Chapter 3

REVIVAL OF INDUSTRIAL SICKNESS IN INDIA
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3.01 INTRODUCTION

As mentioned in the previous chapter, the steps taken by the Government to tackle the problem of industrial sickness have generally focussed towards continued use of productive assets together with ensuring employment of existing employees. We have therefore to examine whether the legal framework created for this purpose has been commensurate with the policy of the Government. In particular, the following issues are addressed:

- How did the Government of India deal with industrial sickness prior to enactment of the Sick Industrial Companies (Special Provisions) Act (SICA), 1985?

- Did the legal framework suffer from certain limitations so that the Government was forced to enact a new law to tackle the situation?

- Why did the Government enact the SICA, 1985 and what were its objects?

- What are the salient features of the SICA, 1985?

- What are the objectives of the Board for Industrial and Financial Reconstruction (BIFR) established under the SICA, 1985 to act as a body of experts to suggest appropriate measures to revive the sick companies?

- What are the procedures adopted by the BIFR regarding registration with it and adoption of subsequent measures for revival?
Whether the performance of the BIFR in handling cases of sick units referred to it was satisfactory.

3.02 LEGAL FRAMEWORK

In the first two decades after independence as a part of policy framework industrial sickness was sought to be dealt with by taking regulatory steps and management takeover and ultimate nationalization of losing units particularly large one to ensure continued production and employment. The Industries (Development & Regulation) Act, 1951 (IDRA, 1951) contains such provisions of taking over. Apart from regulatory provisions, various other provisions were included in the Act with the intention to provide the Government with alternative options so as to ensure that ailing units could be nursed back to health.

The study of the IDRA, 1951 reveals that the main provisions dealing with sickness are contained in the Chapter IIIA of the Act. Chapter IIIA consisting of sections 18A to 18F deals with the direct management or control of industrial undertaking by the Central Government in certain cases.

Under section 18A the Central Government may, by notified order authorise any person or body of persons to take over the management of the whole or any part of the industrial undertakings or to exercise in respect thereof such functions of control as may be specified in the order on account of failure by the undertaking to comply with directions issued under section 16 or where the undertaking in respect of which an investigation has been made under section 15 is being mismanaged to the detriments of the scheduled industry concerned or to public interest, such notified order shall have effect for a period initially of 5 years, which may be extended up to further period of 2 years at a time, so that total period of such order shall not exceed 17 years.

Section 18AA empowers the Central Government to authorise any person or body to take over the management of an industrial undertaking (either wholly or partly) without investigation under certain circumstances, such as, reckless investments, creation of
encumbrances, diversion of funds, closure of undertaking for a period of three months or more, etc. It may be noted that section 18AA has been inserted in the Act through the Amendment Act of 1971 and made effective from 1.11.1971.

Moreover, through the same Amendment Act of 1971, section 18FA has been inserted in the Chapter IIIAA which confers power on the Central Government to authorize, with the permission of the High Court, to take over management & control of industrial undertakings owned by companies in liquidation if the Government is of opinion after an investigation made under section 15A that such an undertaking is viable and that it should be run or restarted for maintaining or increasing the production, supply or distribution of articles or class of articles related to the scheduled industry, needed by the general public. There are certain other provisions in the IDRA, 1951 which deals on preventive & regulatory aspects.

In May, 1978, the Central Government in its Statement on Policy of sick industries disclosed its policy guidelines to prevent and treat industrial sickness. Under that policy guidelines, the Central Government had set up a Screening Committee to recommend take over of management. Also that guidelines contained the list of options available to the Central Government after take over of management. They were as follows:

i) The industrial unit could be sold as running concern under the IDRA, 1951.

ii) A reconstruction of the undertaking could also be done under the IDRA, 1951. Such reconstruction would include restructuring the capital by writing down the share values, conversion of loans to equity, acquisition shares by Government, constitution of new Board of Directors, etc.

iii) The merger of unit with a public sector undertaking could also be considered.
(iv) Nationalisation of the undertaking would also be considered in appropriate cases.

The effectiveness of the IDRA, 1951 get diluted because of cumbersome investigation process legally required. The scope of the IDRA, 1951 also excludes some industries where there are incidence of sickness.

Also section 237(b) of the Companies Act, 1956 empowers the Company Law Board (previously the Central Government up to 13.7.88) to order investigation of the company. It may be treated as preventive provisions which may detect mismanagement or other problems associated with cropping sickness. Moreover, section 408 of the same Act gives power to the Central Government to appoint directors and section 409 empowers to stay operation of any action taken which is detrimental to public interest.

The legal frame-work as described above is considered inadequate by the Government for tackling growing menace of industrial sickness. Also a multiplicity of laws and agencies makes the adoption of a co-ordinated approach for dealing with sick industrial companies difficult. So it is felt by the Government that there is a need for a comprehensive, legislation to deal with the problem. Accordingly SICA, 1985 was enacted. Before elaborating that Act it would be worthwhile to point out the constitutional position of the Acts which are enacted by the Central Government time to time for control of Industries. Power to enact legislation with respect to subject matter "Industries, the control of which by the union is declared by Parliament law to be expedient in the public interest", is vested exclusively on parliament by virtue of Entry 52 of the List I (Union List) read with Seventh Schedules and Articles 245 and 246 of the Constitution of India. But question arises whether such legislations which sometimes encroach Fundamental Rights under the Constitution are valid. Under Article 19(1)(g) all citizen have fundamental right of freedom to practice any profession or to carry any occupation, trade or business. The right to close a business is also an integral part of the fundamental right to carry on business.
However, it is held in the case of Acme Mfg Co Ltd. vs Union of India that right to close down business cannot be placed at par as high as right not to start and carry on business at all. A Bench of five learned judges in that case also pointed out that there should be conciliation between the concept of socialism and interest of private sector in view of the addition of word "socialist" in the preamble to the Constitution by the 42nd Constitution Amendment, 1976.7

3.02.1 Sick Industrial Companies (Special Provisions) Act, 1985

The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA, 1985) (Act I of 1986) was enacted by the Parliament for dealing effectively with sick units. The Act received the assent of the President on 8th January, 1986 and become operative only from 15th May, 1987. This piece of legislation marks the beginning of a new era in resolving industrial sickness by providing remedial measures for sick companies as well as for potentially viable sick companies.

3.02.2 Background of Enactment of the SICA, 1985

The background of enactment of the SICA, 1985 may be traced to the recommendation of the Tiwari Committee. The Reserve Bank of India constituted a committee of 11 members headed by Sri T.Tiwari (the chairman of the Industrial Reconstruction Bank of India, other members being high officials of the nationalised banks & financial institutions) to investigate into the legal and other difficulties faced by the banks and financial institutions in the rehabilitation of sick units and to suggest remedial measures, including changes in law. The terms of reference of the Tiwari Committee run as follows:

1. To review the present policy framework (including legal provisions) within which the banks, financial institutions can bring about a change in the management of industrial units assisted by them and to make recommendations as to changes considered desirable for ensuring that the industrial unit operate viably.
2. To review the existing criteria adopted by banks/financial institutions in determining the suitability of a sick unit for revival and to recommend appropriate modifications therein, keeping particularly in view the need to have a reasonable time-frame for any programme of revival.

