

CHANGING DIMENSIONS OF COMPANY LAW IN INDIA. By V.D. Kulshreshtha. Eastern Book Company, Lucknow/Delhi. 1971. pp. ii+p122 (together with Bibliography and Index).

During the last ten or twelve years the reviewer of this book has spoken and written on many occasions about the aridity of our traditional thinking on company matters, based largely on the concepts of company law, company management and company practice evolved in the second half of the 19th century in the Anglo-American countries. The base of this thinking has been steadily eroded in the countries of its origin during the last two decades or so. But curiously enough, as in several other areas of our life, these west winds of change have yet to leave any noticeable dent on our contemporary legal, economic and social thinking over the place and role of companies in our society. At a recent all-India seminar on 'Law and Social Change in India', held at Bangalore under the auspices of the Indian Council of Social Science Research, the reviewer had occasion to draw attention to this unsatisfactory situation at some length. In this context, the reviewer pointed out how western scholarly literature on corporate organisation and practice during the last two decades—particularly the studies carried on since the late fifties in which legal scholars played a leading part—had already documented with much care the progressive changes in the traditional stereotype of the joint stock company brought about during this period. Unfortunately, these studies had, by and large, bypassed the relatively small number of scholars and serious students of corporate theory and practice in our law schools, law firms and the law courts. It is because of this that the approach to company law and company practice in this country has in the past continued to be dominated by the traditional lore of an earlier age, reinforced by the conventional wisdom of the market place. Only in recent years has a dim awareness of the socio-economic reality represented by the modern joint-stock company begun to emerge. This, in its turn, has been paralleled by a rapid growth in the new thinking on company law and related matters which was for the first time sparked off by the new Indian Companies Act, 1956.

Nevertheless, the interest shown in this country in analytical studies on the structure and functioning of large-scale joint-stock enterprises by social scientists generally, and the law schools in particular, continues to remain limited, in marked contrast to the leading part taken by the concerned university faculties and other centres of higher studies and research in law in the United States, and to a lesser extent in the United Kingdom and in a few other Western European countries. In this context, the slim volume produced by V.D. Kulshreshtha is a welcome addition to the somewhat exiguous literature on this subject. The reviewer would like to think that the appreciative 'Forewords' to this book contributed severally by the President

of the Bar Association of India, who was also a distinguished former Attorney-General of India, by the Dean of the Faculty of Law, University of Delhi, and by the present President of the Institute of Chartered Accountants of India constitute recognition of an urgent need for this new thinking as a major base on which legislative and administrative policy in this area will have to be increasingly mounted in future.

In the Preface, the author refers briefly to the circumstances of its origin. The idea of this study, he says, emerged out of his discussions in 1969 with a Visiting Professor from the School of Law, Indiana University, U.S.A., and candidly acknowledges the fact that it was this discerning scholar, who had 'exposed him to the emerging problems in the area of corporate social behaviour, and also in regard to the need to concentrate his enquiries on selected problem areas within the scope of the Indian Companies Act, 1956.' The author will surely be the last to claim that the efforts embodied in this book bring him very close to the centre of these problems. A few sure preliminary steps in this direction have, however, been taken but the author has yet to go a long way. It is the reviewer's sincere hope that the author will persevere in his efforts and move forward in the near future to the next phase of the enquiries.

The book contains ten chapters. The first chapter entitled 'Changing Phases in Company Legislation' is a hurried historical review of the various stages through which the Indian Companies Act has passed since the first Joint Stock Companies Act, 1850 which was enacted in the wake of the English Companies Act of 1844. The survey ends with a summary of some of the main recommendations of the Working Group on Company Law which was appointed by the Administrative Reforms Commission under the chairmanship of the reviewer. As an introduction to the chapters that follow, this brief historical account perhaps suffices. But the fact must be placed on record that an adequate analytical study of the growth and evolution of the Indian Companies Act has yet to be attempted, and is indeed in some respects overdue.

