

# INSPECTION, INQUIRY AND INVESTIGATION



## LEARNING OUTCOMES

At the end of this Chapter, you will be able to:

- ❑ Explain the provisions related to Inspection, Inquiry and Investigation
- ❑ Comprehend the Powers of registrars, inspectors and Central Government
- ❑ Describe the Establishment of Serious Frauds Investigation Office and its objectives
- ❑ Define the Duties of directors and other employees during inspection, inquiry and investigation
- ❑ Determine Inspection Report and action to be taken on it, Punishment for contravention or non-compliance based on the Inspection Report.



## 1. INTRODUCTION

In case of company, Shareholders and Management may be different. The shareholders elect the directors to run the business. The directors are given adequate power to run the affairs of the company. Sometimes there may be abuse of power by directors or officers of company and it may lead to losses for stakeholders. Therefore, it becomes imperative for the Central Government to assume certain powers to investigate into the affairs of the company, particularly where there is reason to believe that the business of the company is being conducted with the intent to defraud its creditors or members or for a fraudulent or unlawful purpose, or in any manner which is oppressive to any of its members. Chapter XIV contains Sections 206 to 229 of the Companies Act, 2013 which deals with the provisions relating to Inspection, Inquiry and Investigation into the affairs of company.

### POWERS GIVEN UNDER COMPANIES ACT, 2013

Authorities	Powers
Registrar under sections 206, 207, 208 & 209	Section 206 - Call for information and inspection of books of account, papers and explanations and order for inquiry, Section 207 – Conduct of Inspection and Enquiry, The Registrar have all the powers as are vested in a civil court. Section 208 – Submission of inspection report, Section 209 - Search and seizure,
Inspector under sections 206, 207, 208, 209 & 216	Section 206 - Call for information and inspection of books of account, papers and explanations and order for inquiry, Section 207 – Conduct of Inspection and Enquiry, The Registrar have all the powers as are vested in a civil court. Section 208 – submission of inspection report, Section 209 -Search and seizure Section 216 – To investigate on matters relating to company and its membership for determining ownership of company.
Central Government (CG) under sections 206, 210, 211, 212, 216 & 224	Section 206 – CG may authorize any statutory authority to carry out the Inspection of books of accounts of company, Section 210 - Investigate into affairs of company, Appointment of inspectors to investigate into affairs of the company and to report there on. Section 211 - Establishment of Serious Fraud Investigation Office (SFIO),

	<p>Section 212 - Assignment the investigation into the affairs of company by SFIO</p> <p>Section 216 - Appointment of inspector to investigate on matters relating to company and its membership for determining ownership of company,</p> <p>Section 224 - Actions may be taken in pursuance of inspector's report</p>
Regional director in section 206	Section 206 - Appoint inspector for inspection of books and papers of company
Tribunal under section 213, 221, 222	<p>Section 213 -Pass an order for investigation into company's affairs in other cases,</p> <p>Section 221 - for freezing of assets of company on inquiry and investigation,</p> <p>Section 222 -for imposing restrictions upon securities</p>



## 2. POWER TO CALL FOR INFORMATION, INSPECT BOOKS AND CONDUCT INQUIRIES (SECTION 206 OF THE COMPANIES ACT, 2013)

Section 206 of the Companies Act, 2013 provides for the power to call for information, inspect books and conduct inquiries.

According to this section:

- (i) **Power of the Registrar to call for information, explanation or documents** [Section 206 (1)]: According to section 206(1) of the Companies Act, 2013, where on scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—
  - (a) to furnish in writing such information or explanation; or
  - (b) to produce such documents, within such reasonable time, as may be specified in the notice.
- (ii) **Duty of the company and its officers** [Section 206 (2)]: On the receipt of a notice under sub-section (1) of section 206, it shall be the duty of the company and its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar

**Duty of past officers of the company:** According to the proviso to sub-section (2) of section 206, where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(iii) **Additional written notice by the Registrar [Section 206 (3)]:** The Registrar may by another written notice call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

- (a) If no information or explanation is furnished to the Registrar within the time specified under Section 206 (1); or
- (b) If the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate; or
- (c) If the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and the information or documents do not disclose a full and fair statement of the information required.

Provided that, before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

(iv) **Inquiry by the Registrar [Section 206 (4)]:**

- (a) The Registrar may call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard, if the Registrar is satisfied:
  - (1) **on the basis of information** available with or furnished to him; or
  - (2) **on a representation** made to him by any a person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act; or
  - (3) the **grievances of investors** are not being addressed,
- (b) Before calling the company to furnish in writing any information or explanations and carrying out the inquiry, the **Registrar has to inform the company of the allegations** made against it by a written order.
- (c) The **Central Government may**, if it is satisfied that the circumstances so warrant, **direct the Registrar or an inspector** appointed by it for the purpose to carry out the inquiry under this sub-section.

- (d) It is further provided that where the business of a company has been or is being carried on for a fraudulent or unlawful purpose, **every officer of the company** who is in default shall be punishable for fraud in the manner as provided in section 447.
- (v) **Inspection by Central Government:** The Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose [Section 206 (5)].
- (vi) The Central Government may, having regard to the circumstances by general or special order, **authorize any statutory authority to carry out the inspection** of books of account of a company or class of companies [Section 206 (6)].
- (vii) **Failure to furnish information:** If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to 1 lakh rupees and in the case of a continuing failure, with an additional fine which may extend to 500 rupees for every day after the first during which the failure continues [Section 206 (7)].

**Note:** The said provisions apply to the foreign company also [section 228 of the Companies Act, 2013].

Inquiry under section 206(1) of Companies Act, 2013 is fact finding. It is administrative in nature and it is not necessary to give hearing to the company before ordering inquiry.

Following section can be summarized as;

Concerned authorities	Under the said circumstances	Have following Powers
<b>Power of Registrar</b> to call for information/explanation/production of documents under section 206 (1)	On scrutiny of any document filed by a company or on any information received by him, he is of the opinion that any further information or explanation or any further documents relating to the company is necessary	He may by a written notice require the company— (a) to furnish in writing such information (b) or explanation; or (c) to produce such documents,
Registrar may serve <b>Additional written notice</b> under section 206 (3)	(a) If <b>no information or explanation</b> is furnished, or (b) If on an examination of the documents furnished, he is of the	He may by another written notice call on the company to produce for his inspection such further books of account, books,

	<p>opinion that the <b>information or explanation furnished is inadequate</b>; or</p> <p>(c) If he is satisfied on scrutiny of the documents furnished that an <b>unsatisfactory state of affairs exists</b> in the company and the information or documents do not disclose a full and fair statement of the information required.</p>	papers and explanations as he may required.
<b>Registrar may carry out inquiry</b> under section 206(4)	<p>(1) on the basis of <b>information available</b> with or <b>furnished</b> to him; or</p> <p>(2) on a <b>representation</b> made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act; or</p> <p>(3) the <b>grievances of investors</b> are not being addressed,</p>	He may call on the company to furnish in writing any information or explanation on matters specified in the order and carry out such inquiry.
<b>Power of Central Government</b> [Section 206(6)]	if is satisfied that the circumstances so warrant [Section 206 (5)]	It may direct inspection of books and papers of a company by an inspector

		appointed by it for the purpose.
<b>Order passed by Central Government</b> [Section 206(6)]	having regard to the circumstances	By general or special order, authorize any statutory authority to carry out the inspection of books of account of a company or class of companies

1. The High Court of Delhi, in *Axis Ispat (P.) Ltd. v. Union of India*, W.P.(C) No. 4063 of 2021, April 7, 2021 laid down that Registrar of Companies (RoC) has power to call for information, inspection of books, and to conduct an inquiry, however, RoC would have to first call upon company to give an explanation and also provide them a reasonable opportunity of being heard before, issuing show cause notices.

