

# Chapter 4 - Inspection, Inquiry & Investigation

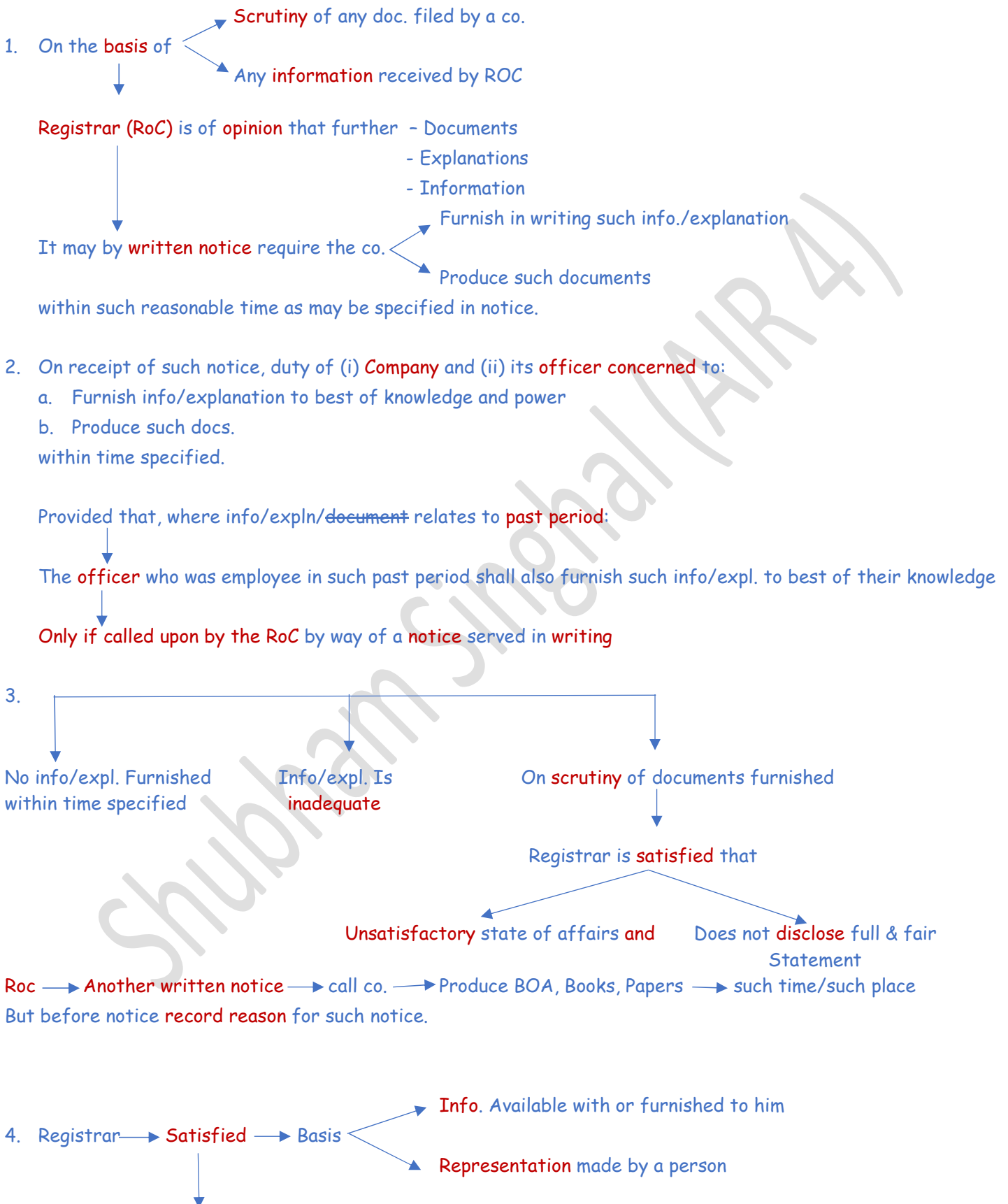
## Let's revise section numbers first

Sec No.	Name of the Section
206	Power to Call for Information, Inspect Books and Conduct Inquiries
207	Conduct of Inspection and Inquiry
208	Report on Inspection Made
209	Search and Seizure
210	Investigation into Affairs of Company
211	Establishment of Serious Fraud Investigation Office
212	Investigation into Affairs of Company by Serious Fraud Investigation
213	Investigation into Company's Affairs in Other Cases
214	Security for Payment of Costs and Expenses of Investigation
215	Firm, Body Corporate or Association Not to be Appointed as Inspector
216	Investigation of Ownership of Company
217	Procedure, Powers, etc., of Inspectors
218	Protection of Employees During Investigation
219	Power of Inspector to Conduct Investigation into Affairs of Related Companies, etc
220	Seizure of Documents by Inspector
221	Freezing of Assets of Company on Inquiry and Investigation
222	Imposition of Restrictions Upon Securities
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224	Actions to be Taken in Pursuance of Inspector's Report
225	Expenses of Investigation
226	Voluntary Winding Up of Company, etc., Not to Stop Investigation Proceedings
227	Legal Advisers and Bankers Not to Disclose Certain Information
228	Investigation, etc., of Foreign Companies
229	Penalty for Furnishing False Statement, Mutilation, Destruction of Documents



Author's Note - Penalties of this chapter is relatively important.

## Sec 206 - Power to call for information, inspect Books and Conduct Inquiries



Business of the co. is being carried on:

- Fraudulent or unlawful purpose, as:
- Not in compliance with this Act

Grievances of investor remain unaddressed

Registrar

Inform co. of the allegation  
by way of written order

Require furnishing of such info/expl.  
written in order (time specified)

Call for such inquiry as it may  
seem fit ( Reasonable O.O.B.H)

Proviso: CG may direct Roc or Inspector to carry out inquiry as if satisfied that circumstances so warrant.