3. To identify the main constraints in the matter of rehabilitation of sick units, the problems faced by the banks/financial institutions involved and to suggest remedial measures including amendments to the various statutes.

4. To suggest measures including amendment to legal provisions which would facilitate the restructuring of the capital base of the assisted units.

5. To identify in a general way the concessions which should normally be made by the various agencies involved in the revival, including management and workers, and in that context, to indicate whether the sick units should be burdened with obligations like payment of minimum bonus and implementation of various wage awards, etc., which may be having adverse effects on the rehabilitation programmes.

6. To suggest stand-by institutional arrangements (other than nationalisation) for purchase of undertakings or shares in companies owning the undertakings, in the absence of private purchasers or in competition with them, in the case of viable units so as to protect to the maximum extent possible, the institutional funds already involved in the undertakings.

7. To identify the factors inhibiting expeditious mergers of sick units with the healthy ones and to suggest remedial measures for expediting such mergers.

8. In case where it is deemed necessary to dispose of certain/all the assets of the units—to suggest legal measures including amendments to the Land Ceiling Acts, etc., so as to expedite the
legal process for speedy realisation of the dues of the banks/financial institutions.

9. To review broadly the difficulties faced by banks and financial institutions in the case of units taken over by the Government under the IDR Act, 1951 and to suggest remedial measures.

10. To make such other suggestions and recommendations which in the opinion of the Committee are expedient for speeding up revival of the sick units.

The Committee besides identifying the causes of sickness gave a model Bill. The present SICA, 1985 though not verbatim version of the Bill recommended by the Tiwari Committee yet the major recommendations mooted through the Bill have been accepted.

3.02.3 Constitutional Validity of the SICA, 1985

Parliament has the constitutional authority to legislate matters specified in List I of Schedule Seven of the Constitution of India. The SICA, 1985 relates to entry 52 which is as follows:

"Industries, the control of which by the union is declared by Parliament by law to be expedient in public interest".

Moreover section 2 of the SICA, 1985 has a specific declaration as given below.

"Declaration - It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) Article 39 of the Constitution".

Further clauses (b) and (c) of Article 39 of the Constitution contain directive principles of the State policy in the following terms.

"(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"
and (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment".

Hence the SICA, 1985 has been enacted to avoid concentration of economic power which operates in detriment of the public interest. However, it is argued that declaration made in section 2 is made to save the SICA, 1985 from the attack of being void on the ground that the provisions of the Act are inconsistent with or takes away or abridge any of fundamental rights conferred by Article 14 or Article 19, specifically "right to practice any profession, or to carry on any occupation, trade or business". Hence, the SICA, 1985 can not be challenged in the court of law so far as its reference to Article 39(b) & (c) are concerned. There were certain cases decided by the Supreme Court on the question whether the directive principles of State policy that contained in Part IV (Art. 36 to 51) of the Constitution can have supremacy over the fundamental rights enshrined in Part III (Art. 12 to 35) of the Constitution like *Keshvananda Bharati vs State of Kerala* (AIR 1973 SC 1461), *Minerva Mills Limited vs Union of India* (AIR 1980 SC 1789). In these two cases, the Supreme Court held that the Indian Constitution is founded on the bed-rock of the balance between Part III and IV and to give absolute primacy to one Part over the other would disturb the harmony of the Constitution. However, in a subsequent case viz, *Sanjeev Coke Mfg Co. vs Bharati Coking Coal Co. Limited* (AIR 1983 SC 239) the Supreme Court took a contrary view stating that Minerva Mills case is an obiter and it has held that the Art. 31-C with its extended provision is valid.

### Object of the SICA, 1985

The object of the SICA, 1985 has been very explicitly described by the Supreme Court in the case of *Navnit R Kamini vs R.R.Kamini* [(1989)66 Comp Cases 132] stating that "the legislation had been enacted with the end in view to:

1. afford maximum protection of employment;
2. optimise the use of the funds, etc;

3. salvaging the production assets;

4. realising the amounts due to the banks, etc; and

5. to replace the existing time-consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts”.

To go deep into the object we may refer to the statement of objects and reasons appended to the Bill presented by the Central Government in the Lok Sabha on 29th August, 1985. Lok Sabha passed the Bill on 9th December, 1985 with some amendments (Act I of 1986). The objectives of the SICA, 1985 are thus as follows:

1. The ill effects of sickness in industrial companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking up of investible funds of banks and financial institutions are of serious concern to the Government and the society at large. The concern of the Government is accentuated by the alarming increase in the incidence of sickness in industrial companies. It has been recognised that in order to fully utilise the productive industrial assets, afford maximum protection of employment and optimise the use of the funds of the banks and financial institutions, it would be imperative to revive and rehabilitate the potentially viable sick industrial companies, as quickly as possible. It would also be equally imperative to salvage the productive assets and realise the amounts due to the banks and financial institutions, to the extent possible, from the non-viable sick industrial companies through liquidation of those companies.

2. It has been the experience that the existing institutional arrangements and procedure for revival and rehabilitation of potentially viable sick industrial companies are both inadequate.
and time consuming. A multiplicity of laws and agencies makes the adoption of a co-ordinated approach for dealing with sick industrial companies difficult. A need has, therefore, been felt to enact in public interest a legislation to provide for timely detection of sickness in industrial companies and for expeditious determination by a body of experts of the preventive, ameliorative, remedial and other measures that would need to be adopted with respect to such companies and for enforcement of the measures considered appropriate with utmost practicable despatch.

Thus the revival of sick corporate enterprises get importance to the degree it deserves through the SICA, 1985. The Act envisages the establishment of a body of experts known as the Board for Industrial and Financial Reconstruction (BIFR) with wide powers over the entire field of finance & management of sick industries.

3.02.05 Salient features of the SICA, 1985

the BIFR referred sick corporate units are the subject matter of this study. Hence, it will be worthwhile to mention briefly the main provisions of the SICA, 1985 as follows:

1. Coverage of the Act

The coverage of the SICA, 1985, as its title shows is in respect of an industrial company as defined under section 3(1)(e). An industrial company is a company (a private, a public or an existing company within the meaning of section 3 of the Companies Act, 1956 which owns one or more undertaking pertaining to a scheduled industry carried on by it in factory i.e., in the premises where a manufacturing process is carried on by 50 or more workers with the aid of power or by 100 or more workers without aid of power). Section 3(1) (n) of the SICA, 1985 defines "Scheduled Industry" as the industry specified for the time being in the First Schedule to the IDR Act, 1951 (excluding the
industries relating to ships and other vessels drawn by power) [Section 14].

The following industries are excluded from the purview of the SICA, 1985 [Section 3(1)(f)]:

(i) An ancillary industrial undertaking as defined in section 3(aa) of the IDRA, 1951.

(ii) A small scale industrial undertaking as defined in clause (j) of section 3 of the IDRA, 1951.

A government company as defined in section 617 of the Companies Act, which had earlier been excluded was also brought under the purview of the SICA, 1985 by an amendment in the Act in November, 1991.