In the given case, RoC by written order sought for inspection of books of account and other statutory records of petitioner company. Petitioner replied to said order belatedly and owing to belated reply, RoC had proceeded further, to issue show cause notice. However, there was a doubt that whether reply submitted by petitioner was considered or not by RoC while issuing show cause notice. In order to ensure that interest of petitioner was properly balanced, and adequate opportunity was afforded to petitioner, RoC was directed to give opportunity of being heard to petitioner and after affording a hearing to petitioner, RoC could proceed further in accordance with law.

2. High Court of Andhra Pradesh and Telangana, in *Karvy Stock Broking Ltd. v. Union of India*, laid down on the Jurisdiction of ROC under section 206(4), is suo motu in nature, because if he is satisfied based on information available with him, or furnished to him, or on a representation by any person that business of company is being carried on for a fraudulent or unlawful purposes, he is empowered to issue notice specifying allegations, and calling upon company to carry out inquiry.

### 3. CONDUCT OF INSPECTION AND INQUIRY (SECTION 207 OF THE COMPANIES ACT, 2013)

Section 207 of the Companies Act, 2013 provides for the conduct of inspection and inquiry as follows:

- (i) **Duty of director, officer or employee [Sub-Section (1)]:** Where a Registrar or inspector calls for the books of account and other books and papers under sub section (1) of section 206, it shall be the duty of **every director, officer or other employees** of the company:
  - (a) **to produce** all such documents; and

- (b) **to furnish** with such statements, information or explanations in such form as may require; and
  - (c) **to render all assistance** in connection with such inspection.
- (ii) **Powers of the Registrar or inspector [Sub-section (2) and (3)]:**
- (a) The Registrar or inspector making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—
    - (1) make or cause to be made copies of books of account and other books and papers; or
    - (2) place or cause to be placed any marks of identification in such books in token of the inspection having been made.
  - (b) The **Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court** under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—
    - (1) the **discovery and production** of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;
    - (2) **summoning** and enforcing the attendance of persons and examining them on oath; and
    - (3) **inspection** of any books, registers and other documents of the company at any place.
- (iii) **Penalty for Contravention [sub-section (4)]:** If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to 1 year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees.

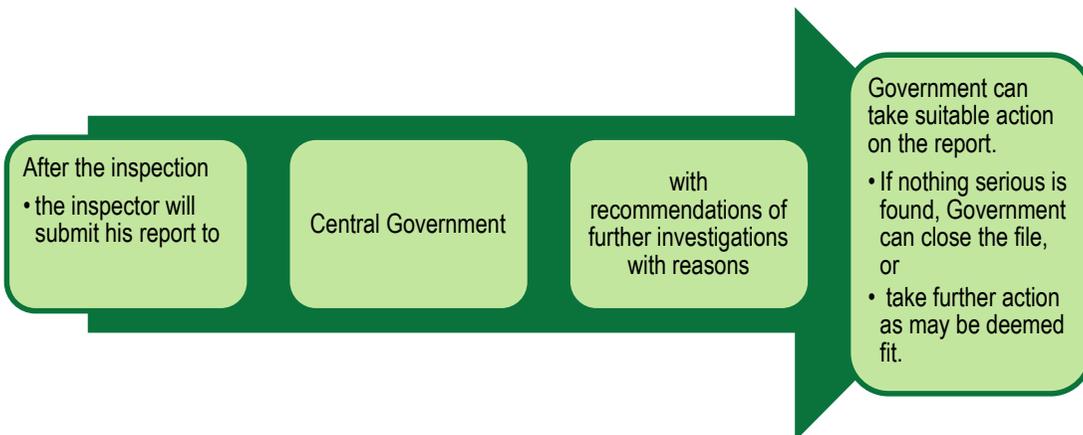
If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.



## 4. REPORT ON INSPECTION MADE (SECTION 208 OF THE COMPANIES ACT, 2013)

Section 208 of the Companies Act, 2013 provides for the submission of the report on inspection made. According to this section:

The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government. The registrar or inspector may recommend in report that there is the need of further investigation. The said recommendation has to be given with reasons in support.



The said report has to be submitted to Regional Director (RD). [Powers delegated vide Notification F No. 3/76/2015-CL-II dated 31-12-2015]

If the punishment is less than two years, RD himself can sanction launching of prosecution. In other cases, he should forward the report to the Central Government for sanctioning prosecution.

## 5. SEARCH AND SEIZURE (SECTION 209 OF THE COMPANIES ACT, 2013)

**Application to Special Court:** Registrar or inspector on reasonable grounds to believe that books and papers relating to the affairs of the company may be destroyed, mutilated, altered, falsified or secreted, he can make an application to Special Court.

**Power of special court to search and seize:** The Special Court, may, by order, authorize it, to enter into the places or premises where books and papers are placed, to search the place and to seize the books and papers as necessary, after allowing the company to make copies.

Search and seizure must be according to provisions of Code of Criminal Procedure.

**Return of seized papers:** The seized papers must be returned within 180 days. The Registrar can take copies of any document or place identification marks on them before returning the books and papers. He can ask for the books and papers again, if needed.

According to this section:

(i) **Circumstances for seizure [Sub-section (1)]:** Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of

- (a) a company, or relating to
- (b) the key managerial personnel or
- (c) any director or
- (d) auditor or
- (e) company secretary in practice (if the company has not appointed a company secretary),

are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—

- (1) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and
- (2) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

(ii) **Period of seizure [Sub-section (2)]:**

**Original period of seizure:** The Registrar or inspector **shall return** the books and papers seized under sub-section (1), as soon as may be, and in any case **not later than 180<sup>th</sup> day after such seizure**, to the company from whose custody or power such books or papers were seized.

**Further period of seizure:** The books and papers may be called for by the Registrar or inspector for a further period of 180 days by an order in writing if they are needed again.

(iii) **Taking of copies, placing identification marks [second proviso to sub-section (2)]:** The Registrar or inspector may, before returning such books and papers as aforesaid, **take copies of, or extracts from them or place identification marks on them or any part thereof** or deal with the same in such other manner as he considers necessary.

(iv) **Applicability of the provisions of the Code of Criminal Procedure, 1973 [Sub-section (3)]:** The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section.

**Example 1:** A group of creditors of Mac Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants

requested the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records.

Here, according to the provisions, Registrar may enter and search the place where such books or papers are kept and seize them **only after obtaining an order** from the Special Court.

Since in the given question, Registrar entered the premises for the search and seizure of books of the company without obtaining an order from the Special Court, it was held that he is not authorized to seize the books of the Mac Trading Limited.

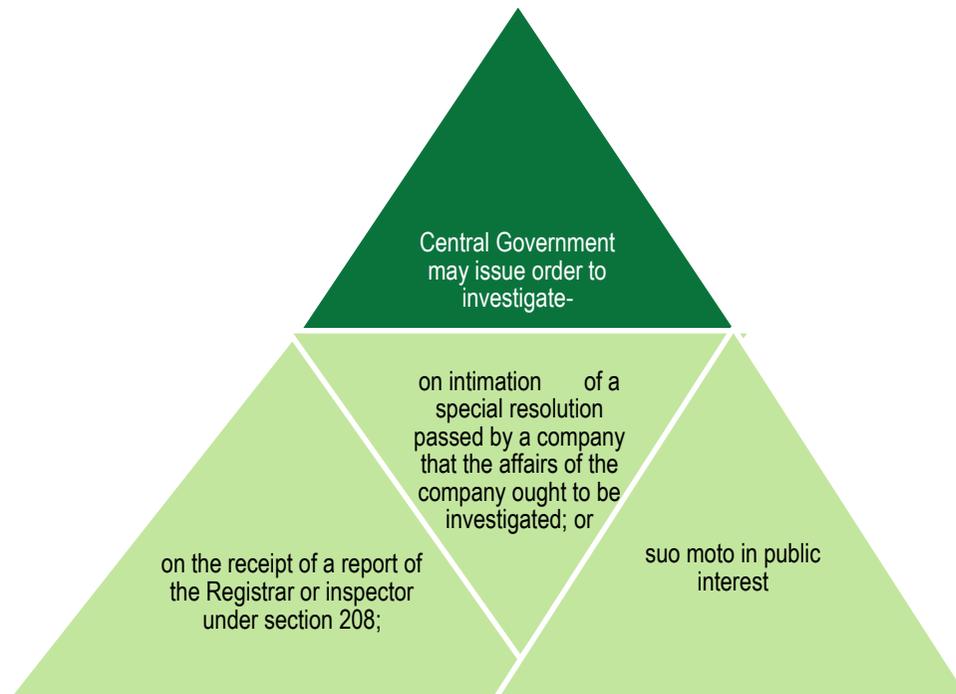


## 6. INVESTIGATION INTO AFFAIRS OF COMPANY (SECTION 210 OF THE COMPANIES ACT, 2013)

Section 210 of the Companies Act, 2013 provides for Investigation into affairs of company. According to this section:

- (i) **Investigation in the opinion of Central Government** [Sub-section (1)]: Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company, it may order an investigation into the affairs of the company.

