



# Securities and Exchange Commission of Pakistan

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Securities Market Division  
Public Offering and Regulated Persons Department  
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Ref. No. 1(5)SMD/PRPD/2015

Date: March 17, 2016

Mr. Mohammad Ahmed Bawany,  
Chief Operating Officer,  
Bawany Air Products Limited  
16-C, Nadir House, 2nd Floor,  
I.I. Chundrigar Road,  
Karachi.  
Fax-021-32414790, 32411986

Mrs. Huma Bawany,  
House No. E-34/2,  
Gizri Street,  
Mohallah No.4.  
DHA, Phase-4,  
Karachi

**Subject: Order in respect of Show Cause Notices dated July 5, 2014 Bearing Number 1(7) BAPL/MSW/SMD/2010**

Dear Sir/Madam,

Please find enclosed herewith a copy of order in the title matter for your record and necessary action.

Yours truly,

**Muhammad Farooq**  
Additional Director (PRPD)

OR G

**Before the Commissioner (SMD)**

In the matter of Show Cause Notice issued Section 15E and Section 22 of the Securities and Exchange Ordinance, 1969, to Mr. Mohammad Ahmed Bawaney, Chief Operating Officer of Bawany Air products Limited and Ms. Huma Bawaney

**Date of Hearing:**

- (i) September 23, 2014,
- (ii) January 22, 2015 and
- (iii) September 03, 2015

**Present at Hearing:****Representing the Respondents**

- (i) Mr. Hanif M. Bawaney, Chief Executive, Bawany Air products Limited
- (ii) Mr. Rizwan Manai, Consultant, Rizwan Manai Associates
- (iii) Mr. Faisal Bashir, Advisor to Chief Executive, Bawany Air products Limited

**Assisting the Commissioner (SMD)**

- (i) Mr. Nasir Askar, Director (PRPD-SMD)
- (ii) Mr. Muhammad Farooq Bhatti, Additional Director, (PRPD-SMD)
- (iii) Mr. Amir Saleem, Joint Director, (SSED-SMD)

**ORDER**

This order shall dispose of the proceedings initiated through the following three different Show Cause Notices dated May 5, 2014, by the Securities and Exchange Commission of Pakistan ("**the Commission**") against Mr. Mohammad Ahmed Bawaney (**Respondent-I**) Chief Operating Officer of Bawany Air Products Limited (**Company**) and Ms. Huma Bawaney, (**Respondent-II**), spouse of the Respondent I, collectively called hereunder Respondents:-

Notice No.	Notice Served to	Notice Served u/s	Notice served for alleged violation of
1(7)BAPL/MSW/SMD/2010-420 ( <b>Notice-I</b> )	Respondents I	Section 15E of the Securities and Exchange Ordinance, 1969 ( <b>Ordinance</b> )	Section 15 E(3) of the Ordinance.
1(7)BAPL/MSW/SMD/2010-431 and 432 ( <b>Notice-II</b> )	Respondents I and II	Section 15E of the Ordinance	Section 15 A of the Ordinance
1(7)BAPL/MSW/SMD/2010-433 to 434 ( <b>Notice-III</b> )	Respondents I, and II	22 of the Ordinance	Section 15 D(5) clause 16(6) and 35(xxiii) of Listing Regulations of formerly Karachi Stock Exchange Limited (" <b>PSX</b> ")

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### Background of the Case:-

2. Brief facts of the case are that on perusal of trading data of PSX, it was observed that the Respondents had traded in the shares of Company in the following manner:

Mr. Muhammad Ahmed Bawany's trading in BAPL shares during the Review Period	
Date	Shares Sold
26-11-2013	75,000
5-12-2013	15,000
10-12-2013	1,000
<b>Grand Total</b>	<b>91,000</b>

Ms. Huma Bawany's trading in BAPL shares during the Review Period	
Date	Shares Sold
06-12-2013	7,000
10-12-2013	12,500
11-12-2013	20,000
<b>Grand Total</b>	<b>39,500</b>

3. The Company announced financial results for the (i) year ended June 30, 2013 (**Year-2013**) and (ii) 1st quarter ending on September 30, 2013 (**1st Quarter-2014**) on October 31, 2013 and November 1, 2013 respectively. Review of the said financial results revealed that one of the Company's existing plants was damaged and the plant has to be partially closed. Consequently, the Company incurred significant losses during the last quarter of financial Year-2013 and 1<sup>st</sup> Quarter-2014. The information "partial closure of plant" was *prima facie* to be classified as "inside information" in terms of Section 15B of the Ordinance. It was observed that Respondents have made aforesaid trading based on *prima facie* abovementioned inside information.

