

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. SKV/SA/AO-01/2010]**

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**UNDER SECTION 15-I OF SEBI ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

**In respect of**  
**Shri K. K. Maheshwari (PAN: AEQPM5521C)**  
**Smt. Sarla Maheshwari (PAN: AALPM2716Q)**

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**BACKGROUND OF THE CASE**

1. Securities and Exchange Board of India (hereinafter “SEBI”) had conducted investigations into the trading in the shares of Wyeth Ltd., a pharmaceutical and healthcare products company (hereinafter “Wyeth”). During the investigations, SEBI *prima facie* observed that certain entities related to Wyeth were privy to unpublished price sensitive information and have dealt before certain Corporate Announcement(s).
2. It was observed that Wyeth had *vide* its letter dated February 15, 2006 informed the stock exchanges BSE and NSE that its parent company ‘Wyeth USA’ had incorporated a wholly owned subsidiary in India and wished to launch in India ‘Prevenar’ (a pneumococcal 7 valent conjugate vaccine an original researched product of Wyeth USA) through this wholly owned subsidiary instead of Wyeth. Wyeth had agreed to relinquish its rights to market Prevenar in consideration of the payment to it of a fair compensation determined on the basis of a valuation by KPMG. Accordingly based on said valuation, Wyeth USA and the Wyeth had mutually agreed upon a fair compensation of Rs 226 million for transfer of authorization to market Prevenar. It was observed that this matter was discussed in the Wyeth’s Board meetings held on December 22, 2005 and January 25, 2006. It was further observed that this information was made public through the stock exchanges on February 15, 2006 and prior to it, information about Wyeth relinquishing marketing rights of Prevenar in favour of the wholly owned subsidiary of Wyeth USA was unpublished price sensitive information. SEBI’s investigation also observed that after the information, a major negative news, was published on February 15, 2006, the price of the scrip fell to close at Rs 652.85 on February 16, 2006 from the previous close of Rs 765.60 on February 15, 2006 and further continued to fall to touch a closing low of Rs 578.35 on February 24, 2006. It was further observed that subsequently the fall got halted as Wyeth *vide* its letters dated February 25, 2006 and February 27, 2006 informed the stock exchanges that the said decision had been reconsidered and after discussions with Wyeth USA an agreement had been reached whereby Wyeth would retain its right to market Prevenar.
3. SEBI *prima facie* found that Shri K. K. Maheshwari who was non-executive independent director of Wyeth (hereinafter “First Noticee”) and First Noticee’s aunt in relation Smt. Sarla Maheshwari (hereinafter “Second Noticee”) had violated various provisions of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter “PIT Regulations”) and therefore, alleged violations by noticees be adjudicated under PIT Regulations and Securities and Exchange Board of India Act, 1992 (hereinafter “SEBI Act”).

## **APPOINTMENT OF ADJUDICATING OFFICER**

4. Whole Time Member, SEBI in exercise of the powers conferred upon him under section 19 read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedures for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred as “Rules, 1995”) appointed undersigned as Adjudicating Officer vide order dated March 5, 2009 to enquire into and adjudge under Section 15G of SEBI Act.

## **SHOW CAUSE NOTICE, REPLY & PERSONAL HEARING**

5. Since the facts and circumstances were inter-linked in respect of both the noticees, a common Show Cause Notice (hereinafter referred as ‘SCN’) dated February 24, 2010 having no. ISD/ SKV/ SA/ SCN/ 195980/ 2010 (for First Noticee) and no. ISD/ SKV/ SA/ SCN/ 195980/2010 (for Second Noticee) were issued narrating the detailed issues, allegations (with all relied upon documents in form of 19 Annexures) and the specific charges against each noticee.
6. Briefly, charges alleged in SCN in respect of noticee(s) are enumerated as under:-

### **FIRST NOTICEE:**

- (1) *The First Noticee being non executive independent director of the Wyeth was privy to the above mentioned unpublished price sensitive information through attending the Board meetings of the company held on December 22, 2005 and January 25, 2006 wherein the discussions about the relinquishing of its rights to market ‘Prevenar’ and decision on the fair compensation for transfer of authorization to market Prevenar was discussed and decided. The minutes of the meetings show that the matter about relinquishment of rights to market Prevenar was discussed at length and the independent directors had taken active part raising various questions on the deal, its impact, had sought for appointment of independent valuer for deciding on fair compensation etc..*
- (2) *It is alleged that the First Noticee being an Insider in terms of Regulation 2(e) of PIT communicated/passed-on the price sensitive information to Second Noticee who is his aunt in relation having address as Maheshwari House, 36-L, Jagmohandas Marg, Mumbai-36. It is further observed that their addresses is same which is also matching with the address of Manoj Madan Family Trust (in which Second Noticee was a trustee). Both Second Noticee and the Trust, while in possession of the unpublished price sensitive information, sold shares which amounted to substantial part of their holdings during the period December 22, 2005 to February 15, 2006 as has been mentioned subsequently. Therefore, it was alleged that the First Noticee violated Clause 2.1 of Part “A” of Schedule I, under Regulation 12(1) of PIT and Regulation 3 (ii) of PIT Regulations which states that:-*

