CHAPTER IV

INVESTIGATION AS A MEANS OF PROTECTION OF INVESTORS

4.1 INTRODUCTION

Investors are the real owners of a company but the power of management of the company is vested in the Board of directors. This may, sometimes, lead to abuse of power by few directors. Hence, the Central Government reserves its right to investigate the affairs of the companies, especially in the cases of alleged frauds or the oppression of the minority shareholders. In previous chapter we have seen that the Central Government is empowered to appoint inspectors to investigate the affairs of such companies, which are not complying the provision of the Companies Act, 2013, either, on its own if it is of the opinion that such investigation is required on the report of the Registrar or Inspector under section 208(i.e. report on inspection made) or in public interest. The Central Government may also appoint inspectors to investigate the affairs of a company either on the request of the concerned company on the basis of a special resolution or on the direction of the Court/Tribunal or from such members of the company having requisite numbers of shares as specified in section 213 of the Companies Act, 2013. The Central Government has established the Serious Frauds Investigation Office (SFIO), a specialized, multi-disciplinary organization to deal with cases of corporate frauds in the Act of 2013. In this chapter, appointment, functions, powers of the inspector, role of the serious fraud investigation office in serious fraud cases, follow up actions and various other provisions related with investigation are to be

1. S.210 of the Companies Act, 2013
2. subsection (2) ibid
dealt and how investigation serves as an important means to protect the investors has been discussed.

4.2 MEANING OF INVESTIGATION OF COMPANY

Investigation of a company is the process to examine the management of the company’s affairs to find out whether any irregularities have been committed or not. Under section 210 an inspector is appointed only to investigate the affairs of a company and to make a report thereon. The investigation is no more than the work of fact finding commission.³

The Companies Act, 2013 empowers the Central Government with the right to investigate the affairs of the company, especially in cases of an alleged fraud or even in the oppression of the minority shareholders. There are following three types of investigation mentioned in the Companies Act 2013:-

(i) investigation into the affairs of the companies⁴
(ii) investigation into company’s affairs in other cases⁵
(iii) investigation into the ownership of the Companies⁶

4.3 PURPOSE OF INVESTIGATION

There was, generally, a policy of non-interference in the functions of the company and also minimum interferences by the court in the management of the affairs of a company, before independence in India. In the Companies Act, 1956 many provisions incorporated to empower the Government to interfere in the affairs of the company’s function and management in order to protect the interest of the shareholders. Section 210 of the Act of 2013 gives right to members of a company to make an application for conducting investigation into the affairs of a company. While the powers to appoint inspectors and to conduct investigation and to act on the report of investigation would remain with the Central Government.

3. Ramaiya, Guide to the Companies Act (16th edn.) p. 2523, Lexis Nexis
4. S. 210 of the Companies Act, 2013
5. S. 213
6. S. 216
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.  

The purpose of investigation is to discover something which is apparently not visible to the naked eye or on the face of it. An order of investigation can, *inter alia*, be made when the Tribunal is of opinion that the persons in management are guilty of fraud, siphoning off of funds, misfeasance, mismanagement or other misconduct in carrying on the day to day affairs of the company. Section 210 to 228 of the Companies Act, 2013 empowers the Central Government to carry out the investigation of affairs of a company. The Central Government appoints inspectors for this purpose. Thus the main objective of investigation is to redress the issue of mismanagement of a company and to protect the interest of members/shareholders, debenture holders, creditors and other investors of the company.

In *Aditya Sharda v. Rangoli Texdye Pvt. Ltd.* it was held that materials *prima facie* should be available for the order of the investigation. The application disclosed that the available materials *prima facie*, conduct of the business was oppressive to the members and that the management of the company was guilty of grave irregularities causing prejudice to members and creditors of the company. The company became *de-facto*. In the premises, the appointment of an inspector did not affect the reputation and prospects of the company. The CLB (Now, Tribunal) ordered the investigation into the affairs of the company. The Central Government was directed to appoint one or more inspectors to investigate the affairs of the company and to take appropriate action on receipt of the investigation report.

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8. (2005) 123 Comp. Cas. 309 (CLB)
In *Dr. Kamal K. Dutta v. Ruby General Hospital Ltd.*, an application was made for investigation into the state of affairs of the company. The respondent directors fully explained that their conduct was not *mala fide*. The explanations were accepted by the Court as satisfactory. The Court dismissed the allegations and the application.

In *Gopalakrishna Kamath v. Mangalore Trading Association Pvt. Ltd.*, it was held that a mere statement of facts based on the reports of auditor without any corroborative evidence will not assist the Company Law Board (now, Tribunal) in framing the requisite opinion for directing investigation into the affairs of the company under section 235 of the Companies Act, 1956 (now, Section 210 of the Act of 2013). The material placed before it should be such as to satisfy the Tribunal that a deeper probe is necessary.

In *A. Ravishanker Prasad v. Prasad Production Pvt. Ltd.*, it was held that the order of investigation should not be ordered on mere suspicion or surmises. In the present case the alleged act of mismanagement were either past or concluded transactions or deliberated and appropriately dealt by the Board of directors. The order of investigation could not be made on mere suspicion or surmises without proper materials to enable the C.L.B. (now, Tribunal) to form an opinion that the affairs of the company required to be investigated.

### 4.4 TYPES OF INVESTIGATION

There are following three types of investigation mentioned in the Companies Act, 2013:

1. investigation into the affairs of the company
2. investigation into company’s affairs in other cases
3. investigation into the ownership of the company

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9. (2005) 124 Comp. Cas. 441 (CLB)
11. (2007) 135 Comp. Cas. 416 (A.P.)
In United Kingdom, there are two different forms of investigations, mentioned in their Companies Act, 1985-

(i) a confidential investigation

(ii) an investigation by inspectors

A confidential investigation is an informal, unpublished inquiry, usually conducted by Companies Investigation Branch (CIB) officials and similar to a police inquiry. An investigation by inspectors is a much more serious affair, often lasting several years.\(^\text{13}\)

**4.4.1 INVESTIGATION OF THE AFFAIRS OF THE COMPANY**

Investigation of the affairs of a company means investigation of all its business affairs i.e. profits and losses, assets including goodwill, contracts and transactions, investments and other property interests and control of subsidiary companies too. Sub-clause (a) of section 210(1) empowers the Central Government to order investigation into the affairs of a company in the following occasions-

(a) on the receipt of report of the Registrar or inspector under Section 208, or
(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated, or
(c) in the public interest

When an inquiry or inspection of books of account or other papers is made under Section 206 or section 207, the person making the inspection or inquiry may recommend further investigation into the affairs of the company. Based on the reasons for the recommendation for investigation on such report, the Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as it may direct.

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The Central Government shall also appoint one or more inspectors to investigate the affairs of a company where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of the company ought to be investigated. The Central Government may also direct to submit report thereon in such manner as prescribed.  

Under sub-clause (c) of Section 210(1) the Central Government has discretion to order an investigation into the affairs of company in public interest. In the case of a company intended to operate in modern welfare State, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are concerned. It emphasises the idea of the company functioning for the public good or general welfare of the community.

The Central Government has also set up the Serious Fraud Investigation Office (SFIO) in the ministry of corporate affairs, a specialized, multi-disciplinary organization to deal with serious cases of corporate frauds. It has come up into statutory form by section 211 of the Act of 2013. Investigation into affairs of a company by SFIO has been dealt under separate heading.

4.4.2 INVESTIGATION INTO COMPANY’S AFFAIRS IN OTHER CASES

Section 213 of the Act, 2013, deals with the investigation into company’s affairs in other cases. According to this provision, the Tribunal may pass an order that the affairs of a company ought to be investigated by an inspector appointed by the Central Government. If such an order is passed by the Tribunal, the Central Government shall appoint inspector(s) to investigate the affairs of the company in respect of such matter. Earlier in the Act of 1956, this power of Tribunal was vested in Company Law Board (CLB). The Tribunal may pass an order to investigate in the following conditions-

14. subsection (2) and (3) of section 210
(a) on an application made by not less than 100 members or members holding not less than one-tenth of the total voting power, in the case of a company having share capital or not less than one-fifth of the persons on the company’s register of members, in the case of a company having no share capital. Such application is required to be supported by evidence to show that there are good reasons for seeking an order. Earlier in the Act of 1956, the corresponding section 235 (2) required that, in case of a company having a share capital, an application to CLB for an order of investigation should be made by not less than 200 members or from members holding not less than 10% of the total voting power therein.

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that-

  (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose.

  (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

  (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager of the company.

It is necessary that before passing an order under section 213, the parties concerned shall be given a reasonable opportunity of being heard.

