Chapter 6
Factors Affecting the Performance of BIFR

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Chapter 6
Factors Affecting the Performance of BIFR

In this chapter, an attempt has been made to investigate the factors responsible for the dismal performance of BIFR.

Normally performance evaluation is taken to mean only an analysis of quantitative data. But for evaluating the performance of a statutory organization like BIFR, mere analysis of the quantitative data is not enough. It does not give the full picture. It is also necessary to examine the underlying statutory framework to find out how far the organizational structure and decision making process are suitable and conducive for furthering the objectives of the organization.

The reason is simple. After all, a statutory organization is a creature of its enabling statute. Such an organization comes into existence only through the operation of law. The parent statute governs its constitution, powers, functions and procedure; determines its organizational structure; prescribes its decision making process; and sets the limits and bounds of its operation. So the provisions of the parent statute have a tremendous bearing on the performance of any statutory organization.

In the case of BIFR, the parent statute is the Sick Industrial Companies (Special Provisions) Act, 1985. Therefore, a proper evaluation of the performance of the BIFR will not be complete without an examination of the statutory framework of SICA. It is for this reason that in this chapter, an attempt has made to find out whether the statutory provisions contained in the Sick Industrial Companies (Special Provisions) Act, 1985 help or hinder the realisation of the objectives of BIFR.
6.1. Lop-sided Composition of Benches

Normally quasi-judicial bodies function in the form of Benches consisting at least a minimum of two members, one of whom shall be a Judicial Member who is or qualified to be a Judge of the High Court or Supreme Court, and the other a Technical Member having adequate knowledge, experience and capacity in the relevant field like law, commerce, accountancy, economics, industry, public affairs or administration. Examples are the MRTP Commission, Consumer Disputes Commission and the Railway Claims Tribunal.

The BIFR also functions in the form of Benches, each Bench having at least two Members.107 But the Act does not prescribe that one Member must be a Judicial Member and the other a Technical Member.

Moreover it has been observed in the previous chapter that the composition of the Board is heavily in favour of former civil servants. It is ironical that even though mismanagement is the premier cause108 of corporate sickness, till date not a single person experienced in industrial management or corporate finance or industrial reconstruction or turnaround strategies or law or science and technology has been appointed as a Member of the Board.

This deprives the Benches of a proper blend of expertise and competence which might have a bearing on its performance.

107 Section 12 of SICA.
6.2. **Stringent Criteria for Detection of Sickness**

The SICA provides\(^{109}\) that an industrial company shall be declared a "sick industrial company" if, and only if, it has been registered for not less than five years and when, and only when, it has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.\(^{110}\)

These criteria for the identification of a sick industrial company are very stringent. They indicate an extreme stage of sickness. By virtue of this definition, a company comes within the purview of the BIFR only when its illness has become terminal by which time there is only a remote possibility that any of the revival measures that the BIFR may choose to apply can really be effective.

The Goswami Committee opined:

"When a company reaches the state where accumulated losses are large enough to wipe out its equity base and reserves, it becomes extremely difficult, if not impossible, to design and implement a viable rehabilitation scheme."\(^{111}\)

Even though a host of treatment options—merger, acquisition, outright sale, workers' cooperative, asset restruturing, hiving off unproductive divisions--

\(^{109}\) Section 3(1)(o) of SICA.

\(^{110}\) Net worth has been defined in section 3(1)(ga) of SICA to mean the sum total of the paid-up capital and free reserves. The same clause defines "free reserves" as all reserves credited out of the profits and share premium account but does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation.

have been placed at the disposal of the BIFR for administration to the patient, it is sad that the only patients who enter the portals of the BIFR are those on whom those treatments may not work.

Thus the definition of sickness itself is inconsistent with the BIFR’s objective of “securing the timely detection of sick and potentially sick companies owning industrial undertakings.” What is more, this definition also adversely affects the other objective of the BIFR, namely, “reducing industrial sickness.” When the patients who come to the hospital are those who are beyond cure, how can industrial sickness be reduced?

6.3. Excessive Emphasis on Revival

It may be recalled that the BIFR has been established to realise the following five objectives:

1. Efficient delivery of services,
2. Timely Detection of sickness,
3. Speedy revival of viable sick industrial companies,
4. Quick winding up of non-viable sick industrial companies, and
5. Reduction of industrial sickness.

A reading of these objectives brings out two crucial points: (i) Quick winding up of non-viable sick industrial companies is as important as speedy revival of viable sick industrial companies. (ii) Time is of the essence in each and every

112 Preamble of SICA.
activity of the BIFR as can be seen from the terms “timely detection,” “speedy revival,” and “quick winding up.”

