BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH
COMPOUNDING APPLICATION NO. 23/621A/441/NCLT/AHM/2016

PRESENT: SHRI M.K. SHRAWAT, MEMBER (JUDICIAL)

In the matter of Section 441 of the Companies Act, 2013 (corresponding Section 621A of the Companies Act, 1956) for violation of Section 211 r/w Schedule VI of the Companies Act, 1956 (corresponding Section 129 of the Companies Act, 2013).

In the matter of **M/s. Dishman Pharmaceuticals and Chemicals Limited**, having its Registered Office at Bhadra-Raj Chambers, Swastik Cross Road, Navrangpura, Ahmedabad 380 009, Gujarat, India.

PRESENT FOR APPLICANT:

Mr. Ashok P. Pathak, Practising Company Secretary for the Applicant.

Date of hearing: 9th December, 2016

ORDER

Reserved on: 09.12.2016
Pronounced on: 12.01.2017

Applicants in Default:

M/s. Dishman Pharmaceuticals and Chemicals Limited (Company), (1) Mr. Janmejay Rajnikant Vyas (Chairman and Managing Director), (2) Ms. Deohooti Janmejay Vyas (Whole-time Director), (3) Mr. Arpit Janmejay Vyas (Managing Director) and Mr. Deepak S. Pandya (Company Secretary).

Section Violated:

Section 211 r/w Schedule VI of the Companies Act, 1956.

Nature of Violation:

1. As per the comments made in the Report of Deputy Registrar of Companies (Gujarat, Dadra ad Nagar Havelli), and as per the submissions made in the Compounding Application for violation of Section 211 r/w Schedule VI of the Companies Act, 1956, during the course of an inspection of the Books of Accounts for the period ended on 31st March, 2013 carried out by the Central Government u/s 206(5) of the Companies Act, 2013, it was observed and *inter alia* pointed out by the Inspecting Officer that the provisions of Section 211 r/w Schedule VI of the Companies Act, 1956 have been violated as under:-

> *"During the course of inspection it is observed from annexure to the auditor's report dated 28.05.2013 for the financial year ended 31.03.2013, the company has granted unsecured loans to a company listed in the register maintained under section 301 of the Companies Act, 1956 amounting to Rs. 3,800 lacs. In respect of the said loan given by the company the terms of repayment of Principal and interest have not been stipulated. Hence, the company has violated the provision of Section 211 read with Schedule VI of the Companies Act, 1956 (Corresponding section 129 of the Companies Act, 2013)."*

2. Accordingly, the applicant has violated the provision under Section 211 r/w Schedule VI of the Companies Act, 1956. The Deputy Registrar of Companies, (Gujarat, Dadra and Nagar Havelli) forwarded the Compounding Application vide his letter No. ROC/Guj/Compounding/Section 621A/8115 dated 1st December, 2016 and the same has been treated as Compounding Application No. 23/621A/441/NCLT/AHM/2016. The report of the Auditors as per Balance Sheet is as under:-

> *"(iv) (a) The Company has granted unsecured loan to a company listed in the register maintained under section 301 of the Companies Act, 1956 amounting to ₹3,800 lacs. The maximum amount involved during the year and the year end balance of the loan granted was ₹3,800 lacs.*

(b) In our opinion and according to the information and explanations given to us, the rate of interest and other terms and conditions are not prima facie prejudicial to the interest of the Company.

(c) In respect of the loan given by the Company, the terms of repayment of principal and interest have not been stipulated and hence the question of overdue amount does not arise.

(d) The company has not taken any unsecured loan from the company, firm or party listed in the register maintained under section 301 of the Companies Act, 1956. Hence the paragraphs (iv) (iii) (f) and (iv) (iii) (g) of the Order are not applicable to the Company."

