
CHAPTER – III

THE COMPANIES ACT, 1956 AND ITS ADMINISTRATION

Objectives and Policies of the Companies Act, 1956

3.1.1 Companies play very vital role in any economy. In our country, the Companies Act, 1956 primarily regulates the formation, financing, functioning and winding up of companies. The Act prescribes regulatory mechanism regarding all relevant aspects including organisational, financial and managerial aspects of companies. The winding up matters, presently are largely within the domain of the jurisdiction of High Courts. Regulation of the financial and management aspects constitutes the main focus of the Act. In the functioning of the corporate sector, although freedom of companies is important, protection of the investors and shareholders, on whose funds they flourish, is equally important. The Companies Act plays the balancing role between these two competing factors, namely, management autonomy and investor protection. The main objects of the Act are as under.

- (a) To protect the interests of large number of shareholders, as there exists separation of ownership from management in a company ;
- (b) To safeguard the interests of creditors;
- (c) To help the development of companies in India on healthy lines, because corporate sector constitutes a very important segment of the economy;
- (d) To help the attainment of the ultimate ends of the social and economic policy of the Government ;
- (e) To equip the Government with adequate powers to intervene in the affairs of a company in the public interest and as per the procedure prescribed by law so that the interest of all the stake-holders may be protected from unscrupulous management.

These objectives are achieved through the measures as explained in the following paragraphs.

Regulation of Companies

3.2.1 The Companies Act, 1956 empowers the Central Government to inspect the books of accounts of a company, to direct special audit, to order investigation into the affairs of a company and to launch prosecution for violation of the Companies Act, 1956. Books of accounts and other documents of the companies are inspected by the officers of the Directorate of Inspection and Investigation and the Registrars of Companies. These inspections are designed to find out whether the companies conduct their affairs in accordance with the provisions of the Companies Act, 1956 to see whether any unfair practices prejudicial to the public interest are being resorted to by any company or a group of companies and to examine whether there is any mismanagement which may adversely affect any interest of the

shareholders, creditors, employees and others. Wherever inspection reports disclose any information that may be of interest to other Departments or agencies like the Ministry of Commerce and Industry, Central Board of Direct Taxes, Enforcement Directorate, State Government or Provident Fund Authorities, such information is passed on to them. If an inspection discloses a prima facie case of fraud or cheating, action is initiated under provisions of the Companies Act, 1956 or the same is referred to the Central Bureau of Investigation.

3.2.2 Sections 235 and 237 of the Companies Act empower the Central Government to order investigation into the affairs of a company under circumstances specified therein. The power to appoint inspectors, to conduct investigation and to act on report of investigation remains with the Central Government. The Company Law Board is also empowered to consider application of members for conducting investigation into the affairs of a company. The powers to order investigation arise in circumstances where the business of a company is being conducted with an intent to defraud its creditors, or for unlawful purposes, or in a manner oppressive to any of its members or that if the company was formed for any fraudulent or unlawful purposes.

3.2.3 The companies are prosecuted for committing default in filing their documents or for contravening the provisions of the Act. The Companies (Amendment) Act, 1988, introduced a new Section 621A empowering the Company Law Board and the Regional Directors to compound offences of prosecution. The power to compound is not exercisable in relation to offences, which are punishable either with imprisonment only or with imprisonment and fine.

3.2.4 To ensure better management of companies, the Central Government accord approval for the appointment and re-appointment of persons as Managing Directors, whole-time Directors or Managers of a public limited or private limited company which is a subsidiary of a public limited company, under Section 269 read with Section 388 of the Companies Act, 1956.

Investor Protection

3.3.1 Investor Protection Cell (IPC) was set up in 1993 in the Ministry of Companies Affairs to deal with grievances of investors and depositors against companies. It receives a large number of complaints daily from the aggrieved investors and depositors. Such complaints are received largely through letters. These complaints are processed with the help of computer. Thereafter, letters are issued in physical form to the concerned companies and the concerned Registrar of Companies. The existing method of processing grievances of the investors and depositors take considerable time. With a view to improving the present system of lodging of complaints and processing, a new system for online lodging of complaints by investors and depositors has been jointly developed by the Ministry of Company Affairs and the National Informatics Centre (NIC). The new system facilitates the complainants to electronically lodge their complaints with the Investor Protection Cell. The system issues complaint number as acknowledgement online for future reference. The complainant is able to know the status of his complaint at any time. This system for lodging online complaints of investors and depositors was put on the website of the Ministry of Company Affairs (<http://>

dca.nic.in) on 11.1.2005.

3.3.2 The Investor Protection Cell has processed 3123 complaints during the period from 1.4.2004 till 31.12.2004. Investor grievances are also handled at the level of Regional Directors and Registrar of Companies.