Now, under the Act of 2013, if Tribunal finds that any of the circumstances specified exist, it can order an investigation and Central Government shall appoint inspector(s) but under the Act of 1956, if CLB found that any of the specified circumstances existed, it was only discretionary on part of Central Government to order an investigation and appoint inspector(s).
If the report of investigation proves that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, every officer of the company who is in default and the person or persons concerned shall be punishable for fraud in the manner as provided in section 447 of the Act of 2013.16

The power of the Central Government under section 237 (now, section 213) is independent and operates without prejudice to its powers under section 235 (now, section 210). In other words, there can be simultaneous investigations under both sections, or an investigation can be ordered under section 237 if the investigation ordered by Central Government under section 235 cannot be proceeded with for some reason or the other.17

In *Barium Chemical Ltd v. Company Law Board*,18 it was held that where the order for investigation was made without proper materials and facts and formation of the opinion by the Central Government did not at all disclose any basis thereof and the denial of such allegations in the petition was evasive, it was held that the order for investigation was improper and not maintainable.19

In *re, Delhi Flour Mills Co. Ltd*.20 It was held that the allegation of uneconomic working of a company is not sufficient to invoke investigation. There must be sufficient supporting material evidence of mismanagement of affairs of the company.

In *Safia Usman v. Union of India*,21 it was held that in a petition under section 237 (corresponding to section 213 of the Act of 2013), the company and its managing

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16. Proviso of section 213 of the Act
18. (1966) 36 Comp. Cas. 639 (SC)
20. (1975) 45 Comp. Cas. 33 (Delhi)
21. (2002) 110 Comp. Cas. 710 (Ker.)
director or other directors are necessary parties and in the absence of in pleading such parties in petition, relief cannot be granted.

In *Union of India v. Mukta Arts Ltd.*,\(^22\) it was held that investigation into the affairs of a company can be ordered when the inspection report has pointed out the huge financial irregularities.

In *Jagannath Gupta & Co. Pvt. Ltd. v. Mulchand Gupta*,\(^23\) it was held that where the remedy of investigation has been chosen, winding up proceeding should not be allowed to be pursued. Where facts disclosed were grounds for investigating into affairs of the company, petition on such grounds for winding up of the company will only be treated as for collateral purpose. The winding up petition will not be maintainable.

The Supreme Court of India has observed that the Writ jurisdiction is not appropriate Forum to invoke the investigation of affairs of a company. The power to appoint an inspector to investigate the affairs of the company has to be exercised by the Central Government after preliminary scrutiny by the Registrar of Companies or the CLB (now, Tribunal) under section 234, 235 and 237 of the Companies Act, 1956 (now, section 206, 210 and 213 of the Act of 2013). The investigation cannot be executed on the basis of allegations made by one shareholder.\(^24\)

In *M. Subbbiah v. Madras Cricket Club*,\(^25\) the CLB (now Tribunal) has held that grievances of petitioners regarding induction of friends and associates of members of executive committee in the club, who have no sports background, does not fall within the ambit of section 237(b) [corresponding to section 213(b) of the Act of 2013].\(^26\)

\(^{22}\) (2007) 137 Comp. Cas. 648 (CLB)  
\(^{23}\) AIR 1969 Cal. 363 (DB)  
\(^{24}\) *Sri Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy* AIR 1997 SC 2189  
\(^{25}\) (2007) 80 SCL 155  
\(^{26}\) See *supra*
The Bombay High Court in *Panther Fincap & Management Services Ltd. v. Union of India*,\(^27\) has held that when a company is found to be engaged in any business authorised by its memorandum, even though its dominant business might remain stalled by various orders of the Government, nevertheless, the company has to be treated as running its business and the requirement if section 237(b) (i) of the Act, 1956 [corresponding to section 213(b) (i) of the Act of 2013] will be satisfied.

To order investigation, requirements of section 213(b) must be complied with. On a single instance of alleged oppression, extraordinary powers could not be invoked. In *N.M. Pimpalkar v. Shree Narkeshari Prakashan Ltd.*,\(^28\) investigation was sought for an allegation that one R, who was appointed as managing director for one year in AGM, was relieved of his post within two months on obtaining resignation under pressure exerted by the chairman, but the petitioner had not been able, even prima facie, to prove how a fraud or oppression by members had been committed based on the instances cited by him which is a requirement under section 237(b) of the Act of 1956 [corresponding to section 213(b) of the Act of 2013] and on the other hand, the company proved that the resignation was voluntary and further R, though a shareholder, did not join petitioners, investigation could not be ordered.\(^29\)

In *Bank of Rajasthan Ltd. v. Rajasthan Breweries Ltd.*,\(^30\) it was held that the scope of section 237(b) of the Act of 1956 [corresponding section 213(b) of the Act of 2013] is very wide as compared to inspection under section 209A [corresponding section 207 of the Act of 207 of the Act of 2013]. Violation of the provisions of the Act noticed on inspection strengthens the ground for ordering investigation under Section 237(b) [corresponding to section 213(b) of the Act of 2013].

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\(^{27}\) (2007) 74 SCL 202  
\(^{28}\) (1998) 17 SCL 259  
\(^{30}\) (2007) 79 SCL 395 CLB, New Delhi
4.4.3 INVESTIGATION OF OWNERSHIP OF A COMPANY

Section 216 of the Act empowers the Central Government to investigate the ownership of a company when satisfied that there is good reason to do so. It may sometimes become necessary in public interest for the Central Government to know the persons who are financially interested in a company and who control the policy or materially influence it.\(^{31}\) It provides that where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons-

\(a\) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or

\(b\) who are or have been able to control or to materially influence the policy of the company.

The Central Government is also empowered to appoint one or more inspectors by sub-section (2) of the section 216, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes of determining the true person who are or have been financially interested in the success or failure, whether real or apparent, of the company who are or have been able to control or materially influence the policy of the company.

Similar provisions are also found in the section 442(1) of UK Companies Act, 1985 where the appointment of inspector(s) is done by the Secretary of State, if satisfied that there is good reason to do so with respect to the company, for the purpose of determining the true person who are or have been financially interested

in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.

4.5 SCOPE OF INVESTIGATION

The Central Government may also define the scope of the investigation by inspector with respects to the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures. The inspector may also investigate whether there are any secret arrangements or understandings observed in practice, even though they may not be legally binding. The inspector may also, with the prior approval of the Central Government, investigate the ownership of other connected companies such as subsidiary, holding and the associates.

In Gauri Shankar Kayan v. East India Investment Co. Pvt. Ltd., investigation was not ordered when ostensible ownership of shares and real control of company vest in different persons. There was no case made out to order an investigation as the entire estate was controlled by one person only.

In Bakhtawar Construction Co. Pvt. Ltd. v. Blossom Breweries Ltd., it was alleged that the names of shareholders given by the company were fictitious, non-existent or benami and that the Registrar for Shares & Securities had not complied with the provisions of law in processing the applications for shares, their allotment and transfers where applicable and urged that an investigation under section 247(1A) [corresponding to section 216(2) of the Act of 2013] would help to find out the relevant facts about the true owner of the shares. The CLB (now, Tribunal) dismissed the petition on the ground that it had been instituted purely on unfolded appreciations and suspicion. The power of investigation under section 216(2) could be invoked *bona fide* in public interest only.

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32. sub section (3) of the section 216
33. (2005) 128 Comp. Cas. 145 (CLB)
34. (1997) 24 CLA 211 (CLB)
4.6 INVESTIGATION BY POLICE NOT BARRED BY THE PROVISIONS OF COMPANIES ACT

The nature and scope of investigation to be conducted under Sections 235 to 242 of the Companies Act, 1956 [now, Section 210 to 229 of the Act of 2013] is different from the nature and scope of the investigation to be conducted by the Police. An investigation under these sections of the Companies Act is not an investigation of a criminal case. The purpose of investigation under the Companies Act is only to streamline the working of the company. The provisions of the Companies Act do not create any bar against an investigation by a Police officer if cognizable offences punishable under the Indian Penal Code, were suspected to have been committed in the affairs of the company.35

4.7 WHO CAN APPLY FOR INVESTIGATION OF THE COMPANY?

As stated earlier, Central Government is empowered by Section 210 of the Act of 2013 to pass an order to investigate into the affairs of a company in following circumstances-

(i) on the receipt of a report of the Registrar or inspector under section 208;

(ii) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(iii) in public interest,

The Central Government has discretion to order investigation as the expression used is “may” in the Section 210, whereas under Section 237(a) (i) of the 1956 Act it was binding on the Central Government to appoint inspectors to investigate when company passed such special resolution.

Section 210(2) further provides that it is mandatory for the Central Government to order an investigation into the affairs of a company if there is order by a Court or a Tribunal directing that the affairs of a company ought to be investigated.

In this way, the following person can apply for the investigation of the affairs of the company:

(a) Registrar of Company/Inspector
(b) Members of the company
(c) Company, by passing special resolution
(d) The Court/Tribunal- by order
(e) Central Government

4.7.1 REGISTRAR OF COMPANY/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.

On such a report having made, the Central Government may appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as it may direct.
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.  

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. 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.

4.7.2 MEMBERS OF THE COMPANY

Under Section 213 of the Act of 2013, members of the company can apply to the Tribunal for the investigation of the affairs of the company. The Tribunal is empowered to pass order for investigation by the inspector(s) appointed by the Central Government. The Central Government is bound to appoint inspector(s) to investigate such company. The Tribunal may pass an order for such investigations in the following conditions-

(i) on an application made by not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or not less than one-fifth of the persons on the company’s register of members, in the case of a company having no share capital.

