

WELCOME ADDRESS

M. C. Bhandari*

Hon'ble Shri J.C. Shah, distinguished guests and fellow delegates : I have proud privilege and honour this morning to welcome Mr. Shah, and all of you, to this seminar on "Company Law, Monopolies and Restrictive Trade Practices" on my behalf and on behalf of The Indian Law Institute and The Institute of Chartered Accountants of India, who have jointly organised this seminar. The professions of law and accountancy are so near to each other in the commercial and economic spheres, and incidentally the buildings of the two Institutes are situated physically so near to each other that it was very much appropriate to have jointly sponsored this seminar on such an important subject which very closely concerns the commerce and industry in our country and those associated with it, like us. This is perhaps the first attempt of this kind where lawyers, accountants, teachers, business executive and government officials all combined will be sitting together and will be deliberating on some of the important issues, problems, implications, ramifications, and background of about one year old legislation on monopolies and restrictive trade practices.

We are, therefore, very particularly fortunate to have Sir, (Mr. Shah), amidst us to inaugurate this seminar. All of us are aware of your high stature and of the highest standard of the judicial independence that you showed when you held the most responsible and respectable position of the Chief Justice of India only some days ago. Born on January 22, 1906, and educated in Gujarat and Bombay, you had a very successful career which led to your appointment as Supreme Court Judge in 1959 and as the Chief Justice in 1970. Your remarkable role in Food Poisoning Enquiry Commission and Punjab Commission and your bold approach and brilliant judgments particularly in tax cases, are all too well known to those belonging to legal and accountancy professions. We are really grateful and indebted to you for having accepted our invitation to be with us this morning to benefit us by your learned inaugural address. We extend to you Sir, our most sincere and warmest welcome.

The seminar would discuss the subjects of "Preventing Concentration of Economic Power Through Corporate Laws and Monopolies and Restrictive

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Trade Practices Act," "Criminal Liability under Company Law," "Corporate Management", and "Company Shareholders" in 3 days and 6 sessions. The first two sessions dealing with concentration of economic power will be presided over by no less a person than the Chairman of the Monopoly Commission itself, Shri A. Alagiriswamy. He is known for amiable manners, clear cut understanding of facts and law and fair approach. His raising to the position of the Chief Justice of Madras High Court and now to the present position bear testimony to this. The third session on "Criminal Liability under Company Law" will be presided over by Shri D.L. Mazumdar, (I.C.S. Retd.). There is hardly any body at least in my profession who does not know Shri Mazumdar. He had a very brilliant career as I.C.S. officer and his contribution to the Department of Company Law Administration particularly has been so tremendous that he came to be known as father of the company law administration in India. He indeed put his heart and soul into it and gave to the corporate sector a new philosophy, a new line of action, a new light which is still burning. And the credit for the continuance of this burning goes to Shri R. Prasad, who is presently the Secretary to the Department of Company Affairs and is presiding over our fourth session on "Corporate Management." Shri Prasad's calm and quite nature, dispassionate approach and fair mindedness have already impressed very deeply all of those who have to deal with his department. I have been asked to preside over the last two sessions on "Company Shareholders" and I must hasten to add that I have nothing like above to describe myself. I very heartily welcome these chairmen on behalf of the organisers.

The seminar is being attended to by many eminent men both from my profession and from my friend Dr. Jain's profession and also from the profession of teaching and management, most of whom have contributed very learned papers. I extend to all of them my hearty welcome.

May I now welcome most profusely our distinguished guests and the members of the press who I am sure will provide us with the best media to reach public to convey them our feelings about some of the important matters that we would be discussing here.

These matters mainly relate to public interest, corporate management and company shareholders. The guiding principles in our Constitution that "ownership and control of the material resources in the community are so distributed as best to subserve the common good" and that "operation of economic system does not result in the concentration of wealth and means of production to the common detriment" relate to public interest and have been sought to be put into practice through various measures both administrative and legislative. Of the most significant measures taken in this regard in recent times is the introduction of the Monopolies and Restrictive Trade Practices Act. As Hon'ble Mr. Chief Justice P.B. Mukharji puts in his