3.3.3 An advertisement indicating the names and particulars of Nodal Officers at the Ministry and at the field level for dealing with the investor grievances was published in leading English and vernacular news papers for information of the general public and the investors. This information has also been put on the website of the Ministry of Company Affairs.

Vanishing Companies

3.4.1 The Capital market had witnessed a boom period during 1993-94 and 1994-95 when many new companies tapped the capital market and collected funds from the public issue of shares/debentures. Some of these companies defaulted in their commitments made to the public while mobilising funds. The Securities and Exchange Board of India (SEBI) had originally identified 229 listed companies as "vanished".

3.4.2 Finance Minister in his Budget Speech on 27.2.1999 had, inter alia, stated that a joint mechanism between SEBI and Ministry of Company Affairs would be set up for taking stringent action against unscrupulous promoters who raised moneys from investors and misused them. Accordingly, a Central Coordination and Monitoring Committee (CMC), co-chaired by Secretary MCA and Chairman SEBI, was set up. The CMC is assisted by four Task Forces, one each corresponding to a Region falling under the jurisdiction of the Regional Director of Ministry of Company Affairs. The main

responsibility of these Task forces is to identify the companies which have disappeared, or which have misutilised funds mobilised from the investors, and suggest appropriate action in terms of Companies Act or SEBI Act.

3.4.3 Of the 229 companies earlier identified as vanished, CMC, in its meetings, held on 25.02.2003, 15.01.2004 and 23.11.2004 deleted the names of 44, 63 and 7 companies respectively from the list of vanishing companies, as these companies were found to be regular in filing statutory returns, etc. As such, the number of vanishing companies stands reduced to 115, as of now.

3.4.4 The field offices of Ministry of Company Affairs have taken action against such companies for violation of the provisions of the Companies Act, 1956 and tried to enlist assistance of police authorities and general public to ascertain the whereabouts of such companies. Prosecutions were originally filed for "technical defaults" such as non-filing of Balance Sheet/Annual Returns. However, in December, 2001, a decision was taken to proceed against these companies for non-compoundable offences, carrying the punishment of imprisonment. Consequently, several prosecutions have been launched for misstatement in prospectus/fraudulently inducing persons to invest money/false statement made in the offer of documents etc., under Sections 62/63, 68 and 628 of the Companies Act, 1956. Model First Information Reports (FIR) has also been finalized in consultation with SEBI for filing complaints with the police authorities against the vanishing companies and their Promoters/Directors for the offences punishable under Sections 420,406,403,415,418 and 424 of the Indian Penal Code. FIRs have been registered/filed

against promoters and Directors of vanishing companies in 92 cases.

Acceptance of Deposits

3.5.1 Section 58A of the Companies Act, 1956 introduced by the Companies (Amendment) Act, 1974, came into force on 1.2.1975. It regulates the invitation and acceptance of deposits by non-banking non-financial companies.

3.5.2 The Companies (Acceptance of Deposits) Rules, 1975 framed in pursuance of sub-section (1) of Section 58A of the Companies Act, 1956 prescribe the limits up to which, the manner in which, and the conditions subject to which deposits may be invited and/or accepted by these companies either from the public or from their members. These Rules, inter-alia, require every company to advertise at the time of inviting deposits a summarized financial position of the company as in the two audited balance sheets immediately preceding the date of advertisement. The Rules lay down ceiling limits with reference to the company's net worth for acceptance of deposits and prescribe the maximum rate of interest and the maximum period of 36 months for which the deposits can be accepted. The Rules also lay down the maximum rate of brokerage, which can be paid by the company to brokers through whom the deposits are collected. In order to safeguard the interests of depositors, the Rules also provide for maintenance of liquid assets to the extent of 15% of deposits maturing during the year invested in specified securities with effect from 1.4.1992 as per Gazette Notification No. GSR 393(E) dated 10.1.1992.

3.5.3 Sub-section 7 of Section 58A empowers the Government to keep any company outside the purview of these provisions after consultation

with the Reserve Bank of India. In exercise of this power, Small Scale Units which conform to certain parameters have been kept outside the purview of the provisions of Section 58A.

3.5.4 Sub-section (8) of Section 58A empowers the Central Government, if it considers necessary, for avoiding any hardship or for any other just and sufficient reason, to grant extension of time to a company or class of companies to comply with or exempt any company or class of companies from all or any of the provisions of Section 58A either generally or for a specified period, subject to such conditions as may be specified, either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974. In case, exemption is to be granted for a class of companies, it is to be done after consultation with the Reserve Bank of India.

3.5.5 Sub-sections (9) and (10) of Section 58A were inserted by the Companies (Amendment) Act, 1988 as a measure of protecting the interests of depositors. It provides for compulsory repayment of deposits, unless renewed in accordance with the prescribed Rules. The amended provisions of sub-section (9) of the Companies Act empower the Company Law Board to take cognisance of any case of non-repayment of such deposits within such time and subject to such conditions, as may be specified in the order. Non-compliance of the order of the Company Law Board would attract penalty by way of imprisonment, which may extend to three years and shall also be liable to a fine of not less than Rs. 500/- for every day till such non-compliance continues.

