



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Before the Director/HOD (MSCID)

In the matter of Show Cause Notice issued under Section 224(4) of the Companies Ordinance, 1984 to Berger Paints Pakistan Limited, a more than ten percent shareholder of Buxly Paints Limited

Date of Hearing: December 30, 2011

Present at Hearing:

Representing the Respondent: Syed Haroon Aziz,
Senior Consultant,
Aziz Associates, Company Law Consultants.

Assisting the Director/HOD (MSCID): Mr. Muhammad Farooq,
Joint Director (SMD)

Order

This order will dispose of the proceedings initiated under Section 224(4) of the Companies Ordinance, 1984 ("**Ordinance**") by the Securities and Exchange Commission of Pakistan ("**Commission**") through Show Cause Notice No. S.M(B.O)C.O.222/14(651)11 dated 21/12/2011 ("**Notice**") issued to Berger Paints Pakistan Limited ("**Respondent**"), a more than ten percent shareholder of Buxly Paints Limited ("**Issuer Company**").

2. The facts of the matter leading up to aforesaid Notice are that the Issuer Company is a public listed company and the Respondent being its a more than ten percent shareholder was required to file its return of beneficial ownership on Form 31, within the period stipulated under Section 222 of the Ordinance. However, it failed to discharge the said obligation which attracts penal provisions contained in Section 224(4) of the Ordinance.

3. Section 222(2)(b) of the Ordinance stipulates the period within which the Form 31 is required to be submitted as under. For convenience, the provisions of the said Section are reproduced hereunder:-

"in any other case, including a case where the company is listed on the stock exchange after the commencement of this Ordinance or after the person has occupied the position or office specified in sub-section (1) or has acquired interest as beneficial owner of securities as aforesaid, within thirty days of occupying the office in the company or acquisition of interest as beneficial owner requiring submission of the return aforesaid or listing of the company on the stock exchange, as the case may be"



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4. It is worth mentioning that in order to provide an opportunity to directors/beneficial owners of listed companies to file their over due returns of beneficial ownership without facing penal action, the Commission through Notices dated 07/09/2009 and 21/09/2010 asked them to file their returns of beneficial ownership with Head Office of the Commission by 31/10/2009 and 31/10/2010 respectively and to ensure timely compliance of Section 222 of the Ordinance in future. The aforesaid Notices were sent to all listed companies and were also disseminated through stock exchanges and print media.

5. On account of scrutiny of record of this office, it was observed that the Respondent has failed to file the return of beneficial ownership on Form 31. The Respondent was, therefore, asked vide letter dated 14/09/2011, followed by a reminder dated 20/10/2011, to file return of beneficial ownership on Form 31 alongwith reasons for non-filing of the same, within the period stipulated in Section 222 of the Ordinance. The Respondent filed the Form 31 with this Commission on 27/10/2011 which showed that the Respondent acquired the status of more than ten percent shareholder on 22/10/2001. Thus, the Respondent was required to file the Form 31 with this Commission latest by 21/11/2001, but the same was filed on 27/10/2011, with delay of 3,627 days, in contravention of Section 222(2)(b) of the Ordinance, which provides as under:-

"Whoever knowingly and wilfully contravenes or otherwise fails to comply with any provision of section 222, section 223 or section 224 shall be liable to a fine which may extend to thirty thousand rupees and in the case of a continuing contravention, non-compliance or default to a further fine which may extend to one thousand rupees for every day after the first during which such contravention, non-compliance or default continues".