Proviso: Fraud → OID → Liable U/S 447

5. CG → If satisfied that circumstance so warrant.

Direct inspection of books and papers

By inspector appointed. (Cannot direct registrar)

6. CG may

- General order
- Specific order

→ Authorise stat authority to carry such inspection.

7. Punishment - Co. and OID - Rs.1 lakh + additional fine Rs.500/day after the first

## Sec 207 - Conduct of Inspection and Inquiry

Duty of co, director, officer & other employees

- To produce such docs.
- Furnish info/expl.
- Render such assistance to

Roc

Inspector

Power of Registrar or inspector

- Make copies
- Place marks of identification as token of inspection

All powers as vested in civil court by CCP, 1908

Powers vested in Civil Court by Code of Civil Procedure, 1908: [PAOI]

- Discovery and production of BoA and other docs at specified place & time;
- summoning and enforcing the attendance of persons and

- examining them on **oath**; and
- **inspection** of any books, registers and other docs. of co. at any place.

Penalty for contravention:

1. Director/Other officers of co. - **Imprisonment** upto 1 year **AND** **fine** Rs. 25,000 to 1 lakh
2. Director convicted of offence under this section shall be deemed to have **vacated office** and shall be **disqualified** from holding office in any co.

Sec - 208 Report on Inspection Made

Registrar or Inspector → After inspection or inquiry u/s 206/207 → Report in writing to CG + Document

May **recommend further** investigation along with **reasons**

Sec 209 - Search and Seizure:

Where upon info. in possession **or otherwise**, the registrar or **inspector** has Reasonable Ground to Believe (**RGTB**) that B&P of:

Company, or

KMP/Director

Auditor

CS in Practice

are likely to be - **DAMFS**

**Destroyed**

**Mutilated**

**Altered**

**Falsified**

**Secreted**

the inspector may **after obtaining the approval of special court** :

- a. Enter (with assistance) and **search** the place where such B&P are kept
- b. **Seize** B&P as he may consider necessary after allowing co. to take copies.