Central Government may order to investigate-



- (ii) **Investigation on the order by a court or the Tribunal** [Sub-section (2)]: Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.
- (iii) **Appointment of inspectors** [Sub-section (3)]: For the purposes of this section, the Central Government may appoint **one or more persons as inspectors** to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

According to the Companies (Inspection, investigation and inquiry) Rules, 2014:

- (i) **Applicant to pay security:** The Central Government may before appointing an inspector under sub-section (3) of Section 210, require the applicant to give a security not exceeding 25,000 rupees for payment of the costs and expenses of investigation as per the criteria given in the said rule.

Sr. No.	Turnover as per previous year balance sheet (₹)	Amount of security (₹)
1	Turnover up to ₹ 50 crore	₹ 10,000
2	Turnover more than ₹ 50 crore and up to 200 crore	₹ 15,000
3	Turnover more than ₹ 200 crore	₹ 25,000

- (ii) **Refund of security to applicant:** Further, the above referred security shall be refunded to the applicant if the investigation results in prosecution.

**Example 2:** Shareholders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.

Here, the shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.

## 7. ESTABLISHMENT OF SERIOUS FRAUD INVESTIGATION OFFICE (SECTION 211 OF THE COMPANIES ACT, 2013)

Section 211 of the Companies Act, 2013 provides for the establishment of Serious Fraud Investigation Office as under:

- (i) **Setting up of Serious Fraud Investigation Office (SFIO) [Section 211 (1)]:** The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company.
- (ii) **Continuation of earlier SFIO:** Until the SFIO as mentioned above is established, the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government of India Resolution No. 45011/16/2003-Adm-I, dated 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.
- (iii) **Composition of SFIO [Section 211 (2)]:** The SFIO shall be:
  - (a) Headed by a **Director**, and
  - (b) Consist of such **number of experts** from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—



- (iv) **Appointment of Director** [Section 211 (3)]: The Central Government shall, by notification, **appoint a Director in the SFIO**, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.
- (v) **Appointment of Experts Officers & Employees** [Section 211 (4)]: **The Central Government may appoint such experts and other officers and employees** in the SFIO as it considers necessary for the efficient discharge of its functions under this Act.

According to **Rule 3** of the Companies (Inspection, Investigation and Inquiry) Rules, 2014, the Central Government may appoint persons having expertise in the fields of investigations, cyber forensics, financial accounting, management accounting, cost accounting and any other fields as may be necessary for the efficient discharge of Serious Fraud Investigation Office (SFIO) functions under the Act.

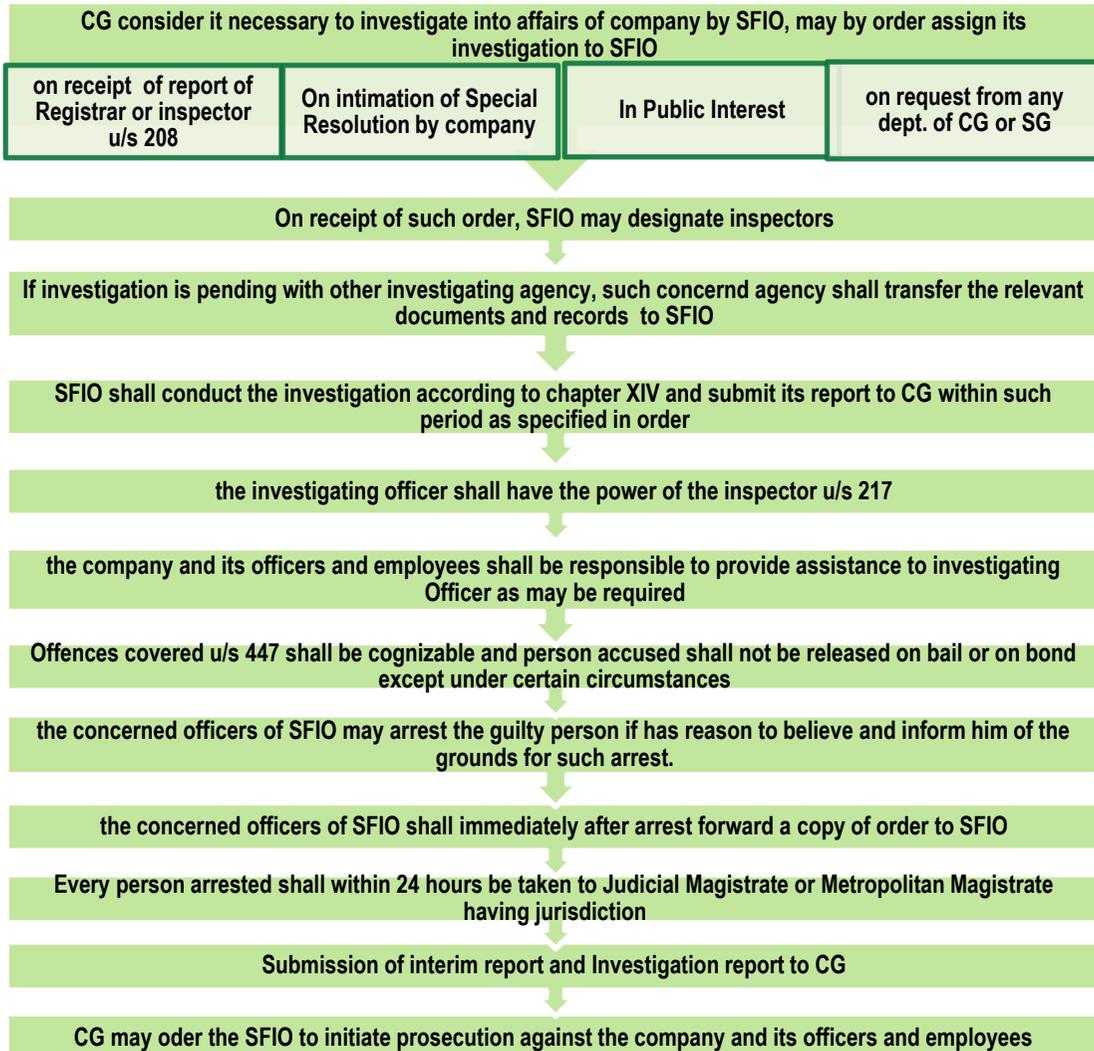
- (vi) **Terms and conditions of service** [Section 211 (5)]: The terms and conditions of service of Director, experts, and other officers and employees of the SFIO shall be such as may be prescribed

The terms and conditions of service of the above mentioned officers have been laid down in the Rule 4 of the Companies (Inspections, Investigations and Inquiry) Rules, 2014.



