WTM/KMA/IVD/314/11/2010

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K.M. ABRAHAM, WHOLE TIME MEMBER

ORDER

DIRECTIONS UNDER SECTIONS 11(4)(b) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, AGAINST, M/S MAHASAGAR SECURITIES, MR. BHUPENDRA SINGH RATHORE AND MR. RAJESH KUMAR VYAS IN THE SCRIP OF KWALITY DAIRY INDIA LIMITED

1. On noticing a sharp rise in the price and trading volume of Kwality Diary India Limited (hereinafter referred to as the Company) during the period October 2008 to November 2009, Securities and Exchange Board of India (hereinafter referred to as SEBI) initiated an investigation into the dealings in the shares of the Company. On the basis of the preliminary findings of investigation, SEBI vide an ad interim ex-parte order (hereinafter referred to as the Order) dated December 1, 2009 *inter alia* directed M/s Mahasagar Securities and its partners, Mr. Rajesh Kumar Vyas and Mr. Bhupendra Singh Rathore (hereinafter collectively referred to as the entities and individually by their names) not to buy, sell or deal in securities in any manner till further directions. The entities, vide separate letters dated December 14, 2009, sought fifteen days time to make comprehensive submissions. Subsequently, vide letters dated January 18 and 19, 2010, the entities *inter alia* contended that their trades in the shares of the Company were limited to June-August 2009. They further denied that their trades were circular, synchronized, or fictitious in nature or that the trades had given a false impression of large volumes in the scrip. The entities also submitted that their purchases were made in the normal

course of business. The entities further stated that they would file additional/supplementary replies after receipt of the documents requested by them in the said letters. Thereafter, an opportunity of personal hearing was granted to the entities on February 9, 2010. In the meanwhile, the entities had intimated that they had filed applications for availing consent orders in terms of SEBI Circular dated April 20, 2007. However, the said applications were not processed because of the ongoing investigation in the matter. SEBI, vide letter dated April 26, 2010 had further provided the relevant information/documents, to the entities, as requested by them. Subsequently, M/s Mahasagar Securities, vide letter dated May 26, 2010 made further submissions in the matter. Mr. Bhupendra Singh Rathore and Mr. Rajesh Kumar Vyas made submissions, vide letters dated June 15, 2010 and June 16, 2010, respectively. On July 15, 2010, Mr. J. J. Bhat, Advocate represented M/s Mahasagar Securities and made submissions. Ms. Rinku S. Valanju, the authorized representative made submissions on behalf of Mr. Rajesh Kumar Vyas and Mr. Bhupendra Singh Rathore, who were also present during the hearing. The submissions were made on the lines of the respective replies. M/s. Mahasagar Securities, vide reply dated May 26, 2010 *inter alia* admitted the fact that it was a partnership firm, with Mr. Bhupendra Singh Rathore and Mr. Rajesh Kumar Vyas, as its partners. During the course of hearing, the counsel appearing for M/s. Mahasagar Securities submitted that the business of the partnership firm was separate and distinct of the said partners who were having independent trading. The counsel further submitted that the partnership firm did not have any relation with the directors of the Company and that its trading in the shares of the Company was between May 25, 2009 and October 22, 2009 at the market price (in the range ₹152.95/- to ₹970.99/-) and it did not trade after October 22, 2009, when the share price went up to ₹1270/-. It was also submitted that its trade volumes in the scrip were not substantial as compared to the market volume and that the trading was not continuous throughout the investigation period. According to him, deliveries were taken. M/s. Mahasagar Securities denied having connection/relation in any manner with the “Surana Group”. As regards the off-market trades, it contended that the same were permissible and were not aware that the parties who bought/sold the shares of the Company in off-market became its counter parties to it in the market. According to it, the alleged connection between the parties of its off-market trades and the on-market counterparties on seven days involved only small quantities of shares and that this did not cause any aberrations in the price discovery. The representative who appeared on behalf of Mr. Bhupendra Singh Rathore, while making similar submissions as that of M/s. Mahasagar Securities, *inter alia* submitted that the transactions of Mr. Bhupendra Singh Rathore in the shares of the Company were normal, intra-day squared off transactions and that his total volume was only 1.24% of the total volume at BSE. It was submitted that his trades involved only 25,158 shares and the total volume at BSE was 20,23,534 shares during the period. The representative further submitted that the trades of M/s. Mahasagar Securities and Mr. Bhupendra Singh Rathore were separate and settled in the respective client’s codes which were different. It was the submission that the address of the other partner, Mr. Rajesh Kumar Vyas was also used for the firm’s business and therefore the inference that the ‘firm appeared to be acting together with its partners’ was misplaced. It was submitted on behalf of Mr. Rajesh Kumar Vyas that that he did not do any trading/investment business in the shares of the Company at BSE during the investigation period.