#### ***Clause 2.1 of Part “A” of Schedule I, under Regulation 12(1) of PIT***

***2.1 Employees/directors shall maintain the confidentiality of all Price Sensitive Information. Employees/Directors shall not pass on such information to any person directly or indirectly by way of making a recommendation for the purchase or sale of securities.***

***Regulation 3. No insider shall—***

*(ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:*

- (3) *The First Noticee had sold 50,000 shares on January 9, 2006. The sale took place at the price of Rs 742 for a total consideration of Rs 3.71 Cr. It is seen that First Noticee had made an application to Wyeth for pre-clearance / approval for sale of shares vide letter dated January 4, 2006 in terms of the code for prohibition of insider trading prescribed as per PIT Regulations but made an incorrect undertaking to Wyeth stating that First Noticee was not in possession of price sensitive information (Clause d of undertaking). Therefore, it was alleged that while in possession of price sensitive information, First Noticee had dealt in the securities (sold) of Wyeth. On examination it was noticed that the deal on the exchange was structured with the shares being bought by his father Shri Krishna Gopal Maheshwari. Both First Noticee and his father had dealt through the same broker and the deal was done at prevailing market price. The shares bought by First Noticee's father was also not sold and was found to be still lying in the demat account jointly held by First Noticee and his father. It was further observed that the source of money for payment to the broker was traced to First Noticee's wife Ms. Madhurika Maheshwari. Noticee was questioned as to reasons for the said transactions.*
- (4) *First Noticee was put to notice on the fact that, being a Director of the company, he had not filed disclosures to Wyeth, as required under regulation 13(4) and 13(5) of PIT Regulations which states that.*

***Regulation 13 Continual disclosure***

*(4) Any person who is a director or officer of a listed company, shall disclose to the company in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

*(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:*

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

- (5) In view of the facts and circumstances and evidences on record, First Noticee was show caused as to why an inquiry for violation of Clause 2.1 of Part "A" of Schedule I, under Regulation 12(1), Regulation 3(ii) read with Regulation 2(e) and Regulation 13(5) of PIT be not conducted; and why penalty should not be imposed on him under Section 15G of the SEBI Act.

## **SECOND NOTICEE:**

*(6) As mentioned above, the First Noticee an Insider in terms of Regulation 2(e) of PIT and while in possession of price sensitive information, in violation of Clause 2.1 of Part "A" of Schedule I, under Regulation 12(1) of PIT and Regulation 3(ii) of PIT, allegedly communicated/passed-on such price sensitive information to the Second Noticee who is his aunty in relation having address as Maheshwari House, 36-L, Jagmohandas Marg, Mumbai-36. It is further observed that their address is same. Second Noticee's spouse Late Shri Madangopal Maheshwari was brother of Shri Krishnagopal Maheshwari (father of First Noticee). Initial holding of Second Noticee in the Wyeth was 42,767 shares which Second Noticee had been holding as an investor for decades. It was observed that Second Noticee is not a regular trader in the securities market however, before Wyeth had come up with corporate announcement regarding the relinquishing of its rights to market "PREVENAR" on February 15, 2006, a major negative news, Second Noticee sold almost all her holdings prior to the publishing of this unpublished price sensitive information. Therefore, it was alleged that, the Second Noticee had received/procured the price sensitive information from the First Noticee and while in possession of the price sensitive information, Second Noticee sold a total 40,328 shares valuing Rs 3.02 Crores during the period January 03, 2006 to February 14, 2006. Further, it was observed that Manoj Madan Family Trust (a trust in which Second Noticee was a trustee and this trust too has a matching address with First and Second Noticee) had also sold more than half of its holding. Therefore, in view of the facts, circumstances, Second Noticee was show caused as to why penalty should not be imposed under Section 15G of the SEBI Act for violation of Regulation 3 (i) and 3(ii) read with Regulation 2(e) of PIT Regulations.*

7. In support of above facts and allegations, SCN dated February 24, 2010 carried as annexure all relevant documents such as Appointment of Adjudicating Officer, Details of the trading (Price-Volume) in the scrip on BSE & NSE, Letters of Wyeth, Copies of the Minutes of the relevant Board meetings, Demat Account Statements, Know Your Client (KYC) Details, Pre-clearance approval letter, Account Opening forms etc. SCN provided 15 days time to noticees to file their replies.
8. However, vide letter dated March 09, 2010, First Noticee sought extension of 3 weeks to file his reply. Vide letter dated March 11, 2010, undersigned reminded both the noticees to file a reply stating that they can avail personal hearing on March 22, 2010 and advised them to file their reply by or on the date of this hearing itself. Pursuant to this letter, undersigned received a reply dated March 11, 2010 from Second Noticee and further vide letter dated March 12, 2010 Second Noticee submitted a copy of her PAN Card. Subsequently, Second Noticee vide letter dated March 17, 2010 and First Noticee vide letters dated March 19, 2010 and email dated April 06, 2010 requested to provide hearing opportunity on some other date in the month of April. Meanwhile, First Noticee filed a reply dated March 19, 2010. Considering the requests, hearing date was accordingly rescheduled and held on April 09, 2010 for First Noticee and on April 12, 2010 for Second Noticee and was duly availed by both the notices / their authorized representatives.
9. Opportunity of hearing was availed by First Noticee on April 09, 2010 through its authorized representatives Shri Vinay Chauhan, Advocate, Corporate Law Chambers and Shri Hitesh Mistry. Authorized representatives explained the para-wise reply filed by First Noticee vide letter dated March 19, 2010. During the hearing, First Noticee undertook to file certain additional written

submissions which were filed vide letter dated April 16, 2010. Key submissions of First Noticee in above said replies, filings and at personal hearing are as under:-