3.5.6 Under the proviso to sub-section (7) of Section 58A, the Government is empowered

to exempt a class of companies from all or any of the provisions of Section 58A. The Ministry has granted exemption vide Notification GSR No. 1075 (E) dated 29.12.1989 from the provisions of sub-Section (1) to (6) of Section 58A in respect of acceptance of deposits by issue of Commercial Paper by companies which satisfy the eligibility criteria laid down by Reserve Bank of India in the Non-Banking Companies (Acceptance of Deposits through Commercial Paper) Directions 1989. The said Notification has come into force from 1.1.1990.

3.5.7 Twenty two applications for exemption/extension of time were received under Section 58A(8) of the Companies Act, 1956 during the period 1.4.2004 to 31.12.2004 and 16 applications were brought forward from the previous year. Out of the total of 38 applications, 13 applications were disposed of and 25 applications were at various stages of consideration as on 31.12.2004.

Protection of Interests of Shareholders/Consumers

3.6.1 In order to afford greater protection to shareholders, Section 205A has been incorporated in the Companies Act, whereby unpaid or unclaimed dividends are to be kept in a separate account for three years by the company concerned. Thereafter, if these dividends still remain unpaid or unclaimed, these are to be transferred to the account of the Central Government, which will make necessary payments to the shareholders concerned upon an application duly made by them.

3.6.2 The interests of the consumers are also sought to be taken care of under the provisions

of the Companies Act. Approval of the Central Government is required to be obtained under Section 294AA in regard to the sole selling agency agreements, which may be entered into by companies having paid up capital of Rs. 50 lakh or more. This is to ensure that the cost of commodities sold to the consumers through these agreements is not inflated by avoidable additional expenditure on the part of the companies concerned.

3.6.3 Cost Accounting Records Rules are prescribed under Section 209(1)(d) of the Companies Act, for companies engaged in production, processing, manufacturing and mining activities. These are designed to bring cost consciousness among the companies to ensure the best use of resources by them with a view to reduce cost of production and in turn to provide cheaper goods to the consumer.

3.6.4 The interest of the public in general in the matter of keeping deposits with the companies has also been taken care of in the Companies Act. Under section 58A of the Companies Act, 1956, the Ministry has framed the Companies (Acceptance of Deposits) Rules, 1975. Under these Rules, companies are required to advertise and publish their financial accounts for the information and guidance of the public at the time of inviting the deposits. If a company fails to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board may, if it is satisfied that it is necessary to do so to safeguard the interests of the company, the depositors, or in the public interest, direct the company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order.

Protection of Interests of Workers

3.7.1 Sections 529 and 530 of the Companies Act provide that the dues of workers would rank pari passu with those of secured creditors in the event of closure of a company. This is intended to protect the interest of the workers of a sick company, who, in the event of closure of the company, have in the past generally lost their dues in the absence of funds after payment to the secured creditors.

Company Law Board

3.8.1 As per the powers vested in it under Section 10E of the Companies Act, 1956, the Central Government has constituted an independent Company Law Board with quasi-judicial powers with effect from 31.5.1991. The Company Law Board has framed Company Law Board Regulations. The Central Government has also prescribed the fees for making applications/petitions before the Company Law Board under the Company Law Board (Fees on applications and Petitions) Rules 1991.

3.8.2 The Board has its Regional Benches at Mumbai, Kolkata, Chennai and New Delhi, besides the Principal Bench at New Delhi and the Additional Principal Bench at Chennai. The matters falling under Sections 235, 237, 247, 248, 250, 388B, 408 and 409 and matters falling under Chapter VI of Part VI of the Companies Act, 1956 and under Section 2A of the M.R.T.P. Act are dealt with by the Principal Bench at New Delhi. The matters falling under Sections 235 and 237 of the Act and matters falling under Chapter VI of Part VI of the Act in so far as they relate to Southern Region are dealt with by the Additional Principal Bench at Chennai. In order to reduce pendency, Single Member Bench has been

entrusted to hear all types of cases from September, 2002 onwards. The Regional Benches are mainly concerned with Petitions/applications under Sections 10E, 17, 18, 19, 58A, 58AA, 79, 80A, 111, 111A, 113, 113C, 117, 117B, 117C, 118, 141, 144, 163, 167, 186, 196, 219, 269, 284, 304, 307, 614 and 621A of the Companies Act, 1956. In case the company fails to comply with the directions contained in the orders so passed by the Company Law Board, applications under Section 634A of the Companies Act, 1956 for enforcing the orders are entertained. During the period from 1.4.2004 to 31.12.2004, 2050 applications were considered under Section 58A(9) of the Companies Act, 1956 and 45QA of the RBI Act, 1934 of which 788 were disposed of. Under other Sections of the Companies Act, 1956, 5230 petitions were considered out of which 4147 petitions were disposed of during this period. This includes 599 cases compounded under Section 621A of the Companies Act, 1956.