6. The Commission took cognizance of the aforesaid default and issued Notice to the Respondent under Section 224(4) of the Ordinance, calling upon it to explain through written reply alongwith documentary evidence, if any as to why action may not be taken against it pursuant to Section 224(4) of the Ordinance, for aforesaid contravention of Section 222(2)(b) of the Ordinance. The Company Secretary of the Respondent vide letter dated 29/12/2011 filed written reply to the Notice, wherein he stated that:-

- a) *The Form 31 was filed in response to Commission's letter dated 14/09/2011.*
- b) *The Respondent had lost all its record in devastating fire occurred in 2008. Any thing filed before the Commission in that period was not available. We have recently got some copies of our filings with SECP after payment of application fee for our record.*
- c) *Proceedings may be withdrawn after accepting our filing as compliance to law.*

7. Furthermore, in order to provide an opportunity of being heard in person, hearing in the matter was fixed for 30/12/2011 at Commission's office, Karachi. On the given date, Syed



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Haroon Aziz, Senior Consultant of Aziz Associates (“**Authorized Representative**”) appeared before me on behalf of the Respondent and pleaded the same point of view as was communicated by the Company Secretary of the Respondent in his aforesaid letter. He further stated that due to non availability of record, the Respondent is unable to confirm as to whether the under reference return was filed within the stipulated time limit or not. The Authorized Representative requested to drop the proceedings by accepting the return filed on 27/10/2011.

8. I have considered the submissions made by the Company Secretary in writing as well as Authorized Representative during the course of personal hearing. The Respondent has neither denied nor accepted the default with the contention that its record has devastated in fire in 2008. In order to arrive at decision, the Company Registration Office (“**CRO**”), Karachi was approached. It is worth mentioning that returns of beneficial ownership are required to be filed simultaneously with the concerned Company Registration Office and Head Office of the Commission. The background of the case was communicated to the CRO, with request to let this office know, the exact date on which the Respondent filed Form 31 with the CRO. In response, it was intimated that the Respondent filed Form 31 with the CRO on 12/10/2011. It was further clarified by the CRO that the record pertaining to the years 2001 and 2002 was specifically checked and noticed that no such return was received from the Respondent during the said period.

9. Besides enquiring from CRO, Karachi, I have also reviewed the available record of this office which reveals that the Respondent, in response to above mentioned letter of this office has filed Form 31 with the CRO, Karachi on 12/10/2011 and Head Office of the Commission on 27/10/2011. The record further signifies that the Respondent has made no purchase and sale transactions in the shares of the Issuer Company since attaining the status of more than ten percent shareholder of the Company.

10. Based on the aforesaid facts, I am of the view that the Respondent has neither filed the return with Head Office of the Commission, nor with concerned Company Registration Office, within the stipulated time limit. It is worth mentioning that Sections 220 to 224 of the Ordinance speak about a Scheme. Under the said Scheme *inter alia* more than ten percent shareholder of a listed company is required to report its shareholding as well as changes in shareholding at the same time to the Company, Registrar of Companies and the Commission. The specified officers and more than ten percent shareholders of a listed company are required to fulfill their statutory requirements within the time period provided in the law. The inevitability of the filing of the return of beneficial ownership with the Commission may be adjudged from the fact, that it enables the Commission to monitor the trading activities of the returnee.

11. It is worth mentioning that in order to engender awareness and provide an opportunity to the specified officers and more than ten percent shareholders of listed companies, for filing of overdue returns, the Commission took certain initiatives as mentioned in detail in para 4 of



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the Order, but apparently the Respondent failed to discharge its liability entailed under Section 222 of the Ordinance, until, the same was pointed out by this office through letter dated 14/09/2011.


12. In view of the foregoing discussion, it is evident that the Respondent has contravenes the provisions of Section 222 of the Ordinance. However, the record of this office reveals that Respondent has made no purchase and sale transactions in the shares of the Issuer Company, since attaining the status of more then percent shareholder of the Company. Taking a lenient view of the default, in exercise of powers conferred under Section 224 (4) of the Ordinance, I hereby impose a fine of Rs. 30,000 (thirty thousand rupees only) on the Respondent and no further fine for continuous default, which may extend one thousand rupees per day for the default period of 3,627 days, is imposed.

13. The Respondent is directed to deposit the fine 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, to the effect.

14. This Order is issued without prejudice to any other action that the Commission/Registrar 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 January 31, 2012




(Imran Inayat Butt)
Director/HOD (MSCID)