

PART IV - Powers, Duties and Report of Inspector (Sec. 217, 220, 223 and 224)	
(11)	<u>Procedure, powers etc. of Inspector (Sec. 217)</u>
	(a) <u>Production of documents:</u>
	- Officers, Employees and agents of the company (present as well as former) under investigation shall preserve and produce all book and papers which are in their custody and provide necessary assistance to the Inspector.
	- Inspector may also require <u>any other body corporate</u> to furnish such information or produce such books and papers as he may consider necessary.
	- Inspector may detain the books for 180 days and if needed may also called the books and papers for a further period of 180 days by written order.
	(b) <u>Examine on Oath:</u>
	- Inspectors may examine officers, employees and agents of company or related companies on oath.
	- Previous approval of C.G. is required to examine any other person.
	(c) <u>Powers of Civil Court:</u>
	Inspector making an investigation shall have all the powers as are vested in a civil court in respect of following matters:
	- Discovery & production of books & other documents at such place & time as specified.
	- Summoning and enforcing attendance of person and examine them on oath.
	- Inspection of any books, registers & other documents at any place.
	Note: Only main powers of Inspector (as seems relevant for exam) are covered in lecture notes. Detailed provisions may be covered from main book.

(12)	<u>Seizure of documents by Inspector (Sec. 220):</u>
(i)	<u>Seizure of books and papers - Sec. 220(1)</u>
	Where the inspector has reasonable grounds to believe that the books and papers are likely to be destroyed, mutilated, altered, falsified or secreted, he may:
	(a) enter, with required assistance, the place(s) where such books and papers are kept in required manner;
	and
	(b) seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers.
(ii)	<u>Time period for keeping books and papers - Sec. 220(2)</u>
	(a) The inspector shall keep the seized books and papers for such a period not later than the conclusion of the investigation as he considers necessary, and
	(b) thereafter shall return the same to the person from whose custody or power they were seized.
	Before returning the books and papers, inspector may take copies of, or extracts from them or place identification marks on them.
(13)	<u>Inspector's Report - Sec. 223</u>
(i)	<u>Submission of interim report and final report - Sec. 223(1)</u>
	(a) An inspector may, and if directed by the C.G. shall, submit interim reports,
	and
	(b) on the conclusion of the investigation, shall submit a final report to the Central Government.
(ii)	<u>Report to be writing or printed - Sec. 223(2)</u>
	Every report made u/s 223(1) shall be in writing or printed as the C.G. may direct.
(iii)	<u>Obtaining copy or report - Sec. 223(3)</u>
	A copy of the report may be obtained by <u>members, creditors or any other person whose interest is likely to be affected</u> making an application in this regard to the C.G.

	(iv) <u>Authentication of report - Sec. 223(4)</u>
	The report of inspector 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 u/s 76 of the Indian Evidence Act, 1872,
	Such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
(14)	<u>Actions to be taken in pursuance of inspector's report (Sec. 224)</u>
	(i) <u>Prosecution - Sec. 224(1)</u>
	- If, from an inspector's report, made u/s 223, it appears to the C.G. that any person has been guilty of any offence for which he is criminally liable, the C.G. 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 C.G. the necessary assistance in connection with the prosecution.
	(ii) <u>Petition for Winding up or Application for relief from Oppression and Mismanagement - Sec. 224(2)</u>
	- If any company or other body corporate is liable to be wound up under this Act or under the Insolvency and Bankruptcy Code 2016
	and
	- it appears to the C.G. that it is expedient so to do by reason of any such circumstances as are referred to in Sec. 213, the C.G. may, cause to be presented to the Tribunal in this behalf:
	(a) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;
	(b) an application u/s 241 (claiming relief from oppression and mismanagement); or
	(c) both.

