

# BOOK REVIEWS

THE STATE FINANCIAL CORPORATIONS ACT 1951 (1988). By M.C. Agrawal and Avadhesh Kumar Srivastava. The Law Book Company (P) Ltd., Sardar Patel Marg—Post Box No. 1-004, Allahabad 211001. pp. XVI+316. Price Rs. 150.

THE BOOK under review<sup>1</sup> has been authored by persons who have the practical experience of the working of one of the state's financial corporations in India.

In the post independence era, the country witnessed the establishment of various financial institutions which were created by the Central government and various state governments to mobilise the capital resources for accelerating the pace of industrialisation in India. Such institutions are viewed as having "certain definite advantages in pooling resources, diffusing risks by diversified investments, easy accessibility to expert guidance for investment and the like."<sup>1a</sup> The constitutional goals like attainment of socio-economic justice, prevention of concentration of economic power in few hands and raising the standard of living of the poor Indians cast a clear cut duty upon the governments to strive to realise them. Hence, in order to achieve the noble aims, the governments opt to involve themselves vigorously in the process of industrial development. More than the pace, the industrialisation needed a right direction in which it could be turned and geared to achieve the national goals of self-reliance, regionally balanced economic development in a federal polity and creation of a class of enterprising entrepreneurs.

The book is in the form of a section-wise commentary. The first chapter deals with the preliminary part of the State Financial Corporations Act 1951 (hereinafter referred to as the Act), which, though seemingly preliminary, contains the seeds of most conclusive portions in the form of the definition clauses. The legislature drafts the definition clauses with utmost care with future in its vision. The definition of 'industrial concern' under section 2(c) of the Act has, however, undergone sea change, since 1951, showing the legislative anxiety or concern for a well-directed industrialisation through state efforts which culminated into many amendments of the definition—every time widening the scope of the term.<sup>2</sup> It is, however, more interesting to note the attitude of the boards of the state financial corporations themselves in the words of the experienced authors:

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1. M.C. Agrawal and Avadhesh Kumar Srivastava, *The State Financial Corporations Act 1951* (1988).

1a. *Id.* at 2.

2. *Id.* at 17-18

Since the object of the State Financial Corporations Act is to give financial accommodation, authors' experience is that the Boards put a liberal interpretation on the clauses of the industries to which financial accommodation can be given and some of the industries which in judicial proceedings may not be includible in the various sub-clauses of clause (c) are yet admitted to them. Resilience and not rigidity may even be a desideratum and to borrow the felicitous forensic phrase from criminal jurisprudence the benefit of the doubt shall be given to the entrepreneur.<sup>3</sup>

The above-quoted observation of the authors about the board's attitude of having a liberalised financial accommodation of industries needs a thorough probe to find out that to what extent the country has gained through such benevolent interpretations. If 'benefit of doubt', as stated in above quote, has been given to the entrepreneurs, the clouds of doubts or mist of the alleged fishy dealings must also be cleared from the skies of the benevolent boards to establish their credibility.

Chapter II of the book (and of the Act too) deals with the incorporation of the state financial corporations, their capital and management. The state government is authorized *vide* section 3 of the Act to establish a state financial corporation and to run it in accordance with the provisions of the Act. Several agencies and authorities like board of directors, chairman and managing director thereof, executive committees and advisory committees are integral parts of the state financial corporation. Chapter II, in its detailed provisions provides for the structural and functional aspects of all these instrumentalities. The authors have looked into the interpretative complexities of each provision with or without the help of the cases which have been brought before the courts. Some of the terms which are commonly used in other statutes *in pari materia* with the Act, and which have judicially or otherwise received accepted meanings, have also been explained to make a consistent and explanatory study of the Act. However, they add to the bulk of the book.

The board of directors of the state financial corporation is an important body which wields immense powers under the Act. The board is under a general duty to act on business principles and to have due regard to 'the interests of industry, commerce and the general public.'<sup>4</sup> It was expected from the authors having practical experience in the field to have given concrete instances to show in which the boards might have not acted on business principles and in the interests of all the concerned and to narrate the inside story which is only whispered and heard in the business circles but not substantiated.<sup>5</sup> However, if the boards *always* act according to the guiding principles, the sketch of the appropriate instances could

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3. *Id.* at 19. The authors have, however, not produced examples to support their view about the attitude of the board.

4. *Id.* at 102.

5. *Id.* at 103-104. The authors, however, discuss *Gujarat State Financial Corporation*

have put the boards above the deck. Modern commentators should earnestly try to show the yawning hiatus, if any, between the 'paper law' and the 'living law'.

