CHAPTER III

INSPECTION AS A MEANS OF PROTECTION
OF INVESTORS

3.1 INTRODUCTION

It has been said that public companies have to work in glass house, which exposes their workings all sides. The belief is that declared affairs are likely to be more honest than those behind the curtain. Professor Gower has stated: “On the basis that forewarned is forearmed” the principle underlying the Companies Act has been that of disclosure. If the public and the members were enabled to find out all relevant information about the company, this, thought the founding fathers of our company law, would be a sure shield. Basically disclosure still remains the principal safeguard on which the Companies Acts pin their faith.¹

Inspection is a useful instrument and the preliminary step for finding out the true and fair view of the state of company’s affairs accordance with the provision of the Companies Act. The object of inspection is not only to keep a watch on the performance of companies but also to evaluate precisely the level of efficiency in the conduct of the affairs of the company concerned. Inspection facilitates to reveal the concealment of income by falsification of accounts, misuse of fiduciary responsibilities by management for personal aggrandizement, misapplication of funds while the industry itself is in a state of perpetual crisis. It helps the Government to ascertain the quantum of profits which have accrued but not adequately accounted for taxation purposes. Knowledge about the management of the business of the company with intent to defraud the creditors, shareholders and

¹ As quoted by Ramaiya, Guide to the Companies Act (16th edn.) p. 1973, Lexis Nexis
the avenue, otherwise the fraudulent or unlawful purposes would enable the Government to take effective emergent remedial measures, before company goes into liquidation and thus it protects the interests of the investors of the company.

Every company maintains the register of their members indicating separately for each class of equity and preference shares holders, debenture holders and other security holders at the registered office of the company or at any such places as prescribed by section 88 and 128 of the Companies Act, 2013. It is also necessary by every company to prepare annual return every year as prescribed by the section 92 of the Act, duly signed by a director and the company secretary and to be kept at the registered office of the company. These all registers, copies of annual returns and other records are kept open for inspection by any member, debenture-holder, other security holder or beneficial owner during business hours without payment of any fees. They can also take extracts from any register or records without payment of any fees.\(^2\)

Since last few decades there have been umpteen corporate frauds around the world and India too could not escape from happenings of such frauds. These are taking place not only in corporations but almost in every walk of life. This is because of fall in moral and ethical values, which has led to less respect for other persons and their properties. People's values of life are changing fast.\(^3\)

Periodic inspection of these important documents of a company is necessary to know the fairness and transparent functioning of the company, which is also important to protect the interests of investors of the company. The Company Registrar is empowered by section 206 of the Companies Act, 2013, to call for further information, inspection of books and conduct inquiries in case he is not satisfied after scrutiny of documents filed by the company before him or any information received by him. In this chapter, it is intended to discuss in detail about inspection of various records and document of the company, the persons who

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2. S.94(3) of the Companies Act, 2013
can inspect, powers of inspector, submission of report, follow up action of this report and importance of inspection.

3.2 INSPECTION OF COMPANY’S DOCUMENTS / RECORDS BY MEMBERS/SHAREHOLDERS, DEBENTURE HOLDERS/OTHER SECURITY HOLDERS OF THE COMPANY

Investor of a company is entitled to inspect the documents and records. A comparative study of the U.K. Companies Act, 2006 and Indian Companies Act, 2013, in this regard, has been made here.

3.2.1 UNDER UNITED KINGDOM COMPANIES ACT, 2006

In United Kingdom, the Companies Act requires that the accounting records must be kept at the registered office or such other place as the directors think fit and must, at all times, be open for inspection by the officers of the company. There is, however, no express statutory provision authorizing the court to compel inspection. It means no legal rights of inspection of book of accounts/records of the company have been provided to shareholders, debenture holders, creditors etc. of the company. If accounting records are kept at a place outside the United Kingdom, accounts and returns with respect to the business dealt with in the accounting records so kept must be sent to, and kept at, a place in the United Kingdom, and must at all times be open to such inspection. Such accounts and returns must be such as to-

(a) disclose with reasonably accuracy the financial position of the business in question at intervals of not more than six months and

(b) enable the directors to ensure that the accounts required to be prepared comply with the requirements of the Act.

4. S. 388(1) of the U.K. Companies Act, 2006
6. S. 388(3) of the U.K. Companies Act, 2006
Accounting records that a company is required by Section 386 to keep, must be preserved by it-

(a) for three years from the date on which they are made in case of a private company.

(b) for six month from the date on which they are made in case of a public company.\(^7\)

However the United Kingdom’s Taxes Management Act, 1970 effectively requires a six years retention period, and in order to cover against possible actions for negligence under the Limitation Act, 1980, the retention period would have been as long as 15 years. Failure to keep accounting records as required is an offence for which officers of the company are held liable, the penalty being imprisonment and/or a fine.\(^8\)

This Act also provides for criminal liabilities on directors of the company in respect of the failure to file account and records.\(^9\) The civil penalty may also follow.\(^10\) There are also provision in the Act for revision of defective accounts and reports. Where a company’s annual accounts, summary financial statement, director’s report do not comply with the Act, the director may voluntarily revise them.\(^11\) The Secretary of the State may also give notice to a company’s directors indicating how he believes that the financial statements and/or reports laid before the company or delivered to the Registrar may not comply with the Act’s requirements. The director must within a specified period of up to a month give satisfactory explanations or prepare revised financial statements and/or reports, failing which the Secretary of State may apply to the court.\(^12\)

An application may be made to the court by the Secretary of the State, after having complied with s. 455 or by a person authorised by the Secretary of the State, for a declaration that the annual accounts of a company do not comply, or

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7. S. 388(4) of the U.K. Companies Act, 2006
11. S.454 (1) of the U.K. Companies Act, 2006
a director report does not comply, with the requirement of this Act. The court may pass the order to revise the said documents to directors of the company complying with the requirement of the Act.