3.8.3 As against the sanctioned strength of nine Members including Chairman and Vice Chairman, the constitution of CLB as on 31.12.2004 is as follows:-

1. Shri S. Balasubramanian, Acting Chairman
2. Shri K.K. Balu, Member
3. Shri K.C. Ganjwal, Member

Company Petitions before Company Law Board

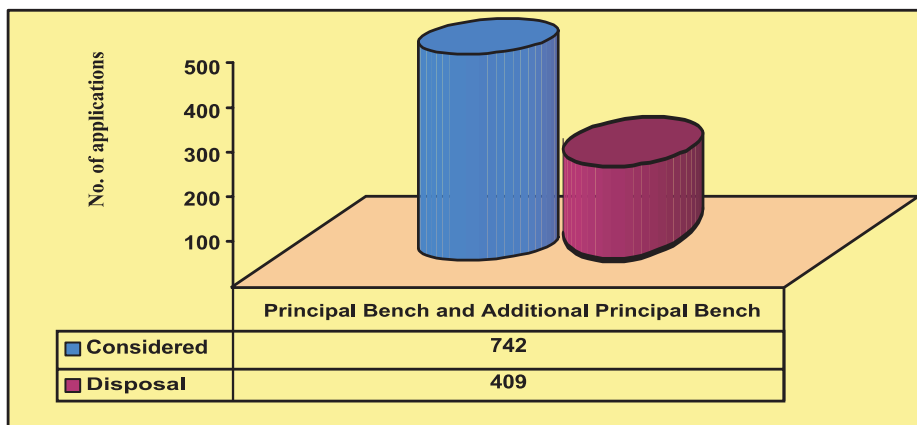
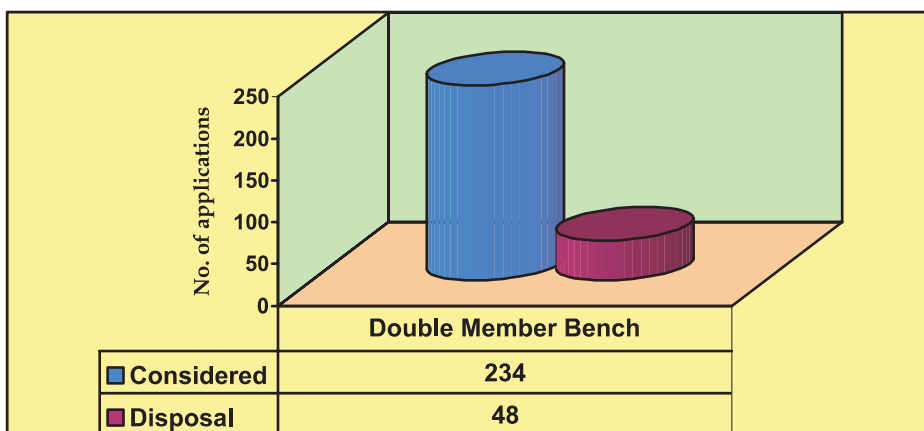
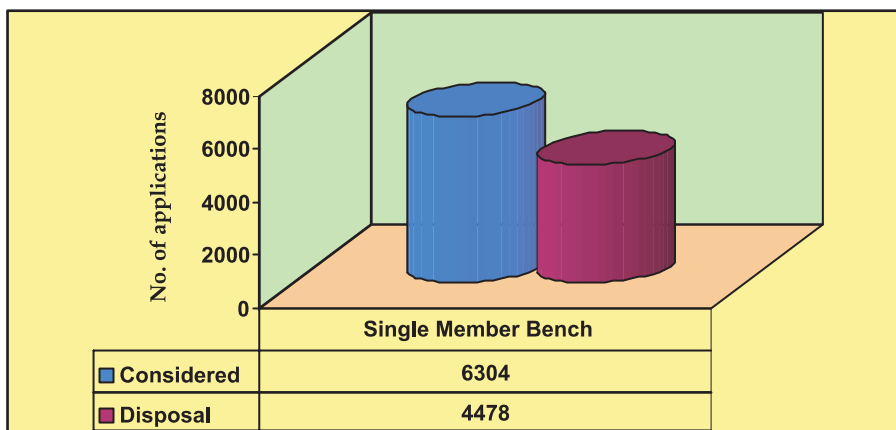
3.9.1 Particulars of petitions/applications received and disposed of by the various Benches including Principal Bench for the year 2004-2005 are given in Table 3.1.