- I. *The allegations are vague, unfounded, baseless, based on mere surmises and conjectures and are not backed by any evidence to substantiate the same. They are product of erroneous interpretations of law and erroneous understanding of factual position.*
- II. *The charges in the notice are based on the erroneous presumption that I was in possession of unpublished price sensitive information regarding relinquishment of marketing rights of the drug "Prevenar" by Wyeth. The fact is that there was no unpublished price sensitive information prior to January 25, 2006. If at all there was any unpublished price sensitive information that came into existence only on or after January 25, 2006. Prior to this date, there was no unpublished price sensitive information. It may be appreciated that mere discussion about a proposal of relinquishment of marketing rights cannot be construed to be unpublished price sensitive information. Mere discussions without any finality in a matter is not price sensitive information. What is relevant is the final decision that could impact the price. Sensitivity is relatable to the final decision and not to anything else. Noticee further submits that discussion regarding the relinquishment of marketing rights of the drug "Prevenar" in the board meeting on December 22, 2005, was not unpublished price sensitive information is also evident from the following:*
  - a. *The Company did not close the trading window (as required in terms of Clause 3.2.3 of Part "A" of the Schedule under Regulation 12(I) of the Insider Trading Regulations) post December 22, 2005;*
  - b. *the Compliance Officer (i.e. Mrs. N. N. Thakore, the Legal Director who was present in the Board meetings held on December 22, 2005 & January 25, 2006) did not raise any issues with me regarding the undertaking given by me wherein I had stated that I do not possess any unpublished price sensitive information, while seeking pre clearance of trades on January 4, 2006;*
  - c. *The Company disclosed to the stock exchanges about the relinquishment of marketing rights of the drug "Prevenar" for the first time only on February 15, 2006, in terms of Clause 36 of the Listing Agreement. It may be noted that in terms of Clause 36 of the Listing Agreement, the listed companies are obligated to inform any information having bearing on the operation/performance of the company as well as price sensitive information.*
- III. *It is denied that I communicated/passed on price sensitive information to Mrs Sarla Maheshwari. This is a bald allegation made in the air and is without any basis. The inference of passing on the alleged price sensitive information to Mrs Sarla Maheshwari is solely drawn on the basis that she is my aunt and shares the same address with me. In this context, I would like to bring to your notice that Mrs Sarala Maheshwari is the widow of my late uncle M.G. Maheshwari and she is not a relative of mine. We have no common business/ investment activities. I am not aware of her investments; financial transactions. Neither does she seek my views nor do I volunteer to advise her in her business / investment activities. The fact that she is not even a director or share holder of any of my family concerns further establishes the said position. Your allegation that we have the same address is also not correct. "Maheshwari House" where we reside is the name of*

*the building which has several independent and separate residential units. Ms Sarala Maheshwari lives in one of the independent units therein. She does not reside with me and we do not share a common address. All persons residing in the said building can not be considered as my relatives or business associates. I would, therefore request you to kindly note the said fact, and not to be misguided by the “building name” to allege that I had communicated or passed on the alleged price sensitive information to her. Save and except that she was my late uncle’s wife, I have no other relationship including business and financial, with her. Further, I had no knowledge or awareness whatsoever regarding her selling of shares of the company during the referred period. I had no role whatsoever to play in either her decision to sell or the timing of sale of shares of the company by her. As stated hereinbefore, neither I have any role to play in her affairs nor does she have any role to play in my affairs. Further the allegation of passing on price sensitive information to Mrs Sarla Maheshwari is untenable for the reason that, had it been so, nothing would have prevented me from passing on the so called price sensitive information to my close relatives.*

- IV. *It is denied that I have failed to maintain the confidentiality of all price sensitive information or that I have passed price sensitive information to any person directly or indirectly by way of a recommendation for the purchase or sale of securities as alleged or communicated, counseled or procured directly or indirectly any unpublished price sensitive information to any person including Mrs Sarla Maheshwari.*
- V. *It is submitted that in compliance with the provisions of the Code of Conduct of the company, I had made an application to the company and sought pre clearance / approval to sell the shares vide my letter dated January 4, 2006. It is denied that I had made any incorrect undertaking to the company stating that I was not in possession of price sensitive information as alleged. As stated hereinbefore, on the said date i.e. January 4, 2006, I was not in possession of any unpublished price sensitive information. Suggestion in the Notice that since the proposal regarding relinquishment of marketing rights of the drug “Prevenar” by Wyeth was discussed in the Board meeting held on December 22, 2005, the same was price sensitive information and I was in possession of the same as I had attended that Board meeting , is totally incorrect . Discussions at the Board Meeting were at the proposal stage only and were contingent upon the compensation factor. Same cannot be given the colour of unpublished price sensitive information. In the circumstances, I had not given any incorrect undertaking. The undertaking given by me was bonafide and based on genuine belief and understanding. Here it may be noted that even the compliance officer (i.e. Mrs N N Thakore, the Legal Director who was present in all the referred Board meetings held on December 22, 2005 & January 25, 2006) did not raise any issue with me regarding the incorrectness of the undertaking, since the undertaking in question was correct. Further the fact that there was no price sensitive information at the relevant time is also reinforced by the fact that Wyeth had also not made any disclosure about such price sensitive information to the stock exchanges. Had there been any price sensitive information, Wyeth would have made disclosure about the same to the stock exchanges. Wyeth had not closed the trading window post December 22, 2005. Also Wyeth had made disclosures of relinquishment of marketing rights for the first time only on February 15, 2006 in terms of the Clause 36 of the Listing Agreement.*

