



FACULTY OF JURIDICAL SCIENCES

Course : B.A.LL.B./BBALL.B IInd Semester

SUBJECT: COMPANY LAW
SUBJECT CODE: BAL 406/BBL 406

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FACULTY OF JURIDICAL SCIENCES



LECTURE-36

(Continued)

Powers of Inspectors [S.240]:

Where an inspector investigating the affairs of the company thinks it necessary to investigate the affairs of another company in the same management or group , he is empowered to do so. However as mentioned in section 239(2), he has to obtain prior approval of the Central Government for that purpose. Section 240 has been amended by the Amendment of 2000 .Sub-section (1) was substituted. The new sub-section provides that it shall be the duty of all

officers and other employees and agents of the company and those of any other body corporate whose affairs are being investigated under Section 239:

- a) to preserve and to produce to an inspector or any other person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of or relating to the other body corporate, 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.

For facilitating the task of the inspector it is the duty of all officers in charge of the management of the company to produce to the inspector all books and papers of the company which are in the custody and power and to give to the inspector all assistance in connection with the investigation which they are reasonably able to give. The inspector may examine

on oath any such person and for this purpose require his personal attendance. If a person required to appear or to produce books, makes a default that is a punishable offence. Where an inspector finds a person, whom he has no power to examine on oath, ought to be so examined the inspector may do so with the previous approval of the Central Government. Notes of any such examination are to be taken in writing and signed by the person examined and may be used in evidence against him . A refusal to answer any question is also punishable.

Conclusion

Oppression and mismanagement are part and parcel of business. During the course of business, oppression of small/minority shareholders takes place by the majority shareholders who are in control of the company. Similarly, mismanagement of business is not uncommon. When we talk of mismanagement we mean mismanagement of

resources. Mismanagement could mean siphoning of funds, causing losses due to rash decision, not maintaining proper records, not calling requisite meetings. Finer version of mismanagement could arise where the management does not act/react to a business situation leading to downfall of business.

The concept of oppression and mismanagement is more relevant or common to family owned concerns. The reasons are very obvious. Family owned concerns are owned by family members who over time develop vested interest in business vested interest in their own heirs being the most common - thereby leading to oppression of other family members. Here typically, the controlling member of the family appropriates the family holdings by means of either a fresh issue or fraudulent transfers in his favor or reconstitutes the board in such a manner as to alienate the other family members. The result is the other family members get oppressed.

Secondly, the family owned concerns are not professional managed and their system of functioning is usually personal. They lack probity and fair play. They generally do business in a manner where they begin to benefit personally to the exclusion of other members. This leads to oppression of other family members/mismanagement of companies.

In order to check all these discrepancies the need was felt to have any measure to prevent the Oppression and mismanagement and thus under Chapter 6th of Part 6th of Companies Act , 1956 provides for the judicial as well as administrative remedies to check Oppression and mismanagement. It is a powerful tool which provides such power that even a single member can approach Company Law Board if any of his right has been infringed or in order to prevent the Oppression and mismanagement in the company.

MCQs

1. Under Chapter 6th of Part 7th of Companies Act , 1956 provides for the judicial as well as administrative remedies to check Oppression and mismanagement.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

2. The concept of oppression and mismanagement is more relevant or common to family owned concerns. The reasons are very obvious. Family owned concerns are owned by family members who over time develop vested interest in business vested interest in their own heirs being the most common...

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

3. For facilitating the task of the inspector it is the duty of all officers in charge of the management of the company to produce to the inspector all

books and papers of the company which are in the custody and power and to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

4. Powers of Inspectors is vested in S.242 of companies Act.

- i. True
 - ii. False
 - iii. Can not say
 - iv. None of the above
5. The new sub-section provides that it shall be the duty of all officers and other employees and agents of the company and those of any other body corporate whose affairs are being investigated under Section 239: to preserve and to produce to an inspector or any other person authorized by him in this behalf with the previous approval of the Central Government,

all books and papers of or relating to the other body corporate, which are in their custody or power

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