## 8. INVESTIGATION INTO AFFAIRS OF COMPANY BY SERIOUS FRAUD INVESTIGATION OFFICE (SECTION 212 OF THE COMPANIES ACT, 2013)

Section 212 of the Companies Act, 2013 provides for Investigation into affairs of Company by the Serious Fraud Investigation Office (SFIO). According to this section:



- (i) **Assigning of investigation to SFIO by CG:** According to section 212(1), where the Central Government -
- on receipt of a report of the Registrar or inspector under section 208;
  - on intimation of a special resolution passed by a company that its affairs are required to be investigated;
  - in the public interest; or
  - on request from any Department of the Central Government or a State Government,

is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO, the Central Government may, by order, assign the investigation into the affairs of the said company to the SFIO.

On receipt of such order, the **Director, SFIO may designate such number of inspectors**, as he may consider necessary for the purpose of such investigation.

- (ii) **No other investigating agency of CG/ or any SG shall proceed with investigation where case is assigned to SFIO:** Where any case has been assigned by the Central Government to the SFIO for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act. In case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to SFIO [Sub section (2)].
- (iii) **Submission of Report to CG:** Where the investigation into the affairs of a company have been assigned by the Central Government to SFIO, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) and submit its report to the Central Government within such period as may be specified in the order [Sub section (3)]
- (iv) **Investigation by an investigating officer:** The Director, SFIO shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217 [Sub section (4)]
- (v) **To provide all information, explanation, documents and assistance to the Investigating Officer:** The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation [Sub section (5)]
- (vi) **Offences are cognizable and non-Bailable:** As per sub-section (6), offences covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—
  - (a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
  - (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, a person, who, is

- (a) under the age of sixteen years or
- (b) is a woman or

(c) is sick or infirm,  
may be released on bail, if the Special Court so directs.

Provided further that the Special Court shall not take cognizance of any offence referred in point (vi) above except upon a complaint in writing made by—

- (a) the Director, SFIO; or
  - (b) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.
- (vii) **Granting of Bail:** The limitation on granting of bail specified in sub section (6) above is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail [Sub section (7)].
- (viii) **Power to arrest:** If any officer not below the rank of Assistant Director of SFIO authorized in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. [Sub section (8)]
- (ix) **Forward copy of order to SFIO:** The officer authorized under sub-section (8) shall, immediately after arrest of such person under such sub-section(8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the SFIO in a sealed envelope, in such manner as may be prescribed and the SFIO shall keep such order and material for such period as may be prescribed. [Sub section (9)]
- (x) **Presented before Special Court/JM/MM:** Every person arrested under sub-section (8) shall within **twenty-four hours**, be taken to a Special Court or Judicial Magistrate, or a Metropolitan Magistrate as the case may be, having jurisdiction.  
  
The period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's court. [Sub section (10)]
- (xi) **Submission of Interim Report to CG:** The SFIO shall submit an interim report to the Central Government, if the Central Government so directs [Sub section (11)].
- (xii) **Submission of investigation report to CG:** The SFIO shall submit the investigation report to the Central Government on completion of the investigation [sub section (12)].
- (xiii) **Receiving of copy of the investigation report by making an application to the court:** Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court [Sub section (13)].

- (xiv) **CG may direct SFIO to initiate prosecution:** On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company [Sub section (14)].

(14A) **Where report mentions fraud has taken place:** Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud, any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.

**Example 3–** Mr. A a director of Pappu Ltd., received a car in gift from his supplier for giving him order in bulk quantity with higher rate than market. This fact was reported in the investigation report under sub-section (11) or sub-section (12), there CG may file an application before the Tribunal for appropriate orders to recover this car from Mr. A.

- (xv) **Filing of investigation Report with the special court:** Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 [Sub section (15)].
- (xvi) **Investigation/action conducted under Companies Act, 1956:** Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by SFIO under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed [Sub section (16)].
- (xvii) **Providing of all information/documents to SFIO:** In case SFIO has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the SFIO [Sub section (17) (a)].
- (xviii) **Sharing of information by SFIO:** The SFIO shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law [Sub section (17) (b)].

**Note:** According to the Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 vide Notification G.S.R. 1062(E) dated 24<sup>th</sup> of August 2017, where any person has been guilty of any offence punishable under section 212 of the Act, he may be arrested as per the respective rules.

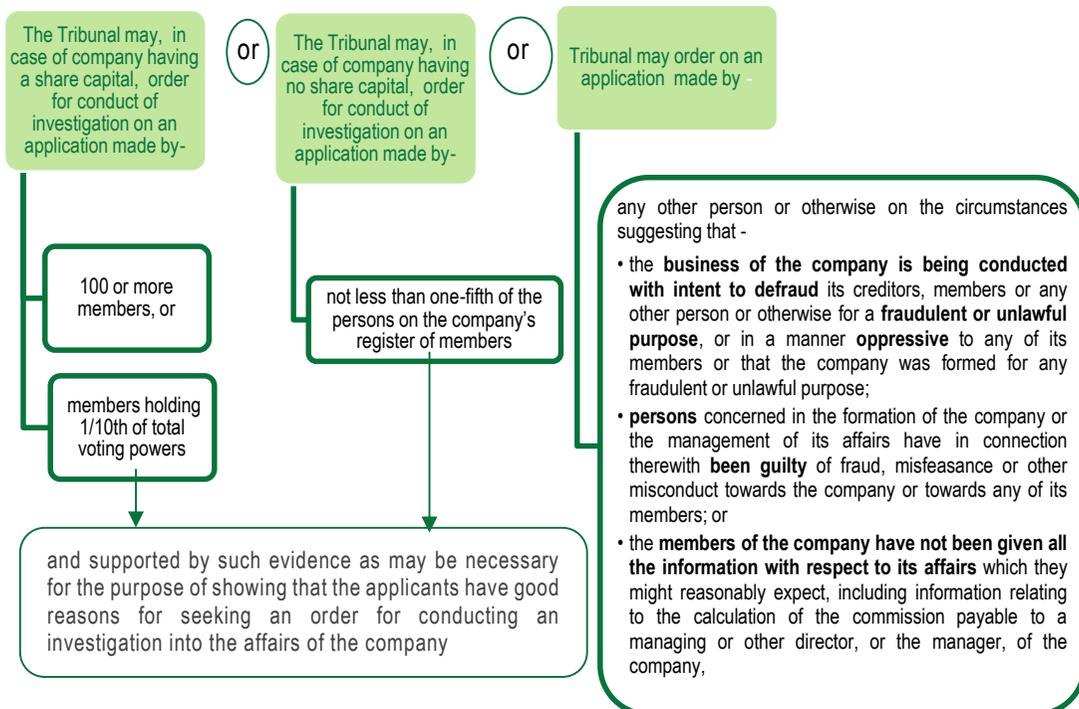
High Court of Andhra Pradesh and Telangana, in *Karvy Stock Broking Ltd. v. Union of India*, held that Section 212(2) mandates that where any case has been assigned by Central Government to SFIO for investigation under Companies Act, no other investigating agency of Central Government or State Government shall proceed with investigation in such case in respect of any offence under this Act.



## 9. INVESTIGATION INTO COMPANY'S AFFAIRS IN OTHER CASES (SECTION 213 OF THE COMPANIES ACT, 2013)

Section 213 deals with the Investigation into Company's Affairs in other cases. According to this section, NCLT can order investigation in specified cases. Such order can be passed by NCLT only after giving reasonable opportunity of being heard to the concerned parties.

### Cognizance of offence by Tribunal:



After giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector/s appointed by the Central Government and where such an order is passed by the Tribunal, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

**Punishment in case of guilty:** If after investigation, it is proved that—

- (i) the business of the company is being **conducted with intent to defraud** its creditors, members or any other persons or otherwise for a **fraudulent or unlawful purpose**, or that the company was formed for any fraudulent or unlawful purpose; or
- (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been **guilty of fraud**,

then-

- (a) **every officer** of the company who is in default, and
- (b) **the person or persons concerned in the formation of the company or the management of its affairs** shall be punishable for fraud in the manner as provided in section 447.



