

Power of Registrar to Call for Information, Etc. (Sections 234 – 234A)

Power of Registrar to call for information or explanation (Section 234)

Question 1

A group of creditors of M/s XYZ Co. Ltd. makes a complaint to the Registrar of Companies, New Delhi, 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. Examine the powers, if any, of the Registrar in such circumstances. (November, 2001)

Answer

The power of Registrar of Companies to seize the records of a company is contained in Section 234 of the Companies Act, 1956. According to that section, if the Registrar has reasonable grounds to believe, upon information in his possession or otherwise, that the records of the company may be destroyed, mutilated, altered, falsified or secreted, he may make an application to the Magistrate of the first class or the Presidency Magistrate as the case may be having jurisdiction for an order for the seizure of the books and papers. After getting permission, the registrar has power to enter the place where the books and records of the company have been kept, and search and seize the books and papers as he considers necessary. The Registrar has to return back the books and papers within 30 days of seizure and he can place identification marks on the records and take copies or extracts from the records as he considers necessary. The Registrar has to follow the procedure laid down in Criminal Procedure Code relating to search and seizure of the records. [Section 234A (4)].

Seizure of Documents by Registrar (Section 234A)

Question 2

The Registrar of Companies, West Bengal has received a complaint from a group of creditors of a company. The complaint alleges that the Directors of the company, in order to prevent the unearthing of their embezzlement of company's funds, are engaged in falsification and destruction of original accounting books and records. The complaints urged the Registrar to seize the accounting books and records of the company so that the Directors may not be able to tamper the same. You are required to state the powers, if any, of the Registrar in this respect. (May, 2004)

Answer

The powers of the Registrar of Companies in respect of seizure of books and records of any company are governed by section 234A of the Companies Act, 1956. Sub-section (1) of the said section provides that if, pursuant to the information in his possession, the Registrar has reasonable ground to believe that books and papers of a company may be destroyed, mutilated, altered, falsified or secreted, the Registrar may make an application to the Magistrate of First Class or the Presidency Magistrate, as the case may be, having jurisdiction for an order for the seizure of such books and records.

According to Section 234(2), the Magistrate, after considering the application and hearing the Registrar, may authorize the Registrar to do the following:

- (i) To enter the place or places where such books and papers are kept.
- (ii) To search the place or places in the manner as provides in the Magistrate's order.
- (iii) To seize the books and papers as he considers necessary.

Section 234(3) authorises the Registrar to keep the seized books and papers for a period of thirty days, after which the same have to be returned to the person from whom the seizure was made. But the Registrar is empowered, before returning the said books and papers, to take copies of or extracts from them or place identification marks on them or deal with them in the manner he considers necessary.

Section 234(4) states that the Registrar, while conducting search and seizure, has to follow the provisions relating to search and seizure as prescribed in the Code of Criminal Procedure, 1898.

In view of the above provisions of section 234A of the Companies Act, 1956, the Registrar of Companies is empowered to seize the books and papers of the company against whom the complaint has been made by following the procedure laid down in the section.