CHAPTER –8

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The Indian Industry witnessed global competition in the post liberalization era. Many of the large firms could withstand the global competition. Moreover, many firms especially both large and medium sized firms, which underwent a restructuring process- both business and financial restructuring, not only survive in this intense competition but also emerged as successful global firms. But on the other hand, a large number of units were registered as sick firms with BIFR and number of cases registered with the CDR cell also increased. The study highlights many revival mechanism available which help in turning around a sick firm into profitable firm. A question would arise – Are these mechanism adequate for turning around a sick firm? In other wards, do sick firms really benefit from financial restructuring? An area of research which has not been much treaded into till now.

In the above backdrop, this study

1. Identify the type of firms in terms of size which are more prone to sickness.

2. Identify the causes and problems of sickness.

3. Study the present financial restructuring mechanism and prevalent laws in the country.

4. Examine the relationship between financial restructuring and its impact on the corporate performance in the Country.

5. Compare the legislation system for insolvency/restructuring of India with other developing and developed countries.
8.1 SIGNIFICANT FINDINGS

In view of the above mentioned objectives, the major findings of the study are:

1. Analysis of the sector which is more prone to sickness: The industries in the country are mainly classified into 4 sectors i.e. large, medium, small and micro. Hence, the first objective of the study was to analyze which sector is more prone to sickness. The major findings from the primary analysis of sectoral sicknesses are:

   a) the small scale sector is more prone to the sickness as compared to large scale or micro scale sector.

   b) The second category of the sector which is more prone to sickness are the medium scale and Micro firms

   c) The literature review also supports this finding of the study.

After globalization of the Indian economy, the size always matters and the level of competition has intensified due to the entry of foreign players with a large asset base and deep financial pockets. Various restrictions as well as items reserved for production under the SSI sector have been lifted which caused a severe competition for this sector. Small healthy units started expanding and shifted themselves into medium scale or large scale. Remaining firms either could not expand due to the factors beyond their control and became prone to sickness. Many firms in the SSI sector could not withstand the competition as well as could not incur sizeable expenditure on technology, advertisement or brand building due to inadequate financial resources.
2. While analyzing the major causes of the sickness, it is found that the causes of sickness are mainly due to siphoning of funds by the promoters, non-availability of adequate funds at the disposal of the promoters or wrong/over-expansion as well as utilization of short term funds for long term purpose. Further analyzing the data on mishandling of the finance, it is revealed that either due to taking away money from the firms for personal uses or for payment of personal debts by the promoters, is the major cause of sickness.

3. It is found that the promoters are not approaching the bank at the time of incipient sickness or at the time of detection of sickness. Generally in Indian context the promoters are trying to cover up the sickness out of their own efforts and do not reveal the facts to the bank and they remain in the vicious circle of covering up the sickness leading to the debt trap situation. Generally such units approach to the bank/FIs when substantial losses have taken place and till that time, no sign of sickness is given to the bank. This is so, even though the promoters’ bonafide may be genuine, the banks/FIs always doubt the bonafide of the promoters. Hence, till the entire net worth is on the verge of erosion, sickness is not reported to the lenders. When the sickness is reported or identified, the lenders are normally not inclined to help the companies because of internal policies and guidelines of banks wherein the domain managers are not confident of taking bold steps for restructuring the unit.

4. The responses further reveal that whenever the restructuring is considered by the lenders, protesting the interest of the lenders is a priority instead of helping and reviving the unit. Thus restructuring in most of the cases is not designed as per the requirement of the unit but to save the bank from slipping into next level of NPA.
5. It is also perceived by the respondents that the financial restructuring helps the unit for its revival/rehabilitation. This shows that the unit should be given proper financial restructuring on a case to case basis with proper monitoring mechanism.

6. Even if proper restructuring mechanism is adopted by the bank, in number of cases it has been observed that the restructuring fails and unit faces liquidation/winding up situation because of non-availability of proper monitoring mechanism on the part of banks. This shows that monitoring aspects are equally important in the restructuring mechanism.

7. The present legislation in the country does not allow the lenders to recover their money or in genuine cases at times, the promoters are also facing SARFAESI action/winding up position and accordingly genuine cases are not rehabilitated in the right spirit. On the other hand unscrupulous promoters are taking shelter of SICA Act and registering themselves with BIFR which does not allow the lenders to recover their money. Though the SICA Act is repealed, till the completion of the thesis BIFR is working in the same fashion. This shows that sizeable amount of the lenders are locked into the non-productive assets. In some of the cases, where SARFAESI actions are taken, the assets are being sold in bits and pieces by the lenders. This loses the character of selling the “Business” and there is a loss to the promoters, economy as well as lenders due to non-realization of true value of assets.

8. The study further reveals that in most of the cases lenders are taking haircuts at the time of revival of the unit.
9. From the primary data analysis, it is revealed that whenever the companies are offered restructuring package by the lenders and they have sacrificed part of the amount of interest or principal with a condition to give back the said sacrificed amount to the lenders upon revival of the unit, in such circumstances, it is revealed that most companies are taking the route of one time settlement and stop working with the said lender who has taken haircut and start relationship with a new bank so as not to give back the earlier sacrificed portion of the bank/FIs.

10. The secondary data analysis shows that there is not much difference in the sales, profitability, gross fixed assets and current ratio of the unit in the short term after rehabilitation of the unit. Thus, the study reveals that there is no major improvement or changes in the parameters within the two years timeframe from the implementation of the rehabilitation package.

