confirmed Blance
	-	20/06/2008	Dr	529400	249000	280400	4.58%	Inter-depository transfer to Seema R Kotia
Seema Rajiv Kotia		20/06/2008	Cr	0	249000	249000	4.07%	Inter-depository transfer from Ravi R Kotia

c. Based on the demat statements of the abovementioned entities, it was observed that Noticee No. 3, 4, 5 dematerialized their shares on March 26, 2008. Further, Noticee No. 6, dematerialized his shares on April 24, 2008. Subsequently Noticee No. 6 transferred 2,49,000 shares to Seema Rajiv Kotia on June 20/06/2008.

d. Based on the reply of the Company/RTA, it was observed that the shares of Sungold Capital Limited were purchased by Noticee No. 3 (2,90,000 shares), Noticee No. 4 (2,69,400 shares), Noticee No. 5 (2,80,000 shares) and Noticee No. 6 (5,29,400 shares) on September 14, 2007 in physical form. Subsequently, Noticee No. 6 transferred 2,49,000 shares to Seema R Kotia through inter-depository transfer. Therefore, while the shares were purchased by Noticee No. 3 to 6, in physical form, the shares in the demat account of Seema was on account of transfer from Noticee No. 6.

e. In terms of regulation 11(1) of SAST Regulations, 1997 the acquirers Noticee No. 3 to 6 who collectively acquired 22.39% along with the 16.53% shares already held by their PAC – Noticee No. 2, were required to make a public announcement to acquire minimum 20% of the voting capital of the company in terms of Regulation 21(1) of SAST Regulations, 1997. Pursuant to acquisition of shares by Noticee No. 3 (4.74%), Noticee No. 4 (4.40%), Noticee No. 5 (4.60%) and Noticee No. 6 (8.65%) on September 14, 2007, the total shareholding of Noticee No. 3 (4.74%), Noticee No. 4 (4.40%), Noticee No. 5 (4.60%), Noticee No. 6 and Noticee No. 2 (16.53%) was 38.92% on September 14, 2007.

Sr. No	**Noticee**	**Previous holding (%age)**	**Quantity Purchased**	**Change in %age shareholding**	**Total shareholding**	**Date of Purchase**
1	Noticee No. 3	-	2,90,000	4.74%	4.74%	14/09/2007
2	Noticee No. 4	-	2,69,400	4.40%	4.40%	14/09/2007
3	Noticee No. 5	-	2,81,371	4.60%	4.60%	14/09/2007
4	Noticee No. 6	-	5,29,400	8.65%	8.65%	14/09/2007
5	Noticee No. 2	16.53%	-	-	16.53%	
Total		**16.53%**	**13,70,171**	**22.39%**	**38.92%**	**-**

f. As mentioned above, Noticees were PACs in terms of Regulation 2(1)(e)(2)(iii). Therefore, in terms of regulation 11(1) of SAST Regulations, 1997, read with Regulation 21(1) of the SAST Regulations, 1997, the acquirers Noticee No. 3 to 6 [who together with PAC Noticee No. 2 were already holding 16.53% shares on the date of acquisition i.e. September 14, 2007] were required to make a public announcement to acquire shares of Sungold Capital Limited.

g. However, no document for open offer was received by SEBI in the matter of Sungold Capital Limited during the period April 01, 2007 – March 31, 2008.

12. In view of the above, it was alleged that the acquirers Noticee No. 3 to 6, collectively acquired 22.39% shares in the company Sungold Capital Limited without making an open offer and are in violation of Regulation 11(1) of SAST Regulations, 1997 read with regulations 21(1) of SAST Regulations, 1997 and read with regulation 35(2) of SAST Regulations, 2011.

13. The aforesaid alleged violations, if established, make you / the Noticees liable for monetary penalty under Section 15A(a), 15A(b) and 15H(ii) of the SEBI Act, which reads as follows:

SEBI Act:

Penalty for failure to furnish information, return, etc.
15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(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.

Penalty for failure to furnish information, return, etc.
15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(b) *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;*

Penalty for non-disclosure of acquisition of shares and takeovers.
15H. *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*
(i) *…………..*

(ii) *make a public announcement to acquire shares at a minimum price; or*

14. In response to the SCN, the Noticee No. 1, vide email dated January 20, 2020 requested for personal hearing on January 21, 2020. Accordingly, an opportunity of hearing was provided to the Noticee No. 1 on January 21, 2020, vide notice dated January 20, 2020 through email.
    (a) Hearing on January 21, 2020 was attended by Mrs. Menka Jha, the Authorised Representative of the Noticee No. 1 (AR). During the hearing

AR of the Noticee submitted its reply dated January 21, 2020 and reiterated the submissions made in its reply dated January 21, 2020 and stated that it will be filing additional submissions.

15. Noticee No. 2, vide email dated February 4, 2020 requested for personal hearing on February 6, 2020. Accordingly, an opportunity of hearing was provided to the Noticee No. 2 on February 6, 2020, vide notice dated February 4, 2020 through email.

    (a) Hearing on February 6, 2020 was attended by Mrs. Menka Jha, the Authorised Representative of the Noticee No. 2 (AR). During the hearing AR of the Noticee submitted its reply dated February 6, 2020 and reiterated the submissions made in its reply dated February 6, 2020.