37. S. 207 of the Act  
38. s. 206(1) of the Act of 2013
An application as such need to be supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company.

(ii) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(a) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(b) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(c) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

It is necessary that before passing an order under Section 213, the parties concerned shall be given a reasonable opportunity of being heard 39.

If the report of the investigation proves that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447. 40

39. S.213
40. Proviso of section 213 of the Act
4.7.3 COMPANY, BY PASSING SPECIAL RESOLUTION

Under Section 210(1) (b), the Central Government may order investigation into affairs of a company on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated. The Central Government shall appoint inspector(s) to investigate such company in such manner as may be directed. For passing an order for investigation, it is not necessary that a proceeding be pending before the court; even a petition simplicities can be entertained.\(^{41}\)

4.7.4 THE COURT/TRIBUNAL

A Court or Tribunal is empowered to pass the order of investigation if it is necessary to do so. Under Section 210(2), it is mandatory for the Central Government to order an investigation into the affairs of a company if there is such order by a Court or a Tribunal directing that the affairs of a company ought to be investigated.

The Central Government shall appoint one or more competent person(s) as inspector(s) to investigate such company in such manner as may be directed and to report thereon. It is not necessary that a proceeding is pending before the court or the Tribunal, for passing an order for investigation under this section.

The object of an investigation under this section is to discover something which is not apparently visible to the naked eye\(^ {42}\). Where a petition discloses merely facts which are apparent from the balance sheet of the company, an investigation will not be ordered At least prima facie evidence should exist concerning circumstances which would lead to the conclusion that an investigation was necessary.

Under section 237 (now, section 213), the power of the Central Government is independent and operates without prejudice to its powers under section 235 (now, section 210). In other words, there can be simultaneous investigations under both sections, or an investigation can be ordered under section 237 if the investigation

\(^{41}\) *re Delhi Flour Mills Co. Ltd. (1975) 45 Comp. Cas.33*

\(^{42}\) *Ramaiya, Guide to the Companies Act (16th edn.) p. 2529, Lexis Nexis*
ordered by Central Government under section 235 cannot be proceeded with for some reason or the other.  

The court has no power to appoint an inspector; it can only make an order directing the Central Government to do so. The judicial conscience must be satisfied that there has been mal-administration in the affairs of the company.

The Gujarat High Court has expressed opinion that the legislature has conferred wide jurisdiction on the court to entertain a petition under the section 237(a) (ii) of the Act 1956 [now, section 210(2)]. In fact, the power of the Central Government to appoint an inspector *suo motu* under section 237(b) is limited to its subjective satisfaction in respect of one or other matters contained in three sub-clauses of clause (b). The legislature in its wisdom has not put any such condition before the court can make an order, though the court may in its wisdom expect *prima facie* proof of some of these conditions on the subjective satisfaction of which the Central Government would appoint an inspector, before directing the Central Government to appoint an inspector. While conferring jurisdiction on the court to direct the Central Government to appoint an inspector, the legislature has not thought fit to circumscribe the discretion or jurisdiction in any manner. It would, therefore be utterly inappropriate to curtail or circumscribe or fetter the jurisdiction of this court by reading into the section something which is not there.

4.7.4.1 **LOCUS STANDI- PERSON HAVING LEGAL RIGHT ONLY MAY APPLY**

Though the section 237(a) (ii) of the Act 1956 [now, section 210(2)] is couched in very wide terms, a person having no interest in or concern with the company as a shareholder, creditor or otherwise has no *locus standi* to apply to the Court for an order under this sub-section of section 210 of the Act of 2013. Though Section 237 [now, section 210(2)] is in a very wide language, the basic limitation is that the

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43. *Id.*
44. *Deo Dutt Purshottam Patel v. Alembic Glass Industries Ltd.*, (1972) 42 Comp. Cas. 63 (Guj)
45. *Id.*
46. *Purie (V.V.) v. E.M.C. Steel Ltd.*, (1980) 50 Com. Cases 127 (Del)
Courts will not entertain action on behalf of private parties to enforce the observance of public rights and duties unless they have a personal interest in the matter and unless their rights and interests are in some way affected, is implicit in the interpretation of the section. The section should be so interpreted as to enable relief to be obtained only by a person whose rights have been affected by the manner in which the affairs of the company have been conducted or accounts maintained and has therefore a grievance in the eye of law for which he seeks relief from the Court.47 A creditor who is unable to move the Central Government under Section 235 (now, section 210) of the Act, a member who though aggrieved is unwilling to move the Central Government or unable to fulfill the requirements of Section 236 of the Companies Act, 1956 (Now, section 214 of the Act of 2013) and hence unable to move the Central Government, the members who approach the Central Government under Sections 210 and 213 are aggrieved by the Government’s rejection of their applications, the company which wants an investigation but is unable to have a Special Resolution passed are some of the illustrations of persons who would be able to move the Court under Section 213 of the Act of 2013.

In Barium Chemical Ltd. v. Company Law Board,48 it was held that the provisions of Sections 235 to 237 are not violating the Article 14 of the Constitution of India. An incorporated company under the Companies Act is not a citizen and cannot, therefore invoke the provision of Article 14 or 19 of the constitution of India.

The Tribunal may also pass an order to the Central Government to investigate the affairs of a company. This has been discussed in Para. 4.4.2 (supra).

A new provision has been added in the section 221 of the Companies Act, 2013 that empowers Tribunal to freeze assets of company under inquiry or investigation for period not exceeding 3 years.

48. AIR 1967 SC 295
4.7.5 CENTRAL GOVERNMENT

Under sub-clause (c) of Section 210(1) the Central Government is empowered to order to investigate the affairs of a company. The Central Government has discretion to order an investigation into the affairs of company ‘in public interest’. This is a new provision stating the clear mandate of the Central Government to encourage the functioning of the companies in modern welfare State. The term public interest has a wide meaning and mainly concerns here with the common interests of the investors of the company and its management.

In *N.R. Murthy v. Industrial Development Corporation of Orissa Ltd.*, 49 it was held that a company intended to operate in modern welfare State, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are concerned. It emphasises the idea of the company functioning for the public good or general welfare of the community.

4.7.5.1 PRE-REQUISITES TO MAKING AN ORDER BY THE CENTRAL GOVERNMENT

Prior to making an order for investigation the Central Government must be satisfied that the circumstances mentioned in Section 237(b) [now, section 213] exist. Section 237 does not allow the Central Government to take arbitrary decision in making an order for investigation of a company. The existence of the circumstances is a condition fundamental to the forming of an opinion. If the existence of the circumstances is challenged the Central Government has to prove at least *prima facie* that the circumstances exist. In case of contrary, the action of the Central Government in directing investigation would be *ultra vires* the Act. The formation of the opinion might be the subjective satisfaction of the Central Government but the materials leading to the formation of such opinion must exist and if challenged in Court it must be proved to exist.50

49. (1977) 47 Comp. Cas. 389 (Ori)
In *Kasturi and Sons Ltd. v. Sporting Pastime India Ltd.* the company did not have a whole time Director, or a Manager in accordance with Section 269 of the Companies Act, 1956. Even the Company did not have a Company Secretary and the company being a public company did not have three directors on its Board as required under Section 252 of the Companies Act, 1956. These irregularities and violations of the Act caused prejudice to the company and its members. The state of affairs of the company warranted an investigation into its affairs to find out who were guilty of irregular conduct of the affairs of the company. The facts and materials were sufficient to form a prima facie opinion in terms of Section 237(b)(i) of the Companies Act, 1956 that the company’s day to day management was conducted in a manner oppressive to the minority shareholder which warranted the central Government to appoint inspectors to investigate the affairs of the company.

In *IFCI Ltd. v. Usha(India) Ltd.*, the investigation under Section 237(b) [now, section 213 of the Act of 2013] is not itself, is only a means to find out the full facts of the acts complained of. In this case, the Loan amount advanced by the petitioner financial institutions was siphoned out. The siphoning off of huge amounts by fraudulent manner by the company was also indicated by the income tax authorities. Without investigation under Section 237 (b), it would not be possible to discover true and correct facts and modus operandi adopted by the respondents in cheating the petitioners and siphoning off the public money. It was held that the Central Government should appoint inspectors for the enquiry and take appropriate action on the enquiry report.