11. From the analysis of the data pertaining to 87 companies for a period of about three years before restructuring and four years after the date of rehabilitation of the unit, it is revealed that there is an improvement in gross profit upon implementation of rehabilitation package. This confirms that once the unit becomes sick and nursing package is offered, the results of the financial restructuring can be witnessed only in the long run.
8.2 **RECOMMENDATIONS**

**Suggestions from the sample respondents**

i) Unit should be helped immediately once the sickness symptoms are diagnosed.

ii) Present Legal System and Labour laws reforms required in the Country.

iii) Structuring of repayment in a more scientific manner to be made so as to take care of stabilization period i.e. giving adequate moratorium and step up repayment.

iv) More restructuring to be granted in the evidencing of siphoning of fund by promoters is established and the performance of the unit is not comparable to the peers in the industry.

v) The focus of the FIs/banks should be more on revival of the unit after understanding the reasons/causes leading to sickness. Important steps should be:
   a) to give proper gestation/moratorium.
   b) Repayment in line with the projected cash flow
   c) Cost cutting measures are to be adopted.

vi) Strengthen the appraisal system of the banks as well as appraisal schemes of the bankers.

vii) Even in case of consortium banking, each bank should appraise the case of its own so as to plug the loopholes.

viii) Close monitoring of the firm i.e. timely inventory check, stock audit, etc. to be implemented.
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ix) In case of the exposures exceeding Rs.1000 crores, an independent concurrent audit should be carried out in the cases regularly

x) Post restructuring and monitoring methods are not known to most of the lenders. Structure monitoring methods should be in place i.e. it should be well defined.

Other Recommendations

1. The findings indicate that for the deterioration of the performance of the unit, finance plays a pivotal role. Once the units slip into sickness, timely and adequate financial restructuring has a capability of turning around the unit subject to other qualitative parameters remaining constant. The maximum number of firms vulnerable to erosion of net worth or leading to sickness is because of the paucity of funds. This clearly suggests that well financially managed firms have lower/insignificant changes of sickness.

2. The research also identifies that the intentions of the promoters also play an equal role in the corporate performance even after restructuring.

3. The study suggests that the present legislation of the country for winding up or restructuring is not up to the mark and requires complete revamping. It further states that there is no proper monitoring mechanism available with the banks and financial institutions and there is lot of vacuum in the monitoring of restructured account which allows the promoters to slip/convert from potentially sick unit to sick unit. Much of the work is required for monitoring of firms upon implementation of restructuring programme. Not only this, a separate set of professionals are to be trained for the purpose of close monitoring as well as having expertise for winding up/liquidation process of the company. The units under nursing should be given doctoral treatment under them so as to revive and rehabilitate such units. The Companies Bill, 2008 states about the appointment of professionals and private liquidators. However, it talks only in case of liquidation and not for the purpose of rehabilitation of the unit. Thus, this
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aspect is still unanswered even after the Companies Bill, 2008 becomes the Companies Act.

4. Finance plays a pivotal role in rehabilitation of the unit. It is always desirable that adequate funds should be provided to the units under nursing. There must be a separate cell in each bank and adequate powers should be delegated to such cell in helping the units covered under the nursing programme without loss of time. The domain manager dealing with such cases should have adequate training and power along with the responsibility for proper monitoring and nursing of the unit. Unless proper delegation of powers for disbursement of additional money at the right time for sick firm is given to the domain manager dealing with such cases, it is difficult for such type of the units to revive. Lack of timely help further deteriorates the financial condition of the firm as the firm is not in a position to fulfill the expectations of its stake holders which leads to tarnishing of its business image and reputation.

5. The philosophy of “Giving Back Your Own Money” is to be implemented. Thus the amount paid by the unit to the exchequer of the government over a period of time should be quantified and out of this, certain percentage should be given by way of interest free loan or subsidy to the units which are not classified as “Willful Defaulters” and can be rehabilitated with adequate financial restructuring. Though the government has provided for creating a fund out of the specific contribution to be levied on turnover of every company, the government should also provide part of the money received from the units towards value added taxes either as subsidy or Interest free loans.

6. There must be a Complete Code and Single Legal Framework/Court to deal with the Restructuring and Liquidation cases. Unlike present scenario, only one Authority should have power to deal with both types of cases.
8.3 LIMITATIONS OF THE STUDY:

No study is free from limitations. The limitations of the study can be broadly described as under.

1. The study was conducted using a convenience sampling method and in a limited time frame.

2. While conducting the study and taking the secondary data, the data related to medium scale and large firms mainly engaged in the manufacturing sector was taken. SSI sector and micro industries were not taken due to non-availability of published data and mostly units under these segments remained are under the unorganized sector, it is difficult to compile the data of such firms. Service sector, finance sector and units engaged in trading activities are not covered under the SICA Act, 1985 as well as due to non-availability of adequate assets base, financial restructuring of such units are difficult and therefore they have not been taken into account in this study. Companies under Infrastructure sector are relatively new and therefore still much of the units under this sector have not become sick or have not undergone restructuring process and therefore the same are not taken into account.

3. The study has not attempted to cover the companies whose financial restructuring took place u/s 391-394 of the Companies Act, as proper data were not available.

4. Companies undergone through re-phasement or re-schedulement for a temporary period have not been considered as financial restructuring. The performance of such type of the companies has not been taken into account.

5. The companies covered under temporary restructuring/ reschedulement due to global meltdown with the specific guidelines from RBI have not been covered under the study as this was universal phenomena and remained for a temporary period.
6. The study does not include sector-wise sickness of the industries and their restructuring taken place due to non-availability of proper sector-wise data.

7. These limitations can serve as basis for future research.