



A CRITICAL ANALYSIS ON INSPECTION , INQUIRY AND INVESTIGATION IN COMPANIES

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ABSTRACT

Companies are commonly founded to carry out activities that are not necessarily legally permissible in the strictest sense, or to evade responsibilities and liability under certain laws. These operations have an influence on other parties, including creditors, depositors, and the financial system as an entire entity. The 2013 Act provides procedures for examining businesses in order to apprehend such persons hiding behind the corporate veil. The 2013 Act attempts to cover all conceivable areas and errors, leaving no stone unturned in an endeavour to uncover all wrongdoings and frauds while setting an example for everyone. It also gives the inspectors and Tribunals broad authority to carry out their duties. These rules are essential to creating a climate that promotes sound corporate governance. If correctly implemented, corporate governance provides enormous advantages for all parties involved, including shareholders, clients, employees, and the general public. The legislation's explicit language, when considered in light of the types of rights at stake, how they will be handled, and how the judgment will affect the parties concerned, will reveal whether a statutory authority has a duty to act judicially. Every citizen is shielded from the government's or state's arbitrary use of power. Because of this, each case or investigation should be decided based solely on the available facts and evidence

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INTRODUCTION

A lack of a nail caused the shoe to fall off, a lack of a shoe caused the horse to fall off, and a lack of a horse caused the rider to fall off. -*Franklin, Benjamin*

The above couplet by Benjamin Franklin emphasizes the impact of a slight oversight or error. A major error could arise from a minor oversight. Small errors might sometimes result in significant losses for the country when it comes to its economy. The nation's economy and business activities are centered round the capital market. For all economic and business activities money, in the form of investment is essential. 'Investment' represents the savings of the people and life savings are invested for the economic development of the nation and also to get certain benefits or profit for them. To achieve maximum benefit to the nation the entrepreneurs are encouraged by conferring various privileges on them. If the businessmen are exposed to a great risk, they may not be ready to shoulder heavy risk, so investors also will not invest their hard-earned money in any business. For these reasons from the time of evolution of Company Law, law has conferred certain privileges. The question of protecting investor and management of the business did not arise and also there was no need of thinking proper governance and disclosure issues. Division of profit and capital was settled immediately after a particular adventure or voyage.

Absence or inadequacy of proper regulating mechanism resulted in various scams inside as well as outside India. Corporate scams have become worldwide phenomenon. Investors' faith has been undermined. Apart from this, major portion of the corporate profit is applied in payment of hefty salary and emoluments to the managers, poor investor, in the absence of proper, adequate and timely information, become the victim in two ways. Mainly not getting any returns on his investments, and indiscriminate and injudicious trading in stocks. On the other hand, managers of the corporation, not only getting lion's share in the profit of the company

Corporate failure and scams are the contribution of not one but many players, such as Board of Directors, Auditors, shareholders as well as Regulating Authorities. Regulating authority, especially legislature, failed to make proper and appropriate laws to control the Directors i.e. The company's governors failed to uphold the objectives of investors.

MEANING OF INQUIRY

Inquiry refers to the procedure of seeking facts and acquiring any data. Scrutiny of accounts and balance sheet is done to check the performance of the companies filed by them with the registrar. When there was an explanation to suspect the fact that the business's activities were carrying

through with the goal of deceiving the company's creditors as well as individuals, for an illegal as well as prohibited objective, or otherwise in a manner that was unfair or obstructive for the benefit of its shareholders, it was deemed necessary for the government of the nation to be granted certain investigatory powers.

The crime is not ongoing; rather, it is judged to have been committed on a specific date. The limitation period starts on that day. A prosecution that is started more than a year after the offence was committed is time-limited.¹

Inspection and inquiry conducted under an enterprise “(Section 207 of the Companies Act, 2013)”²

(i) Responsibilities of managerial personnel [Sub-Section (1)]: Every director, officer, or other employee of the firm shall have the following obligations in the event that a Registrar or Under Section 206, the inspector seeks the records of statement as well as extra records and paperwork:

Provide the official or inspectors with any necessary papers and any declarations, information, or reasons he may want. Additionally, provide all help in dealing with the inspection.

(ii) The “Registrar's or Inspector's” Powers [Subsections (2) and (3)]

(a) The Enlistment centre or Investigator might make duplicates of books of records and different books and papers; or on the other hand it is spot or cause to be put any characteristics of distinguishing proof in such books as a sign that the examination has been made throughout such review or request, by and large.

(b) When conducting an inspection or study, the registry officer or inspector shall have all the jurisdiction conferred to a civil tribunal by “the Code of Civil Procedure, 1908”,³ when determining a matter concerning the following topics:, namely:

- 1) locating and producing materials of is accountable and other paperwork at the precise position and time specified by the office of authority conducting the examination or inquiry;
- 2) instilling and questioning individuals under oath; and
- 3) checking the entity's records, files, and additional records at any location.

¹ *Fairgrowth Agencies Ltd. v. Registrar of Companies*, (2006) 133 Com Cases 314 (Karn).