2. I have considered the written and the oral submission made on behalf of the entities and other material available on record. The circumstances which led to the passing of the Order and the *prima facie* role of entities in respect of the alleged market manipulation have been explained in the said Order.

3. It was observed that the share price of the Company was in the range of ₹51.60/- to ₹171.85/- during the period January 1, 2009 to June 6, 2009 (first

patch, as observed in the Order). During the period June 29, 2009 to September 23, 2009 (second patch), the share price was in the range of ₹139.15 to ₹615.25/-. Subsequently, the share price had increased from ₹595.65/- to ₹1114.45/- till November 11, 2009. Mahasagar Securities and Mr. Bhupendra Singh Rathore were found to be the top purchasers on net basis during the second patch, as observed in the Order. The movement of shares, in off market and through stock exchange during the second patch among various entities including Mahasagar Securities and Mr. Bhupendra Singh Rathore and Mr. Rajesh Kumar Vyas Group were given in Table 5 to the Order. While referring to the said Table, the Order in paragraph 15 thereof observed that *"……..the cycle of off-market transfer and market transaction i.e. purchase through market, has been repeated a number of times among various entities in the same/similar manner wherein either Leela Surana R. (in first patch) or Bhupendra Singh Rathore/Mahasagar Securities/Rajesh Kumar Vyas (in second patch) they had purchased shares initially from the market and then carried out an off market transfers to various related entities. Then they had once again purchased the shares that are transferred off-market from such entities on a subsequent day by carrying out market transaction on exchange platform."* The share price of the Company during the second patch had increased substantially as stated above, on lower volumes (approximately 21,000 shares) as compared to the first patch. It was further observed in the Order that the entities had executed synchronized transactions during the second patch. The Order had observed seven cycles (during the second patch) where Mahasagar Securities/Mr. Bhupendra Singh Rathore/Mr. Rajesh Kumar Vyas had sold/bought shares in off-market/in market to another client (or clients) and purchased/sold the same quantum of shares from the same client (or clients) on the following or subsequent trade days. The cycles as given in Table 5 at pages 5 and 6 of the Order are described below (transaction dates in the said table alone have been taken for explaining the transactions):

Cycle 1: On May 29, 2009, the entities had sold 5,500 shares to one Amit Chotwani in an off-market transaction. The same quantity of shares was bought by the entities from the same counterparty, Mr. Amit Chotwani in a market transaction on June 2, 2009.

Cycle 2: On June 5, 2009, the entities had sold 5500 shares to Mr. Amit Chotwani in an off-market transaction and almost the same quantity (5000) of shares was bought by them from the same counterparty, Mr. Amit Chotwani in a market transaction on June 8, 2009.

Cycle 3: On June 13, 2009, the entities had sold 5500 shares to one Amita Chandresh Jain in an off-market transaction. The same quantity of shares was bought by the entities from the same counterparty in a market transaction on June 18, 2009.

Cycle 4: The entities had, in off-market, sold a total of 5500 shares (2,000 shares on June 22, 2009 to Ms. Amita Chandresh Jain and 3,500 shares to Mr. Sunil Bandi) and the same quantity was purchased back from the said counterparties in market transactions, as follows: 2,000 shares from Ms. Amita Chandresh Jain on June 25, 2009 and 3,500 shares from Mr. Sunil Bandi on July 3, 2009.

Cycle 5: The entities had in off-market transactions, sold 2000 and 3500 shares on July 4, 2009 to Mr. Bhagwandas Hotwani and Mr. Ajay Kumar Bandi, respectively. Almost the same quantity of shares were purchased back in market trades from the same parties on July 13, 2009 (2,500 shares from Mr. Bhagwandas Hotwani) and July 15, 2009 (3,500 shares from Mr. Ajay Kumar Bandi).

Cycle 6: The entities had transferred 6,000 shares to Mr. Amar Veer Kaur Chadha on July 16, 2009 in off-market and purchased the same quantity back from the said person on July 20, 2009 in the market.