Custody of seized B&P:

- **Period** not later than **180 days** from the date of seizure and thereafter return it.
- B&P may be called for a **further period of 180 days** by way of order in writing if needed again.
- **Before returning**, inspector may take **copies/extract** or place **identification marks**

Sec 210 Investigation into Affairs of Company:

1. Where **CG** is of opinion that it is necessary to **investigate** affairs of co, based on:
  - a. **Report** u/s 208
  - b. Intimation of **SR** passed by a co. that affairs ought to be investigated
  - c. in **public interest**
 it **may** order such investigation (**inv.**)
2. Where order of inv. is passed by Court/Tribunal, **CG** **shall** pass an order of inv.
3. On passing such orders, **CG** shall appoint **inspector** for the inv. and reporting to **CG**

Sec 211 Establishment of Serious Fraud Investigation Office (SFIO)

1. **CG** to establish SFIO to investigate **frauds** relating to co.
2. SFIO to be headed by "**Director**" appointed by **CG** (Officer **>= Joint Secretary** to GoI)
3. SFIO to consist of experts from various fields appointed by **CG**  
Fields such as - Audit (Forensic), Banking, Corporate Affairs, Capital Market, Taxation, Info tech, law, etc.

Sec 212 Investigation into affairs of co. by SFIO

1. Where CG is of opinion that affairs ought to be invg. by SFIO based on:
  - a. Report u/s 208
  - b. Intimation of SR passed by a co. that affairs ought to be investigated
  - c. in public interest
  - d. on req. of any dept. of CG/SG
 CG may be order, assign such invg. to SFIO and Director, SFIO to designate inspectors for invg.
2. Where a case is assigned to SFIO, no other invg. agency (CBI,IB) shall initiate invg. in respect of offence under this Act  
 In case invg. had already been initiated - It shall not be proceeded with and trf. all relevant docs to SFIO.  
 [Can Income Tax Dept continue? Yes, invg. under this Act has to halt. Others can continue]
3. SFIO to do invg. as per this chapter and submit report to CG
4. Director, SFIO shall appoint investigating officer (IO) having power of inspector (Sec 217)
5. Co./Officers and employees responsible to provide info/expl./docs to IO.
6. Offence covered within Sec 447 of this act shall be - "Cognizable and Non-bailable"

No person accused u/s 447 shall be released on bail or on his own bond unless:

- a. Public Prosecutor (PP) has been given an opportunity to oppose the appln. for release and
- b. Where PP opposes such appln., court is satisfied that RGTB that he is not guilty of such offence and that he is not likely to commit offence while on bail

Provided that, following person may be released on bail if special court so directs:

- a. Age < 16
- b. Woman
- c. Sick or infirm

Special court shall take cognizance of above offence only upon complaint in writing by

- a. Director, SFIO
- b. Officer of CG authorised by CG

7. Above limitation on bail is in addition to limitation as per CCP, 1973
8. Subsection (8) to (10) - Arrest of a person by SFIO:  
 Where on the basis of material in his possession or otherwise, officer => Asst. Director of SFIO has reason to believe (RTB) that person is guilty of offence u/s 447, he may arrest such person and:
  1. Inform the person being arrested of the grounds for such arrest
  2. Forward copy of arrest order + material in his possession to SFIO in sealed envelope
  3. Within 24 hours, take the arrested person to Special Court or Magistrate (Judicial/Metropolitan)  
 24 hours not to include time taken for journey from place of arrest to court/magistrate
11. SFIO shall submit interim report to CG if so directed.
12. SFIO to submit invg. report to CG on completion of invg.

