INSPECTION, INQUIRY AND INVESTIGATION

POWER OF THE REGISTRAR TO CAL FOR INFORMATION AND PRODUCE BOOKS (Sec.206)

- Company if any documents filed with Registrar OR Any information is received by Registrar and in opinion of ROC Some information/explanation/documents is required then registrar give written notice to furnish information/explanation/document within such time as he deems fit to the Company and company and its officers duty to furnish such information/explanation/document within such time as may be specified in notice Registrar

- Past officers
  - ✓ On whom written notice is served
  - ✓ Who were in the employment of the company during the period to which the information relates has duty to furnish such information/documents/explanation to registrar
- If the required information or explanation is not furnished by the company to the Registrar or it is inadequate or it is unsatisfactory state of affairs exists in the company then registrar order to produce for this inspection books of account, books and papers at such place and at such time as may be specified in the notice to company

- By giving any representation or information given by any person to registrar OR Information available with Registrar and if he satisfied business in being conducted in fraudulent or unlawful purpose, non compliance of provisions of act or grievances of investors are not being addressed then registrar may order for inquiry and order to the company for furnish information and explanations .

- Order of inquiry or inspection by CG: If CG is satisfied that the circumstances so warrant, CG may *Order an inquiry - inquiry* by the Registrar or an inspector appointed by CG, *Order inspection of books and papers - Inspection* by an *inspector* appointed by CG (Power delegated to RD), *Order inspection of books - Inspection* of books by any *statutory authority* authorized by CG

CONDUCT OF INSPECTION AND INQUIRY-SEC 207

- Duties of directors, officers and employees
  - ✓ To produce *books of account* and other books and papers, To furnish *information* or explanation To give all *assistance*
- Powers of Registrar or inspector: Make *copies,* Place *identification marks*
- Registrar or inspector to exercise certain powers of civil court
  - ✓ Discovery and production of books of account and other documents, at such place and time as may be specified by Registrar or inspector, Summoning and enforcing the attendance of persons and examining them on oath, *Inspection* of any books, registers and other documents of the company at any place
- Consequences of conviction of any director or officer: *Vacation of office, Disqualified* report on inspection made

REPORT ON INSPECTION MADE-SEC 208

- Registrar or inspector give report in writing after inspection / inquiry u/s 206 / 207 to CG

SEARCH AND SEIZURE-SEC 209

- Registrar may search and seizure the books and papers of company, KMP, Director, Auditor, CS in practice and has power to enter and search the place, seize books, place identification marks, make copies and extract and deal with books

- Registrar or inspector has reasonable ground to believe that books and papers likely to be destroyed, mutilated, altered and the special court order is required

- Seized books and papers return within 180 days and may be again called for a further period of 180 days , if they needed again

- The provisions of Crpc 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section

INVESTIGATION INTO AFFAIRS OF COMPANY-SEC 210

- CG may order to investigate by appointing inspector on receipt of report of registrar or company intimation requesting investigation (By passing special resolution) or in public interest or order passed by the court/tribunal the affairs of the company are ought to be investigated

ESTABLISHMENT OF SFIO-SEC 211

- CG establish of SFIO by notification in official gazette to investigate frauds relating to the company
- No. of other officers and employees and experts: As *CG may deem fit*

INVESTIGATION INTO THE AFFAIRS OF A COMPANY BY SFIO-SEC 212

- CG assign the investigation if CG is of the opinion that investigation by SFIO is necessary if
  - ✓ On receipt of *report* of the Registrar or inspector *uls 208,* Company *Intimation of SR* requesting investigation CG, *in public interest,* On request from J any *Department of CG or SG.*
- Effects of assignment of investigation to SFIO
  - ✓ Any other investigating agency of CG or any SG shall *not proceed* with investigation, If any investigation had already been initiated it shall *not be proceeded* further, The concerned agency shall *transfer* the relevant documents and records to SFIO
- Report by SFIO to CG: SFIO shall conduct the investigation
- Powers of Investigating Officer : Director appoint Investigating Officer and conduct of investigation by the Investigating Officer and the *powers* of Investigating Officer: *Same as u/s 217*