3.2.2 UNDER INDIAN COMPANIES ACT, 2013

Section 94 of the Companies Act, 2013 prescribes the place of keeping and inspection of registers, return etc. It states that the registers required to be kept and maintained by a company under section 88, 128 and copies of the annual returns filed under section 92, are to be kept at the registered office of the company. These registers, copies of returns and documents may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance.

The Act requires that every company should prepare the annual return in the prescribed form containing the particulars as they stood on the close of the financial year regarding—

(i) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;

(ii) its shares, debentures and other securities and shareholding pattern;

(iii) its indebtedness;

(iv) its members and debenture-holders along with changes therein since the close of the previous financial year;

(v) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

14. S.92 of the Act, 2013 (hereafter referred as the Act)
15. sub section (2) Ibid
(vi) meetings of members or a class thereof, Board and its various committees along with attendance details;

(vii) remuneration of directors and key managerial personnel;

(viii) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;

(ix) matters relating to certification of compliances, disclosures as may be prescribed;

(x) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors (FII) indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(xi) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

In case of One Person Company (OPC) and small companies, the annual returns are required to be signed by the company secretary, or where there is no company secretary, by the director of the company. The Companies Act, 2013 has, for the first time, allowed formation of a limited liability company by just one person on the recommendation of J.J Irani Expert Committee. Such a company is described under section 3(1)(c) as a private company, ‘One Person Company’ is a one shareholder corporate entity.

The annual return, filed by a listed company or, by a company having such paid-up capital and turnover as may be prescribed, should be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.\textsuperscript{16}

\textsuperscript{16} sub section (2) \textit{Ibid}
3.2.2.1 FILING OF ANNUAL RETURNS

Every company should file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed, within the time as specified, under section 403.17

3.2.2.2 PENALTY FOR NON-COMPLIANCE

If a company fails to file its annual return under section 94(4) of the Act, before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than rupees fifty thousand but which may extend to five lakh rupees and 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 rupees fifty thousand but which may extend to rupees five lakh, or with both.18

If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under, he shall be punishable with fine which shall not be less than rupees fifty thousand but which may be extended to rupees five lakh.19

3.2.2.3 INSPECTION OF DOCUMENTS

The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns are required to be kept open for inspection by any member, debenture-holder, other security holder or beneficial owner,
during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.  

Any such member, debenture-holder, other security holder or beneficial owner or any other person may—

(a) take extracts from any register, or index or return without payment of any fee; or

(b) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.

If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be held liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.

Chapter IX of the Companies Act, 2010 provides for the provision of preparation and keeping books of account and other relevant books of every company at the registered office of the company. Company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

Section 128 corresponds to section 209 of the companies Act, 1956. This section provides for inspection of above documents, open for any director of the company, during business hours but not open for the members of the company.

In *Amal Fakkirji v. E.A. Pearson*, it was held that members of a company do not have a right of access to its records. Article of Association may entitle the directors to authorize a member to inspect accounting records of the company if ordinary resolution of members is passed. Even in such a case the member would have to exercise this right personally and not through a proxy.

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20. S. 94(2) of the Act  
21. sub section (4) *Ibid*  
22. AIR 1926 Sind 295
In *Lalita Rajya Laxmi v. Indian Motor Co. Ltd*, it was held that a shareholder has no statutory right of inspection of the books of account of the company. He can, however, inspect the books only if such right is given specifically through the article, which is rare.

### 3.2.2.4 CLOSING OF THE REGISTER OF MEMBERS/DEBENTURE HOLDERS/OTHER SECURITY HOLDERS OF THE COMPANY

A public listed company can close the register of members or debenture holder or other security holders for any period or periods not exceeding in aggregate 45 days in each year, but not exceeding 30 days at any one time, to get their security listed or prior to the annual general meeting for the finalizing the list of shareholders to whom notice should be sent as also to determine the entitlement of dividend for shareholders if and when declared at the annual general meeting. For the purposes of rights or bonus issues, the register may again be closed, for the purpose of determining the entitlement of rights or bonus, as the case may be.

This is, however subjected to notice of at least seven days or such lesser period as may be specified by Security and Exchange Board of India. Such previous notice may be served through advertisement in newspapers circulating in the country where the registered office of the company is located. There is provision of penalty if such notice has not given. Such company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a minimum of one lakh rupees during which the register is kept closed.

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23. (1962) 32 Company cases 207
24. S. 91 of the Act of 2013
25. sub section (2) *Ibid*
3.3 INSPECTION OF COMPANY’S DOCUMENTS / RECORDS BY AUTHORISED PERSONS OTHER THAN MEMBERS / SHARE-HOLDERS/DEBENTURE HOLDERS / OTHER SECURITY HOLDERS OF THE COMPANY

Inspection of books of account and papers of the company can be inspected by persons other than members, shareholders, debenture holders or other security holders, if authorised. Central Government may pass order of inspection either by the Registrar or an Inspector or any statutory authority, appointed for this purpose under Section 206 of the Companies Act, 2013. A check on the performance of companies is generally exercised by scrutiny of balance-sheet and profit and loss account filled by them with the Registrar of the Company (ROC) who is empowered under section 206 of the Companies Act, 2013 to call for information and explanation with respect to any matter to which such documents purport to relate.

The inspection of books of account also enable the Government to ascertain the quantum of profits which have accrued but not adequately accounted for taxation purposes, concealment of income by falsification of accounts, misuse of fiduciary responsibilities by management for personal aggrandizement, misapplication of funds while the industry itself is in a state of perpetual crisis. Such knowledge about the management of the business of the company with intent to defraud the creditors, shareholders and the avenue, otherwise the fraudulent or unlawful purposes would enable the Government to take effective emergent remedial measures, before company goes into liquidation and thus only save the industry or trade, as such, but also prevent distress to the employees and the workers.