## 10. SECURITY FOR PAYMENT OF COSTS AND EXPENSES OF INVESTIGATION (SECTION 214 OF THE COMPANIES ACT, 2013)

Section 214 of the Companies Act, 2013 provides for security for payment of costs and expenses of investigation as under:

Where an investigation is:

- (i) **ordered by the Central Government** in pursuance of clause (b) of sub-section (1) of section 210, or
- (ii) **made by the Tribunal** under section 213,

the **Central Government may before appointing an inspector** under sub-section (3) of section 210 or clause (b) of section 213, require **the applicant to give such security not exceeding 25,000 rupees** as may be prescribed<sup>1</sup>, as it may think fit, for payment of the costs and expenses of the investigation.

---

<sup>1</sup>See rule 5 of the Companies (Inspection, Investigation & Inquiry) Rules, 2014

Such security shall be **refunded** to the applicant if the investigation results in prosecution.



## 11. FIRM, BODY CORPORATE OR ASSOCIATION NOT TO BE APPOINTED AS INSPECTOR (SECTION 215 OF THE COMPANIES ACT, 2013)

Section 215 of the Companies Act, 2013 provides that no **firm, body corporate or other association** shall be appointed as an inspector.



## 12. INVESTIGATION OF OWNERSHIP OF COMPANY (SECTION 216 OF THE COMPANIES ACT, 2013)

Section 216 of the Companies Act, 2013 provides for Investigation of ownership of company. Central Government can order investigation into ownership to decide who are financially interested and who are in real control of the company. According to the section-

- (i) **Appointment of inspectors by CG:** where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—
  - (a) who are or have been **financially interested** in the success or failure, whether real or apparent, of the company; or
  - (b) who are or have been able to **control or to materially influence the policy** of the company, or
  - (c) who have or had **beneficial interest in shares** of a company or who are or have been **beneficial owners** or significant beneficial owner of a company. [Sub-section (1)]
- (ii) **Appointment of inspectors by CG where Tribunal directs for investigation:** the Central Government shall appoint one or more inspectors, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (1) [Sub-section (2)]
- (iii) **To define scope of investigation while appointing an inspector:** While appointing an inspector under sub-section (1), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures [Sub-section (3)]
- (iv) **Power of Inspector:** Subject to the terms of appointment of an inspector, his powers shall extend

to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation [Sub-section (4)]

**Imposition on restrictions during investigation on securities issued or to be issued by company** - During investigation under section 216, NCLT can impose certain restrictions upon securities. Such restriction can be upto three years [section 222(1) of Companies Act, 2013].

If despite such order, there is issue or transfer of securities, company as well as every officer who is in default is liable for punishment of fine and imprisonment [section 222(2) of Companies Act, 2013]

**Applicability of provisions to foreign company** - The provisions of investigation of ownership apply to foreign company also [section 228 of Companies Act, 2013]



### 13. PROCEDURE, POWERS, ETC., OF INSPECTORS (SECTION 217 OF THE COMPANIES ACT, 2013)

Section 217 of the Companies Act, 2013 provides for procedure, powers, etc., of inspectors as under:

- (i) **Duty of all officers and other employees and agents including former officers, employees and agents:** As per sub-section (1), it shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company **which is under investigation** in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—
  - (a) to **preserve and to produce** to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and
  - (b) otherwise to give to the inspector **all assistance** in connection with the investigation which they are reasonably able to give.
- (ii) **The inspector may require any body corporate, other than a body corporate referred in point (i)** to furnish such information to, or produce such books and papers before him or any person authorized by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation [Sub section (2)].

- (iii) **Period of custody of inspector:** The inspector shall not keep in his **custody** any books and papers produced under point (i) or point (ii) above for **more than 180 days** and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced [Sub section (3)].

However, the books and papers may be called for by the inspector if they are **needed again** for a **further period of 180 days** by an order in writing.

- (iv) **Examination on oath:** As per sub-section (4), an inspector may **examine on oath**—

- (a) **any of the persons** referred to in point (i); and  
(b) any other person with the **prior approval of the Central Government**,

in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose **may require** any of those persons **to appear before him personally**.

However, in case of an investigation under section 212, the prior approval of Director, SFIO shall be sufficient under point (b) above (instead of the Central Government).

- (v) **Powers to inspectors similar as are vested in a civil court:** As per sub-section (5), notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the **inspector**, being an officer of the Central Government making an investigation under this chapter, **shall have all the powers as are vested in a civil court** under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

- (a) the **discovery and production** of books of account and other documents, at such place and time as may be specified by such person;  
(b) **summoning** and enforcing the attendance of persons and **examining them on oath**; and  
(c) **inspection** of any books, registers and other documents of the company at any place.

- (vi) **Punishment:** If any director or officer of the company **disobeys the direction** issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees [Sub section (6) (i)].

**On Conviction:** If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company [Sub section (6) (ii)].

- (vii) The **notes of any examination** under sub section (4) above, shall be taken down in **writing** and shall be **read over** to, or by, and **signed by**, the person examined, and may thereafter be **used in evidence** against him [Sub section (7)].
- (viii) **In case of failure /refusal to produce, furnish, appear and sign** : As per sub-section (8), if any person **fails** without reasonable cause or **refuses**—
- to produce** to an inspector or any person authorised by him in this behalf any book or paper which is his duty under point (i) or point (ii) to produce;
  - to furnish any information** which is his duty under point (ii) to furnish;
  - to appear before the inspector personally** when required to do so under point (iv) or **to answer any question** which is put to him by the inspector in pursuance of that point; or
  - to sign the notes** of any examination referred to in sub section (7) above,
- he shall be punishable with imprisonment for a term which may extend to 6 months and with fine which shall not be less than 25,000 rupees but which may extend to 1 lakh rupees, and also with a further fine which may extend to 2,000 rupees for every day after the first during which the failure or refusal continues.
- (ix) **Providing of assistance to the inspector**: The officers of the Central Government, State Government, police or statutory authority shall provide **assistance to the inspector** for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require [Sub section (9)].
- (x) **Provision for reciprocal arrangements**: The Central Government may enter into an **agreement with the Government of a foreign State for reciprocal arrangements** to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State [Sub section (10)].
- (xi) **Issue of letter of request where evidence is, or may be, available in a country or place outside India by competent court**: Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the **inspector stating that evidence is, or may be, available in a country or place outside India**, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of

such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request [Sub section (11)].

Provided that, the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

According to Rule 6 of the Companies (Inspection, investigation and inquiry) Rules, 2014, the 'letter of request', in terms of section 217, shall be transmitted in such manner as specified by the Ministry of Corporate Affairs.

- (xii) **Upon receipt of a letter of request** from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the **Central Government may, if it thinks fit, forward such letter of request to the court concerned**, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court **within 30 days or such extended time** as the court may allow for further action [Sub section (12)].

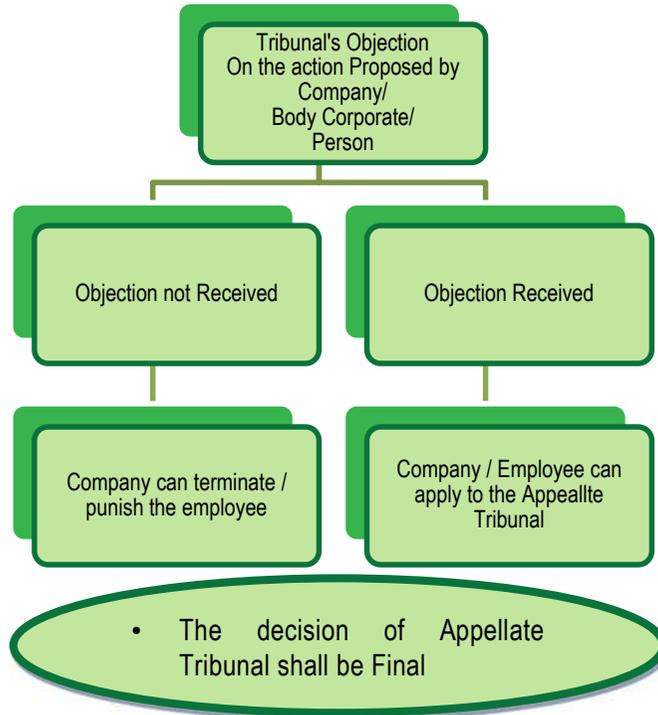
Provided that the **evidence taken or collected as above or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission**, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.