    (b) Further, AR of the Noticee also submitted additional submissions with regard to hearing conducted on January 21, 2020 for the Noticee No. 1 – Sungold Capital Limited

16. An opportunity of hearing was provided to the Noticee No. 3 to 6 on February 26, 2020, vide notice dated February 4, 2020. Vide separate letters dated February 4, 2020, Noticee No. 3 to 6 requested for hearing on February 7, 2020.

    (a) Hearing on February 7, 2020 was attended by Mr. Amit Kotia, the Authorised Representative of the Noticee No. 3 (AR), Mrs. Nibha S Jha, the Authorised Representative of the Noticee No. 4 and 5 and Mrs. Deepa Premachandran, the Authorised Representative of the Noticee No. 6. During the hearing ARs of the Noticee submitted their reply dated February 7, 2020 and reiterated the submissions made in their replies dated February 7, 2020.

17. The key submissions of the Noticee No. 1 are reproduced as below:

    a) Noticee has submitted 8(3) disclosures for FY 2007 and FY 2008 to the stock exchange on April 19, 2007 and April 19, 2008. The Company was under suspension from the year 2004 to 2007 and the disclosure for the year 2008 was submitted to the Stock Exchange second time on August 01, 2008. The Stock Exchange has confirmed all listing criteria post revocation and then the listing permission had been given as a pre-condition to the revocation of suspension wherein unconditionally company undertaken for all compliance made and the same was agreed upon by the Stock Exchange.

18. Noticee No. 1 vide email dated February 11, 2020 submitted the following:-

a) An undertaking was taken by the BSE as a pre-condition to the revocation of suspension in trading of the securities of the Company dated February 07, 2008. It was submitted to the BSE with the same intention that there will no violation/non-compliance on their part. Noticee agreed to make timely disclosures and communications to BSE as and when required. Only when all the formalities and due diligence was conducted that BSE permitted the revocation of suspension in trading of the securities of the Company.
b) Disclosure under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 dated 19/04/2008 for the year ended March 31, 2008 was sent by Speed Post to the Deputy Manager, Corporate Services, BSE Limited.
c) Letter no. DCS/COMP/SAST-MAR08/531433/214/2008-09 dated 25/07/2008 was received from BSE to us via Speed Post on 05/08/2008 for Non-Compliance with the provisions of Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
d) Disclosure under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 for the year ended March 31, 2008 was submitted dated April 19, 2008 on 01/05/2008 via speed post and for the second time on 01/08/2008 via Speed Post and again submitted the same copy of Disclosure dated 01/08/2008 (hand written) on October 14, 2008 as Second reminder. In Annexure 10, of SEBI SCN no. EAD5/MC/DPS/399/2020 dated January 03, 2020, Stock Exchange has

confirmed during the period January 01, 2007 to April 30, 2008 they have not received the disclosure for the year ended March 31, 2008.

e) Letter no. DCS/COMP/Z/AJ/436/2008-09 dated December 18, 2008 was posted by BSE on December 22, 2008 and received by us on December 23, 2008. This Letter was pertaining to non-compliance of Disclosure under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and for other non-compliances by the Company.

f) Clarification and answer dated January 02, 2009 was submitted for all of the above non-compliance via Speed Post on 03/01/2009.

g) Noticee reiterated its submission already made that there was never any violation of compliances on its part. It repeatedly received letter from BSE for non-compliance but it replied each time there was no violation on its part and that timely compliances were made by the Company. However no such timely updation were found in BSE records.

h) However, ignoring the said non compliances as claimed, BSE Limited allowed following course of actions:

    i. BSE Notice No. 20080218-40, Notice Date: 18 Feb 2008
    ii. Subject: Commencement of Trading in equity shares of Sungold Capital Ltd. (Scrip Code 531433).
    iii. Content: Notice was received from BSE that revocation of trading of Sungold Capital Limited will be effective from February 19, 2008
    iv. BSE Notice No. 20110202-22, Notice Date: 02 Feb 2011
    v. Subject: Listing of new securities of Sungold Capital Limited
    vi. Content: There was issue of 2,88,085 equity shares of Rs. 10/- each at a premium of Rs. 10/- per share . Listed and permitted for trading on the Exchange with effect from Thursday, February 03, 2011
    vii. BSE Notice No. 20110519-11, Notice Date: 19 May 2011
    viii. Subject: Listing of new securities of Sungold Capital Limited
    ix. Content: There was issue of 3,35,000 shares of Rs.10/- each issued at a premium of Rs.10 per share. Listed and permitted for trading on the Exchange with effect from Friday, May 20, 2011.
    x. BSE Notice No. 20110630-9, Notice Date: June 30, 2011

xi. Subject: Listing of new securities of Sungold Capital Limited

xii. Content: There was issue of 3,50,000 equity shares of Rs.10/- each issued at a premium of Rs. 10 /- per share. Listed and permitted for trading on the Exchange with effect from Friday, July 1, 2011.

xiii. BSE Notice No. 20120625-9, Notice Date: June 25, 2012

xiv. Subject: Listing of new securities of Sungold Capital Limited

xv. Content: 69,90,000 shares of Rs.10/- each issued pursuant to the Scheme of Amalgamation of Magic Touch Infotech Limited with the Company, Sungold Capital Limited. Listed and permitted for trading on the Exchange with effect from June 26, 2012.

i) The purpose for providing details of above points hereby state that BSE permitted approval for listing and trading only after scrutiny, due diligence had been conducted by various departments of the BSE thereafter only we were herewith provided in-principle approval. It had always obeyed and abided by the mandatory compliances applicable to its Company.

j) Being an accountable and responsible corporate entity it has been the primary and statutory duty of a Company that Compliances are to be followed and with the same responsibility it is stated that Compliances were never ever ignored or avoided by it thereby affecting its public image in the Market.