Table 3.1

Consolidated Statement of Petitions/Applications received, disposed of and pending for the period 1.4.2004 to 31.12.2004

Composition of Bench and Sections	Opening Balance as on 1.4.2004	Receipt	Total (Col. Nos. 2 & 3)	Disposal	Pending as on 31.12.2004
1	2	3	4	5	6
1. Single Member Bench:					
Section 17	87	471	558	496	62
Section 18/19	2	26	28	26	2
Section 45QA of RBI Act	395	415	810	376	434
Section 58A(9)	348	892	1240	412	828
Section 58AA(1)	59	34	93	79	14
Section 79/80A	4	5	9	4	5
Section 113/113 (3)	33	40	73	46	27
Section 117	0	0	0	0	0
Section 117C	145	287	432	217	215
Section 118	0	0	0	0	0
Section 141	27	1614	1641	1578	63
Section 144	0	0	0	0	0
Misc. Applications	10	113	123	99	24
Section 163	2	3	5	0	5
Section 167	9	9	18	2	16
Section 186	0	0	0	0	0
Section 196	4	1	5	2	3
Section 219	0	0	0	0	0
Section 284	5	2	7	3	4
Section 304	0	0	0	0	0
Section 307	0	0	0	0	0
Section 614	6	3	9	7	2
Section 621A	85	593	678	599	79
Section 634A	448	127	575	532	43
Total	1,669	4,635	6,304	4,478	1,826
2. Double Member Bench:					
Section 111	163	64	227	46	181
Section 269(7)	0	0	0	0	0
Section 634 A	3	4	7	2	5
Total	166	68	234	48	186
3. Principal Bench & Additional Principal Bench:					
Cases under Sections 235,237 247,250, 388B, 397/398,408,409 and interlocutory applications	346	396	742	409	333
Grand Total	2,181	5,099	7,280	4,935	2,345

**Petitions/Applications considered and disposed of by the Company
Law Board for the period 1.4.2004 to 31.12.2004**



Petitions before Company Law Board under Section 408/402/406 of the Companies Act

3.10.1 Section 397/368 of the Companies Act, 1956 provides for filing of application before Company Law Board for relief in cases of oppression, mismanagement or apprehension of mismanagement of the affairs of the Company. Section 408 of the Act empowers the Central Government to appoint such number of persons on the Board of the company as directed by Company Law Board on the reference /application made by the Government to safeguard the interests of the company or its shareholders or the general public. In addition, the Central government can also file petitions under Section 402 read with Section 406 of the Act for disgorgement of assets against the Directors of the Company when they indulged in misappropriation/misfeasance. During the period 1.4.2004 to 31.12.2004, the Government has filed petition/application before Company Law Board under Sections 408 and 402 read with section 406 of the Act in respect of four companies. During this period, the Company Law Board has disposed of cases in respect of 9 companies. A total of 10 petitions/applications under Section 408/402/406 of the Act are pending before the Company Law Board for adjudication/decision.

Petitions under Section 237 (b) of the Companies Act

3.11.1 As per section 237(b) of the Companies Act, the Central Government may file petition before Company Law Board seeking order for investigation of the cases. As on 31.3.2004, 21 petitions were pending before Company Law Board. During the period

1.4.2004 to 31.12.2004, the Government has filed petition in one case. During the period, 17 cases have been disposed of by the Company Law Board. As on 31.12.2004 five cases are pending before Company Law Board.

Appointment of Managerial Personnel

3.12.1 The Ministry of Company Affairs deals with statutory applications relating to the appointment of and payment of remuneration to Managing Directors, whole-time Directors and managers of Public Limited Companies and of private Limited Companies which are subsidiaries of Public Limited Companies under Sections 269, 198/309, 310 and 388 of the Companies Act, 1956 in accordance with provisions of Schedule XIII to the said Act, as amended from time to time.

3.12.2 To bring greater transparency in processing of various statutory applications, the status reports of these applications have already been made available on the website of the Ministry of Companies Affairs, which has been appreciated by the applicant companies. Further, to bring about quicker disposal of cases and ushering in an era of e-governance, the prescribed application forms are being revised and simplified.

3.12.3 It has been observed that applications received are generally deficient in several respects. In order to have complete information at the initial stage itself, Form Nos. 25A and 26 have been revised and are pending for notification. The details of receipt and disposal of statutory applications for the period from 01.04.2004 to 31.12.2004 are given in Table 3.2 below.