What this means is that a prompt decision either way—revival or winding up—serves the objectives better than a protracted and uncertain attempt to revive the company. But unfortunately, the decision making process as outlined above has a built-in bias in favour of revival and against winding up. That’s why, till the end of 2001, only 25% of the registered cases (constituting 32% of the cases found maintainable) have been recommended for winding up by BIFR even though almost all these companies come within the purview of BIFR only when their sickness has reached a terminal stage. This brings out the excessive predilection of BIFR in favour of winding up. The BIFR has admitted as much to the Eradi Committee.

When the Committee wanted to know as to why the BIFR does not order winding up immediately once it becomes clear that the secured creditors are not willing to make necessary sacrifices by giving concessions about debts due to them, on behalf of the BIFR it was explained that “In view of the interest of labour, the BIFR makes endeavour till the last minute to obtain the consent of the secured creditors.”

A possible reason why the BIFR has misdirected itself in this manner may be because of the wording of the Preamble to the Sick Industrial Companies (Special Provisions) Act, 1985 which reads as follows:

"An Act to make, in the public interest, special provision with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and 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."

The Preamble does not make an explicit reference to the quick liquidation of non-viable sick companies even though that was one of the objects mentioned in the Statement of Objects and Reasons accompanying the SICA at the time of its passage in Parliament. So this naturally leaves the impression that the main object of the BIFR is to determine the "preventive, ameliorative, remedial and other measures" for the revival of sick industries.

It is suggested that this misdirected approach, this excessive emphasis on revival at the expense of winding up, has drastically affected the performance of BIFR. This approach not only caused interminable delays in the disposal of cases but also prevented quick unlocking of funds due to the banks and FIs from the sick industrial companies.

6.4. LACK OF POWERS AND FACILITIES

Even though the Sick Industrial Companies (Special Provisions) Act, 1985 is considered a very powerful enactment, the BIFR lacks some powers which are essential for carrying out its objectives.

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114 "Indeed, on point of law, SICA is probably one of the most powerful legislation to aid industrial restructuring." Omkar Goswami and Kishore Soni, "Insolvency Systems In
1 As already stated in the second chapter, the turnaround scheme prepared by the Operating Agency may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority to the sick industrial company. But these persons or institutions who are expected to provide financial assistance under the draft scheme enjoy full veto powers—they may agree or not agree to provide such financial assistance and the BIFR can do nothing about it. The BIFR can only coax them like a well-meaning interlocutor but it cannot coerce them like a statutory authority. The SICA does not give to BIFR overriding powers in such situations. This is one of the main reasons why the preparation of draft schemes and their sanction take so much time. It is, therefore, hardly surprising that so few turnarounds actually take off.

2 Even though the BIFR is charged with the task of “quick liquidation of non-viable sick industrial companies,” its role in this regard is confined to forwarding its opinion to the concerned High Court. It has no further say in the matter. The actual liquidation will be under the direction and superintendence of the High Court.

From a reading of the statutory provisions contained in the Sick Industrial Companies (Special Provisions) Act, 1985, it is clear that the BIFR lacks the facilities necessary for carrying out some of its objectives.

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115 Section 19(1) of SICA.
1 Though the Preamble speaks of "preventive measures" in the context of industrial sickness, the body of the Act does not make any provisions in this regard.

2 The BIFR does not have a machinery of its own for safeguarding the assets of the sick industrial companies registered before it and for preventing their asset-stripping by unscrupulous managements.

3 The BIFR does not have a body of experts under its control for conducting viability studies, preparing and implementing rehabilitation schemes and monitoring the implementation of the sanctioned schemes.

6.5. Lack of Emergency Turnaround Strategies

6.5.1. Change of management

In the first chapter, it has been noted that for a turnaround to be effective, the first thing that almost always needs to be done is to change the management of the sick company because mismanagement has been found to be the #1 cause of corporate sickness. In such cases, the sickness would have been precipitated by the incompetence or inefficiency or pigheadedness or dishonest and fraudulent actions of the existing management. So it is imperative that there be a change in management at the earliest. This change is also necessary in the interests of the creditors, workers and shareholders. If the existing promoter-managers are allowed to control the company during the long drawn-out procedures before the BIFR, there is every possibility that they might resort to "asset-stripping" of the company leading to further erosion of the company's worth. Unfortunately, the SICA does not provide for a change of management as an interim measure immediately on the registration of the
company by the BIFR. There is only provision for the appointment by the BIFR of a special director on the board of the sick industrial company.\textsuperscript{116}

Of course, it is also provided that the BIFR may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets (a) during the period of preparation or consideration of the scheme under section 18; and (b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceeding relating to the winding up before the concerned High Court.\textsuperscript{117}

But these provision are not sufficient. This debtor-in-possession situation is also an important factor affecting the performance of the BIFR.