² The Companies Act 2013, s 207.

³ The Code of Civil Procedure 1908.

INVESTIGATION OF COMPANIES

If the “Registrar of Companies” decides the fact that any additional data, clarification, or additionally show concerning the business is required following examining any paperwork submitted by the the business or any details obtained by them, he can demand any additional details by written notification and demand the organisation to either (a) offer any additional data or clarification in the written word; or (b) convey any additional paperwork.

- a. Company's responsibility to provide necessary information: In view to the provisions of section 206(2) of the Act, which was it is the organization's and the appropriate officer's accountability to offer, to the most effective of their abilities and expertise, any data or clarification needed for the issuance of all records asked for by the registrar's office throughout the period of time framework set forth in the notice sent according to section 206(1) or as may be expanded by the Registrar, whichever is longer.
- b. Information provided by former employees: The stipulation to section 206(2) indicates that once the Registrar of Businesses has presented such former staff members with notification in writing, those in authority who were hired by the enterprise for the period in question are also compelled to supply any details or justification, to the most effective of their understanding, if it pertains to any previous time frame.

INVESTIGATION CONDUCTED UNDER THE ENTERPRISE

1. A company's affairs may be investigated under the provisions of “Sections 235 to 250A of the Companies Act of 1956”. Furthermore, the Act's “Section 209A” established a unique process for the examination of a company's books of accounts.
2. It was determined that looking solely at the Books of Accounts would not be very helpful. In fact, the current version of these inspections, as described in S209 A of the Act, runs the risk of being viewed as administrative standard practices. The corporation and the inspecting agency would put in a lot of time and effort without accomplishing much. It is forbidden the law to use a presumption of violation to make it simpler to follow the law. Furthermore, it cannot be validated by physically scrutinizing the parties involved. If this had been the scenario, every system of law would prove extremely difficult to administer. Some of the benefits of a complex system of laws and standards could be missed if law enforcement officers were also required to physically check the subject companies to ensure compliance. Compliance should be driven by rational self-interest, with law enforcement action required only in specified, planned conditions.

The purpose of the law should not be to create a "Inspector Raj."

3. The Committee believed that a company's governance system was not functioning properly when the state intervened in its operations. If and when it does, an effective, well-planned, and deterrent incursion ought to take place.

A well-planned, effective, and deterrent incursion should take place if and when it does. Frequent intrusions into the business affairs of corporations would be more detrimental with little to no penalty. Such interactions would result in an unfavorable transaction cost and an unhealthy relationship between the state and the corporate citizen. Additionally, the law shouldn't enable enforcement agencies an excessive amount of latitude to unilaterally utilize their statutory jurisdiction in order to completely disrupt or paralyze a corporate organization's activity based on a mere suspicion or a false or manufactured complaint. The panel believes that just one exhaustive process for questioning, carried out in accordance with the law while respecting the interests of the firms, should be established upon. As a result, the government might involve to focus on the inquiries into the Companies' defaults in a more focused and goal-oriented way.

4. The Committee thought that a company's ability to function and make decisions may be restricted by excessive regulation and oversight. Additionally, this has a propensity to penalize management's good faith actions, especially those of small businesses that may not have a recourse to expert guidance. Corporate governance fails to work well in a climate of distrust. Businesses would squander money on evasive methods that would impose excessive expenses in a competitive market. The Committee believes that rather than just reviewing a company's activities to determine if it is in conformity with the law, the law should assign accountability for the company's operations. Accountability on the part of management and owners/controllers of the firms, as well as an approach of monitoring via periodic scrutiny of the companies' paperwork. These endeavours ought to make it possible not just to access most recent filings, but also for the identification of any holes in the business's disclosures.

5. The Registrar of Records might additionally have the power to seek data, paperwork, or recordings in accordance with regulations based on such arbitrary examination. The findings of this discretionary inspection may be considered by the Central Government if there is sufficient proof warrants an investigation into the company's behavior. authority to compel the corporation to do the necessary measures, including producing the required records. The current Act offers a framework for this The Committee does advise that this structure be panel feels it

is critical to explore a company's problems. It should result in the implementation of deterrent penalties once implemented. To be effective, the inquiry must be given the appropriate authority to compel the corporation to do the necessary measures, including producing the required records. The current Act offers a framework for this. The Committee does advise that this structure be strengthened and made more effective, though. The opportunity to request and review a company's records would be made available through this portal.

6. No investigation should be started because of a reported violation of a specific legal requirement. After the publication of a statutory notice, criminal prosecution for these actions ought to be possible. Before an inquiry of a company's operations is opened, it should be given a fair chance to describe its actions.
7. Any complaints lodged against the entity must contain a filing fee and a clear identification of the complainant. Such complaints should always be sent to the company to gain their viewpoint before determining whether an investigation is necessary.
8. Employing independent experts as investigators or inspectors: The governing body may select an inspector for an inquiry from among members of the government, people of the private sector, or organisations or companies of specialists. However, it is critical to screen for any conflicts of interest. The person being investigated and his associates should have no significant ties to the business entity, its holding organisation, or anyone of its subsidiaries. Existing regulations governing the inspector's power, what directors, officers, and other persons must do during an inquiry, how false information is punished, and other related restrictions may be maintained. A director or officer who destroys or tampers with a company's records may be subject to penalties under the Act. The laws of investigation should also apply to foreign companies doing business in India.
9. The costs of an independent investigation should be covered by the federal government. However, if a candidate requested the investigation, they should be held responsible for paying for it.