3. This Bench has gone through the Application of the Applicant and the Report submitted by the Deputy Registrar of Companies, (Gujarat, Dadra and Nagar Havelli) and also the submissions made by Practising Company Secretary for Applicant Company at the time of hearing and noted that Application made by the Applicant Company for compounding of offence committed under Section 211 r/w Schedule VI of the Companies Act, 1956 merits consideration. The Applicant has explained on receiving the impugned Notice as mentioned in the report of the Dy. Registrar of Companies that the statutory auditors of the Swiss subsidiary have not agreed upon regarding one of the qualifications observed in the financial statement for non-accounting of the employee's pension benefit or retirement obligation. Due to this disagreement, the alleged default was pointed out in the Notice dated 1st July, 2016. The Applicant Company, resident of India by itself, was not at fault; hence seeking compounding of the default through this Application. Moreover, the explanation offered in the Compounding Application is as under:-

"3.6.1 Section 211 read with Schedule VI of the Companies Act, 1956.

The Company had granted unsecured loan of Rs. 38.00 crores to Dishman Infrastructure Ltd. (DIL). DIL was a wholly owned subsidiary

of the Company at the time of giving unsecured loan. DIL was promoted by the Company for developing the project of Special Economic Zone ("SEZ"), for Pharmaceuticals & Fine Chemicals Segment at Village Gangad and Kaslyangadh, Ahmedabad-Rajkot National Highway No. 8A, Taluka Bavla, Dist. Ahmedabad. The said SEZ project has been notified by the Government of India, Ministry of Commerce vide notification No. F.2/355/2006-SEZ dated 13th November 2010. The Company was earlier envisaged to be the primary beneficiary of the said project which was supposed to be a captive SEZ and thus the said loan was extended to DIL as a long term loan. Hence, terms of repayment of principal and interest have not been stipulated. At that time, DIL required support from its parent company so that DIL could establish its business in the manner planned. However, the Company is charging interest @ 12% on the said unsecured loan. DIL has enough assets in the form of vast land and the company's loan was not at risk. As per the opinion of management of the Company and Auditors, it is not prejudicial to the company's interest.

Hence, we respectfully submit that the Company has not violated the provisions of Section 211 read with Schedule VI of the Companies Act, 1956 (corresponding Sections 129 of the Companies Act, 2013). However in order to buy peace, the Company do not intend to enter into any controversy with the Governments and would like to avoid the protracted litigation on the issue. And accordingly, the Company is desirous of getting the offence in question compounded under section 441 of the Companies Act, 2013 explaining the facts.

Keeping in view the above facts and circumstance, a lenient view be taken and that the offence in question under Section 211 read with Schedule VI of the Companies Act, 1956 be compounded."

4. Under the old provisions of the Act, as applicable when this Compounding Application was filed in the year 2016, the relevant provision was Section 211(7) of the Companies Act, 1956, which is reproduced below:

"Section 211 ....
(7) If any such person as is referred to in sub-section (6) of section 209 fails to take all reasonable steps to secure compliance by the company, as respects any accounts laid before the company in general meeting, with the provisions of this section and with the other requirements of this Act as to the matters to be stated in the accounts, he shall, in respect of each offence, be punishable with imprisonment

for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both."

5. Having regard to the facts and circumstances of the case, the offence committed under Section 211 r/w Schedule VI of the Companies Act, 1956, as stated and explained in the above paragraphs, is compounded against the three Directors of the Applicant Company and the Company Secretary of the Applicant Company on payment of ₹1,000/- by Mr. Janmejay Rajnikant Vyas (Chairman and Managing Director), ₹1,000/- by Ms. Deohooti Janmejay Vyas (Whole-time Director), ₹1,000/- by Mr. Arpit Janmejay Vyas (Managing Director) and ₹1,000/- by Mr. Deepak S. Pandya (Company Secretary). The remittance shall be made by way of Demand Draft drawn in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Ahmedabad".

6. This Compounding Application No. 23/621A/441/NCLT/AHM/2016 is, therefore, disposed of on the terms directed above with a rider that the payment of the fine imposed be made within 15 days on receipt of this Order. Needless to mention, the offence shall stand compounded subject to the remittance of the fine imposed. A compliance report, therefore, shall be placed on record. Only thereafter the Ld. RoC shall take the consequential action. Ordered accordingly.

MKShrawat

Dated: 12.01.2017

Shri M.K. Shrawat
Member (Judicial)