19. The key submissions of the Noticee No. 2 are reproduced as below:

a) Noticee has submitted that the shareholding of the promoter, Mr. Rajiv Kotia - Noticee No. 2 (acquirer) increased from 11.96% to 15.22% in FY 2007. As on March 31, 2007, the promoter and promoter group of the target company was holding 17.94% shares of its total share capital. On April 01, 2007 and July 01, 2007, one of the promoters of the target company i.e. Mr. Rajiv Kotia acquired 2,00,100 equity shares and 80,200 equity shares constituting 3.27% of the share capital of the target company through transfer from two other promoters Janka S Kotia and Sanjay I Shah on April 01, 2007 and from two other promoters Sharad M Gandhi and Devyani Kotia on July 01, 2007.

b) Prior to the acquisition of the target company's shares, the acquirer was one of the promoters of the target company who along with other promoters of the target company, collectively, held 17.94% shares of the target company and that the promoters, prior to the acquisition of the target company's shares, were already in control of the management of the target company.

c) As a result of the aforesaid acquisition by the acquirer (who was an existing promoter of the target company on the date of acquisition), the collective shareholding of the promoter group of the target company increased from 17.94% to 19.25% (i.e. an increase of 1.31%) which was within the permissible limit of 5% which could be acquired by the promoter group as a whole by virtue of regulation 11(1) of the Takeover Regulations, 1997.

d) Then existing regulation that allowed creeping acquisition of 5% a year for promoters with ownership stakes of between 15% and 55% was changed such that promoters with stakes of between 15% and 55% were allowed to acquire up to 5% of their firms' stake in a year.

e) Regulation 10 of the Takeover Regulations applies only when the essential ingredient i.e. the acquirer together with other promoter and promoter group of the Company does not hold 15% shares and has acquired and breached the Triggered limit of 15% in a financial year.

f) In instant case the Acquirer and other Promoter and Promoter group of the Company already in control of the management of the Company and in lieu of that Regulation 10 is not applicable.

g) A Company may have several promoters, but only one of them may decide to increase his shareholding in the company by substantial acquisition of shares or voting rights in the company. The mere fact that one of the promoters of the company wishes to do so, is no reason to hold that the other promoters also necessarily share his objective or purpose. The other promoters may, in fact, be opposed to the acquirer acquiring further shares in the target company, and if they fail to prevent the acquirer from doing so, they may be inclined to dispose of the shares held by them. In such a situation, it cannot be said that the other promoters share the common objective or purpose of the acquirer.”

h) Regulation 11(1) of the Takeover Regulation applies only when the two essential ingredients, i.e. i) the acquirer has already been holding 15% shares together with persons acting in concert; and ii) the said acquirer acquires additional shares either by himself or through with persons acting in concert with him, have been fulfilled.

i) The following changes were made in the shareholding of the acquirer and promoter group:

Year	Pre-acquisition Shareholding (in number)	Pre-acquisition Shareholding (in %)	Post-acquisition Shareholding (in number)	Post-acquisition Shareholding (in %)
2005	1098200	17.94	1098200	17.94
2006	1098200	17.94	1098200	17.94
2007	1098200	17.94	1098200	17.94
2008	1098200	17.94	1178200	19.25

j) As highlighted in the above table, pursuant to the aforesaid acquisition by the acquirer on April 01, 2007 and July 01, 2007, its shareholding in the target company increased from 11.96% to 15.22% thereby not breaching the threshold of 5% stipulated in regulation 11(1) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Prior to the acquisition of the target company’s shares, the acquirer was one of the promoters of target company who along with other promoters of the target company, held 17.94% shares of the target company and that the promoters, prior to the acquisition of the target company’s shares, were already in control of the management of the target company.

k) Basically, there are three types of acquisitions regulated under the Regulations. *First,* initial trigger acquisitions; where an acquirer acquires 15% or more of the shares or voting rights in the target company. *Second,* creeping acquisitions; where an acquirer (who already holds 15% of the shares or voting rights in the target company) acquires another percentage of shares in excess of 5% of total shares during the financial year. *Third,* acquisition of control; where an acquirer acquires (directly or indirectly) the control of the target company. For such acquisition, the Regulations mandate the acquirer to make a public announcement of an open offer to the existing shareholders of the target company. Since additional acquisition made was less than 5% so no public announcement was required to be made in accordance with the regulations.

l) To support the contention Noticee stated that he never traded (sale/purchase) in the scrip of Sungold Capital Limited at any point of time since the day the Company got listed. Whenever Noticee increased his shareholding, all the necessary disclosure/approval from the statutory authorities had been made, also in Noticee's knowledge no other Promoters and Promoter Group and deemed PACs have been trading in the account of Sungold Capital Limited. If Noticee was in possession of any such undisclosed price sensitive information then in the year 2010 i.e. in the month of October the share price of Sungold Capital Limited rechead Rs.39/- then Noticee may have encourage and guided others to trade in the scrip of the Company if, in good terms with them for their benefit.

m) The trading has never been manipulated to make profits or avoid loss based on the non-public information and thus potentially harming the investor. Further not a single complaint was received from any investor or the shareholder of the Company then on what basis it affected the investor.