- VI. *It is denied that when I had sold the shares I was in possession of any price sensitive information as alleged. Admittedly, the sale of 50,000 shares by me on January 9, 2006 was done after fully complying with the requirements of Wyeth's "Code of conduct for Prohibition of Insider Trading" and Wyeth was also intimated about the sale. Requisite "pre clearance" was also obtained from Wyeth. It shows that even Wyeth did not consider that action to relinquish Prevanar, which was only under contemplation, at that time as price sensitive. Thus, the sale was not relatable to any unpublished price sensitive information and further it was a genuine need based transaction between two insiders closely related to each other and not taking advantage of any unpublished price sensitive information to make any gain or avoid any loss.*
- VII. *I have been a shareholder of Wyeth for the past several years. I was holding 2,09,337 shares of Wyeth on December 31, 2005 out of which, I sold only 50,000 shares, that too to my father and not to any outsider. It may also be noted that I retained substantial chunk of my holding in Wyeth and sold only just 1/4th of my holding. I am still holding 1,59,337 shares in Wyeth. If my intention had been to make gain on the basis of alleged unpublished price sensitive information, I would not have retained such big chunk of shares and decided to sell just 50,000 shares out of 2 lakh shares held by me. Further, it is also unthinkable that as a son I would have opted to sell the shares to my father, and thereby pass on an avoidable loss to him, instead of selling the shares to the public at large. Further, the fact that the 50,000 shares sold by me to my father were retained by him for almost 2 years also reinforces my contention that the isolated sale of 50,000 shares was not on the basis of unpublished price sensitive information as alleged. The sale was not motivated by the alleged unpublished price sensitive information. I had sold these shares as I genuinely was in need of money for investing in a private limited company (M/s Universal Chemicals & Industries Pvt Ltd ) owned and run primarily by me and my son. It was a need based transaction and certainly not a greed based one for gain. It is reiterated that the said transaction had nothing to do with the alleged insider trading and was in the nature of arrangement amongst family members for providing finances and reorganizing holdings.*
- VIII. *It is submitted that admittedly, I had made an application seeking pre- clearance of trades to Wyeth vide my letter dated January 4, 2006, which was cleared by the Compliance Officer of Wyeth vide letter dated January 4, 2006. Post completion of the sale transaction, I had vide my letter dated January 9, 2006 inter alia informed the Compliance Officer Wyeth about the confirmation of the deal. Thus at all points of time I had made the requisite disclosure and kept Wyeth informed about the transactions. Inadvertently, by oversight I missed filing the disclosure in Form D as prescribed in Insider Trading Regulations. As soon as I became aware about the inadvertent lapse of non filing of the disclosure in Form D on my part, I immediately filed the same with the Compliance Officer Wyeth on January 12, 2008 (Annexure A). It is submitted that the alleged lapse is at the highest a technical, procedural and venial breach and has not caused any adverse consequences or prejudice to anybody.*
- IX. *The allegation of communicating / passing on price sensitive information to Mrs Sarla Maheshwari is vague, bald and sweeping. The Notice is absolutely silent as to when did I communicate/ pass-on price sensitive information to Mrs Sarla Maheshwari; how I have communicated/ passed-on price sensitive information to Mrs Sarla Maheshwari; what is*

*the version of Mrs Sarla Maheshwari; whether SEBI has recorded the statement of Mrs Sarla Maheshwari in this regard etc. In the absence of the aforesaid, the charge cannot be sustained. In order to further bring out my non involvement and innocence in the entire matter, I request that I be given an opportunity to cross examine Mrs Sarla Maheshwari in consonance with the principles of natural justice .*

- X. *The standard of proof and evidence in a civil proceeding is high and this SCN is devoid of evidences to substantiate the charge. To this effect, various judgements have been cited.*
- XI. *It is submitted that I have not made any disproportionate gain or unfair advantage, as a result of the alleged violations. Therefore, in facts and circumstances any imposition of penalty on me would be unjustified and unwarranted.*
- XII. *Furthermore, it may be noted that Non disclosure of change in shareholding by a director to the Company, a violation contemplated under Regulation 13 (5) is beyond the scope of penalty under section 15 G of the SEBI Act and therefore no penalty can be imposed on me under section 15 G as contemplated.*
- XIII. *While considering my submissions it may be noted that I have a clean track record in terms of compliance. Never in the past has any action been taken against me by any regulatory authority including SEBI.*

10. Similarly, opportunity of hearing was availed by Second Noticee on April 12, 2010 through its authorized representatives Shri Samir Pandya, Chartered Accountant and Shri D. G. Pawale. Authorized representatives explained the para-wise reply filed by Second Noticee vide letter dated March 11, 2010. Second Noticee also submitted tax calculation records of buying and selling various scrips for 2005 and 2006 at the time of hearing and undertook to submit a copy of probate order through which Second Noticee received certain shares from her late husband. A copy of probate order was received by my office on April 13, 2010. Key submissions of Second Noticee in above said replies and at personal hearing are as under:-