Cycle 7: On July 20, 2009, the entities had sold 6000 shares to Mr. Amar Veer Kaur Chadha in an off-market transaction, which was again purchased by the entities from him on July 27, 2009 in a market transaction. Similarly, the entities had on July 21, 2009 transferred 2000 shares in off-market, to Mr. Naveen Kumar Bhageria, and the same quantity of shares were purchased again from the same person in market transactions on July 28, 2009.

4. Therefore, from the above said instances, it can be noticed that the entities have first transferred shares to certain persons/entities in off-market and have purchased back the same quantity/almost the same quantity from the same set of persons to whom the shares were earlier transferred. It has been the submission of the entities (more particularly, M/s. Mahasagar Securities and Mr. Bhupendra Singh Rathore) that their transactions were normal transactions

executed through their stock brokers in the stock exchange mechanism. However, the pattern as explained above does not convince me of their submissions. Clearly, the entities were simply reversing their positions. I also note that the Order had observed that M/s Mahasagar Securities and Mr. Bhupendra Singh Rathore had traded for 1,17,003 shares during the period May 25, 2009 and September 18, 2009. Out of the said quantity, 97,010 shares were traded with the entities who had received shares in off market from the entities. The said acts of the entities would *prima facie* indicate that their trades were not genuine.

5. Further, the entities have executed synchronized transactions as observed in the Order. Few instances (around 45) of synchronized transactions said to have been executed by the entities are mentioned in Table 6 (at pages 9, 10&11 of the Order). In almost all such cases, the time difference between the buy and the sell orders is less than 20 seconds. Nature of such orders would *prima facie* indicate that their trades were synchronized in nature so as to influence the price matching mechanism of the stock exchange. Needless to say, the share price of the Company also increased during the said period, with low volumes. It was also mentioned in the Order that the entities had placed large buy orders at a price away from the prevailing price/last traded price and then later amended/deleted those buy orders. Few such instances were provided in Table 7 to the Order. The aforesaid acts of the entities do not appear to be genuine. The percentage of trading by the entities in the second patch was also high on most of the days and the same was given in Table 8 of the Order. Except submitting that the trades were executed in the normal course, M/s. Mahasagar Securities and Mr. Bhupendra Singh Rathore, have not made any convincing submissions. In view of the above, I am unable to accept, at this stage, the submission of the entities that their trades were in the normal course of business and without any malafide intention. Thus, *prima facie* trading in a circular and synchronized manner, the entities had generated fictitious

trades and given a false misleading impression of trading volumes in the scrip. *Prima facie*, the entities have reversed their positions (selling shares in off-market and purchasing the same quantity from the same counterparties in market transactions) without any change in the actual beneficial ownership of the shares, executed synchronized trades, placed orders at prices higher than the last traded price or the prevailing market prices and later on deleting/modifying them. It was stated in the reply of M/s Mahasagar Securities that no *prima facie* case has been made out to warrant the issuance of the Order and that the entities do not fall under SEBI, for the purpose of Sections 11B and 11(4)(b) of the Securities and Exchange Board of India Act, 1992. I am unable to accept such submissions. Powers available to SEBI under the aforesaid provisions of law are well recognized, which empower SEBI to pass such directions/interim directions against person/persons associated with the securities market, as stated therein. Further, the reasons for passing various directions in the Order have been mentioned in the said Order itself. In view of the same, I am of the considered view that they have not made a case in their favour for vacating the directions issued in the Order or for modifying them. The investigation in the matter is not yet concluded and the same is in progress. As the investigation in the matter is ongoing, I consider it appropriate not to make any finding in respect of the role/involvement of the entities in the manipulation and the same would be reviewed after the conclusion of the investigation. At this stage, in the facts and circumstances of the case *prima facie* suggest their complicity in the matter and the available material on record justifies the continuation of the interim directions passed against them, vide the Order dated December 1, 2009.

6. During the course of hearing, M/s Mahasagar Securities has filed a letter dated July 15, 2010 stating *"You are requested to allow sale of our shares lying in the demat/pool accounts as there are huge debits in the ledger account of Mahasagar Securities with the Angel Broking Ltd. and the broker has been charging interest on*

such debits. Moreover, we want to repay some other liabilities too. This has caused financial burden on us. Further, there are continuous telephonic reminders from Angel to clear our debits in their books of account".

