



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)

Before The Director (Securities Market Division)

In the matter of Show Cause Notice issued to

Mr. M. Hanif.Y. Bawany, Chief Executive Officer, Bawany Air Products Limited

under section 15E (3) of the Securities and Exchange Ordinance, 1969

Date of Hearing:

November 4, 2010

Present at Hearing:

Representing Mr. M. Hanif Y. Bawany

(i) *Mr. Muhammad Sohail*

Chief Financial Officer,

Bawany Air Products Limited

Assisting the Director (SMD)

(i) *Mr. Syed Asad Haider*

Joint Director

(ii) *Mr. Muhammad Atif Hameed*

Deputy Director

(iii) *Mr. Adnan Ahmed*

Deputy Director

1. This order shall dispose of the proceedings initiated through Show Cause Notice dated July 28, 2010 (“SCN”) issued by the Securities and Exchange Commission of Pakistan (“**the Commission**”) under of Section 15E (3) of the Securities and Exchange Ordinance, 1969 (“**the Ordinance**”) to Mr. M. Hanif Y. Bawany (“**the Respondent**”).
2. The brief facts of the case are that Bawany Air Products Limited (“**BAPL**”) is a public limited company listed on the Karachi Stock Exchange (Guarantee) Limited (“**KSE**”) and the Respondent is Chief Executive Officer (the “**CEO**”) and Director of BAPL. Likewise the Respondent is also the CEO and Director of Bawany Management (Pvt.) Limited (“**BML**”).



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3. The members of Board of Directors (“BOD”) of BAPL as on December 31, 2009 are as under:

1. Mr. M. Hanif Y. Bawany
2. Ms. Momiza Kapadia
3. Mr. Vali Mohammad M. Yahya
4. Mr. Danish Amin
5. Mr. Wazir Ahmed Jomezai
6. Mr. Zakaria A. Ghaffar
7. Mr. Muhammad Ashraf

In addition to above, following are the members of the BOD of BML as per the latest Form 29.

1. Mr. M. Hanif Y. Bawany
2. Mr. Vali Mohammad Y. Baway

Furthermore, it is noteworthy that the Respondent and Mr. Vali Mohammad Y. Bawany are the only shareholders of BML and own its 5,000 shares each.

4. On perusal of the KSE trading data from January 01, 2010 to February 23, 2010 (“the **Review Period**”), it was observed that the share price of BAPL witnessed a gradual surge from Rs. 4.70 on January 4, 2010 to Rs. 8.79 on February 23, 2010. BAPL announced its financial results for the Half Year ended December 31, 2009 on February 24, 2010 which exhibited its positive financial outlook, declaring Earning per Share (“EPS”) of Rs. 5.97, which had considerably improved as compared to EPS of Rs. 0.26 announced in the First Quarter ended September 30, 2009. The improved Half Yearly Financial results of BAPL had positive impact on the scrip price which closed at upper circuit breakers for the next two trading sessions i.e. on February 24 and 25, 2010 and also closed on higher price of Rs. 11.78 on February 26, 2010. Accordingly, due to its positive affect on the price of BAPL scrip, the aforesaid declaration of the Half Yearly Financial results is regarded as ‘price sensitive information’.



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5. The review of historical trading data of BAPL showed that it is thinly traded scrip. The year wise volume of BAPL scrip from 2007 till 2009 is given in the following table.

Year	Volume	Avg. Daily Volume	High Price (Rs.)	Low Price (Rs.)
2007	547,000	4,973	20.90	10.30
2008	3,540,500	24,587	23.65	2.99
2009	1,487,686	7,998	6.39	2.05

6. The analysis of trading data of BAPL scrip showed that out of total volume of 253,388 shares during the Review Period, BML purchased 125,101 shares (49% of total market volume) at average rate of Rs. 7.06 through its trading account with Live Securities (Pvt.) Limited ("LSL"), Member KSE. It is noteworthy that out of 125,101 shares purchased by BML 45,272 shares were bought on February 23, 2010 between the time 1:48:13 p.m. to 1:55:26 p.m. which was before the conclusion of BOD meeting of BAPL. It is noteworthy to mention here that this is the same meeting wherein Half Yearly accounts as on December 31, 2009 were approved. However, since the BOD meeting concluded after the end of trading session at KSE, therefore, BAPL disseminated its said financial results to KSE on the following day i.e. February 24, 2010.
7. In view of the above facts regarding the trading of BML, before the public announcement of financial results of BAPL for the period ended December 31, 2009 it was prima facie established that BML had traded whilst in possession of 'price sensitive inside information' available to it due to presence of the Respondent on its BOD and on the Board of BAPL. It is vital to mention here that the Ordinance clearly considers and defines persons like the Respondent, in his capacity as CEO of BAPL, as 'insider'. Section 15C(1)(a) of the Ordinance is important in this regard that reads as under:

"15C. Insiders.—(1) Insiders shall include, —

(a) sponsors, executive officers and directors of an issuer;



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8. Accordingly, the Commission took cognizance of the matter and issued the SCN to the Respondent calling upon it to explain as to why action may not be taken against him under Section 15E (3) of the Ordinance. The Respondent was requested to appear at the Commission's Islamabad Office on August 17, 2010 for a personal hearing. However, no reply to the SCN was received nor any one appeared on behalf of Respondent on August 17, 2010. The Respondent vide letter dated August 17, 2010 requested this office to extend the date of submission of reply to SCN for a few days and also requested for change in the venue of hearing from Islamabad to Karachi. The said request of the Respondent was acceded to.
9. The Respondent submitted the written reply dated August 17, 2010, received by the Commission on August 19, 2010, through its legal counsel M. Salim Thepdawala & Co. Following are the key assertions made by the Respondent in the written reply.
- a. *The Respondent asserted that it has already submitted its written reply to the SCN being the Chief Executive of BML through his legal counsel vide letter dated August 12, 2010 contents of which were again reproduced as reply to the SCN.*
 - b. *The Respondent denied the allegations made in the SCN and stated that the SCN was issued due to misunderstanding of the true facts and misreading of the applicable laws. The Respondent stated that review of trading data of BAPL during the review period does not reveal that it had ever indulged in activities of Insider Trading, therefore the SCN is not maintainable under the law. The Respondent further stated that the SCN acknowledges the fact that BML had only purchased the shares of BAPL and did not sell any shares to realize a gain, therefore, the concept of trading could not be completed.*
 - c. *The buying of shares of BAPL by BML was done with the intention to mitigate losses it has suffered due to purchase of BAPL shares at Rs. 10/- in the capacity of its underwriter. However, it has not sold a single share; therefore, it does not fall under the category of Insider Trading.*



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- d. *The actual earning of BAPL was Rs. 1/- per share and the balance was result of adjustment of deferred tax and reversal of financial liabilities due to settlement/compromise with banks/financial institutions who have waived off certain portion of liabilities of BAPL which is not illegal.*
- e. *The Respondent asserted that BML was not searching to buy the shares but the fact is that the sellers came into the market to sell shares first which were purchased by it. The Respondent asserted that the Commission should check who was trying to sell the shares on February 22, 23 and 26, 2010, whereas during this period it had not sold any shares, in fact, it continued to buy shares up to Rs. 14.25/- per share. The Respondent further asserted that the sellers came first in the market and BML only placed its orders after the sellers. It shows that some persons were trying to create panic in the market by purchasing the shares at lower levels and selling the same at higher price.*
10. The matter was fixed for hearing on November 04, 2010 at the Commission's Karachi Office. On the date of hearing, Mr. Muhammad Sohail, Chief Financial Officer of BAPL (the **"Representative"**) appeared before me on behalf of Respondent. The contentions raised by the Representative during the course of hearing are summarized below:
- a. *The Representative during the hearing stated that BML traded in the shares of BAPL only to accumulate its holding of BAPL shares. Further he stated that the Respondent and his family owns 70% of the company shares and currently BML owns 352,000 shares of BAPL against which it has not availed any credit facility. The Representative stated that the shares were not purchased by BML based on insider information and same was done to maintain price of the scrip and holding in the company.*
- b. *During the hearing the Representative also stated that Mr. Faisal Habib and Mr. Taufiq Moten were authorized to operate jointly BML trading account with LSL, however, Mr. Faisal Habib left the job and only Mr. Taufiq Moten was operating the account. However, in reply to a question regarding who was giving orders on behalf of the BML, the Representative acknowledged that shares were being bought on the instructions of the Respondent.*



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c. *The Representative accepted the fact that the BML should have not bought shares of BAPL during the close period which is violation of law, however, the directors did not sell any shares. The Representative requested that keeping in view the small volume of shares and amount involved lenient view may be taken by the Commission in the instant matter.*

11. I have perused the record, the written reply filed by the Respondent and duly considered submission made by the Representative of the Respondent during the course of the hearing and the same are addressed by me below:

- a) The Respondent asserted that the SCN is based on misreading of law and facts are incorrect. It may be noted that the SCN was issued on the facts which were mentioned in the SCN and have not been denied by the Respondent in his written reply or during the hearing. Additionally, regarding the argument of the Respondent that the transactions did not result in a realized gain, it is observed that that the Section 15 of the Ordinance does not make any differentiation between realized and unrealized profit. Therefore, the Respondent's contention that the said section does not apply because BML did not sell any shares does not justify the buying of BAPL shares by BML or negate the application of Section 15 of the Ordinance in the instant matter. The SCN clearly stated that BML bought shares of BAPL during the Review Period and BML had the inside information available about BAPL through the Respondent who by virtue of his position as CEO of BAPL was in possession of material non-public price sensitive information about BAPL. Section 15 of the Ordinance is prohibitory in nature of the act of insider trading and precludes any person from trading in a listed security based on price sensitive inside information.
- b) The Respondent also stated that BML purchased the shares because it was mitigating the losses that it had suffered due to purchase of BAPL shares as underwriter at Rs. 10/-. However, it is interesting to note that after the announcement on February 24, 2010, BML purchased shares well over the price of Rs. 10/-. The said fact negates the stance of the Respondent that BML was trying to decrease the average cost of its holding of BAPL shares.