\textbf{6.5.2. Restoration of Cash-flow}

After the change of management, the next most-important action that needs to be taken with reference to a sick company is to stop its cash-bleeding. After all, cash is the life-blood of business. So all-out efforts must be made on an emergency-basis to establish a sufficient cash-flow to keep the business on its legs.

The most common causes of poor cash flow are: not collecting accounts receivable quickly enough, buying and maintaining excessive inventory, and inadequate management of accounts payable. So the management has to get

\textsuperscript{116} Section 16(4A) of SICA.

\textsuperscript{117} Section 22A of SICA.
control over all activities that involve working capital by determining the major reasons for poor cash flows and then seriously managing them. It must also aggressively pursue cost reduction exercises on all fronts—purchasing, employee overtime, infrastructural expenses, consumption of power and utilities, waste and scrap disposal etc.

At the same time it is necessary to take up activities that have a quick pay-off not only to get immediate monetary returns but also to boost the morale of the employees and restore the confidence of the creditors.

But the SICA does not make provisions for these emergency treatments and so BIFR goes about its business in its own measured way unmindful of the demands of the situation.

6.6. **Excess Delegation of Powers**

A striking feature of the Act is the pivotal role given to a non-statutory external body called the "Operating Agency" over which the BIFR has no administrative or operational control.

The Act defines an "operating agency" as any public financial institution, State level institution, scheduled bank or any other person as may be specified by general or special order as its agency by the board.\(^\text{118}\) At present, the BIFR recognises the following institutions as Operating Agencies: Industrial Development Bank of India, Industrial Financial Corporation of India, Industrial Credit Investment Corporation of India, State Bank of India, Canara Bank, Punjab National Bank, Bank of India, Central Bank of India, Bank of Baroda,

\(^{118}\) Section 3(1)(i) of SICA.
Indian Bank, Union Bank of India, Kerala State Finance Corporation, and Haryana State Finance Corporation.

The Act entrusts the following functions to the Operating Agency:

- To conduct an enquiry into and make a report with respect to such matters as may be specified in the BIFR's order in connection with the its determination whether any industrial company has become a sick industrial company within the meaning of the Act.\textsuperscript{119}

- To prepare, on the directions of the BIFR, a scheme, as per the guidelines as may be specified by the BIFR, providing for all or any of the measures specified in section 18 in relation to a sick industrial company which cannot make its net worth exceed its accumulated losses within a reasonable time and which needs to be revived in the public interest.\textsuperscript{120}

- To implement, if it is deemed necessary or expedient by the BIFR, a sanctioned scheme with such terms and conditions and in relation to such sick industrial company as may be specified in the order of the BIFR.\textsuperscript{121}

- To prepare, on the directions of the BIFR, with respect to a company—
  (a) a complete inventory of all assets and liabilities of whatever nature and all books of account, registers, maps, plans, records, documents of title

\textsuperscript{119} Section 16(2) of SICA.
\textsuperscript{120} Section 17(3) of SICA.
\textsuperscript{121} Section 18(10) of SICA.
or ownership of property and all other documents of whatever nature relating thereto;

(b) a list of shareholders and lists of secured and unsecured creditors;

(c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;

(d) an estimate of reserve price, lease rent or share exchange ratio; and

(e) proforma accounts, where no up to date audited accounts are available.

The Operating Agency has to do most of the important tasks relating to the turnaround of a company and it functions like an autonomous body with the BIFR's control over its functioning being restricted to giving the occasional directions. This "wheel within a wheel" is also a factor contributing to the endemic delays occurring within the precincts of the BIFR.

6.7. OVERLAPPING OF LAWS

Prior to the enactment of SICA, it was felt that "a multiplicity of laws and agencies made the adoption of a coordinated approach for dealing with sick industrial companies difficult." And BIFR was established with the hope that it will provide a "single-window" access for all issues related to industrial sickness and revival. But this hope was belied in practice. There were many overlappings and conflicts of laws. And the parties have approached the

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122 See the Statement of Objects and Reasons accompanying the Sick Industrial Companies (Special Provisions) Act, 1985 at the time of its passage through Parliament.
Appellate Authority for Industrial and Financial Reconstruction, High Courts and the Supreme Court for the resolution of these issues—resulting in protracted litigation during which period the condition of the sick company would have gone from bad to worse.

