

CH:12 Inquiry, Investigation, Inspection.

- * Inquiry : Derived from French word "Enquire" which means to ask.
Process of questioning & interrogation by way of researching.
- * Inspection : Derived from Latin word "Inspectus" mean "To look into" careful examination of good or item.
To determine their relevance.
- * Investigation : Derived from "Investigatus" to track or investigation.
Inquire in to a manner systematically to make a suspect of criminal inquiry.

Purpose of conducting Inspection :-

- a) To detect concealment of income by falsification of account.
- b) To secured knowledge about mismanagement and to check transaction entered into with defraud with creditor, member.
- c) To ascertain whether statutory Auditor have discharge their function True & fair manner.
- d) To enable the Government ascertain quantum of profit accrued but not adequately account.
- e) To detect mis application of fraud.
- f) Keep watch of performance of the company.

* Power to call for information, inspect book and conduct inquiry.

A) Issuance of notice by Registrar :-

- a) Registrar by written notice may require.
- b) Information or explanation in writing to produce document within the reasonable time.
- c) On scrutiny registrar may frame the opinion.

B) Duty of the company to furnished information.

On receipt of notice company & its officer require to furnished information & explanation within specified time or extended time.

3) Inspection order by Registrar by another notice.

Inspection order may be Passed by ROC

No Information
or
Explanation is
Furnished to ROC

OR

Information or
Explanation furnished
by company is
Inadequate.

OR

ROC Satisfied that
Unsatisfactory State
of affairs.

↓

ROC shall give another written notice to call further Books of Account, Papers, Document.

4) Inspection order by Regional Director

Central Government Satisfaction direct Inspection of Book of Account & Paper by inspector.

Power given to Regional Director.

5) Inspection order by Central Government

CG by General or Special order Authorized by any Statutory Authority to carried out the Inspection.

* Inquiry :- Registrar is satisfied that business of company is being carried on.

at Fraudulent Purpose

unlawful
purpose

nothin compliance
with the provision
of this Act

Investor grivences
not being address

ROC may intimate Inquiry after giving OOBH

However if business is carried out in fraudulently manner every officer in default shall be liable u/s 447

⇒ Conduct of Inspection And Inquiry

Roc or Inspector making on Inspection.

may make copies of books of Accounts

Put any Part of Identification having made.

Roc or Inspector shall have all the Power of civil court.

Inspection Report :-

After Inspection Roc or Inspector shall give Report to CG which may includes demand for the Investigation along with recognition.

ON Receipt of Report Regional Director

A). Shall examine the report & obtain legal advice

B. Shall direct Prosecution if RD is agree with the report.

C. Inform the CG about the action taken on report submitted by Registrar of Inspection.

⇒ Search & Seizure (Section 209)

- Obtain Permission of Special court for Search & Seizure.
- Registrar or Inspector reasonable ground that the Books of Account or Document relating to KMP / Director / PCS / PCA to destroyed, mutilated, altered.
- In that situation enter Search & Seizure Books of account & Document take copies or Extract of such books.
- Roc shall return such books with 180 days after such Seizure,
book may called for further Period of 180 days.

* Investigation and Kind of Investigation

- a) For Public Interest.
- b) Investigation of affairs of related company.
- c) Investigation of foreign company.
- d) Investigation by Serious Fraud Investigation Office by CG.
- e) Investigation by the order of tribunal.

A) Investigation in Public Interest :-

Central Government can investigate affairs of the company

- a) on receipt of report of ROC Inspector.
- b) Intimation by company after pass (SR) that the affairs of the company ought to be investigated.
- c) Public Interest.
- d) on tribunal order of the affairs of the company ought to be investigated.

- Appointment of Inspector
- CG may one or more Inspector for investigation.
- Before appointed Inspector require to deposit amount by applicant up to ₹ 25000.
- Security amount shall be refundable to be applicant in investigation result into prosecution.

B) Investigation of Ownership & Company.

A. Who are or have been financially interested in the success or failure whether real or apparent of the company

B. Who are or have been able to control or to material influence the policy of the company.

C. Who have or had beneficial owner OR Significant beneficial owner of company.

- CG may define the scope of the investigation & may limit the investigation particular share or debenture.
- Inspector shall power to investigate any circumstances suggesting the existence of any arrangement or understanding.

c) Investigation on application made by member or other Person.

a) Having Share capital :- 100 member
OR
10th of total Voting Power

b) Not Having Share capital :- 1/5th of total member

Application must be supported evidence.

Ground application to tribunal

A.) Business is conducted with
intend to defraud with
creditors, member or other
Person.

B.) Promoter or management
have been guilty of fraud
or other misconduct.

Company not provided Reasonable Information including
Commission for MD or manager or Director.

After investigation NCLT may pass the order every officer
in default shall liable u/s 447.

* Procedure Power of Inspector.

It shall be duties of officers or employee and Agent including
former employee & Agent to produce book & paper to Inspector or
authorised person.

- Inspector may require and body corporat to furnished such
Information & books of Account before him or any person
- Inspector can keep books in custody for not more than
180 days.
- An Inspector may examine on oath any of the person
prior approval of CG.
- Notes of any examination shall be taken down in writing
& shall read over to signed by the person may used evidence
- Officers, CG/SG, Police or Statutory authority provide assistance
to Inspector.

* Protection of employee during Investigation

- can't discharged and suspended
- To Punish and employee by removal, dismissal rank.
- Change item of the employment
[Obtain Prior approval of NCLT to take action again.]
- Application to NCLT taking action against the employee if within 30 day.
- NCLT if take objection within 30 day the applicant may appeal NCLAT.

* Power of Inspector to conduct Investigation into affairs of related companies.

a). Inspector after prior approval from CG may Investigation affairs.

- Company's Subsidiary, Holding or Subsidiary of Holding.
- Any Body corporate by MD/manager of the company.
- Any Body corporate whose BOD comprise Nominee of the company or such BC is accustomed to act as per director of the co.
- Any person who is or was MD or M or Employee of company.

* Freezing of Assets of Company on Inquiry or Investigation

A. Tribunal may direct that transfer, Removal, Dismissal of Assets shall not take place during Period exceeding 3 year to condition following statement.

a) Refrrence by CG.

b) Connection with Inquiry & Investigation

c) Complaint made by member U/S 244 oppression & mismanagement

d) Application by creditor having ₹ 100000 outstanding