

REVIVAL AND REHABILITATION OF SICK COMPANIES

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SICK COMPANY

SICA 1985

Reference (S. 15)
 Erosion of net worth (S. 3(1)(o))
 Medium and large industrial Companies
 5 years post incorporation, +50 workmen
 Protection from distress

BIFR – the Authority
 Concept of Operating Agency
 Other restructuring remedies excluded
 Holding-on Operations

At incipient stage of sickness
 S. 391 (CA, 1956), CDR, JLF
 SARFAESI action prohibits/abates 15
 DRT

COMPANIES ACT 2013

Inability to pay debt or secure to reasonable satisfaction when required by 50% or more of secured lenders (S. 253)
 Protection from distress upto 120 days

NCLT – the Authority
 Concept of Interim Administrator, Administrator, Creditors Committee

At incipient stage of sickness
 S. 230 (CA, 1956), CDR, JLF
 SARFAESI action prohibits / abates S.253
 DRT

Stricter time frames
 Is it transitional?

SICKNESS, PROCESS FORWARD

SICA 1985	COMPANIES ACT 2013
<p>Banks functions as OA OA appointed to examine affairs Invites objections from stakeholders OA should not be conflicted</p> <p>Sick Co. and Management have approached with clean hands, Sickness is declared</p> <p>OA prepares Rehabilitation Scheme Invites views of all stakeholders OA monitors Sanctioned Scheme</p> <p>OA conducts processes of change of management, involved in asset sales in stages of SS / Winding up</p>	<p>Sick Co. Secured Creditor tp propose Rehabilitation Scheme.</p> <p>IA to convene meeting of Creditors Committee within 45 days to consider Scheme of Management Scheme to have approval of 3/4th creditors</p> <p>IA to take over control if Scheme not approved or otherwise consented by Management, and Tribunal so considers</p> <p>Administrator to appointed to take control of Sick Co., prepare Rehabilitation Scheme, implement all connected matters</p>

- Financial Reconstruction
- Change of Management of Sick Company
- Amalgamation
- Takeover by a Solvent Company
- Sale or Lease of Part or Whole of Assets
- Rationalisation of Managerial Personnel
- Other preventive, ameliorative and remedial measures
- Repayment/ Rescheduling/ Restructuring of Debts/ Obligations

Schemes to be approved by 75% of secured creditors and
25% of unsecured creditors

TRANSITIONAL, NEW PROVISIONS

SICA CASES (S. 434)	ADMINISTRATORS (S. 259)	INSOLVENCY FUND (S. 258)
<p>Reference, Appeal, Proceeding will abate</p> <p>Company in relation to which such abatement takes place may prefer the matter within 180 days</p>	<p>Persons with prescribed qualifications will empanelled by Central Government</p> <p>Powers to conduct proceedings at Interim and Regular Stage</p> <p>An extended arm of the Tribunal, with a high level of responsibility</p>	<p>Maintain assets, pay essential costs and attend proceedings if there are no funds in Sick Co.</p> <p>Draw down possible by Sick Co. to the extent of its contribution in the past, or as the Tribunal directs</p>

ISSUES, GOING FORWARD

- Vishwanathan Report
- Lenders side and Borrowers side legislations, and Overlaps
- Homogenisation of S. 230 and S. 254 (CA, 2013)
- Jurisprudence evolved under SICA and S. 391 (CA, 1956)
- Reliefs, Concessions from Central and State Governmental Agencies
- Draw down from Insolvency Fund
- Stipulated timelines - Mandatory or Directory
- Losses due to failure to implement scheme

LENDER'S DILEMMA

- Greening and Evergreening of debt has increased the size of problem
- Acceptable business practices are now doubted with low sensitivity
- Absence of new lending has pushed aside the buyers of stress assets
- Realisable value of assets is lower than distress value
- Reconciling with having to maintain productive state of assets
- Accepting write-offs and long tenor and low return instruments
- Delays in TEV Studies and Audits make the Cut-off date irrelevant
- Collateral securities, and problems of enforceability
- Attachments, Restraints by statutory authorities and decrees
- Enforcement of leasehold interests
- Workers housing and places of worship within a secured property
- Right of way for land locked properties

BORROWER AT CROSSROADS

- Pains of Short Term Funds utilised for Long Term Uses
- Bankability of the enterprise, Sum of parts to be greater than whole
- Finding substitutes to Asset backed financing
- Inheritance, Succession, Separation, Family Division, Litigations
- Shrinking team
- Accessing Digital World
- Facing unsecured creditors, international lenders, arbitration
- Unknotting completed and yet to complete transactions
- Meeting threats from efficient uses of materials and newer processes
- Adapting and upgrading with technological changes and improvements

TOUGH ISSUES

- UNCITRAL Model Law for Cross Border Insolvencies
- Foreign Main Proceedings
- Pre-packs
- Holding-on Operations
- New Money with Seniority
- Debt to Equity Swaps, SDR
- Risk Takers Revive Operations
- Asset Restructuring / Securitisation Companies
- Big Bad Bank / Asset Reconstruction Bank
- Bankruptcy Code, Personal and Enterprise
- Forgiveness

THANK YOU