20. Subsequently, Noticee No. 1 and 2 vide letter dated March 3, 2020 submitted the following:-

a) Noticees submitted that further to its email dated February 11, 2020, Mr. Rajiv Kotia ("Promoter and Managing Director"/ Noticee No. 2) is related to Noticee 3, 4, 5 and 6 in terms of Regulation 2(1)(e)(2)(iii) of SAST Regulations 1997 read with Section 6 of the Companies Act, 1956 and are coming under deemed PACs. However they are not having any relationships amongst them and affidavit dated on November 22, 2018 (By Noticee No. 2, before Honb'le Securities Appellate Tribunal in the matter of Sungold Capital Limited vide Appeal No. 250 of 2017 against Adjudication

Order No. EAD-5/SVKM/AO/49-57/2017-18 dated June 30, 2017 confirmed their separation from each other and is self explanatory. Mr. Ravi Kotia (Noticee No. 6) lived separately at A/73, Avani Complex, Near Naranpura Bus Stop, Naranpura, Ahmedabad – 380013, Gujarat i.e. not living together with Mr. Rajiv Kotia (Noticee No. 2 who is father of Noticee No. 6 since a very longtime. **Acquisition of Mr. Ravi Kotia as alleged in the SCN in the Sungold Capital Limited was 8.65% which does not trigger the limit stated under Regulation 11(1) of SAST, 1997 as it is less than 15%.**

b) Ms. Shweta Dhaval Kotia (Noticee No. 4, W/o Mr. Dhaval Kotia (Noticee No. 5) was living separately with her husband Mr. Dhaval Kotia and kid from other family members at his father's house at 2/B Ground Floor State Bank of India Staff Soc. Naranpura, Ahmedabad – 380013, Gujarat. The proportion of holding in Sungold Capital Limited of her and her husband Mr. Dhaval Kotia in Lump sum is 9% i.e. Dhaval Kotia (4.60%) + Shweta Dhaval Kotia (4.40%) which is individually less than 5% and in lump sum its less than 15% in any way, the limit of Regulation 11(1) of SAST Regulations, 1997 was not triggered.

c) Ms. Shilpa Kotia (Noticee No. 3), W/o Mr. Amit Kotia, residing at 2/B Ground Floor State Bank of India Staff Soc. Naranpura, Ahmedabad – 380013 with her husband and kids. Her holding in Sungold Capital Limited was 4.74% which is individually less than 5%, in any way the limit of Regulation 11(1) of SAST Regulations, 1997 was not triggered.

d) Also, the family lives in the house which is owned by the father and mother of the Noticee No. 2. They live in the same house and paying all their bills and household expenses separately.

e) All of the above had separate source of income and not dependent on any family member for their source of living. They have different Electricity Meter connection and different Kitchen from other Family Members. All of them are financially independent and is not in terms to help each other.

f) **The Company came with the IPO in year 1995 and the name of the Promoter and Promoter Group is not the name of the Noticees 3, 4, 5 and 6.**

g) Regulation 10 of the Takeover Regulations is not applicable to the Noticee No.2 as he is not an acquirer and is managing director who together with other promoter and promoter group of the Company already hold 17.94% shares and has not acquired and breached the Trigger limit of 5% in a financial year through creeping acquisition.

h) In instance case the Noticee No. 2 and other Promoter and Promoter group of the Company are already in control of the management of the Company and in lieu of that Regulation 10 is not applicable.

21. Noticee No. 3 to 6 have submitted their separate replies dated February 7, 2020. As their submissions are identical, they are summarized together as below:

a) The provision of Regulation 11(1) were not attracted in case of of Noticees 3 to 6 as they did not hold any shares of Sungold prior to September 14, 2007 and therefore, their purchases of 2,90,000 shares (4.74% of the equity capital), 2,69,400 shares (4.40% of the equity capital), 2,81,371 shares (4.60% of the equity capital), and 5,29,400 shares (8.65% of the equity capital) by the Noticee No. 3 to 6 respectively, was not an acquisition of 'additional shares' as contemplated by the Regulation. It was the first and the only purchase by Noticees in the scrip of Sungold equity shares.

b) Noticees were not acting in concert with others for the aforesaid acquisitions as they have not entered any agreement and made formal or informal agreement with others for change in control of the management of the Sungold or consolidation of their shareholding in the Company as the Noticees were never shown as Promoters and they were not the direct family member of Mr. Rajiv Kotia (Noticee No. 2) and he being the Director and one of the Promoters of the Company never shown other Noticees as the Promoters of the Company since the day of incorporation of the Company and the day Company got listed. Noticees had no support from the Noticee No. 2 who is the eldest brother in the family who had always neglected his responsibilities towards family and started living separately from the family and that he had engaged himself in the business of his own along with his friends and did not serve his responsibilities towards his family. Merely because of the relations with Director and Promoter of the Company does not indicate that they are acting in concert with each other for the said acquisition triggering the threshold limit of the Takeover Regulations. The family separated through the arrangement made amongst them.