2. Criterion of sickness

The SICA, 1985 mainly deals with sick industrial companies i.e., the companies for which sickness is firmly established. Prior to amendment in the SICA, 1985 a sick industrial company as defined in section 3(1)(o) of the Act, means a company which is in existence for at least seven years and has had accumulated loss equal to or exceeding, its entire networth and has been incurring cash losses (without providing depreciation) for consecutive two years. "Networth" is the sum total of the paid-up capital and free reserves. "Free reserves" means all reserves created out of profits and share premium account but does not include reserves credited out of revaluation of assets, write back of depreciation provisions and amalgamations. As per the revised definition [as provided through Sick Industrial Companies (Special Provisions) Amendment Act, 1993] a sick industrial company would be one which fulfills the following criteria:

- A company which is registered for a period not less than five years; and
whose accumulated losses are equal to the sum of paid up capital and free reserves.

Thus wait period for newly established industrial undertaking has been reduced to five years from seven years. Also, the cash loss criterion has been withdrawn.

3. Constitution of the BIFR

Section 4 of the Act provides for establishment of a quasi-judicial body of experts from different fields of science, technology, economics, law, accountancy, labour matters etc. to be known as the BIFR to exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed by or under the SICA, 1985.

4. Establishment of Appellate Authority

Constitution of an appellate authority to be known as Appellate Authority for Industrial and Financial Reconstruction (AAIFR) has been envisaged for hearing appeals against the orders of the BIFR [Section 5].

5. Onus of reporting sickness to the BIFR

In case a company has or had become sick on the basis of the criterion of sickness as stated in section 3(1)(o), the Board of Directors of the company is mandatorily required to request or make reference under section 15 to the BIFR for determination of the preventive or remedial measure by it. Even the Central Government, Reserve Bank of India, State Governments, a public financial institution, a state level institution or a scheduled bank are empowered to make reference to the BIFR regarding a sick company.
6. Inquiry & Scheme for revival

Upon receipt of a reference or on its own the BIFR may make an enquiry under section 16 of the SICA, 1985. Generally it takes help of an operating agency. If the BIFR decides in the negative, it may direct any operating agency to prepare a scheme for revival or otherwise.

7. Winding-Up

Where the BIFR after making due enquiry is of opinion that it is just and equitable that the sick company should be wound up it may forward its opinion to the High Court which may order winding-up of such company and the winding-up proceeding may be taken according to the Companies Act, 1956 [Section 20(1) & (2)].

8. Proceedings in the case of potentially sick industrial company

The SICA, 1985 has provisions for dealing with incipient sickness. Section 23(1) provides that the company whose peak networth has been eroded by fifty percent as at the end of financial year, the company should inform within sixty days from the date of finalisation of the audited accounts. The peak networth referred to in this section means highest networth during the preceding four years (five years upto January 31, 1994). Apart from reporting the fact of erosion to the BIFR, the company has to hold meeting of its shareholders for considering such fact of erosion of networth after forwarding every member a report of such erosion and causes thereof (Section 23). Even the Central Government, the Reserve Bank of India, a State Government, a public financial institutions and/or scheduled commercial bank has power to report the fact of erosion of networth to the BIFR.
9. Overriding effect of the Act

Save & except the provisions of Foreign Exchange Regulation Act,1973 and Urban Land (Ceilings and Regulation) Act, 1976, the provisions of this SICA,1985 and the Rules & schemes made thereunder shall have effect over anything inconsistent therewith contained in any other law or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect under any law other than this Act [Section 32]. Taking advantage of this provision many sick companies have not refunded the fixed deposits taken from the public and the proceedings under section 58A(9) of the Companies Act,1956 regarding default by companies in the repayment of deposit have no effect on them.¹⁶

10. Penalties & Offence

Violation by any person of the provisions of this Act, any sanctioned scheme, any order of the BIFR or the AAIFR and making of false statement or giving of false evidence to the BIFR or the AAIFR are made punishable with simple imprisonment up to 3 years and also with fine [Section 33(1)].

3.03 THE BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

The Board for Industrial and Financial Reconstruction (BIFR) has been constituted on 12th January,1987 under section 4 of the SICA,1985. But it started its operation on 15th May,1987 when the provision of the SICA,1985 has become operative.¹⁷ According to section 4(2) & 4(3) of the SICA,1985 the Board shall consist of a chairman and not less than two and not more than fourteen (14) other members who will be experts in their respective fields. The chairman & other members are appointed by the Central Government. The jurisdiction, powers and authority of the Board are exercised by Benches, constituted by the chairman. Each bench consists of 2 or more members. Special Bench
may also be formed with the Chairman and any one members [Section 12].

3.03.1 **Objectives of the BIFR**

The principal objectives of the BIFR briefly are:

"(a) To evaluate the techno-economic viability of sick industrial companies with a view to either rehabilitating them or to closing them down.

(b) To stop continued drain of public and private resources.

(c) To protect employment as far as practicable".

The objectives of the BIFR can best be described by quoting the preamble to the SICA, 1985 under which the BIFR has been established:

"An Act to make in the public interest, special provision with a view to, securing the timely detection of sick and potentially sick companies owing industrial undertakings, the speedy determination by a Board of experts of the preventive, remedial or other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto".

It may be said that the BIFR is the main instrument through which the objective of the SICA, 1985 is sought to be achieved. The Finance Minister, while presenting the Budget for (1985-86) made following statement:

"The Government propose to introduce a special legislation for sick units. It is proposed to set up a Board for Financial & Industrial Reconstruction, which will provide speedy mechanism for amalgamation, merger and devise such other solutions as may be
necessary to deal with the problem of sick units in the large & medium sector.

3.03.2 **Scope of the BIFR**

The BIFR has been established under the SICA, 1985, and it covers industrial companies in large & medium sector as defined in the said Act. The definition of sick industrial company has already been detailed under the head "Salient Features of the SICA, 1985" (Section 3.02.5). Thus the scope of the BIFR gets restricted for following reasons:

1. Industrial undertakings pertaining to scheduled industry i.e., Industries included in the First schedule of the IDR Act, 1951 are only dealt by BIFR. According to the BIFR, "the IDR Act itself enumerates only industries which were known at the time when the Act was first formulated i.e., in 1951. No attempt has been made so far to systematically update and enlarge the entries in the First Schedule. It will be readily conceded that, both extensively as well as in depth, the industrial structure of the country has developed in complexity but that is not adequately reflected in the enumeration of industries in the First Schedule. This has present some difficulties when the BIFR has had to refuse dealing with industrial units which palpably or from a common sense point of view should be so treated by it, for the simple reason that they do not figure in the First Schedule to the Act".

2. An industrial undertaking to qualify as scheduled industry should be employing not less than 50 persons if it uses power.

3. The shipping industry & public sector companies cannot be considered by the BIFR. Now public sector companies are included in the definition of sick industrial companies with effect from 28th December 1991.

4. Only the companies which are in existence for 7 years or more were only considered as sick company. Only from 1st Feb, 1994
the requirement of 7 years existence has been reduced to 5 years through amendment in the SICA, 1985.