The another significant object of inspection is ensuring that the transactions have been validly entered into in accordance with the rules and procedures of the company and also ascertaining how far the statutory auditors have
discharged their functions and duties in certifying the true and fair view of the company’s account and their proper maintenance.  

Section 206, 207, 208, 220, 223 and 224 of the Companies Act, 2013 deals with inspection of books of account, other books and papers also by the Company Registrar or Inspector appointed for this purpose and making of reports but they are not empowered for investigation of affairs of the company, *suo moto*, in case of finding of irregularity. If the company has acted fraudulently or unlawful manner then there are chances to destroy, mutilated, alter, falsified or secreted of such documents. They are merely report making authority.

The Registrar or inspector shall, after the inspection of the books of account or an inquiry submits a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a necessary giving reason in support. Now it is on the discretion of the Central Government to order for further investigation into the affairs of the company (section 210). Therefore, such default company will get time to destroy, mutilated, alter, falsified or secreted of such documents so to prevent such occurrences it is necessary that inspectors should be empowered to start investigation along with the submission of report to Central Government. This will help in better protection of the rights and interests of investors.

### 3.4 PERSONS/INSTITUTIONS AUTHORISED FOR INSPECTION

Inspection of the books of account can be conducted by the Registrar of Companies or any other officer of the Government who is authorised in this behalf. A new provision through section 206(6) has been introduced in the Companies Act, 2013 which empowered the Central Government to authorize any statutory authority to carry out the inspection of books of account of a

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company or class of companies, by general or special order. There was no such provision in the Companies Act, 1956.

Now, the provision authorizing Stock Exchange Board of India (SEBI) has been removed from the Act of 2013. The Companies Amendment Act, 2000 had added clause (a)(iii) in section 209, under which SEBI was also given the power of inspection for listed companies or companies intending to get listed in respect of specified matters, through such officer as may be authorised by it. The SEBI power was confined to sections specified in section 55A of the Act of 1956, in so far as they relate to issue and transfer of securities or nonpayment of dividend, has now removed in the Companies Act. 2013.

Thus, inspection of the books of account can be conducted by the following persons or institutions-

(a) Registrar of Companies
(b) Person authorised by Central Government
(c) Statutory Authority appointed by the Central Government
(d) Director of the Company
(e) Advisory Committee during liquidation of a company
(f) Reserve bank of India

3.4.1 INSPECTION BY REGISTRAR OF COMPANIES

Registrar of Companies (ROC) is the important authority for a company from its incorporation to till its winding up procedure. They are full time field officers, appointed by the Central Government, who deal directly with the companies registered or intended to be registered within their territorial jurisdiction. Section 396 of the Act empowers the Central Government to establish registration offices for the purpose of registration of companies and exercising powers and functions through ROC, under the Act. These offices function as registry of records, relating to the companies registered with them,
which are available for inspection by members of public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

It has been made compulsory to every company to send all relevant documents and papers related to incorporation and all activities to Registrar of Companies. Under Rule 10 of the Companies (Registration Office and Fees) Rules 2014, after a document is filled with ROC, he is required to examine or cause to be examined the document received in his office which is required under the Act to be registered, recorded or filled by or with the ROC. The ROC needs to take a decision within 30 days from the date of filling of the document.

3.4.1.1 POWER OF REGISTRAR OF COMPANY (ROC) TO CALL FOR INFORMATION

If the Registrar, on scrutiny of any document, filed by a company or on any information received by him, is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may require the company to furnish in writing such information or explanation or produce such documents. The Registrar will give written notice to the company to provide the desired information within reasonable time.27

It is the duty of the company and of 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 in the notice. The Registrar may by another written notice stating the reasons, call on the company to produce for his inspection such further books of account, books, papers and explanations-

(a) if the company fails to furnish the information or explanation to the Registrar within the time specified, or

27. S. 206(1) of the Act
(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 does not disclose a full and fair statement of the information required.\textsuperscript{28}

3.4.1.2 POWER OF REGISTRAR OF COMPANY TO CONDUCT INQUIRY

An additional power to ROC, to conduct inquiry, has been added in the Companies Act, 2013. If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that

(a) the business of a company is being carried on for a fraudulent or unlawful purpose, or

(b) not in compliance with the provisions of this Act, or

(c) if the grievances of investors are not being addressed,

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.\textsuperscript{29}

Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar for the purpose to carry out the inquiry of such company. Where a Registrar calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar and furnish him with such statements, information or explanations in such form as the Registrar may require and shall render all assistance to the Registrar in connection with such inspection.\textsuperscript{30}

\textsuperscript{28} S. 206(2) and (3) of the Act
\textsuperscript{29} S. 206 (4) of the Act
\textsuperscript{30} S.207 of the Act
In *Indra Prakash Karnani v. Registrar of Companies*,\(^{31}\) it was held that the Registrar of the Companies has right to inspect the books of account and if he is prevented from rendering inspection of accounts, the directors of the company may be prosecuted. A prior prosecution of company is not a pre-condition for prosecution of director of the company.

In *Bajoria B.M. v. Union of India*,\(^{32}\) the court held that the power of inspection is different from an investigation under the Act and that is not necessary for the Registrar before filling a complaint on the basis of inspection of accounts to give to a company a copy of the inspection report.

**3.4.1.2 PENALTY IN CASE OF CONTRAVENTION**

Section 206(7) of the Act of 2013 provides that 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 one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for everyday after the first during which the failure continues. Where 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.

**3.4.1.3 POWER OF REGISTRAR OF COMPANY TO RETAIN THE SEIZED BOOKS**

Section 209 of the Companies Act, 2013 provides that when the Registrar has reasonable ground to believe on information or otherwise, 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

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\(^{31}\) (1985) 57 Comp.Cas.662 (Cal)

\(^{32}\) (1972) 42 Comp. Cases 338 (Del)
secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—

(i) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and

(ii) 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.