c) While interpreting the definition of Person acting in concert as given under Regulation 2(1)(e) of SEBI (SAST) Regulations, 1997, Hon'ble SAT relied on the judgement of Supreme Court in the case of Daiichi Sankyo Co. Ltd. Wherein it was observed that: "The idea of the "Person acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition or substantial acquisition of shares, etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares, etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares, etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sine qua non for the relationship of "person acting in concert" to come into being."

d) The purchase of the target company's shares by it has neither caused any change in the board structure of the target company nor has such purchase of the target company nor has such purchase of the target company's shares by it resulted in any change in the control of the target company in any manner whatsoever.

e) The Bombay High Court in the case of K.K. Modi vs. SAT (2002) 35 SCL 230, 247 has also clarified as to when a person can be said to be acting as person acting in concert. The relevant observations in the judgement are as under:

   "As the Tribunal has rightly pointed out, there is no hard and fast rule that a promoter must always be deemed to be an acquirer or a person acting in concert with the acquirer. On the facts, it may be held that a promoter shares the common objective or purpose of substantial acquisition of shares with the acquirer. It may well be that he may not share the said common objective or purpose. **If he does, he shall be deemed to be a person acting in concert with the acquirer but if he does not, he cannot be deemed to be an acquirer merely because he happens** to be a promoter. Regulation 2(1)(e)(2) also makes this clear. The persons named therein are deemed to be persons acting in concert with other persons in the same category, unless the contrary is established. It, therefore, follows that even though there is a presumption that the persons described therein may be deemed to be persons acting in concert with the acquirer, the presumption is rebuttable, and therefore, in each case, the facts have to be examined to reach a conclusion as to whether a person is or is not acting in concert with the acquirer for the purpose of substantial acquisition of shares or voting rights or gaining control over the target company. He may do so by an express agreement or understanding, and the agreement or understanding may be proved by evidence on record. Similarly, he may co-operate with the acquirer directly or indirectly. **What is important is that it must be shown that he is acting in concert with the acquirer.**"

f) The definition of the Acquirer and person acting in concert can be taken in the case of Modipon Ltd. v. SEBI [2001] 33 SCL 85 and reproduced here as below:

An 'Acquirer' is a person who, directly or indirectly, acquires or agrees to acquire shares or voting rights or control in the target company by himself or with any person acting in concert. The term 'acquirer' covers not only completed acquisition but also agreement to acquire. Persons acting in concert are those who co-operate in different ways with the acquirer so that he achieves his objective of acquiring shares or voting rights or control of the target company. The facts of each case determine whether a person is or is not acting in concert with the acquirer. Their actions are the determining factor. It must be shown that they are acting in concert with the acquirer.

g) The provisions of Regulation 11(1) have been considered and explained by the Hon'ble Supreme Court in the case of Swedish Match AB v. SEBI [2004] 54 SCL 549 and to be taken on consideration for this matter.

h) In the case of Phiroze Sethna (P) Ltd vs Adjudicating Officer 2008 83 SCL 330 SAT has also clarified as to when a person can be said to be acting as person acting in concert. The relevant observations can be taken for consideration as follows in our case.

i) It is clear that Noticees 2, 3, 4, 5 and 6 are different persons and not the same. Unless they are different persons, they cannot act in concert.

j) The additional shares should be acquired by the acquirer himself or through or with the persons with whom they had acquired shares either in concert with each other. It cannot be assumed that the earlier acquisitions of Equity Shares by the Noticees was in concert with Noticee No. 2. It is not on record that Noticees had not acquired any shares of the Company prior to 2007. The target company was incorporated in 1993. Its shares were acquired by **Ashok G Modi, Sharad M Gandhi, Hansa M. Gandhi, Janak S. Kotia, Rameshchandra M. Kotia, Devyani R. Kotia, and Paresh R. Shah** in 1993 as subscriber to the MOA. Therefore, atleast the said subscriber to MOA had not acquired any share in the Target Company acting in concert with the Noticees. The Show Cause Notice is not correct to this extent. The dates of acquisition of the shares by the Noticees is not on record of the Company and its share transfer agent. Therefore, it is not known whether they had also acquired shares in the Target Company before 2007 as Registrar got changed in the same year. Be that as it may, it is clear from record available that:

   i. Noticees had not acquired any shares of the Target Company before 2007.

   ii. No evidence is on record to show that the Noticees or any other person had acted in concert with the Noticees when they acquired shares of the Target Company in earlier financial year.

   iii. Noticees confirmed that the provisions of Regulation 11(1) were not attracted in its case because they did not hold any share of the

Target Company prior to 2007 and therefore, the purchase of shares was not an acquisition of 'additional shares' as contemplated by the Regulation. It was the first and the only purchase by the Noticees of the Shares of the Target Company. It is confirmed that there was no consolidation of its holdings which alone could trigger the provisions of Regulation 11(1) in this case. The simple objective of Noticees in purchasing of 2,90,000 shares (4.74% of the equity capital), 2,69,400 shares (4.40% of the equity capital), 2,81,371 shares (4.60% of the equity capital), and 5,29,400 shares (8.65% of the equity capital) by the Noticee No. 3 to 6 respectively was the share purchasing as the suspension got revoked of the company and that these shares were not acquired in concert with any other person and each other. Consequently, the requisite element of the common objective or purpose of acquisition of shares by the persons acting in concert in terms of Regulation 2(1)(e)(1) is missing in this case.

