

## Inspection, Inquiry and Investigation

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### Question 1

*A majority of the Board of directors of M/s High Value Infotech Ltd. have realised that some of the business activities carried out in the name of the company are not in the interest of either the company or its members. They want that the company should make an application to the Central Government to appoint an Inspector to carry out investigation and find out the whole truth. Explain the steps that should be taken to achieve the purpose and draft the application under the Companies Act, 2013.*

### Answer

1. According to section 210 (1) of the Companies Act, 2013 the Central Government may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:
  - (a) on the receipt of a report of the Registrar or inspector under section 208;
  - (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;
  - (c) in public interest.
2. According to section 210 (3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

In the given case, the majority of directors are already of the view that the affairs of the company are not conducted in a manner beneficial either to the company or to the members and want to make an application to the Central Government to appoint an inspector. Therefore, the steps to be carried out for the purpose will be as under:

- (i) Convene an Extraordinary General Meeting of members for passing the required special resolution. The provisions for convening the meeting should be complied with and the explanatory statement with the notice of the meeting must provide full details of the proposed special resolution.
- (ii) Once the special resolution is passed, a copy of it along with the copy of the notice should be filed with the Registrar;
- (iii) An application should be made under section 210 (1) to the Central Government requesting it to appoint an inspector to investigate the affairs of the company.

- (iv) The Central Government on receipt of such notice will ask for information, documents and other supporting evidence and may order an investigation only if it is of the opinion that an investigation is warranted. It may appoint one or more inspectors to investigate into the affairs of the company and to report thereon in such manner as it may direct.

**Draft Application:**

High Value InfoTech Ltd. (Address)

Date:

The Secretary,  
Ministry of Corporate Affairs,  
New Delhi

Sir,

At a meeting of the shareholders of the company held on \_\_\_\_\_ at \_\_\_\_\_, the members have passed the following resolution as a Special Resolution:

"Resolved that the Central Government be approached to appoint one or more Inspector to carry out an investigation into the affairs of the company to determine whether the activities in the name of the Company are being carried on in a manner which is against the interest of either the company or its members.

Resolved further that the Board of Directors be and is hereby authorized to make necessary application to the Central Government for this purpose and submit the necessary documents and informations as may be required by the Central Government in this regard".

The above referred special resolution was passed at an extraordinary general meeting of the company held on.....

It is, therefore, prayed that the Central Government be pleased to appoint as per section 210 of the Companies Act, 2013, an inspector to investigate the affairs of the company regarding the matters mentioned in the above resolution and communicate its decision to the company.

Yours faithfully,

For and on behalf of High Value InfoTech Ltd.

Secretary.

**Question 2**

*What are the circumstances in which an inspector appointed under section 210 of the Companies Act, 2013, can investigate into affairs of related companies also?*

**Answer**

**Investigation into affairs of related companies:** According to section 219 of the Companies Act, 2013, if an inspector appointed under section 210 or section 212 or section 213 to

### 6.3 Corporate and Allied Laws

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investigate into the affairs of a company considers it necessary for the purposes of the investigation, can also investigate the affairs of—

- (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.

#### Question 3

*What are the duties of the inspector as enumerated in section 223 of the Companies Act, 2013, in relation to his report.*

#### Answer

Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:

- (i) **Submission of interim report and final report [Sub section (1)]:** An inspector appointed under this Chapter (Chapter XIV- Inspection, Inquiry and Investigation) may, and 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.
- (ii) **Report to be writing or printed [Sub section (2)]:** Every report made under sub section (1) above, shall be in writing or printed as the Central Government may direct.
- (iii) **Obtaining copy or report [Sub section (3)]:** A copy of the above report may be obtained by making an application in this regard to the Central Government.
- (iv) **Authentication of report [Sub section (4)]:** The report of any inspector appointed under this Chapter shall be authenticated either—
  - (a) by the seal, if any, of the company whose affairs have been investigated; or
  - (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (v) **Exceptions:** Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013.

## Question 4

*Share holders of Hide and Seek Ltd. are not satisfied about performance of the company. It is suspected that some activities being run in the name of the company are not in the interest of the company or its members. 101 out of total 500 share holders of the company have made an application to the Central Government to appoint an inspector to carry out investigation and find out the true picture.*

*With reference to the provisions of the Companies Act, 2013, mention whether the shareholders' application will be accepted? Elaborate.*

## Answer

*According to the Companies Act, 2013, the Central Government under section 210 (1) may order an investigation into the affairs of the company, if it is of the opinion that it is necessary to do so:*

- (a) on the receipt of a report of the Registrar or Inspector under section 208;*
- (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated;*
- (c) in public interest.*

*According to section 210 (3) of the Companies Act, 2013, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.*

*The shareholders' application will not be accepted as under 210 of the Companies Act, 2013, Central Government may order an investigation into affairs of the company on the intimation of a special resolution passed by a company that the affairs of the company ought to be investigated and then may appoint the inspectors. Here, 101 out of total 500 shareholders of the company have made an application to the Central Government to appoint an inspector to carry out investigation but it is not sufficient as the company has not passed the special resolution.*

## Question 5

*A group of creditors of Mac Trading Limited makes a complaint to the Registrar of Companies, Hyderabad alleging that the management of the company is indulging in destruction and falsification of the accounting records of the company. The complainants request the Registrar to take immediate steps to seize the records of the company so that the management may not be allowed to tamper with the records. The complaint was received at 10 A.M. on 1<sup>st</sup> July 2015 and the ROC entered the premises at 10.30 A.M. for the search. Examine the powers of the Registrar to seize the books of the company.*

Answer

*Search and seizure - Section 209 of the Companies Act, 2013 provides that where upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of -*

- (i) a company, or*
- (ii) relating to the key managerial personnel, or*
- (iii) any director, or*
- (iv) auditor, or*
- (v) company secretary in practice if the company has not appointed a company secretary,*

*are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers—*

- (1) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and*
- (2) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.*

*According to the above provisions, Registrar may enter and search the place where such books or papers are kept and seize them only after obtaining an order from the Special Court.*

*Since in the given question, Registrar entered the premises for the search and seizure of books of the company without obtaining an order from the Special Court, he is not authorised to seize the books of the Mac Trading Limited.*