13. Person may obtain **copy** of this report - By appln. in the **court**

14. On receipt of above report, **CG** may, after **examination** of reports, direct **SFIO** to initiate **prosecution** against co/officers/employees

If the report states **fraud** has taken place in co and due to such fraud, any **director**, **KMP** or other **officer** has taken undue advantage/benefit, whether in form of property, asset, cash or others, **CG** may file an appln. before **Tribunal** for orders w.r.t:

- a. **Disgorgement** of such property/asset/cash and
- b. Holding such dir/KMP/officer **personally liable** without any limitation of liability

**Sharing is caring:** In case **SFIO** is invg. under this Act, any other invg. agency, **SG**, police, Income Tax auth. having info/documents related to such offence shall provide it to **SFIO** and Vice-versa

### Sec 213: Investigation into Company's Affairs in Other Cases

**Tribunal** may order investigation in following cases:

On an application (supported by evidence) made by:

1. Co. **having share capital** - **Not less** than 100 members or 1/10th of VP
2. Co. **not having SC** - **Not less** than 1/5<sup>th</sup> of persons on register of members

On an appln made by any person, **NCLT** is satisfied that:

1. **Business** is being conducted:
  - a. With intent to **defraud** crs/members/others
  - b. For a **fraudulent/unlawful purpose (FUP)**
  - c. **Manner** oppressive to members of co.
2. Co. formed for **FUP**
3. **Person** concerned with formation/mgt. of co. is guilty of fraud, misf. or other misconduct
4. **Members** not given all info. (incl. commission to **KMP**)

#### Additional points:

- **Prior** to such order, **ROBH** to be given to co.
- Where such order is passed by **Tribunal**, **CG** shall appoint **inspectors** to carry invg. and report.
- If after investigation, it is proved that business/company/person concerned are involved in fraud (points in the right box), **OID** and concerned **person liable** u/s 447

### Sec 214: Security for Payment of Costs and Expenses of Investigation

Before appointing inspector for investigation u/s 210 or 213, **CG** shall require the applicant to give the below **security** for payment towards cost and expenses of investigation.

Turnover as per previous year <b>balance sheet</b> (Rs.)	Amount of security
Upto 50 crores	Rs. 10,000
50 - 200 crores	Rs. 15,000
Above 200 crores	Rs. 25,000

Above security shall be **refunded** to the applicant if the investigation results in prosecution.

Sec 215: No firm, body corporate or other association shall be appointed as an inspector

### Sec 216: Investigation of Ownership of Company



Where **CG** has a reason to do so, it may appoint inspector to investigate and report on matters relating to co. and its members to determine the true person:

Financially interested in success/failure of co.

Who controls/materially influences the **policies** of co.

Has **beneficial interest** in share or is beneficial owner of co.

If instead of **CG**, **Tribunal** orders investigation of ownership of co., **CG** shall appoint inspectors to carry such invg.

While appointing inspector, **CG** shall **define scope** of invg. w.r.t:

- matter/period** to which it extends
- Limit matters to **particular shares/debentures**

Subject to T&C of appt. of an inspector, his powers shall extend to invg. of any circumstances suggesting the existence of any **arrangement** or understanding which, though **not legally binding**, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