22. In the light of the allegations contained in the SCN, the Noticees' submissions and relevant material available on record, I now proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

23. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee No. 1 had failed to make mandated disclosures under the Regulation 8(3) of SAST Regulations, 1997 read with Regulation 35(2) of SAST Regulations, 2011 for the year 2007-2008?

Issue No. II Whether the Noticee No. 2 had failed to make public announcement and mandated disclosures under the Regulation 3(4), 7 and 10 of SAST Regulations, 1997 and failed read with Regulation 35(2) of SAST Regulations, 2011?

Issue No. III Whether the Noticee No. 3 to 6 had failed to make public announcement upon additional acquisition under Regulation 11(1) read with Regulation 21(1) of SAST Regulations, 1997 read with Regulation 35(2) of SAST Regulations, 2011?

Issue No. IV If yes, whether the failure, on the part of the a) Noticee No. 1 would attract monetary penalty under Section 15A(b) of the SEBI Act, b) Noticee No. 2 would attract monetary penalty under Section 15A(a), 15A(b) and 15H(ii) of the SEBI Act and c) Noticee No. 3 to 6 would attract monetary penalty under Section 15H(ii) of the SEBI Act?

Issue No. V If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticee No. 1 had failed to make mandated disclosures under the Regulation 8(3) of SAST Regulations, 1997 read with Regulation 35(2) of SAST Regulations, 2011 for the year 2007-2008?**

24. I note from the SCN, that Noticee No. 1 is alleged to have failed to make mandated disclosure under Regulation 8(3) of SAST Regulations, 1997 for the year 2007-2008.

25. On perusal of the documents and replies submitted by the Noticee I note that it has submitted disclosures under Regulation 8(3) SAST Regulations, 1997 for the period 2007-2008 vide its letter dated April 19, 2008 through speed post. However, BSE vide letter dated July 25, 2008 informed Noticee for non compliance of Regulation 8(3) SAST Regulations, 1997. Noticee for the second time submitted the said disclosures on October 14, 2008 through speed post. Again BSE vide letter dated December 18, 2008 informed Noticee for non compliance of Regulation 8(3) SAST Regulations, 1997. In this regard, Noticee

produced letter dated January 2, 2009 addressed to BSE along with clarification that it had already complied with it and enclosed its previous disclosures made in this regard to BSE. I note that Noticee had produced letters submitting the said disclosure to BSE thrice. I have perused copies of the letters submitted by the Noticee to BSE and the speed post receipt for the same. Originals of the speed post receipts were shown during the hearing. In view of the same, it cannot be held that Noticee No. 1 failed to make disclosure under Regulation 8(3) SAST Regulations, 1997 and thus the charge of violation of Regulation 8(3) of SAST Regulations, 1997 for the year 2007-2008 is not established.

Issue No. II Whether the Noticee No. 2 had failed to make public announcement and mandated disclosures under the Regulation 3(4), 7 and 10 of SAST Regulations, 1997 and failed read with Regulation 35(2) of SAST Regulations, 2011?

26. Noticee No. 2 has admitted the fact that its shareholding in the scrip of Sungold Capital Limited, increased from 11.96% to 15.22% on acquisition of 2,00,100 shares on April 1, 2007 from two other promoters Janak S Kotia and Sanjay I Shah during the quarter ended June 2007 and 80,200 shares on July 01, 2007 from two other promoters Sharad M Gandhi and Devyani Kotia. The shareholding of Rajiv R Kotia in Sungold Capital Limited further increased from 15.22% to 16.53% between quarter ended June 2007 and quarter ended September 2007.

27. In terms of regulation 10 of SEBI (SAST) Regulations 1997, *"No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations"*.

28. Noticee No. 2 in its reply submitted that Regulation 10 of SAST Regulations does not trigger as the acquirer and promoter group was already holding 17.94% holding from the year 2005 till 2008. I note that the acquisition of the Notice No.2 is from other promoters and thus is an inter-se transfer, not resulting in any change of control, and in terms of Regulation 3(1)(e) would be exempt from complying with Regulation 10. However, I note that Regulation 3(4) of the SAST Regulation requires such an acquirer to within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which would entitle such person to exercise 15 per cent or more of the voting rights in a company. Regulation 3(5) further requires such acquirer to pay a fee of twenty five thousand rupees to the Board, either by a banker‘s cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.

29. I further note that Regulation 7 requires any acquirer, who acquires shares or voting rights which would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

30. Noticee No. 2 has not refuted the allegation that he failed to to make the necessary disclosures required under regulation 7 and failed to submit a report to SEBI under 3(4) of the SAST Regulations, 1997.

31. I note that as per Explanation(2) to Regulation 3(1)(e), the benefit of availing exemption under this clause, from applicability of the regulations for increasing shareholding or inter se transfer of shareholding shall be subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8.