5. A company for being considered as sick should have suffered cash losses in the two immediately proceeding years before its registration. The cash loss criterion has however been withdrawn with effect from February 1, 1994.

3.04

METHOD OF WORKING OF THE BIFR

The BIFR is a quasi-judicial body. Under section 14 of the SICA, 1985 the BIFR is deemed to be a Civil Court and every proceeding before the Board shall be deemed to be a judicial proceedings. Hence, the proceedings before the BIFR are quite elaborate one and it has to operate within the framework of the SICA, 1985. The proceedings of the BIFR regarding sick industrial company may be described as follows:

3.04.1 Registration of the Company

A sick company for which sickness is firmly established has a duty to register itself with the BIFR. The onus of the reporting of sickness is laid on the Board of Directors of the company under section 15 of the SICA, 1985. The reference is to be made within 60 days of finalisation of the duly audited accounts. Finalisation means approval at the annual general meeting of the shareholders. Even before finalisation of the duly audited accounts, the Board of Directors can make reference to the BIFR if they have reason to believe that the industrial company has become sick. Section 15(2) of the SICA, 1985 provides that reference to the BIFR can be made by the Central Government, Reserve Bank of India, State Governments, Public Financial Institutions, State Level Institutions or Scheduled Banks. Only a lending Institution may make reference to the BIFR regarding an industrial company if it has sufficient reason to believe that an industrial company has become sick. The BIFR may make *suo moto* inquiry, without any reference, into the financial condition for determining whether an industrial company has become sick. The references
received by the Board are scrutinised and those which conform to the provisions of the SICA, 1985 are registered and a registration number is given to each registered sick company. Registered cases are placed before the Chairman, BIFR for assigning each registered case to one of the Benches (Benches of the BIFR are constituted by the Chairman, BIFR under section 12 and each bench consists of 2 or more members of the BIFR).

3.04.2 Inquiry

In respect of an assigned case, the Bench makes an inquiry under section 16 to determine whether the unit is sick. For this purpose, the Bench issues notice for hearing to the representative of the concerned company, the financial institution and commercial banks relevant to the company and representatives of department of the Central and State Governments. Generally, parties are heard and in the first hearing itself it is decided whether or not the company is sick industrial company in terms of section 3(1)(o) of the Act. Before deciding a case regarding state of sickness i.e., whether a company in sick or not, the BIFR may require an operating agency to enquire into the affairs of the company in a manner specified in its order. Operating agencies are financial institutions including state level institutions and banks which are prescribed by the general or special order of the BIFR. Generally, the lead financial institution or bank which has financed the project of the company is appointed as operating agency. If the company not found to be sick the reference is dismissed as not maintainable. But in respect of a reference in which the concerned company is declared sick, the reference is further processed under sections 16, 17, 18, 19 and 20 of the SICA, 1985 as detailed below. Also in respect of a declared sick company the Bench appoints one or more persons as special directors in the board of directors of the sick company for safeguarding the financial and other interest of the company. Also sick company enjoys certain protection from the operation of legal proceedings, contracts during the pendency of its inquiry with the BIFR [Section 22].
Disposal of a case of sick company

In the next stage, the case of a sick company is further analysed through hearing/inquiry to dispose it appropriately. There are three types of disposals viz.,

(A) **Disposal under section 17(2)** — When the Bench consider the sick company can rehabilitate itself on its own an order is passed approving the company’s scheme of rehabilitation.

(B) **Disposal under section 18(4)** — In such case a formal scheme of revival is passed through an operating agency.

(C) **Disposal under section 20(1)** — In respect of a sick company where the Bench come to the conclusion that it is not feasible to rehabilitate the company, the company is recommend for winding-up.

The first two types may be called disposal for revival where a definite process for rehabilitation is initiated. If in the process of analysing nature and causes of sickness and the circumstances under which a company is going through, the Bench finds that it is feasible to rehabilitate the company and the rehabilitation is in the public interest the Board considers the proposal for revival. On the other hand, in third type, winding-up is recommended i.e. company is considered as a mortal case. Three types of disposals are discussed in detail in the following paragraphs.

(A) **Rehabilitation by the company itself** — Any sick company can come forward with its own proposal for rehabilitation. Here the Bench does not take the help of any operating agency (OA). The sick company can submit a rehabilitation proposal for the consideration of the BIFR under section 17(2). Schemes under section 17(2) are not prepared by an OA appointed by the BIFR. Such schemes are prepared more or less jointly by the promoters, financial institutions and banks.
When the BIFR after considering all the relevant facts and circumstances of the case decides that it is practicable for the company to make its networth positive within a reasonable time, the BIFR allows the company’s scheme of rehabilitation subject to certain restrictions and conditions which are specified in its order in writing. Approval of a scheme under section 17(2) is the quickest and comparatively less painful route to the path of rehabilitation. There is a difference between a scheme prepared by the promoter himself/herself in agreement with the financiers and one prepared by an operating agency, usually one of the lenders. Though the reliefs in both the cases are governed by RBI guidelines, but the satisfaction of having a scheme of one's own, agreed to by financial institutions and banks and blessed by the BIFR, gives an added dose of enthusiasm to the promoter to achieve the committed targets and goal of converting negative networth into positive within a reasonable time.

(B) Rehabilitation through scheme prepared by operating agency — Where the sick company has not submitted a proposal for rehabilitation and in the opinion of the BIFR it is in public interest to rehabilitate the sick company, the BIFR appoints an operating agency (OA) under section 17(3) to prepare a scheme for revival of the company. The OA is given instruction regarding the measures required to be taken for revival of the company. These measures are set out in sections 18(1) and 18(2). The BIFR Guidelines, 1992 also outlines the common pattern of rehabilitation scheme which generally provides for certain financial assistance and concession.

The BIFR Regulations, 1987 read with the BIFR Guidelines, 1992 provide for detailed procedure for preparation and sanction of scheme under sections 18 and 19. The procedure as stated earlier is quite elaborate being quasi-judicial in nature. These are briefly described below.
Normally 90 days' time is allowed to the OA to compile the data, hold inter-institutional meetings and to submit its report for the revival of the company. The OA would prepare the scheme within the framework of "guidelines" issued by the Board and would submit the same to Secretary, BIFR. Generally, the OA gives a draft scheme laying down the various factors on the basis of which rehabilitation is feasible or comes to the conclusion that company is not capable of rehabilitation. In the first case, the Board consider the draft scheme and in the second case, if the comment of the OA is acceptable by the BIFR, the case will be treated under section 20(1) for winding-up. On receipt of a draft scheme, the BIFR shall publish, or cause to be published, short particulars of draft scheme so prepared in periodicals and newspapers for inviting suggestion and objections within a stipulated period from the shareholders, creditors, employees etc. Also the draft scheme is circulated to the sick company, the OA and the transferee in case of amalgamations, for suggestions and objections.

The BIFR also permits inspection of the records of in its possession in respect of the sick company including the draft scheme by concerned parties to give them access to full information about the case. Interested parties may also seek permission of the BIFR to appear at the hearing.