## 14. PROTECTION OF EMPLOYEES DURING INVESTIGATION (SECTION 218 OF THE COMPANIES ACT, 2013)

Section 218 of the Act deals with the protection of Employees during Investigation. An employee of company who has disclosed information during investigation is protected against dismissal, discharge or removal or change in terms of his employment to his disadvantage, during investigation, without permission of NCLT.

- (1) **Approval of tribunal to take action against the employee:** Notwithstanding anything contained in any other law for the time being in force, if—
- (a) **during the course of any investigation of the affairs** and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or
  - (b) **during the pendency of any proceeding** against any person concerned in the conduct and management of the affairs of a company under Chapter XVI, such company, other body corporate or person proposes—
    - (i) to discharge or suspend any employee; or
    - (ii) to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
    - (iii) to change the terms of employment to his disadvantage,
- the company, other body corporate or person, as the case may be, **shall obtain approval of the Tribunal of the action proposed** against the employee and **if the Tribunal has any objection to the action proposed**, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.
- (2) **Action against employee:** If the company, other body corporate or person concerned does **not** receive **within thirty days** of making of application under sub-section (1), **the approval of the Tribunal**, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.
- (3) **Appeal:** If the company, other body corporate or person concerned is **dissatisfied with the objection raised by the Tribunal**, it may, within a period of thirty days of the receipt of the notice of the objection, **prefer an appeal to the Appellate Tribunal** in such manner and on payment of such fees as may be prescribed.
- (4) **Final and Binding order:** The decision of the Appellate Tribunal on such appeal shall be **final and binding** on the Tribunal and on the company, other body corporate or person concerned.

- (5) **Over-riding effect:** For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.



## 15. POWERS OF INSPECTOR

### 1. To conduct investigation into affairs of related companies, etc. (Section 219 of the Companies Act, 2013)

Section 219 of the Companies Act, 2013 provides for power of inspector to conduct investigation into affairs of related companies, etc. as under:

**Investigation into affairs of related companies:** If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of—

any other body corporate which is, or has at any relevant time been the **company's subsidiary company or holding company, or a subsidiary company of its holding company;**

any other body corporate which is, or has at any relevant time **been managed by any person as managing director or as manager,** who is, or was, at the relevant time, the managing director or the manager of the company;

any other body corporate whose **Board of Directors comprises nominees of the company** or is accustomed to **act in accordance with the directions or instructions of the company or any of its directors;** or

any person who is or has at any relevant time **been the company's managing director or manager or employee.**

**Report of inspector:** The inspector shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

The Supreme Court of India in *Serious Fraud Investigation Office v. Sahara Housing Investment Corporation Ltd.* passed an order under section 212, read with section 219, of the Companies Act, 2013. Serious Fraud Investigation Office in Investigation with regard to construction of section 212(3) statute it was held that it does not contain any specific prescription of time and reference to completion of investigation within a stipulated period is directory and not mandatory.

On basis of a report submitted by RoC, Government of India in Ministry of Corporate Affairs passed an order directing SFIO to investigate into affairs of several corporate entities in Sahara group and furnish a report within a period of three months therefrom. High Court by impugned order stayed operation and implementation of said order on ground that SFIO was unable to complete investigation within stipulated time and, thus, there was violation of section 212(3) and direction of Central Government. It was held that Union Government was only ordering an investigation and it would be inappropriate to place a burden of recording elaborate reasons when purpose of investigation was to ensure that a full enquiry into affairs of companies was carried out.

## 2. Seizure of documents by inspector (Section 220 of the Companies Act, 2013)

Section 220 of the Companies Act, 2013 provides for seizure of documents by inspector as under:

- (i) **Seizure of books and papers [Sub section (1)]:** Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and

papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be **destroyed, mutilated, altered, falsified or secreted**, the inspector may—

- (a) **enter**, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and
  - (b) **seize** books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.
- (ii) **Time period for keeping books and papers [Sub section (2)]:** The inspector shall keep in his custody the books and papers seized under this section for such a **period not later than the conclusion of the investigation** as he considers necessary and thereafter **shall return** the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized.
- (iii) **Extracts of books and papers:** The inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.
- (iv) **Application of provisions of Cr.PC.:** The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply *mutatis mutandis* to every search or seizure made under this section.

## 16. POWERS OF TRIBUNAL

### 1. Freezing of Assets of Company on Inquiry and Investigation (Section 221 of the Companies Act, 2013)

Section 221 of the Act deals with the Freezing of Assets of Company on Inquiry and Investigation. Central Government can make application to NCLT for freezing of assets, funds and properties of the company, if there is reasonable ground to believe that removal or transfer or disposal of funds, assets or properties of company is likely to take place in manner prejudicial to interests of company or its shareholders or creditors or in public interest.

According to this section:

- (i) **Order of the tribunal:** Where it appears to the Tribunal,
  - (a) **on a reference made to it by the Central Government** or in connection with any inquiry or investigation into the affairs of a company under this Chapter or
  - (b) **on any complaint** made by such number of **members** as specified under sub-section (1) of section 244 or

- (c) a **creditor** having one lakh amount outstanding against the company or
- (d) **any other person** having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest,

it may by order direct that such transfer, removal or disposal shall not take place during such period **not exceeding three years** as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

- (ii) **Punishment in case of contravention of order of tribunal:** In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be
  - (a) **punishable with fine** which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and
  - (b) **every officer of the company** who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

## 2. Imposition of Restrictions upon Securities (Section 222 of the Companies Act, 2013)

Section 222 of the Act deals with the Imposition of Restrictions upon Securities. According to this section:

- (i) **Tribunal may by order put restrictions upon securities:** Where it appears to the **Tribunal**, in connection with any investigation under section 216 or **on a complaint made by any person** in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.
- (ii) **Punishment in case of contravention to an order:** Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1),
  - (a) the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and
  - (b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.



## 17. INSPECTOR'S REPORT (SECTION 223 OF THE COMPANIES ACT, 2013)

Section 223 of the Companies Act, 2013 lays down the following provisions in respect of the Inspector's report on investigation conducted under this chapter:

- (i) **Submission of interim report and final report [Sub section (1)]:** An inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
- (ii) **Report to be in writing or printed [Sub section (2)]:** Every report made under sub section (1) above, shall be in writing or printed as the Central Government may direct.
- (iii) **Obtaining copy or report [Sub section (3)]:** A copy of the above report may be obtained by members, creditors or any other person whose interest is likely to be affected by making an application in this regard to the Central Government.
- (iv) **Authentication of report [Sub section (4)]:** The report of any inspector appointed under this Chapter shall be authenticated either—
  - (a) by the seal, if any, of the company whose affairs have been investigated; or
  - (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872,and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (v) **Exceptions [Sub section (5)]:** Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.



## 18. ACTIONS TO BE TAKEN IN PURSUANCE OF INSPECTOR'S REPORT (SECTION 224 OF THE COMPANIES ACT, 2013)

Section 224 of the Companies Act, 2013 provides the following provisions in respect of the actions to be taken in pursuance of inspector's report:

- (i) **On basis of report , if person appears to be guilty of offence:** If, from an inspector's report, made under section 223, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose

affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution [Sub section (1)].