1 As already stated earlier, regarding winding up of companies, the BIFR can only form an opinion under s.20 and forward it to the concerned High Court which then deals with the case under the relevant provisions of the Companies Act, 1956.\textsuperscript{123} So often questions arise whether the proceedings before the BIFR can continue in respect of a company whose case is already before the High Court for winding up under the Companies Act, or conversely, whether a winding up petition before the High Court under the Companies Act is valid if the company had already been registered before the BIFR under SICA. For example, in \textit{Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.},\textsuperscript{124} the question was whether the BIFR has the jurisdiction to continue with the proceedings under s.16 of the Act when the company had been ordered to be wound up before its reference to BIFR.

2 The second instance of conflict is with reference to the operation of section 29 of the State Financial Corporations Act, 1951. This section deals with the rights of Financial Corporations in case of default. This section is analogous to section 28 of the Industrial Finance Corporation Act, 1948. This section confers wide powers on the State Financial Corporations to enforce their claims against industrial concerns without the intervention of the court. "The object is that the loans and advances granted by the State Financial Corporations be capable of speedy and inexpensive realization and a State Financial Corporation may be saved from having to wade its way through

\textsuperscript{123} See sections 433 to 483 and 528 to 559 of the Companies Act, 1956.

\textsuperscript{124} 2000 (003) CLJ 1 SC: 2000 AIR SCW 1753.
the meandering lanes and by-lanes of law courts." The State Financial Corporations have been given the option either to take over the management or possession or both, as well as to transfer by way of sale or lease and realise the property. Once these powers have been exercised by the State Financial Corporation, it shall have the same power over the industrial concern as its owner had. The SFC Act, 1951 also has another provision in its s.31 (which is analogous to section 30 of the Industrial Finance Corporation Act, 1948) which gives power to the Financial Corporation to enforce its claims by simply moving the District Judge by means of a petition for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to it as security for the loan or advance; or for transferring the management of the industrial concern to the Financial Corporation; or for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment without its permission. Questions often arose as to the effect of prior proceedings under these sections on the subsequent proceedings under SICA and vice versa.

3 Then there were cases where the Courts have to reconcile the proceedings under the Negotiable Instruments Act with the proceedings under the SICA. For example, in *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd. and Others*, the question that arose for consideration of the Supreme Court was whether a company and its directors can be proceeded against for having committed an offence under section 138 of the Negotiable

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127 2000 (036) CLA 103 SC.
Instruments Act, 1881 (for short, 'the NI Act') after the company has been declared sick under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'SICA') before the expiry of the period for payment of the cheque amount. The answer to the question depends on interpretation of section 138 of the NI Act and its interaction with the relevant provisions of SICA. In *BSI Ltd. v. Gift Holdings Pvt. Ltd.*,\(^1\) the petitioner-companies had issued cheques which have subsequently been dishonoured by them. After criminal proceedings were initiated against them under s.138 of the Negotiable Instruments Act, they approached the BIFR and sought declaration that they have become sick as envisaged in SICA. They then took the stand that no criminal proceedings can be maintained against them when proceedings are pending before the BIFR. The matter went through the entire hierarchy of courts starting with the criminal court and ending with the Supreme Court.

Most of the cases\(^2\) relate to the application of the provisions contained in s.22 of the SICA. For example, in *Gram Panchayat v. Shree Vallabh Glass Works Ltd.*,\(^3\) the respondent-company has been declared to be a sick industrial company within the meaning of the Act. The petitioners initiated cooercive proceedings under the Bombay Village Panchayat Act to recover amounts due to them as property tax. The question then arose whether the Panchayat could not recover the amount due to it from out of the properties

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1\(^{128}\) Criminal Appeal No. 847 of 1999, judgment delivered on 15.2.2000.


3\(^{130}\) *AIR 1990 SC 1017*. 
of the sick industrial company without the consent of the Board. The matter went first to the High Court and then to the Supreme Court. In *Patheja Bros. Forgings & Stamping and Another v. ICICI Ltd. and Others*,\(^{131}\) the question before the Supreme Court was whether section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 ('the said Act') covers a suit against the guarantor of a loan or advance that has been granted to the concerned industrial company.

All these overlapping and conflict of laws result in avoidable litigation and consequent delays in the disposal of the matters before the BIFR.