The parties should give their consent to the proposal or make comments within a period of 60 days. The BIFR after the receipt of the suggestions / objections shall consider the same. If there is consensus based on the draft scheme, the BIFR, by an order in writing, sanction the scheme for rehabilitation of the company under section 18(4) with or without modification.

Consensus of the parties concerned viz., the management of the company, financial institutions, banks, State and Central Governments and other quasi governmental authorities are necessary for sanction of the scheme. BIFR has no legal teeth to
force the scheme on the parties concerned. Section 19(4) of the SICA, 1985, deals with such eventualities in respect of scheme which requires financial assistance for the concerned sick company, which runs as follows:

"Section 19(4)-Where in respect of any scheme consent under section (2) is not given by any person required by the scheme to provide financial assistance, the Board may adopt such other measures, including the winding-up of the sick industrial company, as it may deem fit".

A general reading of section 19 shows that BIFR cannot force decisions probably it can recommend the decision. It cannot compel. The legal status of the BIFR is not very strong. Thus, as per this section if any person dissents from the scheme prepared/sanctioned by the BIFR, it would be forced to go ahead to adopt other appropriate measures including winding-up of the sick industrial company.

When a draft scheme cannot be put through for want of consensus, the BIFR may opt for winding-up as described below. Before opting for winding-up, the BIFR may take up the case for consideration for other measures as set out under sections 18 and 19 (i.e., sanctioning of rehabilitation package with or without financial assistance) and may order a revised draft scheme to be submitted by the OA and again start the case for sanctioning the scheme.

(C) Winding-up of sick industrial company - On inquiry, if the BIFR is satisfied that it is not feasible to rehabilitate the sick company, it may form the prima facie opinion that it is just and equitable that the company be wound up and a show cause notice is issued. Copies of this are sent to banks, institutions, governments etc.

Brief particulars of the intention to wind up the company are published in newspapers inviting comments/objections from
creditors, employees etc. The latter may also seek permission for appearing before the Bench.

The parties are called for a hearing before the Bench wherein a just and equitable opportunity is given to all concerned to state their position whereafter the Board may confirm its decision that it is just and equitable that the company be wound up and forward the recommendation to the concerned High Court under section 20(1) for further action under the Companies Act.

However, at the time of the hearing it may be considered that the decision to wind up needs to be modified, the BIFR may consider the suggestion for modification and continue the inquiry to prepare a rehabilitation proposal under sections 18 and 19 of the SICA, 1985.

In appropriate cases, where the Board has, on inquiry come to the conclusion that it is not feasible to rehabilitate the company, it may order sale of assets of the company under section 20(4) of the SICA, 1985 and conduct the sale and deposit the proceeds with the concerned High Court.

3.04.4 Implementation of sanctioned scheme

After a scheme is approved in respect of a sick company, the affairs of the company shall be conducted strictly in terms of the scheme which will be binding on the company. The company is supposed to get financial assistance and other concession as per terms of the scheme. Also section 22 provides for suspension of legal proceedings, contempt etc. against the company as may be ordered by the BIFR. Also shareholders' power is curtailed, so much so, that no resolution passed by the shareholders would have an effect unless approved by the BIFR.

The implementation of the scheme is monitored by the Board of Directors of the Company, the special Director appointed by the BIFR and the OA. The BIFR is empowered to direct any OA to implement
the sanctioned scheme as a part of the conditions as may be specified in the order. The BIFR may also hold review meetings to ascertain the progress of the implementation of the sanctioned scheme and to suggest remedial measures.

3.04.5 Modification of the scheme

Sometimes, the BIFR may reopen a case of sick company for de novo enquiry, when it is not satisfied with the implementation of the scheme. The BIFR is also empowered to review any sanctioned scheme and make suitable modifications thereon or to direct any OA to prepare a fresh scheme providing for the appropriate measures to be adopted for such company. When a revised scheme is prepared the BIFR has to follow same course as detailed in section 3.04.4 to arrive at the stage of sanctioning a scheme for rehabilitation. As such, after approval of the scheme a sick company remains under the monitoring of the BIFR. Regarding monitoring the BIFR has detailed the procedure as follows:

"The Benches (i.e. benches of the BIFR) prescribe a schedule of compliance at the end of every proceeding which result in approval of a scheme of revival/rehabilitation under section 18(4). Review hearings are conducted by the Benches or by the Secretary / Officer on special duty (monitoring) on the special direction of the Benches from time to time with reference to schedule of compliance with a view to keeping close watch on the pace and progress of implementation as also to issue necessary direction to the erring/defaulting parties to the proceedings."

3.04.6 De-registration of a company

After sanction of a rehabilitation scheme, there may arise two outcomes, viz., successful implementation of scheme or failure in implementing the scheme. Both these outcomes may result after certain developments depending on the nature of the case e.g., delay in implementation, modification in the scheme, improved performance without implementation of scheme, change in the management etc.
However, failure in implementation of a scheme may lead winding-up. But when the scheme is successfully implemented or otherwise the sick company come up with improved performance resulting in wiping out of accumulated loss, it is natural that the company would want to come outside the purview of the BIFR.

There are well laid out criteria to determine when a company will be declared sick and how the case of a sick company will be registered with the BIFR. However, the SICA, 1985 is not specific about the criteria to be applied for de-registration of a sick company (i.e. declaring that the company is not sick). Enquiry with the BIFR has revealed that the case of a sick company is reviewed when the company applies for de-registration after making its networth positive. Such review is made by the Bench which has sanctioned the scheme in respect of such company. Generally, positive networth criteria is used\textsuperscript{28}. The order of the BIFR in respect of a turnaround company (one of the selected units for our case study) also supports this procedure. The order is reproduced in Appendix 3.1.

The order regarding de-registration has to be considered as a significant event. It has following implications:

i) The company has not to follow the conditions laid-down in the rehabilitation scheme after de-registration.

ii) The auditor of the company may mention in his report that the company is not a sick company within the meaning of section 3(1)(o) of the SICA, 1985. [The auditor of a company is required to mention whether a company is sick or not under Manufacturing and Other Companies (Auditor's Report) Order, 1988 prescribed under section 224A of the Companies Act, 1956 by the Central Government].

iii) The protection enjoyed by a sick company in respect of suspension of legal proceedings under section 2.X. of the SICA, 1985 would no longer be available to the concerned sick company.
iv) The special director appointed by the BIFR under section 16(4) generally stands discharged from the date of the order.

Incidentally, it may be mentioned that regarding 'criteria for treating units as rehabilitated' the RBI Guidelines also stipulates more or less same conditions. According to that 'guidelines' a unit could be treated as revived only when it goes outside the purview of section 3(1)(o) and section 23(1) of the SICA, 1985. Since a company's networth may not improve although it may be earning cash profit, a unit could be considered as rehabilitated only when it has earned net profit at least in 2 consecutive years. Financial Institutions are satisfied when a company would be in a position to earn net profit during the current year also and the erosion of its net worth has become less than 50%.29

There was much doubt about the efficacy of the BIFR in bringing turnaround in actual practice. After the introduction of the Bill for enactment of the SICA, 1985 in the Lok Sabha on August 29, 1985, a Financial Express editorial has observed30 - "Obviously, the Government is ambivalent in its attitude to the question of the viability of a sick industrial company. For employment protection and other reasons, it does not want any 'premature' declaration of sickness by postponing the moment of truth or the day of reckoning to the point the bill has done, the Government tacitly concedes that it is more worried about the likely loss of employment than about the likely loss of money sunk in these sick units by the financial institutions and banks. In other words, the bill prefers hospital for the terminally ill to a swift surgical operation that will cure or quite possibly kill".