### Initiation of proceedings by the Commission:

4. The Commission took cognizance of the aforesaid contraventions and issued
- Notice-I to Respondents I, calling upon him to explain through written reply along with documentary evidence, if any, as to why action may not be taken against him under section 15E(3) of the Ordinance for passing on inside information to his spouse.
  - Notice-II to Respondent I and II, calling upon them to explain through written reply along with documentary evidence, if any, as to why action may not be taken against them, for indulging in insider trading in violation of section 15(A) of the Ordinance.
  - Notice-III calling upon the Respondents I and II, to explain through written reply along with documentary evidence, if any, as to why action may not be taken against them for alleged violation section 15D (5) and regulations 16(6) and 35(xxiii) of listing regulations of PSX.

5. Respondent-I and Respondent II vide letters dated June 2, 2014 and May 26, 2014, respectively filed replies to the Notices and contended that none of them had violated the regulatory framework on the subject matter, including section 15A of the Ordinance. The Respondents expressed intention to be heard in person, for explaining the case in detail. The matter was scheduled for hearing before then Director/HOD (SSED) on July 24, 2014, which on the request on Mr. Rizwan Manai (the "**Representative**") was adjourned and rescheduled for September 23, 2014. The hearing was attended by the Representative, without proper authorization/power of attorney. The Representative was asked to furnish authority letter and certain documentary evidence including detail of monthly sales of the Company. The matter was again fixed for hearing on December 5, 2014, which was later on adjourned and rescheduled for January 22, 2015. The Respondent-1 along with Representative appeared before the then Director/HOD(SSED). Before the matter could be concluded by the Director/HOD, due to internal administrative arrangements of the Commission, the instant case along with some other pending adjudication matters (wherein notices were issued by Supervision and Surveillance Department of Securities Market Division) was passed on to the undersigned.

6. In order to conclude the proceedings, an opportunity of hearing was provided on July 13, 2015. However, the same was adjourned on the request of the Respondent-I and rescheduled for September 03, 2015. On the given date, the Representative along with Mr. M. Hanif Bawany, Chief Executive of the Company and Mr. Faisal Bashir, Advisor to CEO of the Company (collectively called hereunder "**Authorized Representatives**") appeared before me. At the beginning of the hearing, the Authorized Representatives stated that previously they have appeared before Director/HOD twice and explained the case in detail. They were informed that due to internal administrative arrangement, the instant matter along with all pending adjudication cases have been assigned to Commissioner (SMD). All documents/submissions made by the Respondents before the Director/HOD(SSED) are part of the record and would be considered accordingly. The Authorized Representatives contended that no violation of any section of Ordinance has been committed as neither the damage to the component was price sensitive information nor the shares were sold by Respondents I and II on the basis of any inside information. The arguments presented in support of the aforesaid contentions in writing during the entire course of proceedings and contended verbally by the Authorized Representatives during the course of hearing be summarized as under:-

- a) *The Respondent I, has joined the Company in June 2013, with 3 months probationary period, as Chief Operating Officer with the responsibility to look after the production and marketing of products of the company. He was not having any position on Board of Directors and therefore, he is not involved in the process of decision making on behalf of the company.*
- b) *The disposal of shares by Respondent I and II, was part and parcel of compliances with the requirements of employment conditions of the Respondent I rather than on the basis of any non-public inside information.*





- c) Under the terms of the employment, Chief Operating Office is not allowed, directly or indirectly, to deal, hold or trade in the shares of the company.

7. In response, the departmental representative stated that the plant of the Company was damaged in April-May, 2013, but the Company pursuant to provisions of Section 15 D of the Ordinance read with S.R.O. 1431(I)/2012 dated December 5, 2012 (**Notification of 2012**), filed disclosure in this regard with PSX in March 2014. While, the financials circulated through PUCARS did contain the information of closure of plant, therefore, this information became public, when the Company communicated the same to PSX on March 10, 2014. The Departmental Representative further contended that since prior to March 10, 2014, the information of "partial closure of plant" was non-public, therefore, the Respondents have dealt in the securities on the basis of inside information, in contravention of section 15 A of the Ordinance.

**Framing of issues:-**

8. I have heard the Authorized Representatives on behalf of the Respondents, the departmental representative and reviewed the available record in detail. Without prejudice to the contention submitted on behalf of the Respondents, first I would like to discuss the following essential ingredients, which are needed to establish for an offence of insider trading:-

- i. There must be purchase or sale of shares.
- ii. The person dealing in shares should be insider in term of section 15 C of the Ordinance.
- iii. The information used by person should be inside, non-public and material information, in terms of section 15B of the Ordinance.

