CORPORATE MANAGERIAL PERSONNEL—THEIR RIGHTS, POWERS, AND REMUNERATION

V. P. Arya*

I

The directors of a company constitute the executive of the company in whom the management of its affairs, and control and direction of its policies is vested. Management of companies by directors is thus the most obvious and the simplest form of corporate management. In the early days of joint stock companies when business was comparatively simple, companies were actually managed by directors. With the rapid growth in the size of corporate units and increasing complexities of modern business, the Board of Directors had per force to confine themselves to matters of general business policy and overall supervision of mangement and to leave the day to day conduct of business and management to other managerial personnel. Before the passing of the Companies (Amendment) Act of 1969, the company law envisaged the following categories of managerial personnel:

1. Mangaging Director
2. Managing Agent
3. Secrectaries and Treasurers
4. Managers

The said Amendment Act introduced a new section 324A in the Act providing for compulsory termination of the offices of existing managing agents or secretaries and treasurers on April 3, 1970, and prohibiting their appointment or re-appointment after that date. Thus, the Act now specifically envisages only two categories of managerial personnel, *viz.*, managing director and manager.

With the abolition of the managing agency system and the system of secretaries and treasurers, two main trends are noticeable in the companies hitherto managed under these systems. In a number of instances, the ersthwhile managing agents have entered into agreements

*B.Sc., LL.B., F.C.I.S., Company Secretary, Union Carbide India Ltd.

with the managed companies retaining their services as management consultants, share registrar and transfer agents, financial advisers, technical advisers, etc. In some companies the managing agents have been appointed as secretaries. One of the companies that has appointed its erstwhile managing agents, Martin Burn Limited, as secretaries is Indian Iron. The appointment has been made on a monthly salary of Rs. 12,500 for a period of five years. A company recently floated, Shree Synthetics Limited, has entered into an agreement with Messrs Bangur Brothers, appointing them as secretaries for a period of 5 years with effect from April 1, 1970. It is questionable whether such appointments can legally be made if such secretaries not only perform ministerial or administrative duties but also exercise general managerial powers. Further, if such secretaries are appointed in that capacity in more than one company, are such appointments envisaged under the Act ?

In some cases, members of the erstwhile managing agency firms have sought appointment as managing directors and whole-time directors in companies managed by them. Ordinarily, in companies managed by board/managing director form of management, only one managing director is appointed. But appointment of one managing director would not take care of all the members of a managing agency firm and, as such, in several cases, as many as five managing directors have been proposed to be employed in replacement of the erstwhile managing agents. In some cases, in addition, whole-time directors with remuneration have been proposed. These trends appear to be undesirable, and suitable statutory and administrative provisions would be necessary to regulate and check these trends.

Company's articles usually contain clauses empowering directors to delegate their duties and authority. The board may delegate its powers to a committee of directors. Usual form of article empowering delegation of powers to a committee provide as follows :

> "The directors may from time to time delegate any of their powers to a Committee consisting of such member or members of their body as they think fit and may from time to time revoke such delegations. Any Committees so formed shall, in the exercise of the power so delegated, conform to any regulation that may from time to time be imposed upon it by the directors."

Delegation of powers to a committee may be general including all the powers of the board or may be specific, limited to a particular matter or function. Thus, another form of company management that seems possible is management by a committee of directors appointed by the board, though this form of management is not specifically envisaged under the Act. This form of management is, in fact, prevalent in some companies. In the case of Indian Iron Company, apart from appointing its erstwhile managing agents as sacretaries, the board of directors of the company has formed a committee of directors consisting of three directors with a view to carrying on the day to day affairs of the company. Questions arise as to the status of such a committee and of each of its members and as to the statutory controls and regulations applicable to them. Will each member of such committee be deemed to be a managing director? If yes, can the statutory regulations relating to appointment, remuneration etc., of a managing director be applicable to him? An amendment in the Companies Act may, in fact, be necessary to clarify the position.

From the above discussion it follows that after the abolition of the managing agency system and the system of management by secretaries and treasurers, the following patterns of company management would seem possible:

1. Management by board of directors with executives working under the board's directions.
2. Management by one or more managing directors and/or whole-time directors under the supervision of the board.
3. Management by a manager under the supervision of the board.
4. Management by a committee of directors appointed by the board.