PERFORMANCE OF THE BIFR IN HANDLING CASES REFERRED TO IT

As stated earlier, the BIFR has been established to take steps for revival of the sick units in public interest, keeping in view the employment aspects, large financial stakes of financial institutions and banks, the development of backward areas of the country etc. Now it
would be a matter of interest to take macro view of the performance of the BIFR in reviving the sick units.

Revival of a sick unit involves successful implementation of the scheme or otherwise making the company profitable. It obviously needs co-ordinated effort of many agencies including the BIFR and the management. However, for successful revival, the BIFR should be given the due-credit. Hence a statistical profile of the cases handled by the BIFR is attempted here. As discussed earlier, the start of the quasi-judicial process under the BIFR starts with registration of the cases of sick companies for further consideration by various Benches constituted to examine such cases. A year wise break-up of cases registered with the BIFR is given in Table 3.01. It may be noted that only those cases which are referred to the BIFR under section 15 or 16 i.e., cases of companies which are totally sick, are analysed. The BIFR also receives reference under section 23 for potentially sick companies which are excluded at present. Performance of the BIFR has also got another aspect which relates to time taken by the BIFR for disposal of registered cases. The BIFR has been accused of making delays in disposing of the cases. A FICCI study has observed as follows:

"The BIFR was constituted to serve as an expert body to expedite the rehabilitation of medium and large scale industrial enterprises. It has, however, failed in meeting the objectives for which it was set up. The sick companies which are registered with the BIFR are terminally sick as they have accumulated losses equal to or exceeding their active net worth. These companies are like patients brought to the ICU (Intensive Care Unit) needing constant monitoring and immediate treatment. The delays involved in the BIFR mechanism result in the escalation of cost & force units in many cases to die".

Hence a study of average disposal time of cases and time taken of various stages of inquiry would also be pertinent to focus on the performance of the BIFR.
3.05.1 Time Taken by the BIFR in Disposal of Cases Referred to it

Table 3.01 indicates certain interesting features. There is a steady decline over years in the number of cases registered with the BIFR. On the other hand disposal of the registered cases is more or less on the rise. Also there is a gradual decrease in the time taken. It is evident that there is a drastic reduction in average disposal time in 1992 and 1993. It indicates improvement in performance over the period when the average time taken for disposal was on the decline.

Table 3.01

Average Disposal Time of the Cases Referred to the BIFR

<table>
<thead>
<tr>
<th>Year</th>
<th>Reference registered and assigned to Benches</th>
<th>No of cases disposed during the year</th>
<th>Average time taken (days per case)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>311</td>
<td>16</td>
<td>731</td>
</tr>
<tr>
<td>1988</td>
<td>298</td>
<td>108</td>
<td>708</td>
</tr>
<tr>
<td>1989</td>
<td>202</td>
<td>217</td>
<td>613</td>
</tr>
<tr>
<td>1990</td>
<td>151</td>
<td>219</td>
<td>575</td>
</tr>
<tr>
<td>1991</td>
<td>155</td>
<td>182</td>
<td>480</td>
</tr>
<tr>
<td>1992</td>
<td>177</td>
<td>151</td>
<td>129</td>
</tr>
<tr>
<td>1993</td>
<td>115</td>
<td>199</td>
<td>94</td>
</tr>
</tbody>
</table>

(up to Oct.,'93)

Total 1409 1092 —

Source: *BIFR - A Review as on 31st. October 1993*, The BIFR, New Delhi, p. 3.

To analyse the BIFR performance in disposal of cases in Table 3.02 a yearwise disposal has been shown in terms of percentage.
Table 3.02
Yearwise Disposal of the Cases Referred to the BIFR

<table>
<thead>
<tr>
<th>Year</th>
<th>Cumulative No. of cases registered</th>
<th>Cumulative No. of cases disposed</th>
<th>Percentage of disposal over cases registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>311</td>
<td>16</td>
<td>5.14</td>
</tr>
<tr>
<td>1988</td>
<td>609</td>
<td>124</td>
<td>20.36</td>
</tr>
<tr>
<td>1989</td>
<td>811</td>
<td>341</td>
<td>42.05</td>
</tr>
<tr>
<td>1990</td>
<td>962</td>
<td>560</td>
<td>58.21</td>
</tr>
<tr>
<td>1991</td>
<td>1117</td>
<td>742</td>
<td>66.43</td>
</tr>
<tr>
<td>1992</td>
<td>1294</td>
<td>893</td>
<td>69.02</td>
</tr>
<tr>
<td>1993 (up to Oct., 1993)</td>
<td>1409</td>
<td>1092</td>
<td>77.50</td>
</tr>
</tbody>
</table>

Source: Table 3.01. Results computed.

Regarding its own performance, the BIFR has observed that"the BIFR could have dealt with substantially more had the quality of co-operation been better, particularly, from the promoters of industrial companies and State Governments. There have been very considerable delays on the part of several State Governments in coming to decision on matters within their jurisdiction relating to relief and concessions. There have also been delays in far too many cases on the part of promoters in furnishing their rehabilitation proposal and fulfilling their commitments".

Also, according to the BIFR, since inception, the Board has been confronted with a number of problems, constraints and challenges in its functioning. Some of the problems and constraints which continue to inhibit smooth functioning of the Board are as follows:

- Delay in submission of reports by operating agencies.
- Lack of prompt and final responses from the concerned Govts. & their agencies and organisations in the matter of reliefs ad
concessions and infusion of required funds for rehabilitation of the sick units.

- Greater reluctance on the part of banks and financial institutions in the matter of additional funding in the wake of introduction of provisioning norms.

- An unhelpful and obstructive attitude of several promoters of sick industrial companies to seek protection of Appellate Authority (AAIFR) and invoke the jurisdiction of the High Courts and Supreme Court under Article 226 of the Constitution to prolong the proceedings by obtaining stay orders.

- Dillydallying on the part of promoters to bring in promoters' contribution in time and according to the prescribed percentage.

On the other hand, the Committee for corporate restructuring and industrial sickness constituted by the Ministry of Finance under the Chairmanship of Omkar Goswami, popularly known as Goswami Committee has severely criticised the way the BIFR functions.

We may now go into the details of the disposal excluding 132 cases, subsequently reopened after their disposal due to substantial non-implementation and tardy implementation and certain cases remanded by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). Net disposal as on 31.10.93 was 960.

3.05.2 **Nature of Disposal**

In Table 3.03 we depict the nature of disposal i.e., how the cases were disposed off by the Benches of the BIFR. As mentioned earlier, there may be following types of disposal.

i) Rejection of reference for non-maintainability of the application under the SICA,1985 (Type I).
ii) Sanctioning the company's own revival scheme under section 17(2) (Type II).

iii) Sanctioning of revival scheme prepared by an operating Agency with financial concessions under section 18(4) (Type III).

iv) Recommencing winding up or ordering sale of assets of the company (Type IV).