These books and papers seized should be returned, as soon as may be, and in any case not later than one hundred and eightieth days after such seizure, to the company from whose custody or power such books or papers were seized. Earlier in the Act of 1956, Registrar was allowed to keep such seized books and papers only for 30 days. In case of further requirement after 180 days, the books and papers may be called for by the Registrar by an order in writing. This power of Registrar was also not available in the Act of 1956. He 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.

3.4.2 INSPECTION BY THE PERSON AUTHORISED 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. Since the company comes under the subject matter of the Central Government, so Central Government has passed numbers of rules for the effective control over companies. The Central Government can appoint any person as inspector to check the functioning of any company accordance with the Act. The subject matter of inspection is book and papers, which includes books of account,

33. S. 206 (5) of the Act
deeds, vouchers, writings, documents, minutes and registers maintained on paper or electronic form.\textsuperscript{34}

Where an inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to inspector and furnish him with such statements, information or explanations in such form as inspector may require and shall render all assistance to inspector in connection with such inspection.\textsuperscript{35}

The inspector shall, after the inspection of the books of account or an inquiry submits a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a necessary giving reason in support. Now it is on the discretion of the Central Government to order for further investigation into the affairs of the company in case of irregularities.\textsuperscript{36} The powers of the Inspector have been dealt in detail in separate heading.

\textbf{3.4.3 INSPECTION BY STATUTORY AUTHORITY APPOINTED BY THE CENTRAL GOVERNMENT}

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. This is a new provision in the Companies Act, 2013. This provision was necessary to protect the interest of investors. Such statutory authority submits the report, after inspection of books of account of a company or class of companies, to the Central Government.

It is noticed from the Annual Reports of the Department of Corporate Affairs that the books of account and other records of the companies are inspected selectively by officers of the Directorate of Inspection authorised for this purpose under this section. Inspection \textit{inter alia}, covers the companies with paid up capital exceeding certain level, companies incurring losses and companies in respect of which

\begin{itemize}
\item \textsuperscript{34} S. 2(12) of the Act
\item \textsuperscript{35} S. 207 of the Act
\item \textsuperscript{36} S. 210 of the Act
\end{itemize}
complaints are received. The material brought out in the inspection reports is made use of for taking actions under important provisions of the Act including inter alia, appointment of Government directors, ordering investigations into the affairs of the companies under section 210, and consideration of application seeking approval for the appointment of managerial personnel in companies. In certain cases, prosecutions are also launched on the basis of the finding contained in the inspection report. Besides, cases involving non-compliance of certain provisions of the Act, including inadequate maintenance of statutory records noticed during such inspections, are also taken up with the companies for necessary remedial action. Information of interest to other Government Departments/agencies as brought out in the inspection reports is also communicated to them for suitable and appropriate action.  

3.4.4 INSPECTION BY DIRECTOR OF THE COMPANY

A director of the company is empowered to inspect the books of account and other books and paper maintained by the company within India, at the registered office of the company or at such other place in India during business hours. In the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed.

A director cannot be prevented or refused inspection of the books of accounts as it is a statutory right given to him under section 128(3) of the Companies Act, 2013. In case of prevention or refusal, he can enforce his right through the court. But, the right of inspection by a director is not an absolute right.

38. S. 128(3) of the Act
3.4.4.1 WHETHER DIRECTOR'S RIGHT OF INSPECTION OF BOOKS OF ACCOUNT IS ENFORCEABLE THROUGH THE COURT OF LAW?

The question whether the director's right of inspection of books of account is enforceable or not through a Court of Law, was considered by the Rajasthan High Court in *Maharaj Kumar Mahendra Singh v. Lake Palace Hotels (P.) Ltd.*39 It was urged because the company contended that section 209[now section 128(3)] does not contain any provision conferring on the Court the power to make any order directing the company to allow any inspection to any director, and, therefore, in the absence of any such provision the right of inspection is not enforceable. In support of this plausible argument, an express provision contained in some of the sections was also pointed out, *e.g.*, in sections 144, 163, 196, 304, 307 of the Act of 1956, etc. This argument, however, could not carry conviction with the Court. The High Court held that a petition was maintainable under section 209(4) for enforcement of the right conferred by the said section40. The learned Judge observed as follows:

“…. In my opinion, it cannot be conceived that where a statute confers a right, then the right would remain unenforceable. It is one thing that penal proceedings may be taken. It is entirely different that without initiating penal proceedings, the right is sought to be enforced. It is the look out of the director only to launch the prosecution or to seek enforcement of his right by initiating the proceedings before the Court which has jurisdiction to entertain such petition. The general maxim is "ubi jus ibi remedium" (where there is a right, there is a remedy). Here sub-section (4) of section 209 of the Act confers a statutory right of inspection and the Court which has jurisdiction under the Act, in my opinion, possesses powers to enforce that statutory right. It has been urged that the Companies (Court) Rules, 1959 do not envisage any such

39. [1985] 58 Comp. Cas. 805
petition and what petitions lie, are specified. Petitions provided under the Rules are exhaustive. I am unable to agree with this submission as well. As already stated, when sub-section (4) of section 209 of the Act envisages conferment of right of inspection on the director then the director can seek a remedy by moving a petition to this Court. Thus, I hold that the petition is maintainable under section 209(4) of the Act and the company is under an obligation to allow inspection to the petitioner of all the books of account and other books and papers.” [p. 807]

Where on the facts and circumstances it is clear in any case that there is reason to believe that the inspection is sought for supplying information to a rival in business of the company or for any purpose which is prejudicial or injurious to the interest of the company, the inspection may be justifiably be refused.

The right of inspection can be exercised either by director himself or through his agent. In Vakharia v. Supreme General Film Exchange Co. Ltd.\(^\text{41}\) it was held that a director is entitled to make inspection of accounts personally or through an agent provided that there is no reasonable objection to the person chosen and the agent undertaken not to utilize the information obtained by him for any purpose other than the purpose of his principal. In aforesaid case inspection through an agent was allowed because of the physical inability of the director to inspect books of account personally.