### Sec 217: Procedure, Powers, etc., of Inspectors

Duty of co. and its officer/employee/agents	1. To <b>preserve</b> and <b>produce</b> books and paper (B&P) 2. Give inspector <b>assistance</b> in connection with such invg.
BC other than BC under investigation may be required to furnish info.	Inspector may require BC <b>other than BC</b> under invg. to furnish such info or produce such docs which may be relevant or necessary for invg. ( <b>no approval of CG</b> required)
Period of custody	Not more than <b>180 days</b> . Return on or before 180 <sup>th</sup> day Call again by way of order in writing for <b>further 180 days</b>
Examine on oath	1. Any officer/employee/agents of co. being invg. (without <b>CG</b> approval) 2. Any other person - With prior <b>approval of CG</b> (or Director, SFIO where investigation is done u/s 212) For such examination, inspector may require them to <b>appear before him personally</b> . Notes of such examination to be in <b>writing</b> , read over and <b>signed</b> by the person examined and can be used as <b>evidence</b> in court.
Inspector shall have all power vested in CCP, 1908 [PAIO]	<ul style="list-style-type: none"> <li>Discovery and <b>production</b> of BoA and other docs at specified place &amp; time;</li> <li>summoning and enforcing the <b>attendance</b> of persons and</li> <li>examining them on <b>oath</b>; and</li> <li><b>inspection</b> of any books, registers and other docs. of co. at any place.</li> </ul>
If director/officer disobeys directions of RoC or inspector	1. Director/officers. - Imprisonment upto 1 year <b>AND</b> fine Rs. 25,000 to 1 lakh 2. Director convicted of offence under this section shall be deemed to have <b>vacated office</b> and shall be disqualified from holding office in any co.
If person fails without reasonable cause or refused to:	<ul style="list-style-type: none"> <li>Produce B&amp;P</li> <li>Furnish info.</li> <li>Appear personally for examination</li> <li>Sign the notes of examination</li> </ul> <div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>Imprisonment upto 6m AND Fine - 25k to 1 lakh</b>  <b>Further fine - Rs. 2,000/day</b> </div>
Officer of CG/SG/Police to provide assistance	Where the inspector may require, <b>with the prior approval of CG</b> [E.g., Inspector may enter premises with such assistance]
Reciprocal Arrangements (RA)	<ul style="list-style-type: none"> <li><b>CG</b> may enter into <b>agreement</b> with Govt of foreign state for <b>RA</b></li> <li>to <b>assist</b> in Insp, Inq. And Invg. under this Act or corresponding law of that foreign state</li> </ul> <p><u>Procedure for seeking help from country o/s India:</u></p>

- Application to be made by **inspector to competent court in India** stating evidence in relation to an invg. may be available in a country o/s India
- Such court may issue a **letter of request** to competent auth. in such country to:
  - **Examine** any person
  - **Record** his statement
  - Require such person to **produce docs**
  - **Forward** above statements and docs to competent court in India (deemed to be evidence collected during invg.)

Procedure for helping a country o/s India:

- Upon receipt of letter of request from competent authority o/s India
- for examination of any person or production of any doc.
- in relation to affairs of co. under invg. in that country,
- **CG** shall forward such letter to **competent court in India** which shall:
  - **Summon** the person
  - **Record** his statement
  - Require production of **docs**
  - Send that letter to **inspector** for investigation and submission of **report** (within **30 days** or period specified by court)
- Evidence so collected shall be **forwarded to CG** for transmission to person who had sent the letter of request.

### Sec 218: Protection of Employees During Investigation

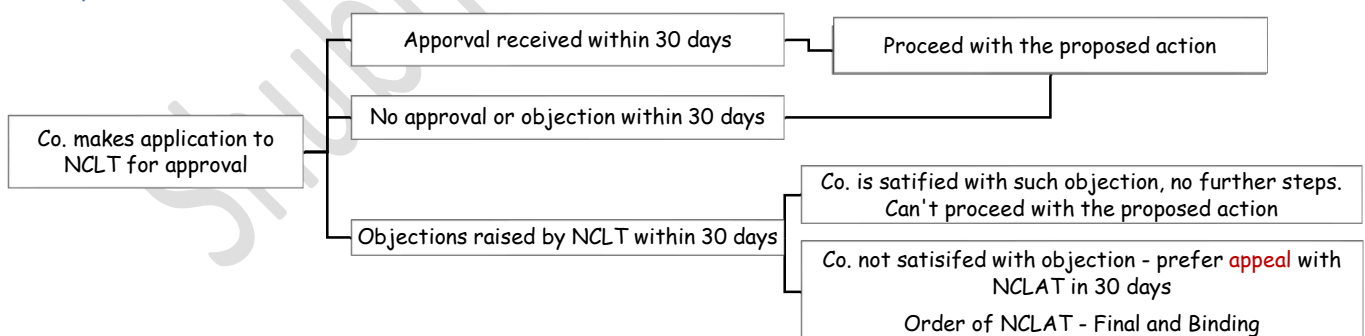
1. If during the **course of**

- Investigation** u/s 210,212,213,216 or 219 or
- Pendency of **proceeding** under Chap XVI (Prevention of Oppression and Mismanagement)

if such company, other BC or person (being invg. or against whom proceedings are conducted), **proposes:**

