# BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH
# COMPOUNDING APPLICATION NO. 25/621A/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. Tushar D. Shah (Company Secretary).

**Section Violated:**

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

**Nature of Violation:**

1. As per the comments 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, 2014 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 Auditor's Report dated 28.05.2014 stating that attention is invited to Note 26.14 to the Financial Statements regarding the company's equity investments aggregating Rs. 4169.54 lacs in Dishman Pharmaceutical and Chemicals (Shanghai) Company Limited, a wholly owned subsidiary, and the outstanding loans from the subsidiary amounting to Rs. 7169.36 lacs as at 31.03.2014. Though the subsidiary has incurred net cash loss during the current year as well as during the previous year and net worth has been significantly eroded as at 31.03.2014, no provisions is considered necessary by the management of the company at this stage in respect of the aforesaid investment in and the loans outstanding from the subsidiary. 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/8117 dated 1st December, 2016 and the same has been treated as Compounding Application No. 25/621A/441/NCLT/AHM/2016.

3. This Bench has gone through the Application of the Applicant Company 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 ~~clarifications~~ qualification 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. The explanation of the Applicant is worth reproduction:

> *"3.6.1 Section 211 read with Schedule VI of the Companies Act, 1956.*
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> *Note No. 26.14 to the financial statements is in the nature of clarificatory note given in the management as regard the investments made in and loans and advances given to the Chinese subsidiary company. This is a wholly owned subsidiary which has set up a USFDA approvable manufacturing facility in China for manufacturing the products viz. APIs and speciality chemicals. As it is normal, after the facility is established, there is a long process of getting the facility approved by various authorities like local Chinese authorities as well as international regulators like USFDA, etc. During the year under review, although technically the project was implemented and commissioned, the said company was in the process of obtaining such approval and was also in the process of negotiating contracts with the customers. As per the financial statements its operations showed losses. However, the management was confident that once the facility is approved regular revenues will start flowing. This in fact has started happening from FY 2014-15 onwards. Therefore, based on the business plan of the management and future cash flows, the management was confident that this investment being in the nature of a long term investment made in strategic subsidiary, there was no need to make provision for the losses. The auditors of the company were also accordingly satisfied with the explanation given by the management. Thus, the Management of*

*the Company has concluded that these losses are temporary in nature and that there is no decline in the carrying amount of this long term investment in the subsidiary and also that the loans outstanding from the subsidiary are good for recovery, taking into account the strategic nature of the investment, the future business plans which include enhancement of the type of products to be manufactured by the subsidiary and the projections of the subsidiary. Accordingly, no provision is considered necessary by the Management of the Company at this stage in respect of the aforesaid investment in and the loans outstanding from the subsidiary. We add to inform you that during the financial year FY 2015-16, the Shanghai Subsidiary has reported profits and thus, the perception of the management has proven to be true.*

*Hence, we respectfully submit that Company has not violated the provisions of Section 211 read with Schedule VI of the Companies Act, 1956 (corresponding Section 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."*

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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. Tushar D. Shah (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. 25/621A/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.

Dated: 12.01.2017

**Shri M.K. Shrawat**
Member (Judicial)