In M.L. Thukral v. Krone Communications Ltd\(^\text{42}\) the petitioners (directors) wanted to exercise their right of inspection by a chartered accountant. The Company Law Board (CLB) allowed it subject to the undertaking being given by the charted accountant that he would disclose the information obtained through inspection only to petitioners and not to others.

In D. Ross Porter v. Pioneer Steel Co. Ltd,\(^\text{43}\) the Delhi High Court has said that it would be proper to allow the director concerned inspection of the books of

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\(^{41}\) (1948) 18 Com. Cases 34  
\(^{42}\) (1996) 86 Com. Cases 643  
\(^{43}\) (1990) 68 Com Cases 145
account, accounts with banks, financial institutions and private parties from whom loans had been taken by the company and register of movable assets only.

3.4.5 INSPECTION BY ADVISORY COMMITTEE DURING LIQUIDATION OF A COMPANY

Section 287 of the Companies Act, 2013 provides that the Tribunal may, while passing an order of winding up of a company, direct that there should be, an Advisory Committee to advice the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct. Earlier, this Advisory Committee was known as Committee of Inspection in the Act of 1956. Winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator, called a liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights. 44

According to Pennington, Winding up or liquidation is the process by which the management of a company’s affairs is taken out of its director’s hand, its assets are realized by a liquidator and its debts and liabilities are discharged out of the proceeds of realization and any surplus of assets remaining is returned to its members or shareholders. At the end of the winding up the company will have no assets or liabilities and it will therefore be simply a formal step for it to be dissolved, that is, for its legal personality as a corporation to be brought to an end. 45

There are two modes of winding up of a company, prescribed in the Act-

(i) by the Tribunal making a winding up order. This is also known as compulsory winding up.

(ii) by passing of an appropriate resolution for voluntary winding up at a general meeting of members. This is also known as voluntary winding up.

45. Pennington’s Company Law, 5th Edn., p.839
3.4.5.1 COMPOSITION OF ADVISORY COMMITTEE

Advisory Committee is constituted on the direction of Company Tribunal under section 287 of the Act of 2013 and earlier this power of appointment was vested in the court. However the appointment of this committee is not obligatory as the operating word of section 287 says- “the Tribunal may.” The Tribunal passes order for the constitution of this committee while passing an order of winding up of a company. The Tribunal may also direct that the Committee should advice the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may seek.

The advisory committee appointed by the Tribunal should consist of maximum twelve members of creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct. Company Liquidator is the chairman of this committee. The Company Liquidator should convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee. This time limit for convening meeting of creditors and contributories was two month in the Act of 1956 which is, now, reduced to thirty days in the Act of 2013.

3.4.5.2 RIGHT OF INSPECTION OF BOOKS OF ACCOUNT OF THE COMPANY DURING LIQUIDATION

The Advisory Committee, so appointed under section 287 of the Act, has the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time. Section 293 provides the provision regarding the books to be kept by Company Liquidator. According to this provision, the Company Liquidator should keep proper books in such manner, as may be prescribed, in which he should cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.
Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

Section 294 of the Act, confers a special duty to the Company Liquidator to maintain the proper and regular books of account so that the interests of all beneficiaries could be protected. According to this provision, the Company Liquidator should maintain proper and regular books of account including accounts of receipts and payments made by him in such form and manner as maybe prescribed. He should, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Tribunal an account of the receipts and payments as such liquidator in the prescribed form in duplicate, which should be verified by a declaration in such form and manner as may be prescribed.

The Tribunal is required to cause the accounts to be audited in such manner as it thinks fit and for the purpose of the audit, the Company Liquidator should furnish to the Tribunal with such vouchers and information as the Tribunal may require, and the Tribunal may, at anytime, require the production of, and inspect, any books of account kept by the Company Liquidator. When the accounts of the company have been audited, one copy thereof is to be filed by the Company Liquidator with the Tribunal, and the other copy is to be delivered to the Registrar which should be open to inspection by any creditor, contributory or person interested. Further The Company Liquidator should cause the accounts when audited, or a summary thereof, to be printed, and should send a printed copy of the accounts or summary thereof by post to every creditor and every contributory.

**3.4.6 INSPECTION BY RESERVE BANK OF INDIA**

The Reserve Bank of India is empowered to inspect the books and paper of all the non-banking companies by sub-section (1) of Section 45N of the Reserve Bank of India Act, 1934. This section states that the banks may, at any time, cause an inspection to be made by one or more of its officers or employees or other persons (hereafter in this section referred to as the inspecting authority-

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46. S.294(4) of the Act
(i) of any non-banking institution, including a financial institution, for the purpose of verifying the correctness or completeness of any statement, information or particulars furnished to the bank or for the purpose of obtaining any information or particulars which the non-banking institution has failed to furnish on being called upon to do so; or

(ii) of any non-banking institution being a financial institution if the bank considers it necessary or expedient to inspect that institution.

3.5 PERSONS RESPONSIBLE FOR KEEPING PROPER BOOKS OF ACCOUNT/RECORDS OF THE COMPANY

Section 128 of the Companies Act, 2013 provides that every company should prepare books of account, other relevant books and financial statement for every financial year and to be kept at its registered office. The following persons of the company are responsible for keeping proper books of account and records of the company as per the section 128(6)-

(a) the managing director of the company,

(b) the whole time director in charge of finance,

(c) the Chief Financial Officer or

(d) any other person of the company charged by the Board

In case of contravention, the company itself is not punishable but abovementioned persons are held liable and they may be punished with imprisonment or with heavy fine or with both as prescribed in the Act. The following punishments are prescribed for non-compliance with this section-

(a) imprisonment which may extend up to one year, or,

(b) with fine of not less than rupees fifty thousand but may be extended to rupees five lakh, or,

(c) with both.
3.6 PROPER BOOKS OF ACCOUNT IN RELATION TO THE BRANCH OF A COMPANY

Section 128(2) of the Companies Act, 2013 prescribes that where a company has a branch office, whether in India or outside India, the company shall be deemed to have complied with the provisions of section 128(1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarized returns, made up to date, at the intervals of not more than three months, are sent by the branch office to the registered office of the company or at such other address where the books of account are kept by fulfilling the requirements mentioned earlier. This requirement is specific that a foreign branch has also to maintain proper books of account as required by section 128(1) of the Act, irrespective of the requirement, if any, in the country where the branch is located.