### 4.7.5.2 CAN CENTRAL GOVERNMENT EXERCISE THE POWER OF INVESTIGATION SUO MOTU?

The Central Government can exercise power under Section 237 (now, section 216) *suo motu* but this is circumscribed by the conditions laid down in clauses (i) to (iii) of Section 237(b) [now, clauses (i) to (iii) of Section 213(b)]. This power of the

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51. (2007) 139 Comp. Cas. 623 (CLB)
52. (2006) 129 Comp. Cas. 534 (CLB)
Central Government has, now conferred to Tribunal. In a complaint of oppression of minority by the majority shareholders, it was held that remedy would not be available merely because minority feels aggrieved about the manner of carrying on affairs of the company. The Court will look into the allegations relating to fiduciary duties. Mere allegation of mismanagement is not sufficient for an order under this section.53

4.8 GUIDELINES FOR ORDERING INVESTIGATION INTO AFFAIRS OF THE COMPANY

In exercising the discretionary powers under section 210(1)(c), the Central Government, while examining each case on its merit, applies certain tests which are calculated to ensure that a substantial and worthwhile basis exists, warranting investigation. Where the allegations are more of a recriminatory nature arising out of factional fights between two or more predominant groups of shareholders, the Government will not ordinarily lend itself to be party to such disputes. In other cases, based on the relevant provisions of the company law or any law in force, the following objective may generally form the prerequisite for ordering of an investigation.

- Where an inspector can bring to light any major contravention of company law or any other law on the basis of which necessary corrective or remedial measure can be applied.
- Where the application of such measures alone will be enough to lend succor so as to bring them in conformity with the accepted principles and standards of good and efficient management.
- Where the allegations bring out clearly or, by implication, a charge of irregular accounting, the truth of which can be established only by the analysis of the books by a qualified chartered accountant54.

4.9 APPOINTMENT OF INSPECTOR FOR INVESTIGATION

The Central Government appoints inspector(s), once decided to investigate the affairs of a company. Section 210 states that the Central Government appoints inspectors to investigate into the affairs of a company in following circumstances:

(i) on the receipt of a report of the Registrar or Inspector under section 208;

(ii) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(iii) in public interest,

(iv) when a Court or a Tribunal passes an order that the affairs of the company ought to be investigated.

Generally a person having experiences of the conduct of the company and handling of books of record is appointed as inspector to investigate the company. But, Section 215 of the Act, 2013 disallows the appointment of a firm, body corporate or other association as an inspector. Thus only an individual is appointed as an inspector.

4.10 POWERS OF INSPECTOR

When the Central Government appoints inspector(s) to investigate the affairs of a company, they have the following powers for the smooth function during investigation under the Companies Act, 2013:

1. Power to carry investigation into affairs of the Company

2. Power to carry investigation into affairs of related companies- Section 219

3. Power to compel production of documents – Section 217

4. Power to examine on oath

5. Power to take down notes of examination in writing

6. Power of seizure of documents

7. Power to seek support from other authorities
8. Power to seek evidence in other countries

4.10.1 POWER TO CARRY INVESTIGATION INTO AFFAIRS OF THE COMPANY

The Central Government defines the scope of the investigation by inspector with respects to the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with only. The inspector is required to follow up accordingly. Section 210 describes investigation into the affairs of the company which has been dealt in Para 4.3.1 whereas Section 213 deals with investigation into company’s affairs in other cases has been dealt in Para 4.3.2 of this chapter. Section 216 empowers inspector(s) to investigate the ownership of the company which has also been dealt in Para 4.3.3, *supra*.

4.10.2 POWER TO CARRY INVESTIGATION INTO AFFAIRS OF RELATED COMPANIES

An Inspector may investigate the affairs of any other body corporate which is company’s subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary. Section 219 [Earlier Section 239 of the Act of 1956] states that the inspector appointed under section 210 or section 212 or section 213 may, if thinks necessary, investigate even the affairs of another company under the same management or in the same group.

This Section empowers an inspector to investigate into the affairs of the following persons and/or bodies corporate and report on their affairs also, if he considers that such an investigation is relevant to the affairs of the company under investigation:

(a) Any other body corporate which is, or has at any relevant time been the company’s subsidiary company or holding company, or a subsidiary company of its holding company;

(b) Any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
(c) Any other body corporate, whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(d) Any person who is or has at any relevant time been the company’s managing director or manager or employee.

4.10.2.1 PRIOR APPROVAL OF CENTRAL GOVERNMENT IS NECESSARY

The Inspector is required to obtain the prior approval of the Central Government before exercising his power of investigation into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed. As a safeguard against possible abuse of his power by the inspector, it is provided by section 219. Thus when the tests of necessity and relevancy are satisfied the inspector is permitted to investigate such matters.

In *Coimbatore Spinning and Weaving Co. Ltd v. N.S. Srinivasan*\(^55\), it was held that the investigation of the affairs of a company by the inspector is not judicial or quasi-judicial act. The inspector has only to investigate the affairs of a company and report thereon so that the Central Government may take further action, if necessary. In this way, investigation by inspector is a fact finding process.

In *Swadeshi Cotton Mills Ltd. v. Swadeshi Polytax*,\(^56\) it was held that a report of the inspector made under section 239 [now, section 213 of the Act of 2013], is not to be disclosed to the public before its acceptance by the Central Government. If the Government was to pass further orders against a company or its official based on report, it may raise an occasion for the production of the document. However if it is found that the document contains revelations which affect the public interest

\(^{55}\) (1959) Comp. Cas. 97 (Mad.).

\(^{56}\) (1982) 52 Com. Cas 483
then in that event the public officer cannot be compelled to produce the document or disclose its content once privilege is claimed on this count.

**4.10.3 POWER TO COMPEL PRODUCTION OF DOCUMENTS**

Section 217 of the Act empowers inspector to compel production of documents and cast duties 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 investigation.

This Section further states that it shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—

(a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

The inspector can keep in his custody such books and papers produced, up to one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced.

If any person fails without reasonable cause or refuses to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under section 217 to produce or to furnish any information which is his duty or to appear before the inspector personally when required to do so or to answer any
question which is put to him by the inspector in pursuance of investigation or to sign the notes of any examination, he shall be punished with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.\textsuperscript{57}

\textbf{4.10.4 POWER TO EXAMINE ON OATH}

The inspector may examine on oath any of the persons referred to in sub-section (1) of Section 217 and with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally. In case of an investigation under section 212, the prior approval of the Director, Serious Fraud Investigation Office (SFIO) is sufficient.

The person making the investigation shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, regarding the discovery and production of books of account and other documents, and summoning and enforcing the attendance of persons and examining them.

There is provision of penalty if any director or officer of the company disobeys the direction issued by 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. 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.\textsuperscript{58}

\textsuperscript{57.} S.217(8)
\textsuperscript{58.} S. 217(6)
4.10.5 POWER TO TAKE DOWN NOTES OF EXAMINATION IN WRITING

Inspector is also empowered under Section 217(7) of the Companies Act, to take down, in writing, the notes of examination in relation to investigation. This Section also permits the notes of examination, when reduced to writing, to be signed by the person examined after the notes have been read over to him. Thereafter, these notes may be used as evidence against him.

4.10.5.1 PENALTY FOR REFUSAL

In case of refusal to sign the notes of examination, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.59

4.10.6 POWER OF SEIZURE OF DOCUMENTS

Section 220 of the Act also empowers an Inspector to seize the documents. This section provides that where in the course of an investigation, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may-

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

(ii) seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.

59. S. 450 of the Act
Further, inspector must return these books and papers to the company or the other body corporate or to the managing director or the manager or any other person from whose custody or power they were seized, after conclusion of the investigation. Before returning the books and papers, the inspector can take copies of, or extracts from them or place identification marks on them or any part thereof as he considers necessary. The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply *mutatis mutandis* to every search or seizure.

Here, it is important to mention that Section 220 of the Act of 2013 allows the inspector to exercise this power on his own without having to obtain the order of a Magistrate whereas under section 240 A of the 1956 Act, the inspector could exercise his powers of search and seizure after making an application to the Magistrate of First Class or, as the case may be, the Presidency Magistrate, having jurisdiction and obtaining an order for seizure of such books and papers. Thus, the Act of 2013 has made this process speedier and less technical.

**4.10.7  POWER TO SEEK SUPPORT FROM OTHER AUTHORITIES**

The inspector may with the prior approval of the Central Government seek support from the other officers of the Central Government, State Government, police or statutory authority for the purpose of inspection, inquiry or investigation. Such authorities or officers are bound to provide necessary assistance or support to the inspector.

**4.10.8  POWER TO SEEK EVIDENCE FROM OTHER COUNTRIES**

Section 217(11) provides that if the inspector has reason to believe that any evidence is or may be available in a country outside India, it may make an application to a court to issue a letter of request to a court or competent authority in such country to examine orally or otherwise a person who is supposed to be
acquainted with the facts or may be in possession of documents pertaining to the case. For this purpose the Central Government may enter into a reciprocal agreement with the government of a foreign State to assist in any inquiry or investigation under this Act or under the corresponding law in force in that State.

4.11 REPORT OF INSPECTOR

An inspector appointed for the investigation purpose is required to prepare and submit a report to the Central Government. Section 223 of the Act states that the inspector, if so directed by the Central Government, shall submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government. Every report made under section should be in writing or printed and also authenticated either-

(i) by the seal of the company whose affairs have been investigated; or

(ii) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872.

Section 223(4) further states that such report is admissible in any legal proceeding as evidence in relation to any matter contained in the report. A copy of the report made under this section may be obtained by making an application in this regard to the Central Government. These provisions do not apply to investigation report of SFIO under section 212 of the Act.

