COMPOUNDING APPLICATION NO. 26/621A/441/NCLT/AHM/2016

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD BENCH COMPOUNDING APPLICATION NO. 26/621A/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 and Section 129 r/w Schedule III of the Companies Act, 2013 (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 and Section 129 r/w Schedule III of the Companies Act, 2013.

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 NO. 26/621A/441/NCLT/AHM/2016

Compounding Application for violation of Section 211 r/w Schedule VI of the Companies Act, 1956 and Section 129 r/w Schedule III of the Companies Act, 2013, during the course of an inspection of the Books of Accounts for the period ended on 31st March, 2014 and 31st March, 2015 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 and Section 129 r/w Schedule III of the Companies Act, 2013 have been violated as under:-

"During the course of inspection it is observed that company has shown as Bad Debt and other receivables written off amounting to Rs. 0.39 lacs during the Financial Year ended on 31.03.2014 and Rs. 11.64 lacs during the Financial Year ended on 31.03.2015. However, the Company has not stated by way of note that what steps company have taken to recover the said Bad Debt and receivables. Hence, the company has violated the provision of section 211 read with Schedule VI of the Companies Act, 1956 (Corresponding to 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 and Section 129 r/w Schedule III of the Companies Act, 2013. The Deputy Registrar of Companies, (Gujarat, Dadra and Nagar Havelli) forwarded the Compounding Application vide his letter No. ROC/Guj/Compounding/Section 621A/8118 dated 1st December, 2016 and the same has been treated as Compounding Application No. 26/621A/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 r/w Schedule VI of the Companies Act, 1956 and Section 129 r/w Schedule III of the Companies Act, 2013 merits consideration. The Applicant has explained on receiving the impugned Notice as mentioned in the report of the Dy. Registrar of Companies that

COMPOUNDING APPLICATION NO. 26/621A/441/NCLT/AHM/2016

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 as under:-

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

Writing off of bad debts and other receivables are the normal business transactions, which is usually found in the balance sheet any company of our size. The amount written off being Rs. 0.39 lacs in Financial Year 2013-14 (which is 0.01% of total debtors and 0.001% of the total income) and Rs. 11.64 lacs in Financial Year 2014-15 (which is 0.12% of total debtors and 0.02% of total income), are very negligible amounts looking to the volume of the business of the company and claimed as allowable deduction under Income Tax Act. No prudent businessman would prefer to write off any debts or receivables under the normal circumstances. The company made all the efforts to recover its dues and only thereafter, being unable to recover, the company was compelled to write off certain dues. Considering the materiality aspect, no note has been put by the auditors about actions taken.

Hence, we respectfully submit that Company has not violated the provisions of Section 211 read with Schedule VI of the Companies Act, 1956 in the Financial Year ended 31/03/2014 and 31/03/2015 (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 in the Financial Year ended 31/03/2014 and 31/03/2015 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:

COMPOUNDING APPLICATION NO. 26/621A/441/NCLT/AHM/2016

"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 and Section 129 r/w Schedule III of the Companies Act, 2013, 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. 26/621A/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)

Meshausal