3.7 PERIOD FOR WHICH BOOKS OF ACCOUNT TO BE PRESERVED

Every company is required to preserve the books of accounts, related vouchers and other relevant records in good condition for a period of not less than eight years immediately preceding the current year. Where the company had not been inexistence for a period less than eight years, the books of account and related vouchers should be preserved in good order right from the first accounting year of the company. A new provision has been added in the Act of 2013, that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.47

47. S. 128(5) of the Act
3.8 BOOKS OF ACCOUNT/RECORDS OF THE COMPANY WHICH CAN BE INSPECTED

Section 128 of the Companies Act, 2013 provides that every company should prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which gives a true and fair view of the state of the affairs of the company. The definition of ‘book of account’ is given in section 2(13) of the Act which states that the ‘books of account” includes records maintained in respect of-

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
(ii) all sales and purchases of goods and services by the company;
(iii) the assets and liabilities of the company; and
(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

To satisfy the above requirements, companies usually maintain the following books and records:

(a) Cash book to record cash and bank receipt and payment, cash discount received and allowed,

(b) Purchase Day Book, Purchase Book, Invoice Book or Bought Book for recording credit purchase,

(c) Sale Day Book, Sales Book or Sold Book for recording credit sales,

(d) Purchase Return Book or Returns Outward Book for recording goods returned by the company,

(e) Sales Return Book or Returns Inward Book to record goods returned to the Company,

(f) Bills Receivable Book to keep a record of bills of exchange receivable,
(g) Bills payable Books to keep e record of bills of exchange payable,

(h) Journal to record opening entries, transfers from one account to another,

(i) Customers’ Ledger or Debtors’ ledger showing the position of account with company’s customers enjoying credit facilities,

(j) Suppliers ledger or Creditors’ Ledger showing the company’s indebtedness to parties which supplied goods to the company on credit,

(k) General Ledger showing accounts other than those of customers and suppliers mentioned in (i) and (j),

(l) Cost Accounting Records as prescribed.

Apart from the above Books of Account, companies also maintain Vouchers, Bills, Invoices and other documents supporting each entry in the Books of Account as well as other records such as Stock records, Stock-taking statements, Bank reconciliation statement etc. These are only an illustrative list and many companies maintain other books of account also. Many companies combine some of the above books and records.48

3.8.1 ANNUAL REPORT ON CORPORATE SOCIAL RESPONSIBILITY

Section 135 of the Act of 2013 made it mandatory for every company having specified net worth or turnover or net profit during any financial year, to spend in every financial year, at least two percent of the average net profits made during the three immediate preceding financial years, in pursuance of its corporate social responsibility policy. It requires such companies to constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The companies specified for this purpose are those having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees

five crore or more during any financial year. The composition of the committee formed under Section 135 needs to be disclosed in the Board’s report. Clause (o) of the Section 134(3) requires disclosure of company’s policy and initiatives taken during the year. The Companies (Social Responsibility Policy) Rules 2014 states that the Board’s report shall include an annual report on CSR containing particulars specified in the Annexure to the rules and also be disclosed on the company’s website.

3.9 MAINTENANCE OF ELECTRONIC RECORDS

The Companies Act, 2013 also permits the company to maintain the books of account and other relevant paper in an electronic mode. If a company decides to maintain the books of account in the electronic mode, the rule 3 of the Companies (Accounts) Rules, 2014 requires that such books of account and records to remain accessible in India for being usable subsequently. Such books and records must be maintained in the format in which they were originally generated, sent or received. Such books of account kept in electronic mode are also subject matter of inspection.

The Information Technology Act, 2000 provides that where any law requires that any information or matter should be in typewritten or printed form, then such requirement shall be deemed to be satisfied if it is in an electronic form. However, it will have to be ensured that the information contained in the electronic records remains accessible and unaltered and its origin, destination, date, etc. can be identified. The Act further provides that where any law requires that information or document or other matter should be authenticated by means of digital signatures affixed in such manner as may be prescribed under the rules framed by the Central Government. 49

In present time several companies carry business globally, so importance of maintaining the various records in the electronic form has became necessary in order to access by management as well as by investors of the company. “As

49. Ibid
business is carried out internationally, the need for a continuous, 24X7 access to 
corporate records becomes extremely important. While as companies have now 
been given the option to keep records in electronic format under the Companies 
Act, 2013, several companies may want to adopt electronic record keeping for 
statutory records. Companies are increasingly realizing that electronic records are 
not merely statutory formalities but they are very important reference points for the 
senior management as well. They are an integral part of the MIS50.