As observed earlier, business cannot be conveniently carried on, especially in large companies, if even day to day management decisions are vested in the whole body of directors. When such functions are vested in one of the directors themselves, such director is called a managing director. The Act does not lay down any specific powers or duties to be exercised by the managing director and, therefore, whatever powers and functions he has must be specifically delegated to him. However, the statutory definition of 'Managing Director' makes it clear that mere exercise of powers of a routine administrative nature would not make a director a managing director and that the powers exercisable by him have to be 'substantial' as would give him discretion and power to take decisions on matters of policy, *e.g.*, pricing of products, buying and selling. The definition given in the Act for the other category of managerial personnel, *viz.*, 'Manager', provides that he has 'the management of the whole or substantially the whole of the affairs of the company'. A managing director on the other hand exercises only such powers of management as the board or the company may think fit to vest in him. He may be in charge of only a division or branch of the business and there may be more than one managing director each in charge of several divisions or branches of the business. It appears, therefore, that a managing director's powers are narrower than those of a manager. From a practical point of view, however, there is not much difference between the office of a managing director and that of a manager. A suggestion was made before the Companies Act Amendment Committee that the definition of managing director may be amended so as to replace the words "substantial powers of management which would not otherwise be exercisable by him" by the words "the management of the whole or substantially the whole of the affairs of a company." The suggestion was rejected by the Committee by saying :

> "The suggested change will place the Managing Directors in the same position as a Manager and would exclude persons, who though not entrusted with the management of the whole or substantially the whole of the affairs of the company, are entrusted with important powers of management. This is not the intention of the Act and the adoption of this suggestion would remove from the control of the Government the appointment and remuneration of directors who, though exercising important functions and powers of management are yet not entrusted with the whole or substantially the whole of the management of the affairs of the company."

The number of public companies managed by managers under the supervision of the board is small and insignificant. This system of management appears to be neither popular nor of much use and consequence. From a practical point of view, there is hardly any difference between the office of a manager and that of a managing director, specially in the case where the manager is also a member of the board of directors. The institution of managers could, therefore, be usefully abolished leading to elimination of several provisions of the Act and its consequential simplifications. If the institution of managers is abolished, the definition of managing director may be amended keeping in view the observations of the Companies Act Amendment Committee. Incidentally, this will also eliminate the confusion caused by the statutory title of manager, which has to be differentiated from the title of 'Manager' generally given to a variety of levels of staff employed in companies.

II

Managerial remuneratian is the remuneration that a company pays to its directors including managing and whole-time directors and managers. With a view to controlling the total cost of management, section 198(1) of the Act places an overall limit of 11 per cent of the net profits (calculated in the prescribed manner) of the company in a financial year as managerial remuneration. Section 309 provides that, subject to this overall limit, a managing director or whole-time director is not entitled to draw by way of remuneration more than 5 per cent of net profits where there is only one such director, or 10 per cent of net profits where there is more than one such director (excluding the sitting fees payable to directors for board and committee meetings). Even within these limits administrative ceilings have been placed by the Central Government. By a notification issued in November 1969, remuneration payable to an individual managing or whole-time director has been limited to Rs. 1.35 lakhs annually comprising a ceiling of Rs. 90,000 by way of salary and 1 per cent of net profits not exceeding 50 per cent of the approved salary, *i.e.*, Rs. 45,000, by way of commission. Administrative ceilings apply to perquisites also, which are restricted to an overall limit of one third of the emoluments or Rs. 30,000 annually, whichever is less. The Government imposes these ceilings on remuneration while giving approvals to appointment of managing or whole-time directors under section 269 of the Companies Act 1956.[1]

The restriction on remuneration of directors was some time sought to be evaded by the directors holding technical or other appointments in addition to their directorship. Section 309 was consequently amended in 1965 so as to bring within its purview the remunerations received by a director 'in any other capacity' also One exception, however, has been made where other services rendered by a director may be separately remunerated without being included in his remuneration for services as a director. This is where the services rendered by him are of a professional nature like those of a lawyer or an accountant and in the opinion of the Government he is duly qualified for the practice of the profession. Question arises can a director serve the company in a capacity other than managerial while in the whole-time employment of the company ? To take an example, can a lawyer, employed as a full-time employee of the company and subsequently appointed to the board of directors, be remunerated for his services as a lawyer without such remuneration being included in his remuneration for services as a director and without reference to the limits fixed by sections 198 and 309 ? Again, if such lawyer has no managerial responsibilities as such, apart from attending board meetings (for which he receives sitting fees) can salary paid to him be called managerial remuneration for purposes of section 198 ? One view is that since whole-time directors constitute a recognised category of managerial personnel under the Act, services of a lawyer in the whole-time employment of the company appointed to the board, will be deemed to be managerial services and the salary paid to him would, therefore, have to be included in managerial remuneration. But this argument does not appear to be convincing, not in any case as conclusively convincing. Let us take another example of that of a company secretary whose duties are only ministerial or administrative and who is appointed to the board of the company. He continues to act as

1. Hereinafter referred to as the Act.

secretary of the company and is designated as 'Secretary and Director'. There is no change at all in his duties and responsibilities except that now he attends board meetings of the company in the additional capacity of a member of the board. Would the salary payable to him, which was hitherto not included in managerial remuneration, now have to be included ? The question may be answered in the negative but again perhaps not conclusively. Incidentally, an interesting question may further be asked : will consent of the shareholders under section 314 of the Act be required for appointment of such company secretary as a member of the board of directors ?