Table 3.03

<table>
<thead>
<tr>
<th>Nature of Disposal of the Cases Referred to the BIFR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total No.</td>
</tr>
<tr>
<td>960</td>
</tr>
<tr>
<td>(100%)</td>
</tr>
</tbody>
</table>


Among the 7 cases shown under the residual group 'Others', in respect of 3 cases references were received from Courts and 4 cases were dropped due to the networth of these companies turned positive during the pendency of proceedings with the BIFR. Out of 303 Type III cases i.e., where revival packages were sanctioned under section 18(4) of the Act, 53, 39, 4 and 3 cases involved merger, management change, workers co-operative and lease respectively. Thus in 204 cases revival was attempted through the BIFR sanctioned rehabilitation schemes. In the next chapter a few among these cases are taken up for study for assessing the role of the BIFR in ensuring turnaround of sick units. It is interesting to note that the BIFR used the threat of winding-up in 35 cases out of 204 cases to finalise the revival package. It does indicate that, apart from the delay made by the BIFR, various other factors are also responsible for delay in the sanction of rehabilitation schemes. If issue of winding up notices is helpful, there is strong reason to believe that the parties involved are interested in the continuance of the
sickness of the company concerned, and they delay the process to get most out of the revival package. The adage "that it is better to be sick and that it is more profitable to continue to be sick" may therefore find support from this study.

3.05.3 Statewise and Industrywise Analysis of Cases Disposed off

Statewise and industrywise analysis of the cases registered disposed off by the BIFR are tabulated in Table 3.04 and Table 3.05.

Statewise analysis reveals that the States in the Eastern Region registered 236 cases. But only 37 schemes were sanctioned under section 18(4) up to October, 1993. It indicates a poor state of affairs compared to all India average. Whereas all India average of sanctioning of rehabilitation scheme was 22% (303 out of 1409), it was only 16% for Eastern Region.

Table 3.04

Statewise Analysis of Cases Registered and Disposed off as on 31st October, 1993

<table>
<thead>
<tr>
<th>Name of the Industry</th>
<th>No. of Regd. &amp; Allocated</th>
<th>Scheme Sanctioned u/s.18(4)</th>
<th>Approved u/s. 17(2)</th>
<th>Dismissed as not maintainable</th>
<th>Winding-up recommended</th>
<th>Draft Scheme</th>
<th>Winding-up Notice</th>
<th>Total Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EASTERN REGION</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bihar</td>
<td>48</td>
<td>7</td>
<td>2</td>
<td>11</td>
<td>13</td>
<td>0</td>
<td>2</td>
<td>35</td>
</tr>
<tr>
<td>Orissa</td>
<td>30</td>
<td>3</td>
<td>2</td>
<td>7</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>West Bengal</td>
<td>149</td>
<td>27</td>
<td>11</td>
<td>23</td>
<td>45</td>
<td>7</td>
<td>5</td>
<td>118</td>
</tr>
<tr>
<td>Nagaland</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tripura</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Assam</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td><strong>Sub Total:</strong></td>
<td><strong>236</strong></td>
<td><strong>37</strong></td>
<td><strong>15</strong></td>
<td><strong>44</strong></td>
<td><strong>61</strong></td>
<td><strong>8</strong></td>
<td><strong>9</strong></td>
<td><strong>174</strong></td>
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<tr>
<td><strong>NORTHERN REGION</strong></td>
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<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Chandigarh</td>
<td>2</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
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<tr>
<td>Delhi</td>
<td>7</td>
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<td>0</td>
<td>2</td>
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<td>0</td>
<td>1</td>
<td>6</td>
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<tr>
<td>Harayana</td>
<td>44</td>
<td>11</td>
<td>4</td>
<td>13</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>32</td>
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<tr>
<td>Himachal Pradesh</td>
<td>26</td>
<td>4</td>
<td>2</td>
<td>8</td>
<td>5</td>
<td>0</td>
<td>1</td>
<td>20</td>
</tr>
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<td>Jammu &amp; Kashmir</td>
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<td>0</td>
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<td>0</td>
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<td>1</td>
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<tr>
<td>Punjab</td>
<td>34</td>
<td>9</td>
<td>5</td>
<td>8</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>28</td>
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<td>17</td>
<td>2</td>
<td>11</td>
<td>16</td>
<td>3</td>
<td>1</td>
<td>50</td>
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<tr>
<td>Uttar Pradesh</td>
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<td>19</td>
<td>4</td>
<td>25</td>
<td>18</td>
<td>5</td>
<td>10</td>
<td>81</td>
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<tr>
<td><strong>Sub Total:</strong></td>
<td><strong>307</strong></td>
<td><strong>64</strong></td>
<td><strong>18</strong></td>
<td><strong>67</strong></td>
<td><strong>46</strong></td>
<td><strong>11</strong></td>
<td><strong>14</strong></td>
<td><strong>220</strong></td>
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<tr>
<td>Name of the Industry</td>
<td>No. of Ref. regd. &amp; allocated</td>
<td>Scheme Sanctioned u/s.18(4)</td>
<td>Approved u/s. 17(2)</td>
<td>Dismissed as not maintainable</td>
<td>Winding-up recommended</td>
<td>Draft Scheme</td>
<td>Winding-up Notice</td>
<td>Total</td>
</tr>
<tr>
<td>----------------------</td>
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<td>------------------</td>
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</tr>
<tr>
<td><strong>SOUTHERN REGION</strong></td>
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<tr>
<td>Andhra Pradesh</td>
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<td>27</td>
<td>26</td>
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<td>Karnataka</td>
<td>99</td>
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<td>82</td>
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<td>10</td>
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<td>5</td>
<td>4</td>
<td>34</td>
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<td>Puducherry</td>
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<td>1</td>
<td>3</td>
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<td>0</td>
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<td>14</td>
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<td>92</td>
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<td>87</td>
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<td>17</td>
<td>26</td>
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<tr>
<td>Daman, Diu &amp; Goa</td>
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<td>3</td>
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<td>Gujarat</td>
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<td>5</td>
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<td>Dadra &amp; Nagar Haveli</td>
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<td><strong>Sub Total</strong></td>
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<td>84</td>
<td>75</td>
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<td>328</td>
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<tr>
<td><strong>Grand Total</strong></td>
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<td>121</td>
<td>282</td>
<td>247</td>
<td>50</td>
<td>71</td>
<td>1074</td>
</tr>
</tbody>
</table>

Table 3.05

Industrywise Analysis of Cases Registered and Disposed off as on 31st October, 1993