3.9.1 FILING OF APPLICATIONS, DOCUMENTS, 
INSPECTION, ETC., IN ELECTRONIC FORM

Section 398 of the Act of 2013 provides the provision for filling of applications 
documents, inspection, etc., of the companies in electronic form. The Central 
Government is empowered to make rules in this regard in accordance with the 
provisions contained in section 6 of the Information Technology Act, 2000. The 
Central Government may, by notification in the Official gazette, make rules 
regarding:

(a) such applications, balance sheet, prospectus, return, declaration, 
memorandum, articles, particulars of charges, or any other particulars or 
document as may be required to be filed or delivered under this Act or the 
rules made there under, shall be filed in the electronic form and authenticated 
in such manner as may be prescribed;

(b) such document, notice, any communication or intimation, as may be 
required to be served or delivered under this Act, in the electronic form and 
authenticated in such manner as may be prescribed;

(c) such applications, balance sheet, prospectus, return, register, 
memorandum, articles, particulars of charges, or any other particulars or 
document and return filed under this Act or rules made there under shall be

50. Kothari Vinod and N. Shankar, “Companies Act, 2013: Requisites with respect to 
electronic records”, [2015] 53 taxmann.com 341
maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;

(d) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;

(e) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and

(f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

3.9.2 ELECTRONIC FORM TO BE EXCLUSIVE, ALTERNATIVE OR IN ADDITION TO PHYSICAL FORM

Section 400 clarifies that the electronic form shall be exclusive, or in the alternative or in addition to the physical form. The Central Government is empowered to make rule in this respect. The Central Government may also provide such value added services through the electronic form and levy such fees as may be prescribed. This is a new provision in the Act of 2013.

3.10 INSPECTION OF OTHER BOOKS AND PAPERS OF THE COMPANY
Not only the books of account but also other books and papers of every company are open for inspection by the Registrar or any other officer authorised by the Central Government. Section 128(3) clearly states that the other books and papers are also the subject matter of inspection. Section 2(12) of the Act of 2013 has defined the terms “book and paper” in an inclusive manner. It provides that “book and paper” and “book or paper” shall include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or electronic form. It may be noted that the definition equates “book and paper” and “book or paper” and provides for a wide coverage which may not necessarily be related to the books of account but also includes such records maintained in the electronic form.

3.11 TIME AND PLACE OF INSPECTION

Inspection may be made at any time during business hours and for this purpose no previous notice to the company is necessary. The place at which inspection may be carried out need not be the registered office of the company. The books of account have to be kept either at the registered office of the company or at some other place, after an intimation to the Registrar of the company.

In Indra Prakash Karnani v. Registrar of Company, the Calcutta High Court has held that authorised Inspecting Officer or Registrar of Company is entitled to demand inspection of the books of accounts even in his office under clause (iii) of subsection (5) of section 209-A of the Act of 1956 (Now, 206(3)(c) of the Act of 2013). However, it can be made at any time during business hours.

3.12 DUTIES OF DIRECTORS, OFFICERS, EMPLOYEES OF THE COMPANY TO ASSIST IN INSPECTION AND INQUIRY

Although the Inspecting Officer is empowered by the Act to inspect the books of account and records of the company but he can execute this successfully only

51. (1985) 57 Comp. Cas. 62 (Cal)
when the employees of the company co-operate with him during inspection. Section 207(1) casts a duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations relating to the affairs of company in such form as the said person may require within such time and at such place as he may specify. Further it shall also be the duty of every director, officer or other employee of the company to the person making inspection under this section all assistance in connection with the inspection which the company may reasonably be expected to give.

3.12.1 PUNISHMENTS FOR DEFAULT

Subsection (4) of section 207 prescribes that if any director or officer of the company disobeys the direction issued by the Registrar or the inspector, 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 twenty-five thousand rupees but which may extend to one lakh rupees. Further, 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.

3.13 POWERS OF THE INSPECTOR DURING INSPECTION

We have seen that under section 206 (5) of the Act of 2013, 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 to check the functioning of any company accordance with the Act. The following powers have been provided to an inspector during inspection, under the Act.

(a) Power to call for books of account and other books and papers

(b) Power to make or cause to be made copies
(c) Power to place identification of marks
(d) Powers of Civil Court
(e) Powers to search and seizure

3.13.1 POWER TO CALL FOR BOOKS OF ACCOUNT AND OTHER BOOKS AND PAPERS

Section 207 (1) of the Act empowers a person making the inspection or inquiry under section 206 to call for the books of account and other books and papers for inspection. It shall be the duty of every director, officer or other employee of the company to produce all such documents to the Inspector and furnish him with information or explanations in such form as the Inspector may require and shall render all assistance to him in connection with such inspection.

3.13.2 POWER TO MAKE OR CAUSE TO BE MADE COPIES

Section 207 (2) of the Act empowers a person making the inspection or inquiry under section 206 may make or cause to be made copies of books of account and other books and papers during the course of such inspection or inquiry, as the case may be. It shall be the duty of every director, officer or other employee of the company to render assistance to the person making inspection.

3.13.3 POWER TO PLACE IDENTIFICATION OF MARKS

The Inspector has the power to place or cause to be placed any marks of identification in such books in token of the inspection having been made, during the course of inspection. Clause (b) of subsection (2) of section 207 empowers the inspector with this power. It is so done to mark the documents already inspected and also to identify easily the documents not inspected so far. This saves the time as well as money.

3.13.4 INSPECTOR’S POWERS OF CIVIL COURT

The person, who is appointed as inspector enjoys the power of as are vested in a civil court under the Code of Civil Procedure, 1908, during the process of
inspection. Section 207(3) of the Act of 2013 provides that notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, any person 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:-

(i) the discovery and production of books of account and other documents, at such place and time as may be specified by such person making the inspection or inquiry,

(ii) summoning and enforcing the attendance of persons and examining them on oath and

(iii) inspection of any books, registers and other documents of the company at any place

3.13.5 POWERS TO SEARCH AND SEIZURE

Section 209(3) of the Companies Act, 2013 provides that, when the Inspector has reasonable ground to believe on information or otherwise, 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

(i) destroyed or

(ii) mutilated or

(iii) altered or

(iv) falsified or

(v) secreted,
he may, after obtaining an order from the Special Court for the seizure of such books and papers,-

(i) enter into the place or places where such books or papers are kept, with such assistance as may be required,

(ii) search, the place or places where such books or papers are kept; and
(iii) 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.

Here, it is to be noted that under the Act of 2013, now the inspector can exercise the power of search and seizure, after obtaining order from the Special Court where as in the Act of 1956, section 234-A was required that the inspector to apply to the Magistrate of the First Class/the Presidency Magistrate having jurisdiction for an order for the seizure of such books and papers.