- I. *I wish to categorically place on record that at no time was I in any knowledge or information on any internal corporate/management affairs of the said Wyeth Limited in any manner whatsoever (including what is being attributed to be any price sensitive information) or any dealings by Mr. K. K. Maheshwari as alleged in the impugned Notice. I have at no time and on no basis interacted with Mr. K. K. Maheshwari as regards the realization of my investments held in Wyeth Limited with respect to any such information.*
- II. *I am a senior citizen, aged 76 years and have held investments in Geoffrey Manners Company Limited since 1957, the reorganization of which resulted in shares of John Wyeth India Limited, Wyeth Laboratories Limited and which over the past decade have been eventually merged/restructured into the present Wyeth Limited. I have in a period of 18 months between 2004 and 2006 continually realized my investments in Wyeth Limited of about 2,16,018 shares besides about 98,800 shares realized earlier in 1998. Similarly, the Manoj Madan Family Trust subsisting since 1967 also held and realized its investments of about 64,011 shares in Wyeth Limited during 2004-06 besides about 72,350 shares earlier in 1998. The sale in January-February, 2006 of 40,328 shares by me and 10,074 shares by the family trust (of*



which I am only one of the trustees) as noted in the Notice is only the balance small portion of the investments/shares in Wyeth Limited continually realized by me and the family trust. Such continual realization of investments has never had any relation to any management decisions at Wyeth Limited or any information thereon in any manner whatsoever.

- III. *My holdings in Wyeth Limited solely arise out of various corporate actions from Geoffrey Manners and Co. Limited, a closely held entity. For reasons already on record, as I was left with no strategic interest left in GMCo or its offshoot entities, I have sold my investments at every instance when my long standing investments were unlocked into marketable listed securities viz. GMCo to Wyeth Limited whether in 1998 or 2004, 2005. Inasmuch as the Wyeth holdings relate directly to my holdings in GMCo, it was also pointed out that likewise incumbent 1,24,684 of the Wyeth shares held by my husband, Shri M. G. Maheshwari devolved on to me after his death on May 18, 2001. The said investments were actually transferred to me only by end-2004 after completion of the Probate proceedings.*
- IV. *Mr. K. K. Maheshwari is the son of my late husband's brother. My husband, Mr. M. G. Maheshwari expired on 17th May, 2001 and his estate devolved onto me. Mr. K. G. Maheshwari and Mr. K. K. Maheshwari have the same address at Maheshwari House, 36, L. Jagmohandas Marg, 400 036. However, it is totally out of context to assume that as we live at the same city- building, I am privy to any sensitive information on Wyeth Limited. I would like to submit that each of us has separate/independent residential apartments at the Maheshwari House building, which houses three other family units. Since my husband, the late Shri M. G. Maheshwari retired from Geoffrey Manners & Co. Limited in 1990 (much before its merger with Wyeth Limited in 2003) and after the severance of our joint family in 1984 i.e. during the life time of my husband, our so-called 'common residence' or 'relation' has no relevance whatsoever to our separate, independent business or personal affairs. I also have no direct association with Wyeth Limited save and except as a member with respect to my investments. Accordingly, you will appreciate that the test of having 'same address' and being some 'relative' (as Mr. K. K. Maheshwari's father's-deceased brother's wife) cannot and does not rightfully apply in my case, after my husband's death or otherwise, to simply presume any connection with any insider and/or can be used to establish any insider trading activity as being attributed to me personally in the impugned notice, within the strict purview of the said PIT Regulations.*
- V. *Accordingly, in light of the foregoing facts, SCN is only presumptions and conjectures in imputing the supposed knowledge of any price sensitive information of any sort on Wyeth Limited or that the unpublished corporate announcement as noted therein was at all 'communicated/ passed on' to me personally. I wish to reiterate that the presumption for making me a party to the Notice merely because I am in some relation with the First Noticee or having the same address will be totally baseless and unwarranted and I categorically deny the same. I deny that my initial holdings were only 42,767 shares as alleged. I deny I had any knowledge of any decision on Prevenar as alleged or sold 'almost all' of my holdings prior to the publishing of any price sensitive information as alleged.*
- VI. *Demat account and statements, amply clarify that I am not any dealer or trader in any shares. The shares are sold through my financial advisors, a SEBI registered broker, Kotak Securities, like many other investments held and realized at all times and the amounts realized have been*

*received and beneficially held by me solely and primarily invested into SEBI approved Mutual Funds and PMS on long term basis for my sole benefit. Therefore, no other cause or reason can be inferred or attributed to my independent decision to sell the Wyeth shares as such decisions which have been consistently effected by me regularly and not for any of the reasons alleged. The same also holds true for shares and investments held by Manoj Madan Family Trust, of which I am one of the Trustees since 1967.*

- VII. *I am and was not aware and/or in knowledge of any aspect of the price sensitive information as alleged at anytime and that the sale and realization of my investments have no bearing on any such information or knowledge. I deny that I can be considered to be an 'insider' or a 'connected person' involved in any 'insider trading' in any manner whatsoever under the said PIT regulations.*