4.11.1 DELAY IN SUBMISSION OF REPORT

The provision contained in Section 223 does not fix a time for submission of the report of inspector. The failure on the part of the inspector in submitting his report within the time administratively fixed, though amounts to breach of duty on his part, does not automatically bring the investigation to an end. The authority can condone the expiry of time and further extend the time for making the report.60

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60. New Central Jute Mills Co. Ltd. v. Deputy Secretary, (1966) 36 Com. Cas. 512 (Cal)
4.12 FOLLOW UP ACTION BY THE CENTRAL GOVERNMENT ON THE INVESTIGATION REPORT OF THE INSPECTOR

The main assignment of inspector is to submit investigation report to the Central Government after duly investigation of the affairs of the company. On receipt of such report, the Central Government shall study the report and if the company is not functioning in accordance with the provisions of the Companies Act and detrimental to the investors, may take the following actions-

(a) Initiation of Criminal Prosecution
(b) Recovery of loss or property or damages
(c) Winding up of the company

4.12.1 INITIATION OF CRIMINAL PROSECUTION

Section 224(1) of the Companies Act, 2013 provides the provisions to prosecute the person(s) who is/are criminal liable. This section provides that if, from an inspector's report, made under section 223, appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.

Therefore, if the report of inspector reveals that the person has been guilty of any offence for which he is criminally liable, the Central Government, after taking such legal advice as it thinks fit, prosecute such person. In such cases, it shall be the duty of all officers and other employees and agents of the company to render to the Central Government all assistant in connection with the prosecution which they are reasonably able to give.
As mentioned earlier, investigation by police is not barred by the provisions of the Companies Act. In *S.P. Gupta v. State (NCT of Delhi)*, it was held that the nature and scope of investigation to be conducted under Sections 235 to 242 of the Companies Act, 1956 [now, Section 210 to 229 of the Act of 2013] is different from the nature and scope of the investigation to be conducted by the Police. An investigation under these sections of the Companies Act is not an investigation of a criminal case. The purpose of investigation under the Companies Act is only to streamline the working of the company. The provisions of the Companies Act do not create any bar against an investigation by a police officer if cognizable offences punishable under the Indian Penal Code, were suspected to have been committed in the affairs of the company.

In *B.M Bajoria v. Union of India*, it was held that prosecution of this type of contemplation by the section 242 [now, section 224 of the Act, 2013] is not violation of Article 14 of the Constitution.

In *Indian Express (Madurai) Pvt. Ltd. v. Chief Presidency Magistrate*, it was held that no show cause notice etc. is necessary for initiating a prosecution under the section.

### 4.12.2 ACTION FOR RECOVERY OF LOSS OF PROPERTY

This is another significant follow up action of the Central Government in pursuance of inspector’s report. Section 224(3) states that where from the report of the inspector, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or anybody corporate whose affairs have been investigated-

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or

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61. (2006) 132 Comp. Cas. 402 (Delhi)
63. (1972) 42 Com. Cas. 338, 347 (Del)
64. (1974) 34 Comp.Cas. 106 (Mad.)
(b) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,

The Central Government may itself bring proceedings for winding up in the name of such company or body corporate. In such proceedings the report of inspector is treated as admissible as evidence. The Central Government shall be indemnified by the company against any cost or expenses incurred by it or in connection with any proceeding bought by it.65

4.12.3 WINDING UP OF THE COMPANY

If the inspector’s report reveals that-

(a) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(b) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members,

The Central Government, unless the company is already being wound up, may cause taking of the following action, by a person authorised by the Central Government namely-

(i) present a petition to the Tribunal for the winding up of the company or body corporate on the ground that it is just and equitable to do so; or

(ii) make an application for order under section 241 of the Act for grant of relief against oppression or mismanagement of the company; or

(iii) make an for winding up as well as make application for relief under section 241 of the Act.66

65. subsection (4) of S. 224.
66. S. 224(2) of the Act
4.13 EXPENSES OF INVESTIGATION

It was desirable that the Central Government should have power to effect recovery of costs of investigation instituted *suo motu* or on the report of the Registrar from the company or such other party, as it thinks fit. Now, the expenses of investigation by an inspector appointed by the Central Government and any other incidental other than expenses of inspection under section 214 are paid by the Central Government. In other investigations, the Central Government is reimbursed.

Section 225 provides that the expenses of, and incidental to, an investigation by an inspector appointed by the Central Government (other than expenses of inspection under section 214) are to be defrayed in the first instance by the Central Government. But the Central Government is entitled to be reimbursed by the following persons, namely:

(i) any person who has been convicted on a prosecution instituted in pursuance of the report or required to pay damages as a result of the report.

(ii) the company or body corporate in whose name proceedings are brought. The company is bound to reimburse the Central Government, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings.

(iii) any company, body corporate, managing director or manager dealt with the report of the inspector under section 224, when as a result of the investigation, a prosecution has been instituted

(iv) any applicant who applied for the investigation under section 213 and inspector was appointed. It is the discretion of the Central Government to claim reimbursement from such applicant.

Any amount for which a company or body corporate is liable as mentioned above shall constitute a first charge on the sums or property mentioned as such.
4.14 VOLUNTARY WINDING UP OF COMPANY, ETC.,
NOT TO STOP INVESTIGATION PROCEEDINGS

An investigation may be initiated notwithstanding that an application has been
made for an order for prevention of oppression or mismanagement under section
241 or the company has passed a special resolution for voluntary winding up or any
other proceeding for the winding up of the company is pending before the
Tribunal. No such investigation shall be stopped or suspended on aforesaid reason
only.67

If a winding up order is passed by the Tribunal in a proceeding, the inspector shall
inform the Tribunal about the pendency of the investigation proceedings before
him and the Tribunal shall pass such order as it may deem fit. A winding up order
does not absolve any director or other employee of the company from participating
in the investigation proceedings before the inspector or any liability arising there
from.68

4.15 PROTECTION OF EMPLOYEES DURING
INVESTIGATION

As we know that Section 217 of the Act empowers inspector to compel production
of documents and cast duties 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 investigation. Any employees
of the company may make disclosure against company during investigation, which
may lead into his dismissal or discharge or removal or reduction of rank or change
of the terms of employment to his disadvantage. Section 218 of the Act provides
safeguard to such employees of the company against evil consequences.

67. S. 226 of the Act
68. Proviso. of section 226.
Despite above, if the company or body corporate proposes to dismiss or discharge or removal or reduction of rank or change of the terms of employment to his disadvantage then the company must take approval of the Tribunal of the action proposed to be taken, it must send a notice thereof to the employer. If the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned. If the company, other body corporate or person concerned does not receive any notice of objection from the Tribunal within thirty days of making of previous application of the action proposed against the employee, then, the company, other body corporate or person concerned may proceed to take the action proposed against the employee.

If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of the prescribed fees. The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.

4.16 POWER OF TRIBUNAL IN FREEZING OF ASSETS OF COMPANY ON INQUIRY AND INVESTIGATION

Under section 221, the Tribunal may, by order prohibit the company from removing, transferring or disposing its funds, assets, properties during the specified period not exceeding three years. Tribunal may also impose appropriate conditions or restrictions upon such transfer, removal or disposal of the funds, assets or properties. The Tribunal may pass such orders-

(i) on a reference made to it by the Central Government, or

(ii) in connection with any inquiry or investigation into the affairs of a company, or

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69. subsection (3) of the S.218
(iii) on any complaint made by such number of members as specified under section 244(1), or

(iv) on any complaint made by a creditor having one lakh amount outstanding against the company or

(v) on any complaint made by any other person

There should be a reasonable ground to believe that the funds, assets or properties of the company may be transferred, removed or disposed in a manner prejudicial to the interests of the company or its shareholders or creditors or in public interest.

In case of contravention of the order of the Tribunal, there is the provision of stringent punishment. Such default company shall be held liable to fine which shall not be less than rupees one lakh but which may extend to rupees twenty five lakhs. Every officer of the company who is in default shall be punishable –

(i) with imprisonment for a term which may extend to three years, or

(ii) with fine which shall not be less than rupees fifty thousand but may extend to rupees five lakh, or

(iii) with both. 70

4.17 IMPOSITION OF RESTRICTIONS UPON SECURITIES

Under section 222, the Tribunal is empowered to impose restrictions upon securities of the company. Where it appears to the Tribunal, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

70. S. 221(2)
In case of contraventions, where securities in any company are issued or transferred or acted upon, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-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 twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

4.18 INVESTIGATION OF FOREIGN COMPANIES

Section 228 of the Act states that all the provisions of Chapter XIV shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies, as well.

4.19 INVESTIGATION BY SERIOUS FRAUD INVESTIGATION OFFICE (SFIO)

Section 211 of the Companies Act, 2013 provides that the Central Government shall constitute the Serious Fraud Investigation Office (SFIO). Accordingly, the Central Government has also set up the Serious Fraud Investigation Office (SFIO) in the ministry of corporate affairs. This is a specialized, multi-disciplinary organization to deal with serious cases of corporate fraud. This was also a major recommendation made by the Naresh Chandra Committee which was set up by the Government on 21 August 2002 on corporate governance.