- (ii) **Filing of petition by person authorized by the Central Government:** As per sub-section (2), if any company or other body corporate is liable to be wound up under this Act or under the Insolvency and Bankruptcy Code, 2016 and it appears to the Central Government from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorized by the Central Government in this behalf—
- (a) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;
  - (b) an application under section 241; or
  - (c) both.
- (iii) **Initiation of winding up proceeding suo moto by the Central Government:** As per sub-section (3), if from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under this Chapter—
- (a) for the **recovery of damages** in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or
  - (b) for the **recovery of any property** of such company or body corporate which has been misapplied or wrongfully retained,
- the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.
- (iv) **Indemnification to the Central Government:** The Central Government, shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (3) [Sub section (4)].
- (v) **Where fraud has been committed:** Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, **the Central Government may file an application before the Tribunal for appropriate orders** with

regard to **disgorgement of such asset, property, or cash**, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability. (Refer example given in section 212)



## 19. EXPENSES OF INVESTIGATION (SECTION 225 OF THE COMPANIES ACT, 2013)

Section 225 of the Companies Act, 2013 lays down the following provisions in respect of expenses of investigation:

- (i) **Reimbursement of expenses:** The expenses of, and incidental to, an investigation by an inspector appointed by the Central Government under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) other than expenses of inspection under section 214 (Security for payment of costs and expenses of investigation) shall be defrayed in the first instance by the Central Government, but **shall be reimbursed by the following persons** to the extent mentioned below, namely:—

any person who is convicted on a prosecution instituted, or

who is ordered to pay damages , or

restore any property in proceedings brought

**Extent of reimbursement:** Reimbursement to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

Any company or body corporate in whose name proceedings are brought, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings;

**Where a prosecution is instituted:** unless, as a result of the investigation, a prosecution is instituted under section 224,—

- (1) any company, body corporate, managing director or manager dealt with by the report of the inspector; and
- (2) the applicants for the investigation, where the inspector was appointed under section 213,

to such extent as the Central Government may direct.

- (ii) **Extent of liability:** Any amount for which a company or body corporate is liable, shall be a **first charge** on the sums or property mentioned in that clause.



## 20. VOLUNTARY WINDING UP OF COMPANY, ETC., NOT TO STOP INVESTIGATION PROCEEDINGS (SECTION 226 OF THE COMPANIES ACT, 2013)

Section 226 of the Companies Act, 2013 provides that an investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

- (a) an **application** has been made **under section 241** (Application to Tribunal for relief in cases of oppression, etc.);
- (b) **the company** has passed a **special resolution for voluntary winding up**; or
- (c) any **other proceeding for the winding up** of the company is **pending** before the Tribunal.

Where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit.

Nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.



## 21. LEGAL ADVISERS AND BANKERS NOT TO DISCLOSE CERTAIN INFORMATION (SECTION 227 OF THE COMPANIES ACT, 2013)

Section 227 of the Companies Act, 2013 provides for non-disclosure of certain information by certain persons.

Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government—

- (a) **by a legal adviser**, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) **by the bankers** of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.



## 22. INVESTIGATION ETC. OF FOREIGN COMPANIES (SECTION 228 OF THE COMPANIES ACT, 2013)

Section 228 of the Companies Act, 2013 provides for Investigation etc. of foreign companies. According to this section:

The provisions of this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) shall apply *mutatis mutandis* to inspection, inquiry or investigation in relation to foreign companies.



## 23. PENALTY FOR FURNISHING FALSE STATEMENT, MUTILATION, DESTRUCTION OF DOCUMENTS (SECTION 229 OF THE COMPANIES ACT, 2013)

Section 229 of the Companies Act, 2013 lays down the following penalty for furnishing false statement, mutilation, destruction of documents:

Where **a person** who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or **an officer or other employee** of a company or other body corporate which is also under investigation, shall be punishable for fraud in the manner as provided in section 447, if he—

- (a) destroys, mutilates or falsifies, or or conceals tampers or unauthorizedly removes, or is a party to the **destruction, mutilation or falsification or concealment or tampering or unauthorized removal** of, documents relating to the property, assets or affairs of the company or the body corporate;
- (b) makes, or is a party to the making of, **a false entry in any document** concerning the company or body corporate; or
- (c) provides an **explanation which is false** or which he knows to be false,

**TEST YOUR KNOWLEDGE****Multiple Choice Questions**

1. *At an Extra-ordinary General Meeting of Ravi Share-brokers Limited, held at its Registered Office situated at Rajendra Place, New Delhi, the shareholders passed a special resolution to the effect that the affairs of the company ought to be investigated. Ravi Share-brokers Limited, thereafter, submitted the special resolution so passed to the Central Government for further action. Under the given situation, you are required to select the appropriate option from those given below:*
  - (a) *Power of the Central Government to order an investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company is discretionary and therefore, it may or may not order an investigation.*
  - (b) *Power of the Central Government to order an investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company is mandatory and therefore, it shall order an investigation.*
  - (c) *Central Government is not empowered to pass order of investigation in case of non-government companies and therefore, no order of investigation into the affairs of Ravi Share-brokers Limited as requested in the special resolution so submitted by the company shall be ordered.*
  - (d) *Power of the Central Government to order an investigation into the affairs of Ravi Share-brokers Limited can be initiated just on request by the company.*
  
2. *Sanchita Tech Mart Limited is in the grip of serious apprehensions that its shares might be cornered by a group of unscrupulous persons and if it happens, it would certainly result in change in the Board of Directors which might be prejudicial to the public interest. With a view to impose restrictions, Ramneek, one of the directors of Sanchita TechMart Limited, seeks your advice as to how the company can impose restrictions on the transfer of shares of the company. Choose the correct option from those given below:*
  - (a) *Sanchita Tech Mart Limited can make an application to the National Company Law Tribunal (NCLT) under Section 222 for imposition of restrictions on securities.*
  - (b) *Sanchita Tech Mart Limited can make an application to the Central Government under Section 222 for imposition of restrictions on securities.*
  - (c) *Sanchita Tech Mart Limited can make an application to the National Company Law Tribunal (NCLT) under Section 216 for investigation into the ownership of company.*

- (d) *Sanchita Tech Mart Limited can make an application to the Central Government under Section 216 for investigation into the ownership of the company.*
3. *After perusal of the inspector's report made under Section 223 of the Companies Act, 2013, it appears to the Central Government that some action is required to be taken against a company, it may cause to be presented to the Tribunal:*
- (a) *A petition for the winding up of the company on the ground that it is just and equitable that it should be wound up.*
- (b) *An application under Section 241 of the Companies Act, 2013.*
- (c) *Both (a) and (b)*
- (d) *A petition for the merger of the company on the ground that it is just and equitable that it should be merged.*
4. *Under the garb of cement business, some of the directors of Royal Cement Limited, a company incorporated in the year 2001 and having its factories at Rohtak and Bhiwani, were involved in several illegal activities. In such a situation, on receipt of a report of the Registrar of Companies or inspector under Section 208 or in the public interest or on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of Royal Cement Limited to the Serious Fraud Investigation Office (SFIO). In addition to the above bases, there is one more basis which may prompt the Central Government to assign the investigation to the Serious Fraud Investigation Office (SFIO). From the following four options, choose such appropriate basis for assigning the investigation to the SFIO.*
- (a) *On intimation through an Ordinary Resolution passed by the shareholders of Royal Cement Limited that the affairs of the company are required to be investigated.*
- (b) *On intimation through a Special Resolution passed by the shareholders of Royal Cement Limited that the affairs of the company are required to be investigated.*
- (c) *On an intimation received from certain senior employees of Royal Cement Limited that the affairs of the company are required to be investigated.*
- (d) *On an intimation received from certain ex-directors of Royal Cement Limited that the affairs of the company are required to be investigated.*
5. *Mr. Raman, an Inspector appointed under Section 212 of the Companies Act, 2013, started investigations into the affairs of C-Tech Innovative Solutions Ltd. During the process of investigation, Mr. Raman noticed certain unusual facts and information regarding the transactions made by C-Tech Innovative Solutions Ltd. with its subsidiary company Shyamala InfoTech Solutions Ltd. Based on the information so collected from the investigation, Mr. Raman wanted to investigate the affairs of Shyamala InfoTech Solutions Ltd. also. Out of the*

following options, which one correctly indicates whether Mr. Raman can proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. or not in the light of the applicable provisions of the Companies Act, 2013.