Table 3.2

Applications on Managerial Appointment received and disposed of by the Central Government during 1.4.2004 to 31.12.2004

Sections of the Companies Act	Nature of Applications	Brought Forward	Received during the year	Total	Disposed of during the year	Pending as on 31.12.2004
259	Increase in number of Directors	3	16	19	14	5
268	Amendment of provisions relating to Managing or Whole time Directors	1	9	10	8	2
269	Appointment/reappointment of Managing or Whole time Directors	216	155	371	227	144
309(1B)	Remuneration of Directors for rendering professional services.	2	32	34	29	5
309(4)(5B)	Waiver of recovery of sums refundable by Directors	3	11	14	9	5
310	Increase in remuneration of Directors	29	132	161	134	27
314(1B)	Appointment/continuance of Director/relative of a Director to hold any office or place of profit in company which carries remuneration of not less than Rs. 20,000 per month	27	102	129	103	26
Total		281	457	738	524	214

Investigation

3.13.1. Sections 235 and 237 of the Companies Act 1956 empower the Central Government for ordering investigation of the affairs of Companies. During the current year, 20 investigations under Section 235 / 237 of the Companies Act, 1956 have been ordered by Serious Fraud Investigation Office (SFIO).

In addition, investigations have also been ordered to be carried out by agencies other than SFIO. During the year, two investigations were stayed by the High Court.

Inspections

3.14.1 Section 209A of the Companies Act, 1956, empowers the Registrar of Companies

and the officers of the Central Government who have been authorised in this regard under the Act to undertake inspection of the books of accounts and other records of companies

3.14.2 Broadly, the inspections are undertaken to serve one or more of the following objectives:-

- i. To ensure compliance of various provisions of the Companies Act, 1956 and also to keep a watch on the performance/efficiency of the companies;
- ii. To ensure that the company has not falsified its books of accounts or the company's funds have not been misappropriated or the management has not misused its fiduciary position for any personal advantage;
- iii. To see whether any unfair practices prejudicial to the public interest are being resorted to by any company;
- iv. To examine whether the companies are managed on sound business principles or whether there are acts of

mismanagement which may ultimately affect the interests of shareholders, creditors, employees, consumers and the general public; and

- v. To see whether statutory auditors have carried out their duties properly while certifying true and fair view of the State of affairs of the company.

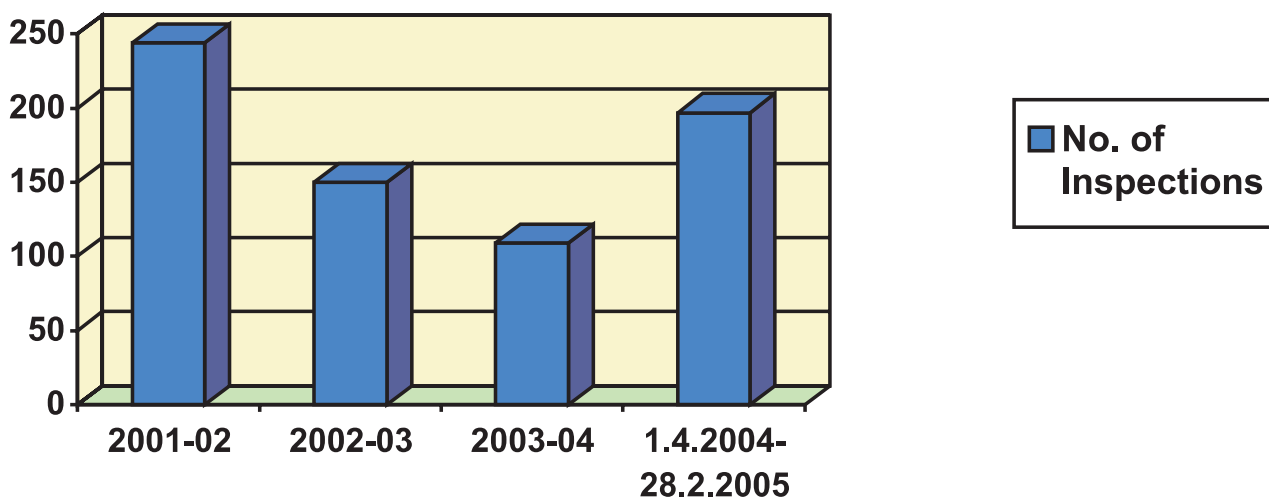
3.14.3 The Joint Parliamentary Committee (JPC) constituted to investigate the Stock Market Scam 2001. JPC submitted its Report in December 2002. The Ministry of Company Affairs is required to furnish Action Taken Reports on the recommendations of the JPC pertaining to the Companies Act to the Department of Economic Affairs, which is the nodal agency for monitoring JPC recommendations. The Ministry furnished latest Action Taken Report on the points/recommendations of JPC concerning Ministry of Company Affairs in December 2004.

3.14.4 The number of Inspections conducted by this Ministry during last four financial years are as under:-

Table 3.4

Year	No. of Inspections
2001-2002	244
2002-2003	150
2003-2004	109
1.4.2004- 28.02.2005	197

No. of inspections conducted by the Ministry during the last four Financial Years



Cost Audit

3.15.1 In exercise of the powers conferred by sub section (l) of the Section 642 read with clause (d) of sub Section (l) of Section 209 of the Companies Act, 1956, the Central Government during the current financial year has notified Cost Accounting Records Rules with respect to Plantation Products, Telecommunications and Petroleum Industry vide Notifications numbers GSR 685(E), 689(E) and 686(E) dated 08.10.2002 respectively requiring every company covered under these Rules to maintain cost accounting records from the financial year on or after the publication of these Rules.