32. Hence I find that though the acquisitions by Notice No.2 were inter se promoter transfers and did not result in any change in control, Noticee cannot claim exemption from requirement to comply with Regulation 10 as he failed to comply with necessary disclosure requirements under Regulation 7.

33. Hence, Noticee No. 2 was required to make a public announcement for acquisition of shares under Regulation 10 of SAST Regulations, 1997. BSE vide email dated January 03, 2019, confirmed that no notice of open offer under SAST Regulations, 1997, was received in the scrip of Sungold Capital Limited for the period April 01, 2007 – March 31, 2008.

34. With regard to compliance with Regulation 7, Noticee No. 2 vide email dated January 15, 2019, informed that the records pertains to the year 2007. Being about 11 years old records the same are unable to be recovered. BSE vide email dated January 07, 2019 & January 10, 2019, confirmed that during the period January 1, 2007 to April 30, 2008, it had only received disclosure under regulation 8(3) of SAST Regulations, 1997 dated April 19, 2007. Noticee also failed to file a report with SEBI as required under Regulation 3(4)

35. In view of above, it is established that Noticee No. 2 is in violation of regulation 3(4), 7 and 10 of SAST Regulations, 1997 r/w Regulation 35(2) of SAST Regulations, 2011, on acquisition of more than 15% in Sungold Capital Limited on April 01, 2007.

Issue No. III Whether the Noticee No. 3 to 6 had failed to make public announcement upon additional acquisition under Regulation 11(1) read with Regulation 21(1) of SAST Regulations, 1997 read with Regulation 35(2) of SAST Regulations, 2011?

36. Noticee No. 3 to 6 had admitted the fact that they had purchased 2,90,000 shares, 2,69,400 shares, 2,80,000 shares and 5,29,400 shares respectively on September 14, 2007. Further in their reply they had admitted the fact that Noticee No. 2 is the eldest brother in the family and every body are independent

and they never depend on other Noticees. I note from the reply of Noticee No. 2 that Noticee No. 3 to 6 are his relatives. However, Noticees in their reply only stated that they were not acting in concert with others and have relied upon the Judgements of Supreme Court in the case of Daiichi Sankyo Co. Ltd., Bombay High Court in the case of K.K. Modi vs. SAT (2002) 35 SCL 230, 247, Modipon Ltd. v. SEBI [2001] 33 SCL 85, Hon'ble Supreme Court in the case of Swedish Match AB v. SEBI [2004] 54 SCL 549 and Phiroze Sethna (P.) Ltd. vs Adjudicating Officer 2008 83 SCL 330 SAT.

37. The Notices have argued that they did not share common objective with Noticee No.2 and hence could not be considered as PAC. In support of this argument, they have stated that they have not entered any agreement and made formal or informal agreement with others for change in control of the management of the Sungold or consolidation of their shareholding in the Company as the Noticees were never shown as Promoters and they were not the direct family member of Mr. Rajiv Kotia (Noticee No. 2)

38. They have further submitted that Noticee No. 2 who is the eldest brother in the family who had always neglected his responsibilities towards family and started living separately from the family and that he had engaged himself in the business of his own along with his friends and did not serve his responsibilities towards his family. The family separated through the arrangement made amongst them.

39. The question to be decided here is whether Noticees No. 3 to 6 were acting in concert with Noticee No.2 when they acquired shares of the company of September 14, 2007. The Noticees are all close relatives and the only evidence offered by them for not having common objective is a stated disagreement in the family. However, even for this stated disagreement, there is no supporting document like a family separation agreement or any other document indicating dispute between family members. Under the circumstances, being close family relatives, the argument that the Noticees were not acting in concert or with common objective is hard to accept. Noticees 3 to 6 have purchased shares on

the same day. While the Noticees have refuted the date of acquisition, they have also not provided any other date of acquisition in 2007 citing lack of access to information. I note that during this period, the scrip was suspended and the acquisition was off-market in physical shares which were subsequently dematerialised. It is also pertinent to note that collective acquisition by Noticees No. 3 to 6 amounted to independently 22.39 % of shareholding, independent of the shareholding of Noticee No. 2. In view of these facts, I note that the judgements quoted by the Noticees 3 to 6 in their reply are not applicable to the facts of this case.

40. In terms of regulation 2(1)(e)(2)(iii) , relatives within the meaning of the section 6 of the Companies Act 1956 or family trust and Hindu undivided families are deemed to “persons acting in concert”. Hence, in the absence of any evidence to the contrary, Noticees No. 2 to 6 are deemed PACs.

41. In terms of regulation 11(1) of SAST Regulations, 1997 the acquirers Noticee No. 3 to 6 who collectively acquired 22.39% along with the 16.53% shares already held by their PAC – Noticee No. 2, were required to make a public announcement to acquire minimum 20% of the voting capital of the company in terms of Regulation 21(1) of SAST Regulations, 1997, pursuant to acquisition of shares by Noticee No. 3 (4.74%), Noticee No. 4 (4.40%), Noticee No. 5 (4.60%) and Noticee No. 6 (8.65%) on September 14, 2007, the total shareholding of Noticee No. 3 (4.74%), Noticee No. 4 (4.40%), Noticee No. 5 (4.60%), Noticee No. 6 and Noticee No. 2 (16.53%) was 38.92% on September 14, 2007.