- (a) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the Director, Serious Fraud Investigation Office (SFIO).
  - (b) Mr. Raman shall not be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. since it is not within his powers to undertake investigation of any other entity.
  - (c) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the National Company Law Tribunal in whose jurisdiction the registered office of the subsidiary company is located.
  - (d) Mr. Raman shall be able to proceed with the investigation of the affairs of subsidiary company Shyamala InfoTech Solutions Ltd. after obtaining the prior approval of the Central Government.
6. Sunder Cosmetics Limited was served a notice by the jurisdictional Registrar of Companies to produce at his office for inspection of certain more books of accounts, other books, papers and explanations, etc. at 11 A.M. on January 5, 2022. Choose the applicable option from those given below that indicates the reason for such inspection by the concerned Registrar of Companies:
- (a) Since no information or explanation was furnished by Sunder Cosmetics Limited to the Registrar of Companies within the time specified in the earlier notice issued by him.
  - (b) Since Registrar of Companies, on an examination of the documents furnished by Sunder Cosmetics Limited, was of the opinion that the information or explanation furnished by the company was inadequate.
  - (c) Since Registrar of Companies was satisfied on a scrutiny of the documents furnished by Sunder Cosmetics Limited, that an unsatisfactory state of affairs existed in the company and the information or documents so furnished did not disclose a full and fair statement of the information required.
  - (d) In all of the situations given above in option (a), (b) and (c), inspection can be preferred.

## Descriptive Questions

1. *Provide various grounds on which the investigation is assigned to Serious Fraud Investigation Office?*
2. *Discuss the powers of Inspectors regarding investigation into affairs of related companies.*
3. *A group of creditors of XYZ Limited makes a complaint to the Registrar of Companies, Gujarat alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 11 A.M. on 06th June, 2018 and the registrar has attempted to enter the premise of company but has been denied by the company, due to not having order from special court.*

*Is the contention of company being valid in terms of Companies Act, 2013?*

4. *Mr. Atul is an employee of the company ABC Limited and investigation is going on him under the provisions of Companies Act, 2013. The company wants to terminate the employee on the ground of investigation is going against him. They have filed the application to tribunal for approval of termination. Company has not received any reply from the tribunal within 30 days of filling an application. The company consider it as a deemed approval and terminated Mr. Atul.*
  - (a) *Is the contention of company being valid in law?*
  - (b) *What is remedy available to Mr. Atul?*
  - (c) *What is remedy available to Mr. Atul, if reply of Tribunal has been received within 30 days of application?*
5. *A group of shareholders of FMG Limited made a complaint to the concerned Registrar of Companies (RoC) that the business of the Company is being carried on for unlawful and fraudulent purposes and filed an application to enquire into the affairs of the Company. Referring to and analyzing the provisions of the Companies Act, 2013, decide:*
  - (i) *Whether the RoC has the power to order for an inquiry into the affairs of the Company?*
  - (ii) *If yes, state the procedure to be followed by the RoC.*
  - (iii) *Whether the inquiry should be pursued by the RoC in case the complaint is withdrawn by the same group of shareholders subsequent to the Order for enquiry?*
  - (iv) *Whether the Central Government has the power to direct the RoC to carry out the inquiry?*

## ANSWERS

### Answer to Multiple Choice Questions

1.	a	2.	a	3.	c	4.	b	5.	d
6.	d								

### Answer to Descriptive Questions

1. As per section 212 of the Companies Act, 2013, the Central Government may assign the investigation into affairs of a company to the Serious Frauds Investigation Office on the basis of an opinion formed from the following:
  - (a) After the inspection of books of account or papers or inquiry the Registrar shall submit a written report to the Central Government. The report may recommend the need for further investigation along with reasons in support. The Central Government on receipt of such report can order an investigation under Serious Frauds Investigation Office.
  - (b) The company may pass a special resolution and can request Central Government to investigate into the affairs of the company.
  - (c) The Central Government can order investigation under Serious Frauds Investigation Office, in public interest.
  - (d) The departments Central Government and State Governments can request for investigation under Serious Frauds Investigation Office.
2. **Section 219 states that**, if the inspector appointed under Sections 210, 212 or 213 to investigate into the affairs company considers it necessary for the purposes of the investigation to investigate, he can do the investigation of the affairs of other related companies or body corporate with the prior approval of the Central Government.
  - **Holding or Subsidiary Company:** which is or has been at the relevant time been the company's subsidiary or holding or subsidiary of its holding company;
  - **Related Party:** which is or has been at the relevant time been managed by any person as a managing director or manager who is or was at the relevant time the managing director or the manager of the company;
  - **Deemed Control:** whose Board of Directors' comprises nominees of the company or is accustomed to act in accordance with the directions of the company or any of its directors; or
  - **In Employment of Company:** in case any person is or has at any relevant time been the company's managing director or manager or employee.

The results of the investigation are relevant to the investigation of the affairs of the company for which he is appointed.

3. Section 209, of the Companies Act, 2013 states that, if the Registrar has **reasonable ground to believe** that the books and papers of
- A company or
  - relating to the key managerial personnel or
  - any director or
  - auditor or
  - company secretary in practice if the company has not appointed a company secretary are likely to be destroyed, mutilated, altered, falsified or secreted he may, after obtaining an order from the special court for the seizure of such books and papers,
    - (a) enter with such assistance as may be required and search the place where such books or papers are kept; and
    - (b) seize such books and papers as he considers necessary after allowing the company to take copies or extracts there from.

According to the above provisions the registrar may enter, search and seize the books only after obtaining an order from the Special Court.

In the given scenario, the registrar has failed to obtain permission from the special court so, he is not authorized to enter the premises of the company and seize the books of accounts of XYZ Limited. Hence, the contention of the XYZ Limited is valid in law.

4. The provision of Section 218 states that, the company shall require to take approval of the tribunal before taking action against the employee if there is any pendency of any proceedings against any person concerned in the conduct and management of the affairs of the company.

The company shall require approval in the following circumstances:

- discharge or suspension of an employee; or
- punishment to an employee by dismissal, removal, reduction in rank or otherwise; or
- change in the terms of employment to the disadvantage of employee(s);

The Tribunal shall notify its objection to the action proposed in writing.

In case, the company, other body corporate or person concerned does not receive the approval of the Tribunal within 30 days of making the application, it may proceed to take the action proposed against the employee. That means it can be considered as a deemed approval by the tribunal.

### Appeal to the Appellate Tribunal

If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, refer an appeal to the Appellate Tribunal in such manner and on payment of fees of INR 1,000 as per the schedule of Fees.

The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

- (a) Yes, the termination of Mr. Atul made by the company is totally valid in law and company can do so by considering deemed approval of tribunal.
  - (b) In this scenario, Mr. Atul has not any remedy available. As per the provision of the law appeal to the appellate tribunal can be made only if the person is dissatisfied with the objection raised by the tribunal. Hence, in this case the tribunal has not replied Mr. Atul cannot refer an appeal to Appellate Tribunal.
  - (c) In this case, Mr. Atul can refer and appeal to appellate tribunal within 30 days of the receiving letter of objection raised by the tribunal and with payment of Fees of Rs. 1,000 as per schedule of Fees.
- 5.
- (i) Yes, the RoC has the power to order for an inquiry as he deems fit after providing the company a reasonable opportunity of being heard, into the affairs of the company if he is satisfied on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act. [Section 206(4) of the Companies Act, 2013]
  - (ii) Procedure followed by RoC: The Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard.
  - (iii) The inquiry can be pursued by the ROC in case the complaint is withdrawn by same group of shareholders subsequent to the order for inquiry in terms of section 206(4).
  - (iv) Yes, the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar for the purpose to carry out the inquiry under section 206(4).