- Conditions for release on bail of a person accused of any offence covered u/s 447: Opportunity to Public Prosecutor to *oppose* the bail application, Satisfaction of Court: Reasonable grounds to believe that he is *not guilty,* Satisfaction of Court: *Mot likely to commit any offence* while on bail

- Release on bail : If special courts so directors release on bail if aged less than 16 or women, sick or infirm and nature of offences u/s 447 shall be cognizable

- SFIO, Director or any officer of CG can complaint in writing for cognizance of offences u/s 447

- SFIO give investigation report to CG and CG may examines the report and obtains legal advice and give direction to initiate prosecution against the officers and employees to SFIO

- SFIO and other authorities may share the information

INVESTIGATIONS INTO THE AFFAIRS OF A COMPANY ON AN ORDER MADE BY THE TRIBUNAL- SEC 213

- Order of Tribunal on receipt of an application from eligible members
  - ✓ *Eligible members: Company having a share capital 100 members or member(s) holding 1/10th of total voting power, Company having no share capital l/5th of members*
- Application seeking an order of investigation + Evidence to Tribunal and Tribunal or its own *Discretion* to order: Investigation into the affairs of the company is required (after reasonable opportunity of being heard)

- If business of the company is being conducted 1) with intent to defraud its creditors, members or any other persons 2) for a fraudulent or unlawful purpose 3) in the manner oppressive of any of its members

- *CG is bound* to order investigation and appoint the inspector(s) for conducting the investigation

- Inspector - Report of investigation – CG

SECURITY FOR PAYMENT OF COSTS AND EXPENSES OF INVESTIGATION (Sec.214)

- *When cm CG* demand security?: Company *Intimation of SR*_requesting investigation CG and Tribunal *Order of investigation u/s 213* CG
- Amount of security :Turnover upto 50 crore-1000, 50-200 crore-15000, more than 200-25000
- Purpose of investigation is to determine the true persons who are or have been *financially interested in the success or failure* (whether real or apparent) of the company or able to *control* or materially of the policy of the company

- Duties of inspector: To investigate into, and report on - matters relating to the *company and* matters relating to the *membership* of the company

- Power of CG to specify : *Scope* of investigation, *Matters* to be investigated , *Period,* to which the investigation shall relate

- Inspectors has power to investigate into any arrangement or understanding which, though not legally binding, is or was observed and the powers of inspectors may be limited to matters connected with particulars shares or debentures.

- Firm, body corporate or any other association cannot be appointed as inspector- Sec 215

INVESTIGATION OF MEMBERSHIP OF COMPANY-SEC 216

- CG may order investigation either suo moto or complaint to CG by any person and its mandatory for CG to order investigation if reference made by tribunal
- The purpose of the investigation is to determine the true person who are or have been financially interested in the success or failure or able to control materially influence the policy of the company
- It is the duties of the inspector to investigate into, and report on matters relating to the company and relating to membership
- CG specify scope, matters and period of investigation

SEC 217- PROCEDURE, POWERS OF INSPECTORS

- To require information from anybody corporate, retain books and papers of the company (180 + 180 days retention period), related companies etc or anybody corporate, examine on oath, empowered to exercise certain powers of civil court and certain persons to assist the inspectors

TEMPORARY PROTECTION OF EMPLOYEES (Sec.218)

- Employees to be discharged only if no objection is made by the Tribunal
- Company- *Intimation* (before discharging/ punishing any employee) (During pendency of *investigation* made u/s 210 / 213 / 219 / 216 / 212) or (During pendency of an *application* made u/s 241 or 245)
- Tribunal - Entitled to make *objection* (Max. 30 days) – Company
- If *Objection is made by the Tribunal the* company has *Right to appeal to* Appellate Tribunal
- *No objection is made by the Tribunal the* company –is *entitled to discharge/punish the e*mployee

POWER OF INSPECTOR TO CONDUCT INVESTIGATION INTO AFFAIRS OF RELATED COMPANIES,ETC- SEC 219

- Meaning of 'related companies, etc' means *Subsidiary - Holding - Subsidiary of holding* - Company's *MD/ Manager or employee, A body corporate* managed by any person as *MP I manager* who is the MP / manager of the company at present or at any relevant time during the past or