Headquarters of this office is located in New Delhi, with field offices located in major cities throughout India. The SFIO is headed by a Director not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with the matters relating to corporate affairs and also consist of experts from various disciplines. The SFIO will only deal with investigation of corporate frauds characterized by

(a) Complexity and having inter- departmental and multi-disciplinary ramifications.
(b) Substantial involvement of public interest in terms of monetary
misappropriation or in terms of number of persons affected and
(c) The possibility of investigations leading to or contributing towards a clear
improvement in systems, law of procedure\textsuperscript{71}.

The other experts are appointed by the Central Government from amongst persons
of ability, integrity and experience in the field of banking, Corporate Affairs,
Taxation, Forensic audit, Capital Market, Information Technology, Law, or Other
fields as required\textsuperscript{72}.

\section*{4.20 ROLE OF SERIOUS FRAUD INVESTIGATION
OFFICE}

SFIO, in following circumstances, investigate into the affairs of a company when
the Central Government assigns\textsuperscript{73}–

(a) on receipt of a report of the Registrar or inspector under section 208 where
further investigation into the affairs of the company is necessary;
(b) on intimation of a special resolution passed by a company that its affairs are
required to be investigated;
(c) in the public interest; or
(d) on request from any Department of the Central Government or a State
Government,

Director of SFIO, may designate such number of inspectors, as he may consider
necessary for the purpose of such investigation and such investigating officer have
the power of the inspector according to section 217 of the Act\textsuperscript{74}. Hence, inspectors
may also be empowered to investigate the affairs of –

\begin{itemize}
\item \textsuperscript{71} Ramaiya, \textit{Guide to the Companies Act}, 16\textsuperscript{th} edn. p.2525, Lexis Nexis
\item \textsuperscript{72} Please refer, further, the Article of author written with guide Prof.(Dr.) Tabrez Ahmad,
“Role of Serious Fraud Investigation Office (SFIO) in Protection of Investor’s Interest”:
An Overview, \textit{AD VALOREM}, Vol.1 Issue III (Jul-Sep 2014)
\item \textsuperscript{73} S. 212(1)
\item \textsuperscript{74} S. 212(4)
\end{itemize}
(a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;

(b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

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

(d) any person who is or has at any relevant time been the company's managing director or manager or employee, he shall investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company.75

4.21 THE CASE SHALL NOT BE INVESTIGATED BY OTHER DEPARTMENT WHEN ASSIGNED TO SFIO

In order to bring integrity and acceleration in investigation in serious corporate frauds, when any case has been assigned by the Central Government to the SFIO for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to SFIO.76

The company and its officers and employees, who are or have been in employment of the company, shall be responsible to provide all information, explanation,
documents and assistance to the investigating officer as he may require for conduct of the investigation. SFIO shall conduct the investigation in the manner and follow the procedure provided in chapter XIV of the Companies Act, 2013 and submit its report to the Central Government within such period as may be specified in the order.

4.22 POWERS OF SFIO

As we know that the SFIO deals only with serious cases of corporate fraud, when it appoints any person as investigating officer to cause the affairs of any company to be investigated, such person enjoys with certain powers during investigation. Section 212(4) of the Act prescribed the powers of the investigating officer. It states that such investigating officer shall have the power of the inspector under section 217 of the Act. It means such investigating officer has the following powers-

(a) Power to compel production of documents
(b) Power to examine on oath
(c) Power to take down notes of examination in writing
(d) Power of seizure of documents
(e) Power to seek support from other authorities
(f) Power to seek evidence in other countries

These powers of inspector have already been discussed (supra). In addition to these, the Director or Additional Director or Assistant Director of SFIO also has the power to arrest the accused, if authorised by the Central government.  

4.23 POWER OF SFIO TO ARREST THE ACCUSED

Under Section 212(8) of the Act, Director, Additional Director or Assistant Director of SFIO, if authorized by Central Government by general or special law,
may arrest such person, who is found guilty of cases of fraud as mentioned in Section 212(6) which are as below-

<table>
<thead>
<tr>
<th>Section</th>
<th>Particulars/nature of offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>7(5)</td>
<td>Furnishing of false or incorrect information or suppression of any material information in any document required to be filed with the Registrar at the time of incorporation of company.</td>
</tr>
<tr>
<td>7(6)</td>
<td>If at any time after incorporation of company it is proved that the incorporation was obtained by furnishing false or incorrect information or suppressing any material information, the first directors and the persons making declaration under clause (b) of subsection (1).</td>
</tr>
<tr>
<td>34</td>
<td>If a prospectus issued, circulated or distributed includes any misleading or false statement or where any inclusion or exclusion is likely to mislead, the person authorizing the issue of such prospectus.</td>
</tr>
<tr>
<td>36</td>
<td>Making of any statement, promise or forecast knowingly or recklessly which is false, deceptive or misleading or deliberately conceals any material fact to induce another person to invest money into any security.</td>
</tr>
<tr>
<td>38(1)</td>
<td>Making or abetting the making of any application in a fictitious name for acquiring securities of any company, making multiple applications by using different combinations of his name or surname or otherwise fraudulently inducing the company to allot or register any transfer of securities to him or to any other person in fictitious name.</td>
</tr>
<tr>
<td>46(5)</td>
<td>If a company with an intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crore whichever is higher and every</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>56(7)</td>
<td>Any depository or depository participant guilty of transferring any shares with intent to defraud a person.</td>
</tr>
<tr>
<td>66(10)</td>
<td>If any officer of the company is guilty of knowingly concealing the name of any creditor entitled to object to the reduction of share capital, knowingly misrepresents the debt due to any creditor or abets or is privy to any such concealment or misrepresentation.</td>
</tr>
<tr>
<td>140(5)</td>
<td>If any auditor is guilty of acting in a fraudulent manner and against whom any final order has been made by the Tribunal.</td>
</tr>
<tr>
<td>206(4)</td>
<td>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.</td>
</tr>
<tr>
<td>213</td>
<td>Every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs.</td>
</tr>
<tr>
<td>229</td>
<td>Furnishing false statement, mutilation or destruction of documents in respect of a company under investigation or inspection.</td>
</tr>
<tr>
<td>251(1)</td>
<td>Fraudulently making an application for removal of name of a company to the Registrar with intent to evade a liability or to deceive its creditors, the person in-charge of management of the company.</td>
</tr>
<tr>
<td>339(3)</td>
<td>If in the course of winding up of a company, it is found that any business of the company is being carried on with intent to defraud its creditors or any other persons, every person who was knowingly a party to the carrying on of the business in the manner aforesaid.</td>
</tr>
</tbody>
</table>
| 448    | Any person makes a false statement-  
(i) which is false in any material particulars, knowing it to be false; or |
These activities come under the ambit of fraud as well as cognizable offence and punishable under section 447 of the Act. Every person arrested shall, as soon as possible, be intimated the ground of arrest and within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction; provided that the period of twenty-four hours shall be excluded the time necessary for the journey from the place of arrest to the Magistrate's court. 78

No person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

A person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs. The Special Court shall not take cognizance of any offence except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

4.24 SUBMISSION OF INVESTIGATION REPORT BY SFIO

SFIO has to submit the investigation report, on completion of the investigation to the Central Government. If the Central Government so desire, SFIO shall also

78. S. 212(6)
submit interim report before submission of final investigation report. The detail
and final report is to be submitted, in due course of time, after completion of
investigation.

4.24.1 SUBMISSION OF INTERIM INVESTIGATION REPORT

The Central Government if so directs, the SFIO will submit an interim report to the
Central Government within stipulated time. This report may contain the
preliminary findings related with seriousness, wrongdoers of the fraud etc.

4.24.2 SUBMISSION OF FINAL INVESTIGATION REPORT

SFIO shall submit the detail and final investigation report on completion of the
investigation to the Central Government. A copy of the investigation report may be
obtained by any person concerned by making an application in this regard to the
court.

On receipt of the investigation report, the Central Government will, after
examination of the report (and after taking such legal advice, as it may think fit),
may direct the SFIO to initiate prosecution against the company and its officers or
employees, who are or have been in employment of the company or any other
person directly or indirectly connected with the affairs of the company. The
investigation report filed with the Special Court for framing of charges shall be
deemed to be a report filed by a police officer under section 173 of the Code of

In case, SFIO has been investigating any offence under this Act, any other
investigating agency, State Government, police authority, income-tax authorities
having any information or documents in respect of such offence shall provide all
such information or documents available with it to the SFIO.

The SFIO will also share any information or documents available with it, with any
investigating agency, State Government, police authority or income tax authorities,
which may be relevant or useful for such investigating agency, State Government,
police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.\(^7\)

### 4.25 CRIMINAL LIABILITIES OF COMPANY IN CASES OF FRAUD

The following corporate activities have been regarded as fraud and kept under the category of cognizable as well as non-bailable offences and punishable under section 447 of the Companies Act, 2013.