Chapter II of the book dealing with the 'Objects Clause' in the Memorandum of Association of a company and chapter III dealing with the relations between a company and its directors cover much familiar ground. An interesting suggestion bearing on the problems of needlessly prolix 'object clauses', however, deserves comment. The author would like the Registrars of Companies to be empowered, presumably through an amendment of section 33 of the Companies Act, to refuse to register the Memorandum and Articles of a company under certain conditions. The difficulty in giving effect to this suggestion is neither constitutional nor legal, but only of administrative expediency. About fifteen years ago, the reviewer was seized of this problem in his then official capacity as Secretary of the Department of Company Affairs. What had then deterred him from pursuing this suggestion was that, having regard to the rapid changes that were taking place in the growth and extension of technology, including the technology

of management, and to the necessarily circumscribed administrative capabilities of executive officers at the level of Registrars of Companies, the vesting of large discretionary powers of this type in them might not be considered administratively or politically expedient. It was this fear, shared by many others at the policy-making level, which finally scotched the suggestion. As far as the reviewer can see, this consideration will constitute a major hurdle in the administration of Company Law and related matters for many years to come, viz., the difficulty of reconciling the need for flexibility in business management with the social compulsions to regulate it in the public interest, which, it may be conceded, can be best done through discriminating but objective use of discretionary powers vested in the Administration. The solution of this dilemma, indeed, constitutes the crux of the problem of administrative law in the area of company administration.

There is another major proposal for the amendment of the present law relating to the 'Objects Clause' which the author omits to mention but which needs to be referred to in this context. In the early sixties, George Goyder, in his thought-provoking book, *The Responsible Company*, proposed that the law should provide for formal recognition in the 'Objects Clause' of a company of its responsibility towards several interests besides its traditional constituents, namely, the shareholders and the creditors. His specific suggestion was that an obligation should be cast on the directors of a company to ensure that the interests of the other principal partners in production, viz., the workers, the consumers of the goods and services produced by the company, as also of the general public and the local community which was affected by the activities of a company were duly protected. The latest amendment to the English Companies Act, following the *Jenkins Report* attempted to give some limited effect to this recommendation in the amendments which were made to the provisions of the English Act relating to directors. But this issue, which is linked basically with the new concept of a joint-stock company as a socio-economic institution embodying a system of power, has yet to be more fully explored, studied and analysed.

Chapters IV and V of the book, dealing with the provisions of the Companies Act relating to the Prospectuses and the Management of Companies deal mostly with the existing provisions of the Act and the case law on these subjects. One important suggestion made by the author, however, is that of the workers' participation in the management of companies which he develops at some length in chapter VI. This is a hoary theme, and has been often debated in informed circles concerned not only with the administration of the Companies Act and connected matters, but also with labour administration and management. The balance of considered opinion on any scheme of workers' participation on the broad model of the well-known German law of 'Economic Co-determination' is that it has hardly achieved any significant result even in the country of its origin, and is unlikely to confer any substantial benefit either on labour or company management in this country. This is a view which the present reviewer also reluctantly shares. In the present state of labour politics in this country and the current

level of education and training of workers in most undertakings, whether in the private or the public sector, it is unlikely that the representation of workers engaged in the business of a company, will serve the purposes which its promoters have in view or raise the standards of company management. The Working Group of the Administrative Reforms Commission on the Company Law Administration which went into the subject carefully was also inclined towards this view. A more fruitful and productive reform in the short period would be the closer association of workers, and the office rooms in the case of clerical and ministerial staff, on matters directly connected with the technical operations of companies. This would need to be supported by exposition of major policy decisions by the top and middle-level management and the Board of a company to representatives of workers at different levels and at regular intervals, whenever there is a major change in the plans and programmes of a company or any shifts in its technological and financial policies that are likely to affect the conditions of work or the fortunes of the workers employed in an undertaking.

Chapter VII of the book deals with the vexatious problem of managerial remuneration. This reviewer is inclined to think that a broad working consensus has perhaps been reached at long last on the policies adopted by the Administration on this subject. Such problems as still remain unsolved and cause avoidable irritation to many people both in business and outside it, are traceable to continuing unjustifiable administrative delays in the disposal of references to the central government. Future amendments of the Act on this subject must be designed with due regard to this aspect of administration. It was because of this consideration that the Working Group of the Administrative Reforms Commission on Company Law made the recommendations which the author has reproduced on pp. 85 to 87 of his book. In this connection, he draws attention to a lacuna in the present law, which, he fears, might provide a loophole for critics of the existing policy. His fears have since been partially confirmed by the recent decision in the *Upper Ganges Sugar Mill Ltd v. S. (Addl.) P.F. Authority*¹ decided by the Delhi High Court, which impugned the authority of the central government to impose administrative ceilings on managerial remuneration in terms of the provisions of section 637A of the Act. As far as one can see from the newspaper summaries of this decision, the objection appears to have been based largely on the Court's interpretation of words used in this section. Apparently, in arriving at its decision, the Court took the view that the 'conditions' which the central government could legitimately impose while approving or sanctioning appointments of whole-time managing directors or their remunerations, should be such as fell within the limits of the specific provisions of the Act relating to managerial remuneration. Any attempt to modify these provisions through the imposition of 'conditions' in the relevant administrative orders, would, in the court's view, be an illegitimate extension of the discretionary powers vested in the central government. The lesson to be drawn from this case is that policy decisions in all major areas of company law administration must be based on the specific provisions of the