## **CONSIDERATION OF ISSUES AND FINDINGS THEREOF**

11. Having taken note of the above-said replies, I note that neither of the noticees had an objection to a common show cause notice and/or common order concluding allegations against both the noticees. I also note that none of the noticees had an argument of not being able to understand the charges; neither did they seek any additional material/document so as to understand the charge against them hence it would be fair to assume that all the principles of natural justice have been complied with. In this regard, I however note that the First Noticee had asked for a copy of the Investigation Report and for that, it is my considered view that all the facts and evidences relied upon forms part of the SCN for the noticee to controvert and there is no other material or evidence which is being taken note of, hence furnishing a copy of investigation report does not serve any additional purpose or cause any prejudice to noticee. Similarly no statements of any person have been relied upon so as to provide any opportunity of cross-examination to any of the noticee.
12. ***First issue for consideration is whether “relinquishment of marketing rights of the drug Prevenar” can be considered as unpublished price sensitive information prior to January 25, 2006 in terms of PIT Regulations?***
- 12.1 First Noticee’s argument is that that there was no unpublished price sensitive information prior to January 25, 2006 since in the Board meeting held on December 22, 2005 no final decision on relinquishment of marketing rights of the drug “Prevenar” was taken. According to him, the matter was discussed at the meeting and it was decided by the Board to appoint KPMG to decide fair compensation for such relinquishment. The decision to relinquish the marketing right was contingent on the compensation factor. Only on receipt of the report from KPMG, in the Board Meeting dated January 25, 2006, the decision was taken to relinquish the marketing rights. A mere discussion without any finality in a matter is not price sensitive information. What is relevant is the final decision that could impact the price. Sensitivity is relatable to the final decision and not to anything else. Non closure of the trading window, compliance officer not objecting to his disclosure and trades are sighted to support his contention.
- 12.2 Regulation 2(ha) of PIT Regulations defines price sensitive information as under:-

“Price sensitive information” means **any information** which relates directly or indirectly to a company **and** which **if published** is **likely to materially affect the price of securities** of company.

*Explanation* — The following shall be deemed to be price sensitive information:—

- (i) Periodical financial results of the company;
- (ii) Intended declaration of dividends (both interim and final);
- (iii) Issue of securities or buy-back of securities;
- (iv) Any major expansion plans or execution of new projects;
- (v) Amalgamation, mergers or takeovers;
- (vi) Disposal of the whole or substantial part of the undertaking; and
- (vii) Significant changes in policies, plans or operations of the company.

- 12.3 Perusal of the definition makes it clear that price sensitive information would be “*any information*” that has likelihood and potential to materially affect the price of the securities. The information that Wyeth is not launching / marketing ‘Prevanar’ drug on behalf of Wyeth USA and that the US company intends to instead launch it through its wholly owned subsidiary certainly is an information which if published, would affect the price of securities of Wyeth. On a *prima facie* basis, this news is definitely a negative news and this is also borne out from the fact that the price declined post announcement by the company on February 15, 2006 and continued to fall till the decision was subsequently reversed. Thus in my considered view, this news of “relinquishment of marketing rights of the drug Prevenar” can definitely be considered as unpublished price sensitive information prior to February 15, 2006.
- 12.4 Further, whether this can be considered as unpublished price sensitive information more particularly before January 25, 2006 is a fine distinction sought to be drawn by the First noticee as he had dealt in the shares on January 4, 2006 after the Board meeting of December 22, 2005 but before the Board meeting on January 25, 2006. From the above definition, I note that the words used in the definition are “if published” so as to pre-suppose that “any” information (not only a ‘final decision’ but would include probable and most likely event) which can effect price of the securities would be price sensitive information before its date of publication. In this case it is seen that in the Board meeting held on December 22, 2005 there were detailed discussion on “*Giving No Objection letter to ROC, Maharashtra for the use of the name ‘Wyeth’ as part of the corporate name of the new wholly owned subsidiary being established in India by Wyeth USA*” and on “*Relinquishment of marketing rights of the drug “Prevenar”*”. I have carefully gone through the entire minutes of the board meeting and it is observed that the Board of Directors (BoD) was informed all details with regard to the issues including inter-alia that Wyeth USA had obtained FIPB approval and was in the process of establishing its wholly owned subsidiary in India, Wyeth was only a non-exclusive registered user of the trademark Wyeth and Wyeth USA had the right to terminate the registered usership, Wyeth USA, intends to market Prevenar, its original researched product, through its new wholly owned subsidiary being incorporated in India,. Wyeth USA had requested Wyeth to issue a No Objection Certificate addressed to the Drug Controller General of India indicating that Wyeth did not have any objection to transfer of the Prevenar marketing rights in favour of the new wholly owned subsidiary. Wyeth USA had indicated that reasonable compensation would be paid to Wyeth for the costs incurred in registration, pre-marketing expenses and for relinquishing its marketing rights to Prevenar. The Independent Directors had expressed their concerns and raised various queries about the future of Wyeth which were answered by the MD. After considerable discussions, where in Independent Directors took active part, the BoD agreed to and passed resolution for the issue of the said no objection letter to ROC. On the second issue of relinquishment of marketing rights of the drug “Prevenar” the independent directors had emphasized that the company should accept Wyeth USA’s offer for reasonable compensation in lieu of the company relinquishing the marketing rights in respect of Prevenar and

