

Inspection and Investigation

By:
CA Kamal Garg

Inspection by Inspecting Officers [Section 209A]

- **Inspecting Officers (IO):**
 1. Registrar;
 2. Officer authorised by CG;
 3. Officer authorised by SEBI
- Inspection only during business hours;
- Prior notice not required;
- **Place of Inspection:**
 1. Registered office;
 2. Other place in India where books are kept;
 3. Any other place specified by IO

Inspection by Inspecting Officers [Section 209A]

- Directors, officers and employees to **furnish books, explanations, information** and to give assistance to IO;
- IO can take copies and place identification marks;
- Books of Accounts **and/or** Books & Papers can be inspected;
- **Books/ Papers:** include accounts, deeds, vouchers, writings and documents [Section 2(8)];
- Default u/s 209A attracts:
 1. Fine and Imprisonment;
 2. Vacation of office and disqualified to hold such office for 5 years

Other Powers of IO

Shall have powers of civil court for the following:

- discovery and production of books of accounts and other documents at such place as he may specify.
- summoning and enforcing attendance of persons.
- examining them on oath.
- inspecting any books, register and other documents at any place.
- 1. Shall **have all powers of ROC** for making inquiries;
- 2. Shall have a **right to examine the books and records** of
 - any firm in which the company is a partner (*Department's view*);
 - a joint venture of the company (*Department's view*).

Inspection by Directors, Members etc. [Section 209]

- Inspection during business hours;
- Inspection not allowed for mala fide purposes;
- Agent may be appointed;
- Company may object person chosen as agent [*N V Vakharia vs. Supreme General Film Exchange Co. Limited*];
- Undertaking may be demanded by Company from agent as a token of proper utilisation of information;
- Member has no right to inspect the books of accounts except if AOA provides so

Power of Registrar to call for information or explanation [Section 234]

- ROC may call information:
 1. on perusal of company's documents; **or**
 2. on receipt of complaint;
- Company duty bound to furnish info.;
- If Company does not furnish info. ROC may file case with Court and Court may order such furnishing;
- ROC to keep CG reported;
- CG may order investigation on ROC report

Seizure [234A]

- Registrar to apply to First Class Magistrate or Presidency Magistrate;
- Application to be made on reasonable grounds of belief that books and papers may be destroyed, mutilated, altered, falsified or secreted;
- Magistrate may authorise ROC to:
 1. Enter the place where books etc. are kept;
 2. Search of those places;
 3. Seize such books etc. if considered necessary
- ROC empowered to take copies and make identification marks;
- Books etc. to be returned within 30 days

Investigation into the affairs of a Company [Section 235]

- Only **CG has the powers** to direct investigation into affairs of a company;
- **CG can direct so:**
 1. When **ROC** makes a report to CG u/s 234, or
 2. **Members:** On the application of **minimum 200 members or Members holding 1/10th of total voting power** (if it has a share capital) or **minimum 1/5th of the members** (if it does not have a share capital).
- CG shall give opportunity of being heard;
- Members application to be with evidence and with prescribed security [Section 236]

Investigation u/s 237

Circumstances (Basis) of Investigation:

- CLB Opinion (e.g. fraudulent purposes, oppression, etc.);
- Court's order;
- SR passed by Company;
- Directors may make a petition to the CG

Investigation of Ownership of Company [u/s 247]

- If **CG being satisfied for good reasons**, it may appoint one or more inspectors to:
 1. Investigate and report on the membership of the company; and
 2. Other matters relating to it
- **Good Reasons** (i.e. purpose of Section 247): To determine the true persons:
 1. Financially interested in the success or failure, whether real or apparent of the Company;
 2. Able to control or materially influence the **policy** of the company
- **Section 247(1A) also empowers CG** to appoint inspector for above purposes **if CLB makes an order** in this regard in course of any proceedings before it;
- With **CG prior approval**, ownership of **connected companies** (i.e. subsidiaries, holding, associates) **may also be investigated**;
- Section 239, 240 and 241 apply mutatis mutandis;
- Investigation report to be submitted to CG;
- CG not obliged to supply its copies to company or other persons;
- A copy of such report shall be kept by ROC

Other Provisions

- Voluntary **winding up** or application for prevention of **oppression or mismanagement** u/s 397 or 398 shall not stop investigation. Nor shall any resolution for the same shall be prohibited to be passed [**Section 250A**];
- **Legal advisors** shall **not be bound to disclose any privileged communication** made to them except name and address of their client [**Section 251**];
- **Bankers** shall **not be bound to furnish information about the state of affairs** of any of their customers other than such body corporate, company or person [**Section 251**].

Protection of Employees during Investigation [Section 635B]

- Protection against **dismissal, discharge, removal**, etc. of the employees;
- **Employees** = Employees of the Company under Investigation who make disclosure during the course of investigation;
- Section 635B requires to **intimate CLB prior of any such action** (i.e. dismissal etc.);
- If **CLB objects (within 30 days)** any such action then it must send notice to employer;
- **CLB not bound to hear** the employer (i.e. Co.) before issuing that notice [Ashoka Marketing Ltd. Vs. CLB];
- If **no notice within 30 days**, then **Company may proceed** to take action;
- If **Company dissatisfied** with CLB objection = **Appeal to Court within 30 days of receipt of notice**;
- **Court decision** = final and binding on CLB and Co.

Inspection vs. Investigation

- Inspection covered u/s 209A whereas Investigation u/s 235 or 237 or 239;
- **Inspection of books of account** and other books and papers is not an investigation though it may lead to investigation;
- **Investigation is wider in scope** and may cover all business affairs, profit or loss, assets including goodwill, contracts, interest & control of subsidiary;
- **Inspection** can be done by **ROC/ Officer of CG/ Officer of SEBI BUT Investigation only by** competent persons appointed as **inspectors by CG**;
- **No prior notice or reason required for inspection** u/s 209A, **BUT** u/s 235 report of ROC or CLB declaration is required, u/s 237 SR or Court order is required
- In **Investigation**, the **power to seize** is also there

Other Sections

- **Section 239:** Inspector can investigate affairs of the following if considers necessary:
 1. Holding or subsidiary company(s) whether past or present;
 2. Any body corporate which is/ was managed by any person as MD/ Manager (in past or present) of company under investigation;
 3. Any body corporate which is/ was managed by the company or nominee/ shadow directors **BUT** with CG prior approval
 4. Any MD/ Manager (past or present) **BUT** with CG prior approval
- **Section 240:** Officers, employees and agents of the company to:
 1. Preserve and produce to an inspector or any authorised person all books, papers etc. being in his custody or power;
 2. Give all reasonable assistance to inspector in connection with investigation