NEED FOR COMPANY INVESTIGATIONS

As shareholders are unable to independently monitor and oversee the efficient operation of the companies, organised oversight by government authorities is essential. It ensures that the business will run smoothly and effectively and that shareholders will receive a suitable return on their capital. The basic premise of the Companies Act, according to the SC in *Barium Chemicals Ltd*, is to put

faith in the owners in order to guarantee efficient operation. However, for a number of motives the owner has previously faded towards obscurity.

Firstly, he is a shareholder who, outside of dividends, prefers solitude. Second, because of widespread stock distribution, investors are less interested in casting ballots and exercising power. Thirdly, the shareholders lack the resources required to challenge the officials' qualifications and background. Fourth, few stockholders have the necessary skills or resources to critique leadership. says Freund, the two sole locations whereby monitoring is genuinely performed are "the movement of the population and the systematic observation exerted by administrative bodies." As a result, research is critical. The measures for investigations therefore ensure that corporate management is run effectively and help to avoid misconduct and abuses in the workplace. Corporate investigations are frequently done to establish whether a firm is safe to do business with. Companies are protected from the following threats by undertaking an in-depth analysis: harmed reputation, Misuse or exploitation of the network and its resources , Customer data has been compromised Theft or loss of confidential information ,Issues that may occur if a corporation's network is utilised to launch an attack and Other methods.

THE WORKING OF SERIOUS FRAUD INVESTIGATION OFFICE

When striving to reduce the corporate frauds occurring in our nation, and designing the appropriate legal framework is the primary difficulty, The relationship between auditors and management is thought to be the main driver of this upward tendency.

The foundation of the "Serious Fraud Investigation Office (SFIO)" At the hand of the “ Naresh Chandra Committee”, as well as its ongoing efforts for combating white collar crimes, includes the implementation of the EWS, which stands for “Early Warning System” to detect corporate scams at the earliest stages.

It is a probe office established within the control of the “ Ministry of Corporate Affairs” to track down and oversee the country's commercial scams, or white collar crimes. It was founded as a multifaceted autonomy to look into frauds, where professionals from the accounting profession, forensics, the auditing profession, statute, technology-related scrutiny, the stock market, and taxation collaborate to resolve corporate scams that entice not simply legal attention but all of a variety of additional fields.

“M.S. Shoes Fraud Case”⁴: it was formed around 1986 and collapsed in the year 1995, presenting the stock market and creditors with a significant loss. “Pawan Sachdeva”, the owner, created enticing adverts to captivate investors. His stock were priced at Rs 24 in 1993 and Rs 502 in 1995. A majority prices, however, were fraudulently inflated, causing the CBI to commence its investigation. In 1997, the Central Government gave the CBI authority to collect fees against top SEBI and SEBI financial markets personnel. He was charged with breaching the Anti-Corruption Act and the Companies Act of 1956. Unfortunately, as a result of a lack of documentation, the CBI was compelled to call the inquiry off. The case was revisited in 2003, and further penalties were brought against the defendant for failing to return the money. “MS Shoes” was labelled a sick firm by “BIFR” in 2005.

The SFIO is putting in place a mechanism to even find a needle in a haystack in order to eliminate any potential of escape from the white collar offences. The implementation of Early Warning Systems in businesses is one of the upcoming innovations being worked on covertly. It has established a consultancy firm that is working to create the conceptual framework for the system. This basically functions as an alert system to detect corporate frauds early on, allowing their occurrence to be stopped and sparing not only the losses of investors but also the overall economic situation of the nation.

CONCLUSION

Corporate entities are frequently utilised to carry out illegal and dishonest acts. These actions have an effect on other members, creditors, depositors, and the overall financial system. The Companies Act of 2013 has measures on the investigation of ownership of companies in an effort to identify those sheltering behind the corporate veil. The inspector has broad authority under the law to carry out their responsibilities. Thus, these provisions are essential to creating a climate conducive to good corporate governance. When an organisation has excellent corporate governance and no frauds, it sends an indicator to the market that it is managed efficiently as well as the goals of management align with those of other parties involved. As consequence, it might provide your company with a significant competitive edge. all of the rules, norms, and practises that govern how an organisation operates .It defines the prerogatives and scores of all functional instrumentalist inside an organisation, increases internal effectiveness, recruits skill and monetary assets, and generates for a long time financial benefits for stakeholders. The beneficial impacts that are

⁴ Lyla Bavadam, ‘The M.S. Shoes Affair’ The Hindu (India, 5 August 2000) 8.

achieved when organisational procedures are simplified with uniformity and risks are controlled efficiently.