Sr. No	**Noticee**	**Previous holding (%age)**	**Quantity Purchased**	**Change in %age shareholding**	**Total shareholding**	**Date of Purchase**
1	Noticee No. 3	-	2,90,000	4.74%	4.74%	14/09/2007
2	Noticee No. 4	-	2,69,400	4.40%	4.40%	14/09/2007
3	Noticee No. 5	-	2,81,371	4.60%	4.60%	14/09/2007
4	Noticee No. 6	-	5,29,400	8.65%	8.65%	14/09/2007
5	Noticee No. 2	16.53%	-	-	16.53%	

Total	**16.53%**	**13,70,171**	**22.39%**	**38.92%**	**-**

42. However, no document for open offer was received by SEBI in the matter of Sungold Capital Limited during the period April 01, 2007 – March 31, 2008.

43. In view of the above, it is established that the acquirers Noticee No. 3 to 6, collectively acquired 22.39% shares in the company Sungold Capital Limited without making an open offer in violation of Regulation 11(1) of SAST Regulations, 1997 read with regulations 21(1) of SAST Regulations, 1997 and read with regulation 35(2) of SAST Regulations, 2011.

Issue No. IV **If yes, whether the failure, on the part of the a) Noticee No. 2 would attract monetary penalty under Section 15A(a), 15A(b) and 15H(ii) of the SEBI Act and b) Noticee No. 3 to 6 would attract monetary penalty under Section 15H(ii) of the SEBI Act?**

And

Issue No. V **If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

44. Since it is established that Noticee No. 2 is in violation of regulation 3(4), 7 and 10 of SAST Regulations, 1997 r/w Regulation 35(2) of SAST Regulations, 2011, on acquisition of more than 15% in Sungold Capital Limited on April 01, 2007 and the acquirers Noticee No. 3 to 6, collectively acquired 22.39% shares in the company Sungold Capital Limited without making an open offer in violation of Regulation 11(1) of SAST Regulations, 1997 read with regulations 21(1) of SAST Regulations, 1997 and read with regulation 35(2) of SAST Regulations, 2011, I am of the view that it warrants imposition of monetary penalty under Section 15A(a), 15A(b) and 15H(ii) of the SEBI Act on the Noticee No. 2 and

under Section 15H(ii) of the SEBI Act on the Noticee No. 3 to 6, text of which is reproduced as under:

<u>SEBI Act:</u>

<u>Penalty for failure to furnish information, return, etc.</u>
15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(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.

<u>Penalty for failure to furnish information, return, etc.</u>
15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(b) *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;*

<u>Penalty for non-disclosure of acquisition of shares and takeovers.</u>
15H. *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*
(iii) *…………..*

(iv) *make a public announcement to acquire shares at a minimum price; or*

45. While determining the quantum of penalty under Section 15A(a), 15A(b) and 15H(ii) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

    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.

46. I note that from the material on record that no quantifiable figures are available to assess disproportionate gain made or loss caused to investors by the aforesaid violation. With regard to repetitive nature of default, I note one order has been passed by SEBI on July 19, 2017 and two on June 30, 2017 levying penalty against the Noticees in the matter of Sungold Capital Limited.

47. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of ₹10,00,000/- (Rupees Ten Lakh only) upon the Noticee No. 2 under Section 15H(ii) and ₹1,00,000/- (Rupees One Lakh only) under Section 15A (a) and 15A(b) and ₹10,00,000/- (Rupees Ten Lakh only) upon the Noticee No. 3 to 6 under Section 15H(ii) jointly and severally will be commensurate with the violations committed by the Noticees..

ORDER

48. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty of upon the Noticees as under.

Noticee No.	Name of the Noticee	Violations	Penalty Amount
2	Rajiv R Kotia	Under Section 15H(ii) of the SEBI Act for violation of Regulation 10 of SAST Regulations, 1997 and read with Regulation 35(2) of SAST Regulations, 2011	₹10,00,000/- (Rupees Ten Lakh only)
		Under Section 15A(a) and 15A(b) of the SEBI Act for violation of Regulation 3(4) and 7 of SAST Regulations, 1997 and read with Regulation 35(2) of SAST Regulations, 2011	₹1,00,000/- (Rupees One Lakh only)
3	Shilpa Amit Kotia	Under Section 15H(ii) of the SEBI Act for violation of Regulation 11(1) of SAST Regulations, 1997 read with regulations 21(1) of SAST Regulations, 1997 and read with regulation 35(2) of SAST Regulations, 2011	₹10,00,000/- (Rupees Ten Lakh only) shall be paid by the Noticees jointly and severally.
4	Shweta Dhaval Kotia		
5	Dhaval Ramesh Kotia		
6	Ravi Rajiv Kotia		
Total Penalty			₹21,00,000/- (Rupees Twenty One Lakh only)

49. The Noticees shall remit / pay the said amount of penalty within 45 days from May 31, 2020 or receipt of this order, whichever is later either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable

at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

50. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

51. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: MAY 18, 2020	**MANINDER CHEEMA**
PLACE: MUMBAI	**ADJUDICATING OFFICER**