BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH
COMPOUNDING APPLICATION NO. 22/621A/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. 29 (corresponding Section 129/133 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 made in the Report of Deputy Registrar of Companies (Gujarat, Dadra ad Nagar Havelli), and as per the submissions

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made in the Compounding Application for violation of Section 211(3A) and 3(B) 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(3A) and 3(B) of the Companies Act, 1956 r/w Accounting Standard 29 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 provided for asset retirement obligation aggregating to Rs. 5156.25 lacs and its corresponding depreciation amounting to Rs. 1916.97 lacs (net of tax Rs. 473.27 lacs) related to its leased assets. This would not be in compliance with the requirements of Accounting Standard 29 – Provisions, Contingent Liabilities and Contingent Assets. Hence the Company has violation of provision of Section 211(3A) & 3(B) of the Companies Act, 1956 read with Accounting Standard 29 (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 Accounting Standard 29. The Deputy Registrar of Companies, (Gujarat, Dadra and Nagar Havelli) forwarded the Compounding Application vide his letter No. ROC/Guj/ Compounding/Section 621A/8114 dated 1st December, 2016 and the same has been treated as Compounding Application No. 22/621A/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 Accounting Standard 29 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. The explanation offered is also worth reproduction:-

> *"3.6.1 Section 211(3A) and 3(B) of the Companies Act, 1956 read with AS-29.*
>
> *This issue relates to Swiss subsidiary, CARBOGEN AMCIS AG. As per a local Accounting Standard, an Asset Retirement Obligation (ARO) is required to be created in case of leased assets so that effectively on the expiry of the lease the company has adequate reserves available. However, in this case the period of long term lease was 40 years, out of which a major period is unexpired (over 20 years). Therefore, in view of the management of CARBOGEN AMCIS AG. there was no need to make a provision or creation of the ARO. This stand was also accepted by the statutory auditors of CARBOGEN AMCIS AG. and they have also not qualified the standalone audited financial statements, under the Swiss GAPP. However, on a technical ground in the process of consolidation, the statutory auditors of DPCL have qualified their report on the ground that the company has not made provision of the ARO, but based on the explanation received from the management of the Swiss subsidiary and as per the above clarification / factual position the management of the DPCL was of the view that there is no requirement for creation of this ARO and hence no provision was regarded as necessary in the consolidated accounts. We further submit that it does not impact P&L but we have to debit it directly to the asset account. However, as we explained, significantly longer term of lease is still unexpired which is more than 20 years and therefore that reorganization or reconstruction at this point in time is not relevant and it has no impact on our P&L or on our financial statements as such.*
>
> *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-29 (corresponding Sections 129/133 of the Companies Act, 2013). However in order to buy peace, the Company do no 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-29 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 Accounting Standard 29, 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. 22/621A/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)