	Capacity	*Demat BO A/c. No.*	*DP Name*
Bhupendra Singh Rathore	*Partner of Mahasager Securities (Partnership account)*	*1203320003177802* *1201680000070062*	*Angel Broking Ltd.* *Brics Securities Ltd.*
Mahasagar Securities	*Partnership*	*Angel Broking and Brics Securities Client benefitiary account*	*AngelBroking Ltd. & Brics Securities Ltd.*
Bhupendra Singh Rathore	*Individual/personal*	*1203320002870899* *1201680000066569*	*Angel Broking Ltd.* *Brics Securities Ltd.*
Bhupendra Singh Rathore	*Self*	*Angel Broking and* *Brics Securities Client benefitiary account*	*Angel Broking Ltd.* *Brics Securities Ltd.*
Rajesh Kumar Vyas	*Individual/personal*	*1301930001239692*	*State Bank of India*

In view of the above, we request you to allow us the shares lying in our demat BO account as well as Member Client beneficiary account."

7. It also enclosed copy of demat holding statement with Angel Broking Limited, client beneficiary holding (Securities Ledger) with Angel Broking Limited and Brics Securities Limited. Mr. Rajesh Kumar Vyas and Mr. Bhupendra Singh Rathore also filled separate letters dated July 15, 2010 to allow them to sell the shares lying in the demat/pool account to meet with the expenses. As stated above, M/s. Mahasagar Securities and Mr. Bhupendra Singh Rathore have *prima facie* executed synchronized trades, trade reversals and had sold back 83% of their volumes to the persons/entities who had received shares in off-market transfers from them. Further, the preliminary findings also suggested that the entities have placed large orders at prices

more than the prevailing market price or the last traded price, which *prima facie* suggested their manipulative and unfair conduct in the securities market. Mr. Rajesh Kumar Vyas has also made a request for allowing him to sell the shares. It is the submission of Mr. Rajesh Kumar Vyas that he did not trade in the shares of the Company on BSE during the relevant period and has also denied any relationship with the Company or its directors. However, from the trading account opening form of M/s. Mahasagar Securities (with Brics Securities Limited), it is noted that Mr. Rajesh Kumar Vyas has been identified as the contact person and his address has been provided as the contact address of the firm. This would presumably indicate that Mr. Rajesh Kumar Vyas was the authorized person in respect of the trades of M/s. Mahasagar Securities that had been involved in the transactions, which *prima facie* led to the manipulation in the shares of the Company. Further, though M/s. Mahasagar Securities had submitted that it had huge debits in its ledger account maintained with the stock broker, Angel Stock Broking Limited and that it intends to clear off "some other liabilities", it has failed to produce any certified documentary evidence from the said stock broker. M/s. Mahasagar Securities had annexed certain documents purported to be the ledger accounts for the cash and the derivatives segment, the same has not been certified by the stock broker to whom such dues are intended to be settled. Further, there is no document to show what the other liabilities are. In view of the *prima facie* findings against M/s. Mahasagar Securities in the matter, I am of the considered view that the said request should not be allowed at this stage. The same would be the case in respect of Mr. Bhupendra Singh Rathore also. Though Mr. Bhupendra Singh Rathore had requested SEBI to allow sale of share lying in his demat/pool account to "*meet with certain expenses*", he had not produced any documentary proof in support of his request. In view of the aforesaid reasons, I am not convinced to allow the request of the entities at this stage. However, taking into account the aforesaid request of the entities, it would in the interest of justice to complete the investigation in the matter as expeditiously as possible and thereafter complete the proceedings at the earliest.

8. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4) and 11B thereof, hereby confirm the directions issued against M/s. Mahasagar Securities, Mr. Rajesh Kumar Vyas and Mr. Bhupendra Singh Rathore, vide the ad-interim ex-parte Order dated December 1, 2009 in the matter. Accordingly, the letters dated July 15, 2010 of M/s. Mahasagar Securities, Mr. Rajesh Kumar Vyas and Mr. Bhupendra Singh Rathore seeking permission to sell shares lying in their demat accounts are rejected.

9. The Investigating Authority of the Securities and Exchange Board of India shall complete the investigation before February 28, 2011.

10. A copy of this Order shall be forwarded to the stock exchanges, National Stock Exchange of India Limited and the Bombay Stock Exchange Limited and the depositories, the National Securities Depository Limited and the Central Depository Services (India) Limited, for necessary action.

DR. K.M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: MUMBAI
DATE: NOVEMBER 9, 2010