**6.8. CONVOLUTED DECISION MAKING PROCESS**

**6.8.1. Large Number of Issues**

The decision making process of BIFR is very complicated and convoluted. In the course of its proceedings, it has to decide a large number of issues—both main and ancillary—as shown below:

**6.8.1.1. Main Issues**

1. Whether the company has become a sick industrial company [s.16(1)].

2. Whether it is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time [s.17(1)].

3. Whether it is necessary or expedient in the public interest to attempt to revive a sick industrial company when it is not practicable for it to make its...

\(^{131}\) 2000 (038) CLA 202 SC.
net worth exceed the accumulated losses within a reasonable time [s.17(3)].

4 Whether the draft scheme prepared by the OA has received the consent of the person(s) required to provide financial assistance to the company [s.19(4)].

5 Whether it is just and equitable to wind up a sick industrial company when it is not practicable for it to make its net worth exceed the accumulated losses within a reasonable time [s.20(1)].

6 Whether the company has revived after implementing the scheme u/s 17(2) or 18(4).

6.8.1.2. Ancillary Issues

1 Whether it is necessary to initiate *suo moto* proceedings against an industrial company upon its own knowledge as to the financial condition of the company [s.16(1)(b)].

2 Whether it is necessary to have an operating agency enquire into and make a report with respect to such matter as may be specified by BIFR for determining whether any industrial company has become a sick industrial company [s.16(2)].

3 Whether it is necessary to appoint one or more persons to be a special director or special directors of the company for safeguarding the financial and other interests of the company or in the public interest [s.16(4)].

4 Whether to make any modifications in a draft scheme [s.18(3)] or a sanctioned scheme [s.18(5)].

5 Whether to give consent for the continuation of legal proceedings against an industrial company which have been automatically stayed by the operation of s.22(1).
6 Whether to declare that the operation of all or any of the contracts, agreements, settlements, awards, standing orders or other instruments in force, to which the sick industrial company is a party or which may be applicable to such company, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder shall remain suspended or shall be enforceable with such adaptations as may be specified by the Board [s.22(3)].

7 Whether to direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets [s.22A].

8 Whether to direct any person who has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company or who has been guilty of any misfeasance, malfeasance or non-feasance or breach of trust in relation to the sick industrial company, to repay or restore the money or property or any part thereof, with or without interest or to compensate the sick industrial company in such way as may be decided [s.24].

9 Whether to request the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other documents of any sick industrial company be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, shall, on such request being made to him (i) take possession of such property, books of accounts or other documents; and (ii) cause the same to be entrusted to the Board or the operating agency [s.29].

The large number of issues that need to be decided takes large chunks of time. It may also noteworthy that most of these issues come up for decision in a sequential, and not concurrent, manner which greatly slows up the whole process.
In this context, the Eradi Committee has remarked as follows:

"The implementation by the BIFR of the various steps and measures under the scheme sanctioned with reference to Section 18 or 19 of the Act in a sequential rather than concurrent manner is an additional contributory factor leading to long and avoidable delays in the disposal of cases and proceedings."\textsuperscript{132}

\textbf{6.8.2. Decision-Action Matrix of BIFR}

An analysis of the decision-action matrix of the BIFR also brings out the extremely dilatory nature of its procedure which provides for a number of decision-loops or re-entry points. This matrix is shown in Table 6.1.