(a) *Furnishing False or incorrect information during registration of company*- If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company\(^8\).

(b) *Incorporation of company by fraudulent means*- Any company incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action\(^9\).

(c) *Untrue or Misleading Prospectus*- When a prospectus issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead\(^10\).

(d) *Inducing a person to enter into financial matter*- Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into

\(^{79}\) S. 212(17)  
\(^{80}\) S. 7(5)  
\(^{81}\) S. 7(6)  
\(^{82}\) S. 34
(i) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting securities; or

(ii) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(iii) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution.

(e) Any person who makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name.

(f) If a company with intent to defraud issues a duplicate certificate of shares.

(g) Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares.

(h) If any officer of the company knowingly conceals the name of any creditor entitled to object to the reduction; knowingly misrepresents the nature or amount of the debt or claim of any creditor; or abets or is privy to any such concealment or misrepresentation as aforesaid.

(i) When the auditor of the company has acted fraudulently or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, such auditor are held liable for fraud and may be removed from office.

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83. S. 36
84. S. 38(1)
85. S. 46(5)
86. S. 56(7)
87. S. 66(10)
88. S. 140(5)
(j) Where business of a company has been or is being carried on for a fraudulent or unlawful purpose, or if the grievances of investors are not being addressed, every officer of the company who is in default shall be held liable for fraud.\(^89\)

(k) if after investigation it is proved that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be held liable of fraud.\(^90\)

(l) **Furnishing false statement mutilation, destruction of documents**-
Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

(i) **Destroys, mutilates** or falsifies, or conceals or tampers or unauthorized removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;

(ii) makes, or is a party to the making of, a **false entry** in any document concerning the company or body corporate; or

(iii) provides an explanation which is false or which he knows to be false.\(^91\)

(m) **Fraudulent application for removal of name**- Where it is found that an application by a company under sub-section (2) of section 248 has been made with

\(^89\) S. 206(4)
\(^90\) S. 213
\(^91\) S. 229
the object of evading the liabilities of the company or with the intention to deceive
the creditors or to defraud any other persons, the persons in charge of the
management of the company shall, notwithstanding that the company has been
notified as dissolved—

(i) be jointly and severally liable to any person or persons who had incurred
loss or damage as a result of the company being notified as dissolved; and

(ii) be punishable for fraud as per section 447.92

(n) Fraudulent conduct of business- If in the course of the winding up of a
comp any business of the company has been carried on with
intent to defraud creditors of the company or any other persons or for any
fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or
the Company Liquidator or any creditor or contributory of the company, may, if it
thinks it proper so to do, declare that any person, who is or has been a director,
manager, or officer of the company or any persons who were knowingly parties to
the carrying on of the business in the manner aforesaid shall be personally
responsible for fraud.93

(o) False Statement94- any return, report, certificate, financial statement,
prospectus, or other document required by, or for the purposes of any of the
provisions of this Act or the rules made there under, any person makes a statement-

(i) which is false in any material particulars, knowing it to be false; or

(ii) which omits any material fact, knowing it to be material.

4.26 PUNISHMENT FOR FRAUD IN THE COMPANIES
ACT

It is worth to discuss here the punishment of various frauds prescribed by the
Companies Act, 2013. The Act prescribes punishment for following frauds-

92. S.251
93. S. 339
94. S. 448
(a) any person who is found to be **guilty of fraud**, is punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.\(^95\)

(b) where the **fraud in question involves public interest**, the term of imprisonment shall not be less than three years.

(c) **Giving false statement** in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act, shall be punishable as per section 447.\(^96\)

(d) **Giving intentionally false evidence** upon any examination on oath or solemn affirmation, authorised under this Act; or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company or otherwise in or about any matter arising under this Act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.\(^97\)

(e) **Punishment where no specific penalty or punishment is provided**\(^98-\) If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which

\(^{95}\) S. 447  
\(^{96}\) S. 448  
\(^{97}\) S.449  
\(^{98}\) S. 450
may extend to one thousand rupees for every day after the first during which the contravention continues.

(f) **Punishment in case of repeated default**- If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence. 99

### 4.27 EVALUATION OF THE ROLE OF SFIO

SFIO is a specialist organisation that investigates only the most serious type of corporate frauds. It has been empowered by the Companies Act, 2013 to investigate all the matters pertaining to frauds occurred in any company where the investors lost their hard earned money. An inspector can examine on oath any person involved in the fraud and may thereafter be used in evidence against him. In this work of inspector, the officers of the Central Government, State government, police or statutory authorities shall provide assistance to him. They enjoy 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 100:

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

Here, it is worth to mention that investigation proceedings are not judicial proceedings but only investigatory and quasi-judicial in nature 101. If any director or

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99. S. 451
100. S. 217(5)
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.

If a director or an officer of the company has been convicted of an offence under section 217, 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. The notes of examination of the person as mentioned above are to be taken down in writing and to be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him. If any person fails without reasonable cause or refuses—

(i) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty to produce; or

(ii) to furnish any information which is his duty to furnish; or

(iii) to appear before the inspector personally when required to do so or

(iv) to answer any question which is put to him by the inspector in pursuance of that; or

(v) to sign the notes of any examination referred to;

he shall be punished with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for everyday after the first during which the failure or refusal continues. 102

**Satyam Computers Scam** was investigated by the SFIO in record three months of time. This scam of worth Rs.7,200 crore and caused loss of Rs. 14,162 crore (approx.) to its investors in 2009, has happened with the help of audit firm

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102. S. 217(8)
PricewaterhouseCoopers which is big blow for corporate governance in India. The role and liability of Independent director were also held suspicious. Satyam Computer Services Ltd was founded in 1987 by B.Ramalinga Raju. The company offers information technology (IT) services spanning various sectors, and was also listed on the New York Stock Exchange and Euronext. Satyam's network has covered 67 countries across six continents. The company employed 40,000 IT professionals across development centers in India, the United States, the United Kingdom, the United Arab Emirates, Canada, Hungary, Singapore, Malaysia, China, Japan, Egypt and Australia. It was serving over 654 global companies, 185 of which were Fortune 500 corporations. Satyam has strategic technology and marketing alliances with over 50 companies. Apart from Hyderabad, it has also development centers in India at Bangalore, Chennai, Pune, Mumbai, Nagpur, Delhi, Kolkata, Bhubaneswar, and Visakhapatnam.\(^\text{103}\)

SFIO questioned the independent directors and found that allegedly at the behest of the chairman and other top executives of the IT giant, it has occurred. SFIO concluded had no knowledge about the falsification of accounts and overstated profits, which the Independent directors of Satyam were not involved in the multi-crores accounting fraud in the IT Company and were kept in the dark by the chairman.

SFIO has also investigated **Deccan Chronicle Holding Ltd (DCHL)** loan default case of Rs. 1,230 crore(approx).\(^\text{104}\) This is also Hyderabad based company, which owns the English dailies Deccan Chronicle and Asian Age, was under probe for alleged financial irregularities and failure to repay loan during 2009-11. In a report to the ministry, the SFIO has pointed to violations of several provisions of the Companies Act, 1956. The SFIO report has confirmed that the money was availed by the company's management from various banks through sale of non-convertible debentures and other commercial papers. Later, DCHL declared itself sick and

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103. Ahmad Tabrez, “Satyam Scam in the Contemporary Corporate World”, retrieved from SSRN, id. 1460022
104. The Hindu, Hyderabad, Jul 09, 2013
registered with the Board for Industrial and Financial Reconstruction (BIFR). Although the BIFR has accepted the company's plea under the Sick Industries Act, the move does not deter DCHL's lenders from taking action against the company under the Securitisation Act.

The famous **Sardha Chit Fund Scam** of West Bengal is, now, being investigated by the SFIO. The investigation was ordered by the Corporate Affairs Ministry, in 2013, following huge public outcry over the scam that duped hundreds of gullible investors by running fraudulent money-pooling schemes in the garb of chit funds. More than 60 companies, most of them from the eastern states of the country, which are believed to have cheated the public of their money, are being probed by SFIO. In its interim report, SFIO had said that companies under the scanner indulged in serious financial mismanagement besides siphoning off the funds by their promoters, who exploited regulatory gaps. There has been proliferation of innovative financial products in the market due to technological advancement and extensive use of the internet to market such products to investors. In this scam many politician are allegedly involved and investigation are still going on, till date.