- to discharge or **suspend** any employee; or
- to **punish** him, whether by dismissal, **removal**, reduction in rank or otherwise; or
- to change the **terms** of employment to his **disadvantage**,

Co./BC/Other person shall **obtain approval of Tribunal** of the action proposed. Tribunal may raise objection by way of notice.



Note: The above provision is application during the course of investigation/proceedings. In case where the invg./proceedings are concluded, these action can be taken w/o approval of Tribunal.



**Sec 219: Power of Inspector to Conduct Investigation into Affairs of Related Companies, etc.**

If the inspection appointed for investigation u/s 210, 212, 213, ~~216~~, considers it necessary for the purpose of investigation to investigate affairs of following person, it may do so with the prior approval of ~~Special Court~~ Central Government:

- Other BC which is or has been company's S, H or S of its H company
- Other BC which is or has been managed by a MD/Manager who is or was MD/Manager of co.
- Other BC whose BoD consists of Nominee Director of co.
- Other BC whose BoD is accustomed to act as per D/I of co. or its director
- Any person who is/was MD/Manager/Eee of the co.

**Sec 220: Seizure of Documents by Inspector**

Where in the course of investigation, the inspector has Reasonable Ground to Believe (RGTB) that B&P of:

Company, or

MD

Manager

Other body corporate

are likely to be - DAMFS

Destroyed

Mutilated

Altered

Falsified

Secreted

the inspector may ~~after the approval of special court~~ :

- Enter (with assistance) and search the place where such B&P are kept
- Seize B&P as he may consider necessary after allowing co. to take copies.

**Custody of seized B&P:**

Period not later than conclusion of investigation and thereafter return it.

Before returning, inspector may take copies/extract or place identification marks

Note - There is no provision related to call such B&P for any further period

**Sec 221 - Freezing of Assets of Company on Inquiry and Investigation**

1. Where it appears to the Tribunal:

On a  
reference  
made to it  
by CG

or in connection  
with inquiry or  
inv. under this  
Chapter

on complaint made by  
such numbers of  
members as specified  
u/s 244(1)

on complaint  
made by crs  
having > Rs. 1  
lakh outstanding

on complaint  
made by other  
person having  
RGTB

that:

- Removal, disposal or transfer of
- Funds, assets or properties of co. is likely to take place
- in a manner prejudicial to interest of - Co., SH, Crs., Public interest

the Tribunal may order that:

- such transfer shall not take place during such period not > 3 years as may be specified in the order or
- such transfer may take place subject to such T&C as the Tribunal may deem fit.

2. Penalty for transfer made in contravention of this section:

Company - Rs. 1 lakh to Rs. 25 lakhs

OID - Fine - Rs. 50,000 to Rs. 5 lakhs or Jail upto 3 years or Both.

**Sec 222 - Imposition of Restrictions Upon Securities** [E.g., Amazon vs Future Group vs Reliance]

1. Where it appears to the Tribunal:
  - a. In connection with **investigation** u/s 216 (ownership) or
  - b. On **complaint** made by any person (E.g., amazon)

that:

  - a. there is **good reason** to find out relevant facts about securities issues/to be issued by the co., and
  - b. such facts cannot be found out unless **restrictions** are imposed

Tribunal may by order - Impose restrictions on such securities for period **not > 3 years**
2. If securities is transferred in **contravention** of such restriction, penalty:
 

Co. - Rs. 1 lakh to Rs. 25 lakh  
 OID - Jail upto 6m or Fine - Rs. 25,000 to Rs. 5 lakhs or both.

