COMPOUNDING APPLICATION NO. 24/621A/441/NCLT/AHM/2016

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH COMPOUNDING APPLICATION NO. 24/621A/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(3A) and 3(B) of the Companies Act, 1956 r/w A.S. 15 (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(3A) and 3(B) 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

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Compounding Application for violation of Section 211(3A) and 3(B) of the Companies Act, 1956 r/w A.S. 15, 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(3A) and 3(B) of the Companies Act, 1956 r/w Accounting Standard 15 have been violated as under:-

"On going through the consolidated balance sheet as at 31.03.2014, it is observed that the company has not accounted for employee's pension benefits amounting to Rs. 5287.75 lacs (net of tax Rs. 1305.45 lacs). This would not be in compliance with the requirements of Accounting Standard (AS) 15 — employees benefits which requires pension plans to be treated as defined benefit obligations and the liabilities to be recorded using actuarial valuation methods as prescribed in gthe said Accounting Standard. Hence the Company has violation of provision of Section 211(3A) & 3(B) of the Companies Act, 1956 read with AS-15 (Corresponding Section 129/133 of the Companies Act, 2013)."

- 2. Accordingly, the Applicant has violated the provision under Section 211(3A) and 3(B) of the Companies Act, 1956 r/w A.S. 15. The Deputy Registrar of Companies, (Gujarat, Dadra and Nagar Havelli) forwarded the Compounding Application vide his letter No. ROC/Guj/Compounding/Section 621A/8116 dated 1st December, 2016 and the same has been treated as Compounding Application No. 24/621A/441/NCLT/AHM/2016.
- 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(3A) and 3(B) of the Companies Act, 1956 r/w A.S. 15 merits consideration. The Applicant has explained on receiving the impugned Notice as mentioned in the report of the Dy. Registrar of

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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. The explanation offered was as under:-

"3.6.1 Section 211(3A) and 3(B) of the Companies Act, 1956 read with AS-15.

Employee's pension benefits amounting to Rs. 5287.75 lacs pertain to out Swiss subsidiary, CARBOGEN AMCIS AG. In fact they are consistently following it as a practice where they are contributing to an insurance pension fund, which completely takes care of pension liabilities and obligations and this is consistently followed over last several years. Under the Swiss GAAP, the Swiss subsidiary is not required to make any provisioning and as per the IFRS, also as it is stood prior to this year, there was no requirement for any provisioning. As per the Swiss laws, the Swiss subsidiary has taken out an employee's retirement benefit plan under which both the employer and employee makes contribution. As per the plan, the employee gets retirement benefit sums along with interest earned by the insurance company which is based on the returns on the assets in which it has invested. Swiss company has no further obligation towards the employees except for payment of premium. The said company has also obtained a certificate from the insurance company to the effect that the company has no obligation towards retirement plans. In view of the foregoing, it was explained by the management of the said Swiss subsidiary that as per the local GAPP since there is no liability in respect of pension owing to the above insurance plan there was no need to make any provision as per the local GAPP. Similarly on the basis of the facts and circumstances mentioned above, in view of the company's management, the above specific arrangement made with the insurance company was not regarded as a defined benefit obligation under the relevant Indian Accounting Standard AS-15 and hence even in the consolidated financial statements there was no requirement to provide for the employee pension benefit liability in the consolidated financial statements.

Hence, we respectfully submit that in company's view there is no violation of provisions of Section 211(3A) and (3B) of the Companies Act, 1956 read with AS-15 (corresponding Sections 129/133 of the

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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(3A) and (3B) read with AS-15 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(3A) and 3(B) of the Companies Act, 1956 r/w A.S. 15, 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".

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6. This Compounding Application No. 24/621A/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)

Mohrane