Act and where it is intended to vary or alter these specific provisions, this should be done through straightforward legislative amendments, and not circuitously through administrative interpretations of a type which could be legitimately challenged as overtly tendentious and therefore improper exercise of the discretionary powers vested in the central government.

Chapter VIII of the book deals with inter-company loans and investments, often a fruitful source of misuse of company funds, and the remaining two Chapters deal with the postulates of 'a shareholders' democracy' and the role of the audit profession in company management. This is a large problem area which has been the subject of much discussion and debate in the past, and is likely to continue to be a source of controversy for many years to come. However stringent the substantive provisions of the Act may be on this subject, it is unlikely that the evils arising out of improper inter-company loans and investments would be effectively checked, unless the management of companies and their directors entertain the right views on this subject, and are prepared to look upon such loans and investments only as a means of strengthening the working of the undertakings concerned, in the public interest and not as instruments of personal, family or group aggrandisement. Neither company auditors nor shareholders, the reviewer fears in the light of his long hind-sight, will be able to check these evils, except in isolated cases, and that only to a relatively marginal extent. Those who are closely acquainted with the mechanics of company management and company practice, must regretfully come to the dismal conclusion that neither a shareholders' democracy nor a nationalised audit profession is likely to be of much avail for checking effectively the malpractices that not unoften, are committed through dubious inter-company loans and inter-company investments. This is not to deny that vigilant shareholders of a crusading type, alas increasingly rare now-a-days, and enlightened leadership of the professions (including that of company auditors) connected with company management, could undoubtedly do much to raise the standards of company management. The truth however, is, that in the area of company law as in many other spheres of our contemporary social life in this country and elsewhere, it must be for men, more than their laws and institutions, to sustain and elevate standards. The management of companies and their directors who are supposed to guide, control and direct company policies, must look upon company management not merely as an honourable profession based on sound professional ethics, but also as a major social function in the discharge of which they are essentially the agents and trustees of a wider community in which they are privileged to work. This is the underlying message of the tenets of the new thinking on company management and company practice in the modern world. As the reviewer has already observed, many scholars and students of the subject have been propagating this message in many advanced countries of the West and in many centres of higher study and research in the Western World for over two decades now.

V. D. Kulshreshtha's book is a welcome addition to the growing

literature on this subject which is now being developed in this country by a small group of young researchers and scholars. They are materially helping in an all-important preparatory communication process. This is an essential preliminary step towards the wide dissemination of this message in the learned circles concerned. For, a new corporate jurisprudence can emerge only out of concentrated thinking by the best minds in those circles, and the major task of company law reform based on this jurisprudence can be taken in hand with a reasonable hope of success, only when this new thinking has seeped into the minds of the enlightened leaders of trade and industry on the one hand and imaginative policy-makers and perceptive administrators on the other. The reviewer has on several earlier occasions ventured to outline some of the governing principles of this jurisprudence, as he sees them. It is unnecessary to repeat them in this context, except to stress the fact that a good deal of sophisticated "engineering work" in the triple fields, of law, economics and business administration will need to be done before the new model of company law suited to the ethos of our times can be slowly built up. For this will be a complicated exercise involving, *inter alia* the construction of the conceptual frame of the new law, the formulation of appropriate legislative measures and their administration in a difficult socio-economic field, where many divergent forces will have to be co-ordinated and balanced, so that a harmonious corporate policy, in tune alike with the logic of business management and with the social purposes which the companies of the future will be required to subserve may be evolved. Meanwhile, students and scholars working in the field of company law, company management and company practice can do much invaluable spade work to help in this construction process. The present volume should be an aid to their appreciation of the issues ahead of them, and the reviewer should like to think that its author can take an active part in due course in the next phase of the basic operative exercises.

The elaborate bibliography attached to the book adds to its usefulness, and should help the future researchers in this somewhat neglected field.

*D. L. Mazumdar**

* I.C.S. (Retd.). Formerly, Secretary to the Government of India, Deptt. of Company Law and Administration (Now Deptt. of Company Affairs).