**Sec 223 - Inspector's Report** [N.A. to investigation by SFIO u/s 212]

1. Inspector to submit **interim report** if directed by CG and **final report** on conclusion of investigation to CG
2. Report to be in **writing** / printed
3. **Copy** of report may be obtained by members/creditors, person likely affected by making **application to CG**  
 Author's Note: SFIO report can be obtained by anyone on application to Court (not CG) and that's an overriding provision
4. Report of inspector to be **authenticated** by:
  - a. Either the **seal** of co. being investigated or
  - b. By a **certificate** of public officer having the custody of report

**Sec 224 - Actions to be Taken in Pursuance of Inspector's Report**Based on the report u/s 223

	Scenario 1	Scenario 2	Scenario 3
If it appears to the CG that:	Any person in relation to co/BC being investigated is <b>guilty</b> of offence for which he is <b>criminally liable</b>	If any co/BC is liable to be <b>wound up</b> under this Act or IBC and it is expedient to do so,	In public interest, proceedings ought to be brought by the co/BC investigated for <b>recovery</b> of: <ol style="list-style-type: none"> <li>a. <b>Damages</b> in respect of fraud, misfeasance w.r.t. form/mgt. of affairs</li> <li>b. <b>Property</b> of co/BC which has been misapplied or wrongfully retained</li> </ol>
Following action may be taken	CG may <b>prosecute</b> such person and it shall be duty of officers of Co/BC to give necessary assistance	CG may: <ol style="list-style-type: none"> <li>a. Make a <b>petition</b> for WUP on the grounds that it is just and equitable, or</li> <li>b. Application u/s 241</li> <li>c. <b>Both</b></li> </ol>	CG may itself bring <b>proceedings</b> for WUP in the name of Co/BC  CG to be <b>indemnified</b> by the co./BC in respect of cost for bringing such proceedings.

If the report states fraud has taken place in co and due to such fraud, any director, KMP or other officer has taken undue advantage/benefit, whether in form of property, asset, cash or others, CG may file an appln. before Tribunal for orders w.r.t:

- a. Disgorgement of such property/asset/cash and
- b. Holding such dir/KMP/officer personally liable without any limitation of liability

#### Sec 225 - Expenses of Investigation

<u>Cases</u>	<u>Who pays the expenses?</u>	<u>To what extent?</u>
Where person is convicted on a prosecution instituted u/s 224	Such convicted person or such person who is ordered to pay damages or restore properties	The extent such person is ordered to pay
	The co/BC in whose name proceedings are brought (scenario 3 of Sec 224)	The extent of amt recovered by it
If no prosecution is instituted u/s 224	<ul style="list-style-type: none"> <li>Any Co./BC/MD/Manager dealt with in the report of inspector and</li> <li>Applicants of the investigation</li> </ul>	As CG may direct

#### Sec 226 - Voluntary Winding up of Company, etc., Not to Stop Investigation Proceedings.

The investigation under this chapter shall in no way be impacted because of the following:

1. Application is made u/s 241
2. Co. has passed SR for WUP
3. Other proceeding for WUP is pending before the Tribunal.

If WUP order is passed by NCLT, inspector to inform the NCLT about pendency of such investigation

#### Sec 227 - Legal Advisers and Bankers Not to Disclose Certain Information

Nothing in this Chapter shall require disclosure to Tribunal/CG/RoC/Inspector by:

- (a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by the bankers of any co./BC/other person, of any info. as to the affairs of any of their customers, other than such company, body corporate, or person.

Sec 228 - The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.

#### Sec 229 - Penalty for Furnishing False Statement, Mutilation, Destruction of Documents

Such offence shall be considered as offence u/s 447 (fraud)