9. In the instant case, it has been alleged in Notice I and Notice II that Respondents have sold the shares in violation of section 15 A of the Ordinance, on the basis of non-public information regarding "partial closure of plant" of the Company. I have reviewed the available record which revealed that plant was damaged during April-May, 2013. The Company disclosed the said information in its financial results for the financial year ended on June 30, 2013 and 1<sup>st</sup> Quarter 2014 (ended on September 30, 2013). The said information was later on communicated to PSX in March, 2014. Disclosure made by the Company, in this regard, may be summarized in chronological order as under:-

- (i) On October 31, 2013 disclosed that during the last quarter of the current year, one of the components of the Company's existing plant was damaged and the plant had to be partially closed.
- (ii) On November 1, 2013 (in quarterly accounts as on September 30, 2013) disclosed that the component has been repaired successfully and it is in process of being installed.





- (iii) On February 27, 2013 (in half yearly accounts as on December 31, 2103) disclosed that by the time accounts are being approved by the Board the plant has become fully operational."
- (iv) On March 10, 2014, the Company intimated to PSX that one of the manufacturing units have been shut down due to breakdown of its critical part.

In my opinion, the financial results of a listed company are public documents resultantly, any information disclosed in financial results is deemed to be made public from the date of circulation of the financial results to the members of the company and the stock exchange. In the instant case, the Company disclosed the under reference inside information in its financial results approved by the Board of Directors on October 31, 2013. I have also noticed that financial results sent to PSX on October 31, 2013 comprised only profit and loss account and Balance Sheet as at June 30, 2013. The aforesaid "inside information" was not part of documents which was made public through PUCARS on October 31, 2013. In fact, the said information was part of printed accounts which under the regulatory requirements were sent to all members of the Company and PSX separately. In response to a query PSX intimated that annual accounts for the year ended June 30, 2013 and first quarter ended on September 30, 2013 were provided to the stock exchange on November 11, 2013 and November 12, 2013 respectively. So, in my opinion owing to disclosure in annual accounts the information about incurring of loss became public on October 31, 2013 while, the information regarding "partial closure of plant" stood public on November 11, 2013.

In the instant case, the Respondents have sold shares during the period from November 26, 2013 to December 11, 2013. While, as inferred above, the under reference inside information became public on November 11, 2013. Thus, the said dealing in the shares of the Company by the Respondents has been made after becoming the aforesaid inside information public.

In view of the foregoing, I am of the view that, the aforesaid dealing in shares by the Respondents does not attract the provisions of section 15A of the Ordinance. Thus, the proceedings initiated through Notice I and Notice II are disposed of accordingly.

10. Now I take up the allegations levelled in Notice III, wherein it was alleged that Respondent I has failed to file disclosure of aforesaid transactions pursuant to section 15 D (5) of the Ordinance and listing regulations of PSX. In this regard, the Authorized Representative contended that the Respondent I neither falls in the ambit of section 222 of the Companies, 1984 nor the transactions were made on the basis of any inside information, therefore, the said transactions were neither required to be reported to the Commission under Companies Ordinance, 1984 nor in terms of section 15D (5) of the Ordinance. Concerning the allegation of non-reporting of transactions under listing regulations it was contended that Respondent I, duly informed the Company Secretary



about sale made by his spouse, however, the same were not reported to PSX. The Respondents requested that lenient view of the default may be taken.


11. In this regard, it is pointed out that clause 16(6) and 35(xxiii) of the Listing Regulations of PSX prescribes that as and when *inter alia* an executive of a listed company or their spouses sell, buy or take any beneficial ownership position directly or indirectly in the shares of the listed company, such person immediately notify the same to the company in writing. While, clause 35(xvi) of the listing regulations of PSX explains that "executive" means the CEO, COO, CFO, Head of Internal Audit and Company Secretary by whatever name called. Thus, the Respondent I, pursuant to clause 16(6) and 35(xxiii) of the Listing Regulations was required to communicate the aforesaid transactions to Company for onward transmission to PSX for dissemination of all concerned. The Respondent-II has contended vide letter dated May 26, 2014, that sale transactions made by her, during the period from December 06, 2013 to December 11, 2013 were communicated to the Company by her husband i.e. Respondent I. While, as per available record, the sale transactions made by the Respondent I, from November 26, 2013 to December 12, 2013 have not been reported to the Company. Thus, the Respondent I has committed violation of Listing Regulations. In view of the above facts, I am imposing a penalty of Rs 20,000/- on Respondent I. Further, the Respondent I, being Chief Operating Officer of the Company is strictly warned to ensure compliance of regulatory framework on the subject matter, in future.

12. The Respondent-I is directed to deposit the penalty in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of the date of this Order and furnish Original Deposit Challan to this office.

13. This Order is being issued without prejudice to any other action that the Commission or the Pakistan Stock Exchange may initiate against the Respondent in accordance with the law on matter subsequently investigated or brought to the Notice of the Commission.

Islamabad.  
Announced on March 17, 2016



  
(Akif Saeed)  
Commissioner (SMD)