<table>
<thead>
<tr>
<th>Name of the Industry</th>
<th>No. of Ref. &amp; allocated</th>
<th>Scheme Sanctioned u/s 13(4)</th>
<th>Approved u/s. 17(2)</th>
<th>Dismissed as not maintainable</th>
<th>Winding-up recommended</th>
<th>Draft Scheme</th>
<th>Winding-up Notice</th>
<th>Total</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metallurgical</td>
<td>242</td>
<td>50</td>
<td>26</td>
<td>42</td>
<td>51</td>
<td>9</td>
<td>14</td>
<td>192</td>
<td>50</td>
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<tr>
<td>Fuels</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Boiler and Steam</td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Generating Plants</td>
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<td>Telecommunications</td>
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<td>5</td>
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<td></td>
<td></td>
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<td>5</td>
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<td>17</td>
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<td>Industrial Instruments</td>
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<td>2</td>
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<td>0</td>
<td>7</td>
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<td>1</td>
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<td>5</td>
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<td>Chemical(other than Fertilisers)</td>
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<td>20</td>
<td>3</td>
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<td>3</td>
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<td>6</td>
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<td>0</td>
<td>28</td>
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<td>19</td>
<td>41</td>
<td>46</td>
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<td>13</td>
<td>188</td>
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<td>Paper &amp; Pulp</td>
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<td>19</td>
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<td>96</td>
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<td>8</td>
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### Table 3.06

<table>
<thead>
<tr>
<th>Name of the Industry</th>
<th>No. of Ref. regd. &amp; allocated</th>
<th>Scheme Sanctioned u/s 18(4)</th>
<th>Approved u/s. 17(2)</th>
<th>Dismissed as not maintainable</th>
<th>Winding-up recommended</th>
<th>Draft Scheme</th>
<th>Winding-up Notice</th>
<th>Total</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shops, Cosmetics &amp; Toilet Preparation</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Rubber Goods</td>
<td>18</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Leather, Leather Goods and Pickers</td>
<td>16</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>11</td>
<td>5</td>
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<td>Glue &amp; Gelatin</td>
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<td>0</td>
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<tr>
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<td>0</td>
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<td>9</td>
<td>3</td>
</tr>
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<td>7</td>
<td>3</td>
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<td>2</td>
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<td>Cement &amp; Gypsum Products</td>
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<td>0</td>
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<td>2</td>
<td>7</td>
<td>3</td>
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<td>8</td>
<td>3</td>
<td>5</td>
<td>62</td>
<td>40</td>
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<tr>
<td>Jute</td>
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<td>5</td>
<td>1</td>
<td>6</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>23</td>
<td>11</td>
</tr>
<tr>
<td>Leather &amp; Shoes, Machine Tools</td>
<td>3</td>
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<td>0</td>
<td>1</td>
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<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Cement</td>
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<td>16</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>32</td>
<td>18</td>
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<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Industrial Gases</td>
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<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Electronics</td>
<td>43</td>
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<td>2</td>
<td>15</td>
<td>5</td>
<td>1</td>
<td>3</td>
<td>31</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>1409</td>
<td>303</td>
<td>121</td>
<td>282</td>
<td>247</td>
<td>50</td>
<td>71</td>
<td>1074</td>
<td>335</td>
</tr>
</tbody>
</table>


### 3.05.4 Turnaround

Now we revert our attention on the turnaround i.e., revival of the sick companies. The true success of the BIFR lies on making a company viable. As per data supplied by the BIFR, the status of the cases where revival packages were sanctioned may be shown in Table 3.06.
Table 3.06

Status of the Cases where Revival Packages were Sanctioned

<table>
<thead>
<tr>
<th>Particulars</th>
<th>No. of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where schemes were sanctioned</td>
<td>344 units as on 30.9.91 (424 units as on 31.10.93)</td>
</tr>
<tr>
<td>Companies turnaround or threshold of recovery</td>
<td>139 units as on 31.10.93</td>
</tr>
<tr>
<td>Success Ratio</td>
<td>40% (139 out of 344)</td>
</tr>
</tbody>
</table>


Success Ratio has been found out on the basis of schemes sanctioned up to 30.9.91 instead of that as on 31.10.93, on the assumption that an allowance of 2 years should be given to judge the outcome of revival measures.

According to the BIFR it has also given importance on revival compared to liquidation as per its statutory objectives. Data on cumulative loss, net worth etc. as given in Table 3.07 give testimony to this fact.

Table 3.07

Cumulative Loss, Networth and No. of Workers of the BIFR Referred Companies

<table>
<thead>
<tr>
<th></th>
<th>Cumulative Loss (Rs. in million)</th>
<th>Networth (Rs. in million)</th>
<th>No. of workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies</td>
<td>22300</td>
<td>10610</td>
<td>212560</td>
</tr>
<tr>
<td>Under revival</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Companies</td>
<td>10800</td>
<td>2740</td>
<td>108240</td>
</tr>
<tr>
<td>Under winding-up</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Thus the ratio of rehabilitation and closure recommended by the BIFR was 1.7:1 as on 31.10.93. However, rehabilitation do involve sacrifice of many parties. It has a social cost. Whether such costs commensurate with the benefits is not a very simple question which may be answered straight way. However, an indepth analysis of the financial and operating performance of a few companies in respect of which the BIFR has sanctioned rehabilitation scheme is done in the next chapter.

3.06 CONCLUSION

From the discussion made, it is evident that on an overall basis, the BIFR is moderately successful in bringing turnaround of sick companies. Thus, the objectives of enacting the SICA, 1985 have been, at least in part, fulfilled and the BIFR has been playing a significant role in nursing many sick units back to normal health. This has tremendous economic and social significance. However, to understand the process of turnaround and the role of the BIFR from a micro perspective, we have examined the cases of few selected sick companies in respect of which the BIFR has sanctioned rehabilitation schemes. This analysis is presented in the next chapter.
References


28. Interview with S. Ramachandran, Section Officer, The BIFR, March, 1996.


Appendix 3.1
Dumraon Textiles Limited

Order of the BIFR Declaring the Company "No Longer Sick"

IN THE BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION
CASE NO.65/87 IN RE: M/S.DUMRAON TEXTILES LIMITED

B E N C H : III

O R D E R

WHEREAS it was noted that after the successful implementation of the Rehabilitation scheme sanctioned on 5th January, 1989, the company's overall performance has shown substantial improvement.

AND WHEREAS it was noted with satisfaction that the rehabilitation scheme sanctioned under the aegis of BIFR had been implemented successfully, the net worth of Dumraon Textiles Ltd., had turned positive in the year 1989-90 and its accumulated losses wiped out in the year ended 31st March 1991.

AND WHEREAS IRBI Reported that the company has satisfactorily implemented the rehabilitation scheme, that its networth turned positive in the year 1989-90 and its accumulated losses were wiped out in the year ended 31st March 1991 and that it is no longer sick and recommended that it may be taken out of the purview of SICA.

AND WHEREAS on consideration of the Audited Accounts for the year ended 31st March 1993, the Bench has noted that the financial position has registered improvement.

AND WHEREAS by virtue of making its net worth positive, the company is no longer Sick Industrial Company under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and is out of the purview of Section 3(1)(o) of the said Act.

THE Company accordingly hereby stands discharged from the purview of BIFR. The Special Director on the Board of the company is also hereby discharged.

Sd/-
(V.P.SAWHNEY)
MEMBER

Sd/-
(MAHFOOZ AHMED)
MEMBER

Dated : 3rd November, 1993