paper, this law is an attempt to control by law, power in an area, which in the modern economic and technological society, is continually over-running and overcoming limitations imposed upon it. Or in other words, as Shri G.A. Shah, Jt. Secretary in the Department of Company Affairs and who is mainly with the administration of this Act, writes in his paper, "this is the legislation to prevent concentration of economic power and formation of monopolies and to prevent the concomitant malpractices." I am not quite sure that this legislation alone will achieve this object unless it is supported by the policy of liberalisation of licencing for new entrepreneurs and several positive measures are taken to develop middle class entrepreneurship throughout the length and breadth of the country by providing such fiscal and financial assistance as may be necessary to fill up the tremendous gap of market competition. Moreover, the Act shall have got to be effectively administered so that the impression in the public mind, that any Government control could be tackled by undertaking two or three pilgrimages to Delhi, may be dispelled. I do not for the moment suggest that the administration should be harsh; in fact all the grey areas in the provisions of the Act, as pointed out in a separate paper by Prof. A.N. Oza, should soon be converted into bright areas and the administration should act with consideration, equity and fair deal to the parties concerned but what I mean to say is that where after all this the administration feels that the public interest will be hit by permitting anything for which the permission is sought, it should not be merely moved by an individual's ambition to go ahead with a particular expansion.

As regards corporate management, one has to admit that the professionalisation of management to replace hereditary or share-ownership based management is the ultimate answer of all the ills that one notices in the corporate sphere today. A professional corporate manager recognises that the company is a separate, economically viable unit and is a conglomeration of various interests namely—management, shareholders, employees, labour, creditors, consumers, state and the community and the modern professional manager has to strike balance between the conflicting or nonconflicting interests of all these segments which go to make the company. In this very concept of "company" the element of public interest is very much existent, although, our Companies Act has brought it out in a more pronounced way particularly in sections 388A B C D E, 203, 397, 398, 408, 233A, 153A, 250, 396, 293A, 635B to ensure a reasonable management acting on sound business principles and following prudent commercial practices and yet not acting prejudicial to public interest.

The problems of shareholders are complex. While my friend Mr. P. Chattopadhyay very strongly advocates divesting the shareholders of all managerial powers and deprive them even the voting rights to make the company in itself a complete entity left to be entirely managed by professional

managers; the shareholders only, having right to return on capital. My another friend Shri Kothari pleads for more effective powers—managerial as well as others for the shareholders to make the shareholders democracy a reality. I think those diametrically opposed views will be a very interesting issue for discussion in the seminar.

Be that as it may, most relevant question in the legal system which exists today, is, how to make the shareholders' control over the company's affairs, even from the public interest point of view, effective. Mr. Kothari has given several suggestions in this regard. I would like to add only two or three to his list for proper discussion in the seminar. The first one is to introduce the election of board of directors on proportional representation basis of all the public limited companies. The second one is to give right to holders of at least 25% equity capital to demand at least 6% dividend on equity capital if there are residual profits or free reserves in the company to the extent of at least 10% of equity capital. The third is to introduce some such system by which reasonable queries of the shareholders could be replied to by the management without causing it any harassment or embarrassment. I hope these suggestions would receive due attention of the participants of the seminar.

In conclusion, I would like to stress that the basic problem is that of self-control. If the corporate or business sector could adopt some sort of self-regulatory measures which could take care of "public interest," I think the question of stringent provisions which exist today in Monopolies and Restrictive Trade Practices Act or Companies Act or Taxation Laws would not arise. Even now, to prevent further inroads of legislation into every aspect of business life, it is high time for business to acquire a sociological sense, to become aware of instrumental character of the business system and its social implications. The old slogan that we have no business beyond business will not do any more. Companies have a natural and intimate stake in the viability of society, in the stability and growth of its economy, in the orderly functioning of its free and democratic institutions under the Rule of Law. I hope, the professions both of law and accountancy will be successful in bringing home this message. I have every hope that you will find the deliberations of this seminar quite educative and interesting. I also hope that you will be generous enough to forgive us for any deficiency which might have remained in making the arrangements for this seminar. I must frankly admit that most of the botherations of this seminar were very remarkably shared by The Indian Law Institute and the role of my Institute has been not very significant, for which I personally offer my deep sense of gratitude to Dr. Jain and his team. With these words of welcome, I would now like to request Mr. J.C. Shah to inaugurate this seminar.