also take into account the loss of potential profits that would result therefrom. The independent directors stated that in order to arrive at a reasonable compensation a valuation be done by an independent valuer who should be instructed to assess in a fair, impartial and objective manner as to what would constitute fair compensation which Wyeth could with justification, request Wyeth USA to pay. After considerable discussion, it was agreed and a resolution was passed, authorizing the MD to appoint KPMG to conduct the valuation and to submit the report to the board. Thus from perusal of the minutes of the Board meeting of December 22, 2005 it is seen that though no final decision was taken yet from the discussions it is evident that the likelihood of the events were almost certain and what was left to be decided was only the reasonable compensation which would be based on KPMG's valuation. Thus in my considered view, there was price sensitive information even prior to January 25, 2006 and it was incumbent on the insider(s) including the Independent Directors who were aware of the issues and had detailed deliberations on the same to refrain from communicating / dealing prior to release of the information to the public. Thus in my view, there was unpublished price sensitive information and non-closure of trading window by the company or Compliance Officer of Wyeth not objecting to disclosure / trades does not take away the nature of such information from being 'sensitive' for the scrip and more particularly 'price sensitive information' as defined under PIT Regulations.

**13. *Second issue for consideration is whether First Noticee had passed/communicated the alleged unpublished price sensitive information to Second Noticee or conversely, whether Second Noticee procured unpublished price sensitive information and dealt while in possession of the price sensitive information in violation of PIT Regulations?***

13.1 At the outset, I note that the facts mainly relied upon to bring this charge are:-

- (a) First Noticee is an Insider being an Independent Director on the Board of Wyeth and had attended the Board meetings wherein relevant issues were discussed and hence had access to the information.
- (b) First Noticee and Second Noticee are related to each other, Second Noticee being 'aunt' in relation to First Noticee.
- (c) Address of First Noticee is matching with the address of Second Noticee and the trust.
- (d) First Noticee sold shares during the period December 22, 2005 to February 15, 2006 and Second Noticee and the trust sold major part of their holding during the period January 03, 2006 to February 14, 2006 and the timing of these transactions relate to the developments relating to relinquishing of marketing rights of Prevenar by Wyeth i.e. the time of subsisting Price Sensitive Information.

13.2 Both the Noticees have strongly and vehemently denied any violation and have claimed that, based on independent unconnected facts / untenable premises / assumptions, inferences have been drawn to their detriment. They have stated that in the absence of evidence, based on presumptions and conjectures, it cannot be imputed and automatically concluded that unpublished price sensitive information had been passed / communicated, which formed the basis of trades executed and thereby norms have been violated. In the absence of sufficient material / evidence the same would be legally untenable and unsustainable. The requirement of law would be that the allegation against the Noticees must be established by such evidence which should leave no reasonable doubt

about guilt. Suspicion / mere possibility / conjuncture or surmise cannot take the place of proof to assume that it would have happened and to sustain the finding of guilt.

- 13.3 The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. However, it is equally true that in cases of Insider Trading seldom direct evidence would be available. Proof is generally to be found in form of circumstantial evidence. Various judicial pronouncements including those noticees have cited, have held that the inference from the evidence and circumstances would have to be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstances to deduce necessary inferences in proof of the facts in issue. At the same time the standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable.
- 13.4 In so far as sale of shares on January 9, 2006 by First Noticee is concerned he has claimed that the sale was not motivated by the alleged unpublished price sensitive information. He had sold these shares as he genuinely was in need of money for investing in a private limited company (M/s Universal Chemicals & Industries Pvt Ltd) owned and run primarily by him and his son. It was a need based transaction and not a greed based one for gain. He has claimed that the said transaction had nothing to do with the alleged insider trading and was in the nature of arrangement amongst family members for providing finances and reorganizing holdings. The fact that the shares have been sold by him to his father and not to any outsider / public and that the said shares were held by his father for almost two years, reinforces his contention that sale was not motivated by the alleged unpublished price sensitive information. If he were indulging in insider trading, he would have directly sold the shares in the market or his father would have sold the shares (after acquiring from him) in the market any time prior to February 15, 2006 i.e. the date when the alleged price sensitive information was made public by Wyeth. Also if his intention had been to make gain on the basis of alleged unpublished price sensitive information, the rest of his holdings would also have been sold instead of retaining a substantial chunk of his holding in Wyeth and selling only just 1/4th of his holding. He is still holding the balance 1,59,337 shares in Wyeth. Thus First Noticee has claimed that the sale was not to make any gain or avoid any loss but a genuine need based transaction between two insiders closely related to each other and did not involve any disproportionate gain or unfair advantage. It is also noted that First Noticee has not been charged with violation of Regulation 3 (1) pertaining to dealing on the basis of insider information / unpublished price sensitive information.
- 13.5 It is seen that in the case of the Second Noticee the Wyeth holdings relate directly to her / her husband's holdings in Geoffrey Manners Company Limited (GMCo) since 1957 and various corporate actions thereof. She has claimed that as she was left with no strategic interest in GMCo or its offshoot entities, she had sold her investments at every instance when the long standing investments were unlocked into marketable listed securities. In the period of 18 months between 2004 and 2006 she had continually realized her investments in Wyeth Limited of about 2,16,018 shares besides about 98,800 shares realized earlier in 1998. Similarly, the Manoj Madan Family Trust subsisting since 1967 also held and realized its investments of about 64,011 shares in Wyeth Limited during 2004-06 besides about 72,350 shares earlier in 1998. Thus the sale in January-February, 2006 of 40,328 shares by Second Noticee and 10,074 shares by the family trust as noted