3.15.2 The Cost Accounting Records Rules (CARRs) prescribe the manner in which cost records are to be maintained so as to have cost data base to be utilized by the industries to improve upon their performance and face competitive environment, and by various Government agencies like revenue authorities, regulatory bodies and other institutions for meeting their respective

objectives. Cost Accounting Records Rules in respect of 44 industries have been notified so far as indicated in table 3.3.

3.15.3 To simplify/rationalize the existing Cost Accounting Records Rules and synchronize them with the likely technological changes in the manufacturing process and perceptual shift in the accounting methods and policies, the Ministry has reviewed the four Cost Accounting Records Rules, namely, the Rules for Chemicals, Caustic Soda, Soda Ash and Sulphuric Acid and the four Rules were merged into single Rule titled "Cost Accounting Records (Chemical Industry) Rule, 2004 vide Notification No. 562(E) dated 02nd September, 2004. Similarly, applicability clause of principal Cost Accounting Records (Milk Food) Rules, 1986 were amended and new Cost Accounting Records (Milk Food) Amendment Rules, 2004 were notified vide Notification No. G.S.R..661(E) dated 08th October, 2004.

3.15.4 Simplification in the procedure for appointment of cost auditors is also under

consideration. Accordingly, the necessity for seeking prior approval of Central Government by the companies before appointing the cost auditors is being examined.

3.15.5 In order to improve the transparency, the Cost Audit Branch (CAB) has launched its website under the main website of Ministry of Company Affairs during the year. Networking connection among various computers of CAB, mechanism to store the soft copies of Cost Audit Reports, software in extracting and analyzing the data are also under consideration.

3.15.6 Committee on Subordinate Legislation (14th Lok Sabha has presented its Report to the Lok Sabha on 2nd December, 2004. The recommendations of the Committee are under consideration.

3.15.7 In compliance with Section 233B(2) of the Companies Act, 1956, 1380 applications were received for approval of appointment of cost auditors and exemption from cost audit during April to December 2004 as against 1392 applications received during the corresponding period of previous year and 1612 applications received during the full year 2003-04. The amount of fees collected on these applications aggregated to about Rs. 24.48 lakh during April to December 2004 as against about Rs. 23.01 lakh received during the corresponding period of the previous year and about Rs. 27.34 lakh of fees collected during the full year 2003-04.

3.15.8 The number of Cost Audit Reports received during April 2004 to December 2004 was 1228 as against 1387 during the corresponding period of the previous year i.e.,

from April 2003 to December 2003 (1871 during full year 2003-04).

Table 3.3

Industries in which Cost Accounting Records Rules were notified under Section 209(1)(d) of the Companies Act, 1956 during 2004-05 (April 2004 - December 2004)

S.No.	Name of the Industry
1.	Aluminium
1(a).	Batteries other than dry cell batteries
2.	Bearings
3.	Bulk Drugs
4.	Cement
5.	Chemicals
6.	Cosmetic & Toiletries
7.	Cycle
8.	Dry Cell batteries
9.	Dyes
10.	Electric Cables and Conductors
11.	Electric fans
12.	Electricity Industry
13.	Electric Lamps
14.	Electric Motors
15.	Electronic Product
16.	Engineering Industries
17.	Fertilizers
18.	Footwear
19.	Formulations
20.	Industrial Alcohol
21.	Industrial Gases
22.	Insecticides

23.	Jute goods
24.	Milk food
25.	Mining and metallurgy
26.	Motor vehicles
27.	Nylon
28.	Paper
29.	Petroleum Industry
30.	Plantation products
31.	Polyester
32.	Rayon
33.	Refrigerators
34.	Room Air conditioners
35.	Shaving Systems
36.	Soaps and Detergents
37.	Steel Plants
38.	Steel tubes & pipes
39.	Sugar
40.	Telecommunications
41.	Textiles
42.	Tyres and Tubes
43.	Vanaspati

Application under Section 108A

3.16.1 Under this Section, prior approval of the Central Government is required to be obtained for acquisition/transfer of shares by or to an individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management in relation to dominant undertaking, provided, there is any increase in dominance as a result of such an acquisition or transfer of shares. During the period from 1.4.2004 to 31.12.2004, no

application was received under the said Section.

Declaration of Dividends

3.17.1 Section 205A(3) of the Companies Act, 1956 makes it obligatory for a company to seek prior approval of the Central Government where owing to inadequacy or absence of profits in the year, it proposes to declare dividend out of the accumulated profits earned by it in the previous years and transferred to the reserves and where declaration of dividend is not in accordance with the Rules, namely, the Companies (Declaration of Dividends out of Reserves) Rules, 1975. During the period from 1.4.2004 to 31.12.2004, no application was received while 2 applications were brought forward from the previous year under Section 205A(3) of the Companies Act, 1956. Out of the 2 applications, 1 was approved and 1 was pending as on 31.12.2004.