These books and papers seized should be returned, as soon as may be, and in any case not later than one hundred and eightieth days after such seizure, to the company from whose custody or power such books or papers were seized. Earlier in the Act of 1956, Inspector was allowed to keep such seized books and papers only for 30 days. In case of further requirement after 180 days, the books and papers may be called for by the Inspector by an order in writing. This power of Inspector was also not available in the Act of 1956. He 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.

3.14 REPORT OF REGISTRAR/INSPECTOR

Where an inspection of the books of account and inquiry has been made, a report is prepared by the person inspected and submitted to the Central Government. Section 208 requires that 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 along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

According to the provision of section 208, it is the duty of the Inspecting Officer to submit the report to the Central Government. The Central Government shall decide
the further course of action and the same time the Central Government is not bound to forward a copy of the inspection report to the company.

3.15 CONCLUSION

Inspection of books of account and other books and paper of a company is necessary to know the fairness and transparent functioning of the company accordance with the Act. It is a useful instrument and the preliminary step for finding out the true and fair view of the state of company’s affairs. Every company is required to maintain the books of account, registers, annual returns and other records at the registered office of the company. Therefore a company should prepare its annual report as per the section 92 of the Act and it should be duly signed by the company secretary or director if there is no company secretary. This annual reports are also required to be filed at ROC within 60 days from the completion of AGM. In case of non-compliance, section 94(5) of the Act has prescribed punishment with fine which shall not be less than rupees fifty thousand but which may be extended up to rupees five lakh. The Act has also prescribed to maintain the books of account and other relevant paper in electronic form. Section 400 also clarifies that the electronic form shall be exclusive, or in the alternative or in addition to the physical form.

Inspection of books of account and other books and paper of a company can be done by the ROC or inspector duly appointed by the Central Government under section 206 or any other person/authority as mentioned in the Act. They enjoy with certain powers as mentioned in the section 206 (5) of the Act, during inspection. They also have the power to summon and enforce the attendance of persons and examine them on oath as are vested in a civil court, during inspection. They can also seize the doubtful documents during inspection. Investor of a company can also inspect such documents and records during office hours without paying any fee and they can also take the extracts or copies of it. Inspection of such documents of a company enables the investors to check the true affairs of the company. They would like to see that their investments are safe and also being used for the
intended purpose. If the investor is not satisfied with affairs of the company, he may sell out the shares of that company. Therefore, companies are bound to maintain the proper books of account and records according to the provision of the Act in order to sustain and prosper further. This will help in prevention of fraud which ultimately provides better protection of the rights and interests of investors.

Here, it is also to be noted that the inspection under section 206 and 207 is not an investigation, though it may lead to one, in case, anything wrong or objectionable or fraudulent. The right to inspection is limited to books of account and other books and paper only. The inspector cannot under the guise of this right, undertake a roving inquiry into all the affairs of the company. Person Inspecting are merely report making authority. They are required to submit an inspection report to the Central Government after completion of inspection.

Now, it is on the discretion of the Central Government to order for further investigation into the affairs of the company (section 210), in case the affairs of the company are not in consonance with the Act. Meantime, such default company will get time to destroy, mutilated, alter, falsified or secreted of such documents. Therefore, to prevent such occurrences, it is necessary that inspectors should be empowered to start investigation \textit{suo moto} along with the submission of report to Central Government and recommendation for further investigation into the affairs of the company by giving his reasons in support.

The Calcutta High Court has held in \textit{Indra Prakash Karnani v. Registrar of Company} [(1985) 57 Comp. Cas. 62 (Cal)] that inspector or ROC is entitled to demand inspection of the books of accounts even in his office under clause (iii) of subsection (5) of section 209-A of the Act of 1956 [Now, 206(3) (c) of the Act of 2013]. However, it can be made at any time during business hours. Further, it was also held that the ROC has right to inspect the books of account and if he is prevented from rendering inspection of accounts, the directors of the company may be prosecuted. A prior prosecution of company is not a pre-condition for prosecution of director of the company.
In *Bajoria B.M. v. Union of India* [(1972) 42 Comp. Cases 338 (Del)], the Delhi High Court held that the power of inspection is different from an investigation under the Act and that is not necessary for the Registrar before filling a complaint on the basis of inspection of accounts to give to a company a copy of the inspection report. In this way the courts of India are also vigilant in implementation of the powers of inspector or ROC for the inspection of documents and other records of the company so that the investors can be protected against any intended corporate frauds.

Annual Report on the working and administration of the Companies Act, 1956, in pursuance of Section 638 of the Companies Act, 1956 (now, section 461 of the Act of 2013) which lays down that the Central Government shall cause a general annual report on the working and administration of this Act to prepared and laid down before each House of the Parliament within one year of the close of the year to which the report relates.

57th Annual Report for the year ended March 2013, disclosed that inspection of the books of account and other books and paper of the companies under section 209A(now, Section 206) were carried out by the inspectors, authorised by the Central Government, on various complaints received, during the financial year 2012-2013.Total 101 inspection reports were received by the Ministry of Corporate Affairs during the financial year 2012-2013 whereas this number was 80 during the financial year 2011-2012.52

The report also states that total 46 cases were referred to Serious Fraud Investigation Office (SFIO) under section 235/237 of the Companies Act, 1956 (now, section 210/213 of the Act of 2013), by the Ministry of Corporate Affairs, where the size of the alleged fraud was estimated to be at least Rs. 50 crores or more in each cases, for further investigation. The Ministry has received 22 investigation reports from SFIO during the period the financial year 2012-13 and prosecutions have been launched in various courts. Therefore, this report

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52. 57th Annual Report on the working and administration of the Companies Act, 1956, 31 March 2013, p. 52-54.
also shows that inspection of the documents and other records is an importance means to protect the interest of investors.