Apart from the above question, another question arises with regard to the ceilings on managerial remuneration, *viz.*, are these ceilings just, proper and called for and can they be validly imposed under section 269 of the Act ? This question may be considered in some detail.

What motivates key management personnel entrusted with the task of management of companies ? Several incentives or keys to motivation like job satisfaction, responsibility and challenge can be mentioned. But these motivations are somewhat inexact and hard to define. More exact, easier to define, and perhaps more effective is the traditional incentive of money. However, with the value of rupee falling at the rate of 7 per cent per aunum and the prevailing high rates of income-tax, it is well nigh impossible to offer effective monetary awards to managerial personnel. The following calculations of incidence of tax on managerial salary levels in the range of Rs. 80,000 to Rs. 300,000 (with the rent free accommodation taken as a usual perquisite) will bear this out :

	Rs.	Rs.	Rs.	Rs.	Rs.
Annual Salary (a)	80,000	1,00,000	2,00,000	2,74,000	3,00,000
Add. 10% for accommodation	8,000	10,000	20,000	27,400	30,000
Taxable salary	88,000	1,10,000	2,20,000	3,01,000	3,30,000
Tax (b)	46,300	66,000	1,63,900	2,40,000	2,66,750
Cash Receipt (a-b)	33,700	34,000	36,100	34,000	33,250

The above statement reveals the fact (besides showing the anomalous, if not ridiculous, position that net take home at a salary level of Rs. 80,000 is more than at a salary level of Rs. 3,00,000) that it is impossible for a manager to receive in cash an amount of more than Rs. 3,000 per month.

One may, therefore, ask : what purpose is achieved by putting administrative ceilings on managerial remuneration? Statutory ceilings are already there controlling the maximum remuneration payable to directors and managers and the incidence of tax adequately takes care of politicians' concern with 'reducing the inequities of income' and realising the 'socio-economic objectives of the State policy'. (Talking of politicians, we are reminded of a devastating array of facts and figures produced in the last Parliament by Shri N. Dandekar according to which a Union Minister devoted to the lofty ideal of socialism draws a gross salary, including perquisites, of about Rs. 4.5 lakhs per year).

To the question whether the Government can validly impose administrative ceilings on remuneration payable to whole-time directors and managing directors while approving their appointment under section 296, the answer appears to be in the negative. It is argued that under section 637A, the Government has powers to impose any conditions while according any approvals or consents, etc., and that, therefore, while giving approvals under section 296, the Government can impose conditions as to remuneration. However, in advancing this argument, it is ignored that under section 269 approval is sought to the desirability or suitability of the appointment and not to the remuneration. If one is to scrutinise the scheme of arrangement of sections in Chapter II of the Act, under their group headings, it will be shown that "Remuneration of Directors" is dealt with under sections 309 to 311, that qualifications and disqualifications of directors, etc., are dealt with in several sections interspersed between sections 252 and 278, and that purpose of Section 269 is to give power to the Government to ensure suitability of a person for appointment as a whole-time or managing director and not to regulate the quantum of remuneration payable to him.

Section 269 of the Act states that the appointment of a person for the first time as the managing or whole-time director shall not have any effect *unless* approved by the Government. Question arises whether prior approval of the Government is necessary before the date of appointment for a person to act as a managing or whole-time director and for payment of remuneration to him. The usual practice for the companies is to make the appointments and later on make application to the Government for approval. If Section 269 is read to mean that prior approval of the Government before the date of appointment is necessary for a person to act as a whole-time director or managing director and payment of remuneration to him, it is going to present extreme practical difficulties. Approval of applications by the Government under section 269 usually takes several months and, therefore, what it would mean is that appointments would have to be held up for indefinite periods. One view is that if approval application is made after appointment, the person can act as the managing or whole-time director but he will have to forgo any remuneration (even temporarily drawing any amount) until approval is accorded by the Government. It appears to be most unreasonable that a person renders services but is denied remuneration for an indefinite period. Again question arises what happens if the Government refuses to approve the appointment. Section 290 of the Act validates the acts of a director whose appointment is afterwards found to be defective. Will the provisions of section 290 apply to the acts of whole-time or managing director whose appointment is disapproved by the Government? If the answer is in the affirmative, would it not be equitable that such whole-time director of managing director is remunerated for his services for the period he acted as a de-facto managing or whole-time director?

As discussed earlier, management by a committee of directors appointed by the board is a possible from of management. Each of the members of such a committee may be remunerated by way of sitting fees for each meeting of the committee attended by him. If meetings of such committee are held frequently, the remuneration of members of the committee can be quite substantial. The Committee may consist of non-working directors in which case no formal approval of Company Law Department or of the shareholders would be necessary for remunerating them in this matter. This provides a very easy way of remunerating members of erstwhile managing agency firms.