	<p>(iii) <u>Proceedings for recovery of damages - Sec. 224(3)</u></p> <p>If from the inspector's report, it appears to the C.G. that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under this Chapter:</p> <p>(i) 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;</p> <p style="text-align: center;">or</p> <p>(ii) for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,</p> <p>the C.G. may itself bring proceedings for that purpose in the name of such company or body corporate.</p> <p>(iv) <u>Indemnity to C.G. - Sec. 224(4)</u></p> <p>The C.G. shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of Sec. 224(3).</p> <p>(V) <u>Application w.r.t. disgorgement and personal liability of directors etc. - Sec. 224(5)</u></p> <p>Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, KMP, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the C.G. may file an application before the Tribunal for appropriate orders</p> <p>(a) with regard to disgorgement of such asset, property or cash, as the case may be,</p> <p style="text-align: center;">and</p> <p>(b) also for holding such director, KMP, officer or other person liable personally without any limitation of liability.</p> <p style="text-align: center; background-color: #90EE90;">Do practice - Questions on Sec. 217, 220, 223 and 224</p>
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PART V - Tribunal Orders as to Misc. Matters (Sec. 218, 221 and 222)	
(15)	<u>Protection of employees during investigation (Sec. 218)</u>
	(i) <u>Requirement of Tribunal Approval to take any action against employee - Sec. 218(1)</u>
	If during the course of any investigation of the affairs of a company, such company proposes:
	(a) to discharge or suspend any employee; or
	(b) to punish him, whether by dismissal, removal, reduction in rank or otherwise;
	or
	(c) to change the terms of employment to his disadvantage,
	the company, shall obtain approval of the Tribunal of the action proposed against the employee.
	If the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company.
	(ii) <u>Non-receipt of approval from Tribunal - Sec. 218(2)</u>
	If the company does not receive within 30 days of making of application, the approval of the Tribunal, then and only then, the company, may proceed to take against the employee, the action proposed.
	(iii) <u>Appeal against Tribunal Objection - Sec. 218(3) & 218(4)</u>
	- If the company is dissatisfied with the objection raised by the Tribunal, it may, within a period of 30 days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in prescribed manner and on payment of prescribed fees.
	- The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company.
(16)	<u>Freezing of assets of company on inquiry and investigation (Sec. 221)</u>
	(i) <u>Circumstances in which assets may be frozen - Sec. 221(1)</u>
	Where it appears to the Tribunal,
	- on a reference made to it by the C.G.; or

	- in connection with any inquiry or investigation under this Chapter; or
	- on any complaint
	• made by such number of members as specified u/s 244(1); or
	• a creditor having ₹1 lakh outstanding against the company; or
	• any other person
	having a reasonable ground to believe that the removal, transfer or disposal of
	funds, assets, properties of the company is likely to take place in a manner that is
	prejudicial to the interests of the company or its shareholders or creditors or in
	public interest, it may by order direct that such transfer, removal or disposal shall
	not take place during such period not exceeding 3 years as may be specified in the
	order or may take place subject to such conditions and restrictions as the Tribunal
	may deem fit.

Number of Members specified u/s 244(1):

(a)	in the case of a company having a share capital	<ul style="list-style-type: none"> • Lower of 100 members or 1/10th of the total number of members. <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • Members holding not less than 1/10th of the <u>issued share capital</u> of the company provided the applicant has paid all calls and other sums due on his shares.
(b)	in the case of a company not having a share capital	Atleast 1/5 th of the total number of its members.

(ii) Penalty provisions - Sec. 221(2)

In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal u/s 221(1),

(i) the company shall be punishable with fine ranging from ₹ 1 to ₹ 25 lakh.

and

(ii) every officer of the company who is in default shall be punishable

- with imprisonment for a term which may extend to 3 years or

- with fine ranging from ₹ 50,000 to ₹ 5,00,000, or

- with both.

(17)	<u>Imposition of restrictions upon securities (Sec. 222)</u>
	(a) <u>Circumstances in which restrictions may be imposed on securities - Sec. 222(1)</u>
	(i) Where it appears to the Tribunal,
	- in connection with any investigation u/s 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
	(ii) 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 3 years as may be specified in the order.
	(b) <u>Penalty Provisions - Sec. 222(2)</u>
	Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal u/s 222(1),
	(i) the company shall be punishable with fine ranging from ₹1 lakh to ₹ 25 lakh.
	and
	(ii) every officer of the company who is in default shall be punishable
	- with imprisonment for a term which may extend to 6 Months or
	- with fine ranging from ₹ 25,000 to ₹ 5 lakh, or
	- with both.
	Do practice - Questions on Sec. 218, 221 and 222
	PART VI - Other Provisions (Sec. 225 and 226)
(18)	<u>Expenses of investigation (Sec. 225)</u>
	The expenses of an investigation by an inspector appointed by the C.G. other than expenses of inspection u/s 214 (Security for payment of costs and expenses of investigation) shall be borne in the first instance by the C.G.

(19)	<u>Voluntary winding up of company, etc., not to stop investigation proceedings (Sec. 226)</u>
(a)	<u>Effect of winding up events on Investigation:</u>
	An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—
	(i) an application has been made u/s 241 (claiming relief from oppression and mismanagement);
	(ii) the company has passed a special resolution for voluntary winding up; or
	(iii) any other proceeding for the winding up of the company is pending before the Tribunal.
(b)	<u>Informing Tribunal as to pendency of investigation:</u>
	Where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), 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.
(c)	<u>Liability of Directors and employees:</u>
	Nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.
Do Practice - Questions on Sec. 224 and 225	