### 4.28 **POWER OF SEBI TO INVESTIGATE THE TRANSACTIONS OF SECURITIES MARKET**

The Stock Exchange Board of India (SEBI) can investigate any irregularity of transaction taken place into the security market. Section 11 C of the SEBI Act, 1992 empowers the SEBI to investigate when there is reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board there under, it may, at any time by order in writing, direct any person specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

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105. The Hindu, New Delhi, April 20, 2014
4.29 DIFFERENCES BETWEEN INSPECTION AND INVESTIGATION

The primary objective of Inspection and Investigation is to check the conduct of a company as per the provisions of the Companies laws, but they differ with their nature and scope, which are as follows-

(a) Section 206 to 208 of the Companies Act, 2013 deals with Inspection of books of account, other books and papers by the Company Registrar or inspector appointed for this purpose and making of reports. It is initiated based upon the scrutiny of books of account, other books and papers, the inspecting authority need not assign any reason. The primary aim of inspection is to keep a watch over the companies to ensure that the statutory books and papers are maintained and business of the company is being managed at proper level of efficiency. On the other hand, the Central Government appoints inspectors under section 210, to investigate either on its own if it is of the opinion that such investigation is required on the report of the Registrar or Inspector under section 208 or in public interest or on the request of the company on the basis of a special resolution or on the direction of the court/Tribunal or from such members of the company having requisite number of shares as specified in section 213 of the Companies Act 2013. Section 212 also empowers the Central Government to order an investigation by SFIO under certain circumstances. Section 216 also empowers the Central Government to order investigation as to the ownership of the company. Under section 219, the inspector may, if considered necessary, investigate even the affairs of another company under the same management or in the same group.

(b) Inspection of books of account and other books and papers is not an investigation though it may lead to investigation in case anything wrong or objectionable is found during inspection. The object of inspection is to ensure that there is nothing abhorrent in the books of account and other books and papers, but investigation into affairs of the company is wider in scope. It includes investigation of all the business affairs, profit & loss, assets including goodwill, contracts and
transactions, investment and other property interests and control of subsidiary, holding and other related companies also.

(c) Inspection of books of account and other books and papers can be done either by the Registrar or by an officer authorised by the Central Government. But, investigation can be conducted by the competent persons only, appointed as inspector for investigation by the Central Government or Serious Fraud Investigation Office (SFIO).

(d) In inspection, an inspector can examine only that company for which he is so authorised by the Central Government but cannot investigate further, *suo motu*. On the other hand, in investigation, under section 239, the inspector has the power to investigate the affairs of the holding company, or the subsidiary of the company being investigated and the affairs of the managing director or the manager of the company without the approval of the Central Government and the affairs of the connected companies with the approval of the Central Government.

(e) The expenses of the inspection are borne completely by the Central Government and not recoverable. But, in investigation, the expenses, prima facie, are borne by the Central Government but under section 225 of the Act, it may be reimbursed partly or fully by the applicants in the case of investigation in accordance with any direction of the Central Government in this regard. The Central Government under section 214 of the Act, may also ask for the security deposit not exceeding rupees twenty five thousands from the applicant seeking investigation of a company.

(f) Copy of report- No company or member can ask for a copy of inspection report but a copy of investigation report may be obtained by anybody by making an application to the Central Government.

**4.30 CONCLUSION**

Though investors are the real owners of a company but the power of management of the company is vested in the Board of Directors. This may, sometimes, lead to
abuse of power by few directors as the power of management of the company are vested in few hands. Like Lord Acton has said in this regard that ‘Power corrupt; absolute power corrupt absolutely’. Hence, to avoid monopoly of Board of directors, the Central Government reserves its right to investigate the affairs of the companies, especially in the cases of alleged frauds or the oppression of the minority shareholders, to protect their interests. In previous chapter we have seen that the Central Government is empowered to appoint inspectors to investigate the affairs of such companies, which are not complying the provision of the Companies Act, 2013, either, on its own if it is of the opinion that such investigation is required on the report of the Registrar or Inspector under section 208 (i.e. report on inspection made) or in public interest.

Investigation of a company is the process to examine the management of the company’s affairs to find out whether the company is functioning according to the provisions of the Company Act and other relevant laws of the country. Investigation of the affairs of a company is the investigation of all its business affairs i.e. profits and losses, assets including goodwill, contracts and transactions, investments and other property interests and control of subsidiary companies too.

The Central Government is empowered to order investigation into the affairs of a company either on the receipt of report of the Registrar or inspector under Section 208 that has pointed out the huge financial irregularities, or on intimation of a special resolution passed by a company that its affairs are required to be investigated, or the Tribunal has passed order in the public interest. Investigation may be also carried out when there is allegation that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or any person concerned in the formation of the company or the management of its affairs have in connection therewith. The Tribunal may pass an order that the affairs of a company ought to be investigated by an inspector appointed by the Central Government. If such an order is passed by the Tribunal, it is necessary for the Central Government to
appoint inspector(s) to investigate the affairs of the company in respect of such matter.

The Central Government is also empowered to investigate the ownership of a company when satisfied that there is good reason, in public interest, to know the persons who are financially interested in the company and who control the policy or materially influence it. The Central Government, on the order of the Tribunal appoints one or more inspectors to investigate and report on matters relating to the company and its membership for the purpose of determining the true persons who are or have been financially interested in the success or failure, whether real or apparent, of the company or who are or have been able to control or to materially influence the policy of the company.

The purpose of investigation is to discover something which is apparently not visible to the naked eye or on the face of it. An order of investigation can, inter alia, be made when the Tribunal is of opinion that the persons in management are guilty of fraud, siphoning off of funds, misfeasance, mismanagement or other misconduct in carrying on the day to day affairs of the company. Thus the main objective of investigation is to redress the issue of mismanagement of a company and to protect the interest of members/shareholders, debenture holders, creditors and other investors of the company. The Central Government may also define the scope of the investigation by inspector with respects to the matters or the period to which it is to extend or otherwise.

Inspector(s), appointed by the Central Government to investigate the affairs of a company, they enjoy certain powers for the smooth function during investigation which includes power to carry out investigation into affairs of the company and its related subsidiary companies, to compel directors and its officers for the production of documents, to examine them on oath, to take down notes of examination in writing, seizure of documents, to seek support from other authorities etc. Inspector is required to prepare and submit a report to the Central Government. Under Section 223 of the Companies Act, 2013, the inspector, if so
directed by the Central Government, shall submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government. Employees of the company are protected against dismissal or discharge or removal or reduction of rank or change of the terms of employment to his disadvantage during investigation.

On receipt of such report, the Central Government studies the report and if the company is not functioning in accordance with the provisions of the Companies Act and detrimental to the investors, the follow up action taken may be initiation of criminal prosecution against such company or recovery of loss or property or damages or order for winding up of such company. There are various criminal liabilities has been provisioned in the Companies Act, 2013.

Under Section 211 of the Companies Act, 2013, the Central Government has, now, constituted the Serious Fraud Investigation Office (SFIO) in the ministry of corporate affairs. This is a specialized, multi-disciplinary organization to deal with serious cases of corporate fraud. This was also a major recommendation made by the Naresh Chandra Committee which was set up by the Government on 21 August 2002 on corporate governance. Headquarters of this office is located in New Delhi, with field offices located in major cities throughout India. The SFIO is headed by a Director not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with the matters relating to corporate affairs and also consist of experts from various disciplines. The SFIO will only deal with investigation of corporate frauds characterized by Complexity and having inter-departmental and multi-disciplinary ramifications. SFIO enjoys all the powers as provided to inspector during investigation. In addition, he has also the power to arrest the accused, if authorised by the Central Government.

It is concluded that investigation of the affairs of the company is an important means of protection of the interest of the investors. Investigation by Inspectors/SFIO can reveal the occurrence of various corporate frauds in speedy manner. SFIO is involved, when the Central Government finds that there is
allegation of serious fraud in the company. The Central Government is empowered by the Companies Act, 2013 to investigate all the matters pertaining to frauds occurred in any company where the investors lost their hard earned money. An inspector can examine on oath any person involved in the fraud and may thereafter be used in evidence against him. In this work of inspector, the officers of the Central Government, State government, police or statutory authorities are duty bound to provide necessary assistance to him. An inspector/SFIO also enjoys all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit during investigation. But it is also expected from them to work honestly and in responsible way in the investigation. Since SFIO is a Government agency and its officials are appointed by the Central Government so there is strong apprehension for its unbiased and unfair working like CBI as we often heard that the later is being used against the leaders of oppositions during investigation of any crime. Similarly the SFIO may, sometimes, be used against the rival company of the Government. Therefore, Inspector/SFIO should conduct fair investigation of any alleged corporate fraud and then they should submit the detail report to the Central Government; otherwise the share price of the company will fall sharply in a single day, in reaction, merely on this bad news, which will result into huge loss, again to investors.

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 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 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.\textsuperscript{106}

The report also states that total 139 cases were referred to SFIO for investigation up to 31 March 2013. Out of these, SFIO has submitted investigation report in 104 cases to the Ministry of Corporate Affairs till 31 March 2013. In 10 cases the order for investigation were either stayed or quashed/withdrawn as on 31 March 2013 and the remaining 25 cases are under investigation.

The report, further, states that a total of 49950 prosecutions launched under the Companies Act, were pending in various courts as on 31 March 2012 and 6062 prosecutions were instituted during the year 2012-13 against 3293 companies and their officers. Thus, in all 56012 prosecutions were pursued in the courts during 2012-13. Out of these 6542 prosecutions were disposed of and 49470 were pending at the end of the year.

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\textsuperscript{106} 57th Annual Report on the working and administration of the Companies Act, 1956, 31 March 2013, p. 53-61