The state financial corporations have to carry on their functions in such a climate where their exercise of powers generally becomes subject to judicial scrutiny.<sup>6</sup> The effective implementation of the purposes requires wide powers and discretion also to the implementors. It has been revealed by the authors that the provisions of chapter III of the Act were amended many times to facilitate the task of the financial corporations but the courts were called upon to put the meanings onto the disputed provisions and to settle the disputes arising on the issue of the authority of the financial corporations.<sup>7</sup> The merit of the book under review lies in the threadbare analysis of the judicial decisions in chapter III which enhances the utility of the work.<sup>8</sup>

Chapter IV contains the provisions relating to the investment of funds,<sup>9</sup> audit<sup>10</sup> and inspection<sup>11</sup> *etc.* The Central government has a power to get inspected the *working* and account books of a state financial corporation<sup>12</sup> but the inspection-report has been given immunity against the production of it in a court, tribunal, *etc.*<sup>13</sup> The widely-worded exemption flouts the democratic norms which, in modern times, acknowledge that the public has a right to know about the functioning or mal-functioning of the state controlled bodies. It is beyond one's comprehension and understanding as to why the Act has excluded even the courts, and overridden the Evidence Act too,<sup>14</sup> with regard to the report of inspection while, interestingly enough, the financial corporation does absolutely non-confidential work. In the present excited era while the people are clamouring to peep into even defence-dealings, such a provision can only make any legislature a laughing stock. Furthermore, it is doubtful whether this immunity clause would be able to withstand the challenge of articles 14 and 19 of the Indian Constitution.<sup>15</sup>

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*v. Lotus Hotel Pvt. Ltd.*, A.I.R. 1982 Guj. 198 to show the application of the doctrine of promissory estoppel against the state financial corporation but do not discuss the ruling of the Supreme Court in the same case. Only a reference without citation is made to the appeal in the case to the Supreme Court.

6. See, e.g., for *Mirza Javed Murtaza v. U.P. Financial Corporations*, A.I.R. 1983 All. 234; *Kharavela Industries Pvt. Ltd. v. Orissa Financial Corporation*, A.I.R. 1985 Ori. 153; *Swaya Mal Sant Ram v. Punjab Financial Corporation*, A.I.R. 1963 Punj. 555; *Gujarat State Financial Corporation v. Natson Manufacturing Co. (Pvt.) Ltd.*, A.I.R. 1978 S.C. 1765, *etc.*

7. *Supra* note 1 at 29-101.

8. *Ibid.*

9. State Financial Corporations Act 1951, (hereinafter referred to as the Act), s. 34.

10. *Id.*, s. 37.

11. *Id.*, s. 37-A

12. *Ibid.*

13. *Ibid.*

14. *Ibid.*

15. See, *sopra* note 1 at 239 wherein the authors argue that article 20 of the Indian Cons-

Chapter V, dealing with the 'miscellaneous', has some important provisions which have been critically commented upon by the authors. For instance, section 39 of the Act, which empowers the state government to give instructions to the board on questions of policy and to supersede the board on default, has been viewed as making the board "a complete handmaid of the State Government."<sup>16</sup> The same section requires the state government to give such instructions 'in consultation with and after obtaining the advice of the Development Bank'.<sup>17</sup> The involvement of the development bank, therefore, does not allow the state government to act arbitrarily and subjectively. The criticism of the provision arming the state government with a power to act with determination seems to be unwarranted. The authors do not provide any alternative mechanism to control the board and fail to accept that in the era of welfare state, the governments are to be given wide powers in the public interest, of course with adequate checks and balances.

The commentary, first of its kind on an academically unattended subject, is a welcome addition in the racks of the libraries of industry, economics, commerce and law. The authors have set the law on the subject with detailed consideration. The book examines conflicting verdicts<sup>18</sup> also and the authors have, at few places, recorded their views. As regards the issues which have not been agitated in the courts so far, nevertheless if confounding, the authors have tried to unfold their meanings too in the light of the statutes in *pari materia* or otherwise.<sup>19</sup> It is hoped that the book would inspire other field workers to enrich the legal literature with their experiences in the respective areas of their operation.

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titution may also be invocable against section 37-A(3) of the Act. It is doubtful, in the opinion of the reviewer, if article 20 has any application in this case.

16. *Id.* at 242.

17. *Supra* note 9, s. 39(1).

18. See, for e.g., *supra* note 1 at 163, 167.

19. *Id.* at 130-131 wherein the authors attempt to interpret the words 'and such like conditions' used in section 27(2) of the Act.

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