

L.5. VARKEY, A.—Administrative Controls of Companies in India—1984—Dr. V.D. Sebastian

Increasing State interference in the economic life of its citizens is a common phenomenon in the modern world. Company, a standard form of all business activities, is not exempted from such interference. The nature, function and impact of such State interference in the working and progress of the corporate sector is the subject matter of this study.

Administrative control over corporation existed in some form or other even in the early days. With the emergence of a large number of trading companies, the State interference increased to reduce the abuses of corporate form of business. The sphere of corporate control went on increasing to meet the changing needs of the society. The nature and extent of administrative controls over companies in India also faced gradual changes to meet the social needs and to satisfy the changing social ideology.

At present, the controls of companies in India, may be classified into (1) shareholder controls, (2) Judicial controls, and (3) administrative controls. A brief but critical study of these controls is made in the work. This study reveals that the shareholder controls and the judicial controls have many limitations.

One of the important objective behind administrative control over companies is the protection of public interest. The Government is acting as the guardian and the protector of public interest. But, the State is a party having substantial interest in the matter in which it acts as an arbitrator or as a judge. This makes the study of this problem very important in the present day. The difficulty in ascertaining what 'public interest' is, also creates much confusion. This aspect is given due importance in the study. The possibility for a reconciliation between the two contesting interests, the public interest and the individual interest, is considered here.

At the stage of formation and expansion of companies, a large number of administrative controls are provided in the law. The controls are generally exercised through registration and licensing provisions. The simplification of these procedures without liberalising the controls is considered necessary.

Administrative controls for the protection of investors and creditors have been emphasized in the study. The need and sufficiency of disclosure provisions at the time of issue of shares and debentures is considered in the light of decided cases.

Maintenance of share capital is of much concern for all those who are interested in the company. Therefore, restrictions are placed on reduction of share capital. Payment of commission, brokerage, etc. on the issue of shares are thus restricted to a great extent. While forfeiture of shares and surrender of shares are allowed to some extent, there is total prohibition on purchase of own shares by companies. In the light of the recent developments in England, there appears to be no harm

in allowing companies to purchase own shares under certain circumstances. For this purpose strict conditions and limitations are to be prescribed by the Legislature.

Another important power of the Central Government in relation to the shares of a company is the power to hear appeals from shareholders when registration of transfer of shares is refused by the directors. Most of the Companies by its articles give wide discretionary powers to the directors to refuse registration of transfer of shares. Unlike administrative discretion, the control over the exercise of discretion by the directors is much limited.

Prevention of economic concentration is another objective sought to be achieved through the administrative controls. Mergers, amalgamations and takeovers are controlled for this purpose. The study reveals that what is controlled in India is not the concentration of economic power. Only when the economic concentration turns out to be prejudicial to public interest, governmental interference is made to check the abuse.

Many of the administrative control provisions under the Companies Act 1956 are designed to regulate the conduct of the management of companies and to ensure better protection to the shareholders, investors and the creditors. Provisions of the Companies Act ensuring "federalism" in company management is critically studied. The result is not encouraging. Even though the shareholders are "sovereign" in theory, their actual role in management is not significant. Search for a better system by which a pleasant reconciliation of the different competing interests in the management of companies is made. Defining and delimiting the powers and duties of the three most important partners of a company, the management, the shareholders and the workers, is considered essential for this purpose.

The Government enjoys considerable powers to regulate the appointment and removal of directors and other managerial personnel of a company. The study reveals that even though these powers are administrative in nature, the Courts have prescribed standards to determine whether an action taken under these provisions is arbitrary or not. Abuse of these powers may cause havoc to the economic life of the country. Fortunately, the judiciary has proved to be a vigilant guard against such abuses.

Administrative action against a company may take different forms. Inspection of company documents, investigation, prevention of oppression and mismanagement, winding up, etc. are some of such powers. Inspection and investigation are considered as drastic steps which may shake the credit of a company. But if the provision for inspection and investigation is properly used, it can prevent a number of abuses by company management and prevent many company liquidations. This along with the power of the Central Government to take action for the prevention of oppression and mismanagement could be developed as an alternative remedy to winding up. The nature and extent of administrative powers exercised over the conduct of winding up is also subjected to a fair discussion.

Finding a proper forum for settlement of disputes arising out of the administration of company laws is one of the difficult problems at present. The present position is analysed to focus these difficulties and to suggest alternate methods.

To sum up, the process of administrative controls over companies at all stages of operation of a company is discussed in this study. Based on such discussion, some concrete suggestions are made to improve the situation, wherever found