\textsuperscript{132} Department of Company Affairs, Government of India, \textit{Report of the High Level Committee on Law relating to Insolvency of Companies (Chairman: Justice V. Balakrishna Eradi), Government of India, (2000), para 5.9.}
<table>
<thead>
<tr>
<th><strong>Issue #1:</strong> Whether company is a sick industrial company [s.16].</th>
<th><strong>Issue #2:</strong> Whether it is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time [s.17(1)].</th>
<th><strong>Issue #3:</strong> Whether it is necessary or expedient in public interest to revive the company [s.17(3)].</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DECISION #1.1:</strong> Company is not a sick industrial company.</td>
<td><strong>DECISION #2.1:</strong> It is practicable for the company to make its net worth exceed the accumulated losses within a reasonable time.</td>
<td><strong>DECISION #3.1:</strong> It is necessary or expedient in public interest to revive the company.</td>
</tr>
<tr>
<td><strong>ACTION #1.1:</strong> Case dismissed as not maintainable. [Exit Point #1]</td>
<td><strong>ACTION #2.1:</strong> Grant time for self-revival subject to restrictions and conditions [s.17(2)].</td>
<td><strong>ACTION #3.1:</strong> Take up Act-revival. Order OA to prepare scheme [s.17(3)]. Circulate draft scheme, after changes, if any [s.18(3)]. Obtain consent from all persons who are to provide financial assistance under the scheme. Go to Issue #4.</td>
</tr>
<tr>
<td></td>
<td><strong>ACTION #2.2:</strong> Consider public interest. Go to Issue #3.</td>
<td><strong>DECISION #3.2:</strong> It is not necessary or expedient in public interest to revive the company.</td>
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<td></td>
<td></td>
<td><strong>ACTION #3.2:</strong> Consider winding up. Go to Issue #5.</td>
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<tr>
<td>ISSUE #4: Whether all persons who are to provide financial assistance under the scheme give their consent [s.19]</td>
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<tr>
<td><strong>DECISION #4.1:</strong> All parties give consent to draft scheme [s.19(3)].</td>
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<tr>
<td><strong>ACTION #4.1:</strong> Sanction the scheme [s.18(4)].</td>
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<tr>
<td><strong>DECISION #4.2:</strong> All or some parties do not give consent to draft scheme.</td>
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<td><strong>ACTION #4.2:</strong> Consider fresh scheme. Go to Action #3.1. [Loop #1] Or, consider other measures including winding up. Go to Issue #5 [s.19(4)].</td>
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<tr>
<th>ISSUE #5: Whether it is just and equitable for the company to be wound up [s.20]</th>
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<tbody>
<tr>
<td><strong>DECISION #5.1:</strong> Objections to show cause notice upheld. It is not just and equitable to wind up the company.</td>
</tr>
<tr>
<td><strong>ACTION #5.1:</strong> Attempt Act-revival. Go to Action #3.1. [Loop #2]</td>
</tr>
<tr>
<td><strong>DECISION #5.2:</strong> Objections to show cause notice rejected. It is just and equitable to wind up the company.</td>
</tr>
<tr>
<td><strong>ACTION #5.2:</strong> May sell company's assets. Forward opinion &amp; sale proceeds to HC [s.20]. [Exit Point #2]</td>
</tr>
</tbody>
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<tr>
<th>ISSUE #6: Whether company has revived either under self-revival [s.17(2) scheme] or Act-revival [s.18(4) scheme].</th>
</tr>
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<tbody>
<tr>
<td><strong>DECISION #6.1:</strong> Company has revived.</td>
</tr>
<tr>
<td><strong>ACTION #6.1:</strong> Case closed. [Exit Point #3]</td>
</tr>
<tr>
<td><strong>DECISION #6.2:</strong> Company has failed to revive.</td>
</tr>
<tr>
<td><strong>ACTION #6.2:</strong> Consider fresh scheme. Go to Action #3.1. [Loop #3] Or, consider other measures incl. winding up. Go to Issue #5 [ss.17(4)(a) &amp; 19(4)].</td>
</tr>
</tbody>
</table>
The decision-action matrix, presented in Table 6.1, reveals three points of exit from the ambit of the BIFR—the first when the case is dismissed as not maintainable, the second when the BIFR recommends the winding up of the company and the third when the company revives on the successful implementation of the rehabilitation scheme.

The matrix also identifies the following re-entry points:

1. When the concerned parties do not give consent to provide financial assistance as proposed in the draft scheme, the BIFR, instead of straight-away ordering the winding up of the company, has the option of going for a fresh scheme.

2. Similarly when the revival scheme under s.17(2) or s.18(4) fails, the BIFR, instead of straight-away ordering the winding up of the company, has the option of going for a fresh scheme.

3. It is provided that the BIFR, even after coming to the conclusion that it is just and equitable to wind up the company, shall hear the objections of the parties after which it may decide not to wind up the company and instead opt for revival under s.18(4). This is a reversal of the normal procedure. The BIFR ought to first hear the objections of the parties and then conclude that it is just and equitable to wind up the company. And once this conclusion is reached, it must be final.

The provision of these re-entry points not only makes the entire decision-making process of the BIFR extremely time-consuming but also places a disproportionate emphasis on revival.
6.9. CONCLUSION

The analysis of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 made in this chapter has clearly brought out the factors affecting the performance of the BIFR. From this analysis, it is clear that the statutory provisions contained in SICA have actually hindered the BIFR from realising its objectives.

Thus the third hypothesis which reads: “The existing provisions of the Sick Industrial Companies (Special Provisions) have adversely affected the performance of the Board for Industrial and Financial Reconstruction” has been verified and proved to be true.