in the Notice is only the balance small portion of the investments/shares in Wyeth Limited continually realized by her and the family trust. Hence, the allegation that she had on the basis of unpublished price sensitive information sold of almost all of her initial holding of 42,767 shares held for decades and the trust had sold off more than half of its holding of 19,917 shares was not entirely correct. She has claimed that no other cause or reason can be inferred or attributed to her independent decision to sell the Wyeth shares as such decisions which have been consistently effected by her regularly and not for any of the reasons alleged. The said shares were sold through her financial advisors, a SEBI registered broker, like many other investments held and realized at all times and the amounts realized have been received and beneficially held by her solely and primarily invested into SEBI approved Mutual Funds and Portfolio Management Services (PMS) on long term basis for her sole benefit. There is nothing on record to show that Second Noticee had any common business/ investment activities or relationship with First Noticee or had received any communication / information or that the latter has derived any benefit from the said trades.

- 13.6 Keeping in mind the various judicial principles, when I consider the various facts and evidences in this specific case and the explanations given by the Noticees, the allegations pertaining to communicating / procuring insider information and dealing on basis of said insider information do not sustain.

**14. *Third issue for consideration is whether First Noticee was in compliance with Regulation 13(4) and 13(5) of the PIT Regulations?***

- 14.1 I note from the reply of First Noticee dated March 19, 2010 that he admits non-filing the disclosure in Form D as prescribed in PIT Regulations within prescribed time of four working days which he complied only on January 12, 2008 (presumably after SEBI started enquiring about the transaction) while the sale had taken place on January 9, 2006 i.e. after a delay of almost 2 years. However, First Noticee submits that-

- (a) Alleged lapse is at the highest a technical, procedural and venial breach and has not caused any adverse consequences or prejudice to anybody.
- (b) In its additional reply dated April 16, 2010 noticee submits that non-disclosure of change in shareholding by a director to the Company as contemplated under Regulation 13(5) is beyond the scope of penalty under section 15G of the SEBI Act and therefore no penalty can be imposed on him under section 15G as contemplated.
- (c) The Adjudicating Officer cannot travel beyond the scope of authority as conferred by the Appointing Authority. By putting a penalty, Adjudicating Officer would expand his jurisdiction while Adjudicating Officer's power is confined to specific violations stated in his appointment order.

- 14.2 With regard to the above, I am of the view that PIT Regulations are made under the SEBI Act and as such the compliance of the same by a director of a listed company is a statutory requirement, and failure would attract the penalty provided under section 15 A of SEBI Act and such failure need not necessarily be willful or intentional. Moreover, adverse consequence or prejudice to market is not a requirement for violation of regulation 13(5) of PIT Regulations. Though, this irregularity in disclosing within 4 working days from the date of sale may seem technical breach but it is my considered opinion that if SEBI Act and PIT regulations are not complied strictly, then the very purpose of enacting regulations for continuous disclosures and fixing a time frame for such disclosures would be defeated. Continual Disclosures mandated under Regulation 13 of the

PIT is very important to convey the right picture to the investors as these disclosures of the trades by Company Insiders act as a critical input to enable the investors to take informed decisions about their investments.

- 14.3 In the instant case, I also note that sale of 50,000 shares by First Noticee to his father Shri Krishna Gopal Maheshwari was publicly available on BSE website as Bulk Deal details on January 09, 2006. However, in absence of a disclosure in Form D as prescribed in Regulation 13 of PIT Regulations within prescribed time of 4 working days from sale, an investor in the market could not readily have known that this sale worth 3.71 Crore of Rupees is effected by an insider who is non-executive independent director of Wyeth. Hence, such an act of First Noticee is not in order as it deprived the market from revelation that an independent director of Wyeth is selling his stake and it left investors missing an important input for taking informed decision while dealing in securities of the company. At the same time in this instant case it is seen that the securities sold by the First Noticee was bought by his father and the securities were credited to a joint demat account wherein the father was first holder and the First Noticee was second holder. In the joint beneficial account in the depository system both the joint holders are members / shareholders of the company. In view of the First Noticee continuing to be beneficial owner of shares, a disclosure of only a sale by him, would have been incomplete and potentially misleading. So the correct disclosure in the instant case should have been not a sale but complete disclosure of the entire reorganization of holdings. In view of this and also considering the contentions (b) and (c), I am of the view that no penalty be imposed on First Noticee in the matter.
15. In light of aforesaid deliberations, charges against First Noticee and Second Noticee are being dropped, the Noticees are being discharged and therefore no penalty is required to be imposed under Section 15G of SEBI Act, 1992.

## **ORDER**

16. After taking into consideration the totality of facts and circumstances of the case, I come to conclusion that this is not a fit case for imposing the monetary penalty and the matter is disposed of accordingly.
17. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees viz. Shri K K Maheshwari and Smt. Sarla Maheshwari and also to the Securities and Exchange Board of India.

**Date: 03.06.2010**  
**Place: Mumbai**

**SHASHI KUMAR**  
**ADJUDICATING OFFICER**