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- c) The Respondent also contended that the major rise in EPS of the BAPL was mainly due to adjustment of deferred tax and reversal of financial liabilities. It may be noted that in addition to improved financial performance due to adjustment of deferred tax and reversal of financial liabilities, the financial statement also showed improved operational performance of BAPL in the financial results for the Half Year ended December 31, 2009. The financial statement as of December 31, 2009 showed considerable improvement in Gross Profit of the company which increased from Rs. 9.197 million as on September 30, 2009 to Rs. 22.730 million resultantly contributing positively to the EPS of the company. However, it may be noted that whatever was the source of the improved EPS i.e. better business, adjustment of deferred tax and reversal of financial liabilities, the general public had no prior information about the same until it was made public on February 24, 2010 and was in possession of the Respondent in his capacity as CEO of BAPL which constitutes the inside information. The said inside information was also materially price sensitive as upon becoming public, it had positive impact on the share price of the scrip.
- d) The Respondent's assertion that BML was not searching to buy the shares and the sellers came first in the market does not have effect on the fact that the shares were bought by BML. The placement of order by BML, on the instructions of Respondent, shows the intention to purchase the shares of BAPL. Mere placement of orders before or after the sellers does not show that BML had no intention to buy the shares or it was forced to purchase the shares in question. The selling of the shares by other market participants does not mean that they were trying to manipulate the market price, however, on the basis of said contention further review of data was done and no suspicious trading in the scrip of BAPL was observed. By making the aforesaid contentions the Respondent can not divert the attention from the fact that BML purchased the shares of BAPL based on inside information made available to it by the Respondent.
- e) The contention of the Respondent that the shares were bought in order to increase the existing holding of the BAPL shares by Respondent's family does not justify the purchase of shares. The timing of the purchase of shares by BML shows that same was



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done based on inside information available to the Respondent as CEO of the BAPL. Further the Representative, during the hearing, also acknowledged the fact that the shares were bought on the instruction of the Respondent.

- f) The Representative during the hearing also acknowledged the fact that BML should have avoided trading in the shares of BAPL during the close period i.e. between February 17, 2010 to February 23, 2010 which is a violation of Regulation 35 (xxvi) of The Listing Regulations of The Karachi Stock Exchange (Guarantee) Limited.

12. Based on the contentions submitted in the written reply and the arguments made by the Representative during the course of hearing it transpired that the Respondent, in his capacity as CEO of BAPL, possessed price sensitive inside information about the improved financial performance of BAPL. The Respondent being privy to the inside information by virtue of influential position as CEO in BAPL was able to pass on this information to BML which purchased shares of BAPL at lower market price and indulged in insider trading as defined in Section 15(A)(2) of the Ordinance and the Respondent violated Section 15E (3).

13. Moreover, it is clear from Section 15B(1)(a) of the Ordinance that the inside information should be material non-public, price-sensitive information which directly or indirectly relates to the listed company. This divulges that the information regarding the financial results of BAPL was a material inside information, directly related to it and the Respondent was in possession of the said material information which he passed on to BML which indulged in insider trading on the basis of same. Moreover, dissemination of the financial results to the general public resulted in positive movement in the share price of BAPL.

14. It is pertinent to mention here that the Respondent, being in his capacity as the CEO and director of BAPL and BML, has a fiduciary duty to the BAPL and its shareholders that he is required to exercise care consistently to maximize the value to all of the shareholders of BAPL. He should also discharge his responsibilities diligently without exception in any matter including his position as an insider holding confidential information regarding BAPL.



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15. In light of the above, in exercise of the powers under Section 15E (3) of the Ordinance, I hereby impose on Respondent a fine of Rs. 1,000,000/- (Rupees One Million Only) for passing on/disclosing inside information regarding financial results of BAPL to BML. I further direct the Respondent to ensure that full compliance be made of all rules, regulations and directives of the Commission in future for avoiding any punitive action under the law.
16. The matter is disposed of in the above manner and the Respondent is directed to deposit the fine as mentioned in paragraph 15 above, in the account of the Commission being maintained in the designated branches of MCB Bank Limited not later than thirty (30) days from the date of this Order and furnish the copy of the deposit challan to the undersigned.
17. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Imran Inayat Butt

Director

Securities Market Division

Announced on December 29, 2010
Islamabad.