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

- Powers of inspector - Investigate into the affairs of the *related companies, etc.*
- Condition for conducting investigation into affairs of related companies etc - *Prior approval of CG* is required.
- Reporting the results of investigation of 'related companies etc' by the inspector and If such results are *relevant* to the investigation of the affairs of the company for which he was appointed

SEIZURE OF DOCUMENTS BY INSPECTOR (Sec.220)

- Condition for entry, search and seizure : *Inspector* (during investigation)- reasonable ground to *believe- Books and papers* of a company or related companies etc are likely to be *destroyed,* mutilated, altered, falsified or secreted
- Powers of the inspector
  - ✓ *Enter* the place(s), *Seize* books and papers, Place *identification marks*, Make *copies / extracts, Deal* with the books and papers in such other manner as he may consider necessary
- Company etc. allowed to take copies of books and papers and *Before seizure- Cost to be borne* by the company / related companies etc.
- Retention of books and papers seized- *Upto conclusion* of investigation

FREEZING OF ASSETS OF COMPANY ON INQUIRY AND INVESTIGATION (Sec.221)

- When can Tribunal act u/s 221: CG - Reference- Tribunal, Creditor having an outstanding amount of Rs. 1 Lakh - Complaint – Tribunal, Members eligible u/s 244 - Complaint – Tribunal, Any other person - Complaint – Tribunal in connection with any *inquiry or investigation* into the affairs of a company

- Tribunal has reasonable ground to believe that removal/transfer/disposal assets of companies is likely to place prejudicial to the interest of the company then tribunal for such period as specified in order(max 3 years) such transaction shall not take place

IMPOSITION OF RESTRICTIONS ON SHARES OR DEBENTURES(Sec.222)

- Cases in which the Tribunal is empowered to impose the restrictions
  - ✓ Where, in connection with any *investigation* into the membership of a company *u/s 216,* it appears to the Tribunal, that such an order is required OR *Complaint* is made to the Tribunal by any person
- Conditions for imposing restrictions
  - ✓ *Satisfaction of Tribunal:* Good reason to *find out the relevant facts* about any securities and such facts cannot be found out unless certain *restrictions* are imposed on securities.

- Nature of restrictions on securities As Tribunal may *deem fit and the* Period of restrictions as tribunal may deem fit(but, maximum 3 years).

INSPECTOR'S REPORT (Sec.223)

- Interim Report by inspector to CG:
  - ✓ Time of Submission : Before conclusion of investigation and its mandatory if so directed by CG
  - ✓ Final Report by inspector to CG : On conclusion of investigation
  - ✓ Manner of preparation of reports: *Written or printed,* as may be directed by CG
  - ✓ Authentication of report: By the *seal,* if any, of the company
  - ✓ Copy of the report: May be obtained by any person from *CG*
  - ✓ Effect of the report: Admissible as *evidence* in all legal proceedings

ACTION BY CG AS A RESULT OF INSPECTORS REPORT –SEC 224

- CG may prosecute any person who is in guilty of offence and its duty of officers to give necessary assistance.
- Application u/s 241 & 271 (oppression and mismanagement , Winding up)
- CG may proceed for recovery of damages and property
- Application by CG to the tribunal for order for disgorgement

EXPENSES ON INVESTIGATION

- Payment of expenses : By CG

- Convicted persons, company or related companies dealt with report of inspector, a person who is ordered to pay damages or to restore any property, shall be liable to reimburse to CG the expenses of investigation (amount specified by court)

VOLUNTARY WINDING UP ETC NOT TO STOP INVESTIGATION- SEC 226

- An investigation may be initiated and continued even if an application has been made u/s 241, company passed a SR for voluntary winding up or any winding up proceeding is pending before the tribunal
- During investigation tribunal may ordered for winding up based on inspector information

SAVING FOR LEGAL ADVISERS AND BANKERS (Sec.227)

- Saving for legal advisers: *Liable to disclose:* The *name and address* of his client

Not bound to disclose: Any *privileged communication* made to him

- Saving for bankers :*Liable to disclose:* Information relating to the *affairs of the company and related companies etc.*

Not bound to disclose: Any information relating to affairs of *any other customer*

INQUIRY, INSPECTION AND INVESTIGATION OF FOREIGN COMPANIES (Sec.228)

Chapter XIV of the Companies Act, 2013 *(Sec. 206 to 229) Applicable - Foreign companies*