Payment of Dividend

3.18.1 Section 205(1)(c) of the Companies Act empowers the Central Government to allow any company, in the public interest, to declare or pay dividend without providing for depreciation. Nine such applications including 7 brought forward were considered during the period from April, 2004 to December 2004. Out of these, 7 applications were disposed of and 2 were pending as on 31.12.2004.

Accounts of Subsidiaries

3.19.1 Section 212 of the Companies Act provides that the Balance Sheet of a holding company should include certain documents of its subsidiaries. However, sub-section (8) thereof empowers the Central Government to

exempt a holding company from the requirements of including in Balance Sheet the said particulars of subsidiary companies.

3.19.2 Two hundred thirty four applications including 80 brought forward from the previous year were considered during April 2004 - December 2004. Of these, 206 applications were disposed of and 28 applications were pending as on 31st December 2004.

Prohibition on Appointment of Sole Selling Agents

3.20.1 Section 294AA (1) of the Companies Act, 1956 requires that where the Central Government is of the opinion that the demand for goods of any category is substantially in excess of the production or supply of such goods, and where the services of the sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that Sole Selling Agents shall not be appointed by a company for the sale of such goods for such periods as may be specified in the declaration.

3.20.2 The Central Government had issued Notifications prohibiting the appointment of Sole Selling Agents by any company for the sale of sugar, vanaspati, cement, paper, bulk drugs, 'drugs' and 'formulations' for various periods in the past. Based upon recommendations of the administrative Ministries/Departments, the prohibition has been lifted for sugar, vanaspati, cement and paper. For 'bulk drugs', 'drugs' and 'formulations', the period has now been extended for three years with effect from 23.2.04 vide Notification GSR No. 130(E) dated 23.2.2004.

Appointment of Sole Selling/Buying Agents

3.21.1 Sub-sections (2) and (3) of Section 294AA of the Companies Act, 1956 require the companies to obtain approval of the Central Government for appointment of Sole Selling/Buying Agents. Sub-section (2) applies to those companies in which Sole Selling/ Buying Agents through themselves or through their relatives hold paid-up capital of Rs. 5 lakh or 5 per cent of the paid-up capital of the company whichever is less. Sub-section (3) of Section 294AA of the Companies Act applies to those companies whose paid-up capital is Rs. 50 lakh or more.

3.21.2 Fourteen applications were received under sub-sections (2) and (3) of Section 294AA of the Companies Act seeking approval of Central Government for appointment of Sole Selling/Buying Agents during the period 1.4.2004 to 31.12.2004, while 4 applications were brought forward from the previous year. Out of these, 8 applications were disposed of and 10 applications were pending at various stages of consideration as on 31.12.2004.

Loans to Directors and relatives:

3.22.1 Section 295 of the Companies Act, 1956 requires all public companies or their subsidiaries to obtain the previous approval of the Central Government before making any loan to, or giving any guarantee or providing any security in connection with a loan made by any other person to, or to any other person by their directors, relatives of such directors, firms or private companies in which such directors are common/interested and to other body corporate falling within the ambit of clauses (d) and (e) of sub-section (1) of the said Section.

3.22.2 Sixty two such applications, including 27 applications brought forward from the previous year, were considered during the period April 2004 to December 2004. Of these, 14 applications were disposed of and 48 remained pending as on 31st December 2004.

Amalgamation of Companies

3.23.1 During period under report, 12 cases including 10 brought forward from the previous year were considered under Section 396 of the Companies Act, 1956. Of these, seven cases were disposed of and 5 cases were pending as on 31.12.2004.

Power to Declare Companies as NIDHI

3.24.1 Under the Section 620A, the Central Government is empowered to declare by notification in the official gazette certain special type of Non-Banking Financial Companies as Nidhi companies or Mutual Benefit Societies

as the case may be and direct that certain provisions of the Companies Act, 1956 shall not apply and/or, as the case may be, shall apply with certain exceptions, modifications and adaptations to the said Nidhis. The Reserve Bank of India also allows relaxation from compliance of its directions and thus the Nidhis do not to follow strict guidelines of the RBI for Non Banking Financial Companies (NBFCs). During the period from 01.04.2004 to 31.12.2004, the Central Government declared 15 companies as Nidhi Companies vide Notifications GSR 547(E), dated 25.08.2004.

3.24.2 During the period under review, the Central Government received 37 applications under Section 620A of the Companies Act, 1956 and 81 cases were brought forward from the previous year. Out of these 118 applications, 46 were disposed of as on 31.12.2004, and 72 applications were pending consideration of the Central Government.