

# **Sick Industrial Companies (Special Provisions) Act, 1985**

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**Lecture 06**

Welcome to all.

As a part of the course on Insolvency and Bankruptcy Law in India, today we are going to discuss on the topic, SICA, Sick Industrial Companies Special Provisions Act 1985. Famously it is called as SICA Act. Let us discuss what we have discussed in the previous classes. Let us recap. So, in the previous class, we have discussed the provisions under the Companies Act 1956.

Before that, we have discussed the Presidency Town Insolvency Act and Provincial Town Insolvency Act and the insolvency provisions in UK and US, okay? So, subsequent to that, we have discussed the Companies Act 1956. So, under the Companies Act, we have discussed the provisions relating to liquidation under the Companies Act 1956 and we have discussed the various modes of winding up. So, under the Companies Act, we are having two categories of winding up. So, one is voluntary winding up and another is compulsory winding up. Then we have discussed about the grounds of winding up. Then we have discussed about who can file a petition for winding up so member members creditors. Okay so, central government can find the petition for winding up okay then we have discussed the provisions relating to appointment of liquidator and voluntary winding up of the company.

Now, let us discuss about SICA, sick industrial companies act. So, if you observe the preamble of SICA. Okay, so, the preamble of the SICA provides the objectives of the SICA. So why this legislation was framed? So, if you observe the preamble, an act, it is an act to make, in the public interest, special provisions with a view to securing the timely detection of sick and potentially sick companies owing to industrial undertakings, the speedy determination by the 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. So, if you read the preamble, I can tell you that you can understand the basic gist of the legislation, why this legislation was passed. Okay, so this legislation was passed with a view to securing the timely detection of sick and potentially sick companies. So, one of the basic objectives of SICA is to detect the sick companies

and potentially sick companies. So, that's why if you observe the provisions of the Act. Okay, so, the board of directors of the company, they are having responsibility when any company becomes sick.

Okay, when any company becomes sick, the board of directors are having responsibility to refer the matter to BIFR. Okay, so under this legislation, board was established, there is BIFR. So, to the board, they are supposed to recommend. So, once that is recommended within the time framework, though there is no prescribed time limitations are not there. So unlike in the case of IBC, Insolvency Bankruptcy Code, we are having the time limitations.

So, in the subsequent lessons, we are going to discuss the timelines under the IBC, separate lesson will be there. But under the SICA, so the basic objective of SICA is to detect the Sick companies or potentially Sick companies, and whenever there is a possibility you have to rehabilitate the sick companies or if there is no possibility or if it is not viable to continue. The company in such cases okay so, the board will give the order for winding up of the company. Okay, so, if you observe the preamble from the preamble only you can understand the basic scope and the objective of the legislation. Okay, so, look at the preamble okay so remedial and other measures which need to be taken with respect to such companies okay so preventive, ameliorative, remedial or other measures. So, there is a possibility under the SICA that if the matter is referred to the BIFR their board then they may go for revival of the company and they can go for sometimes merger, amalgamation or any kind of arrangements under the Companies Act.

Okay or any other person can take over the company or else if all the possibilities are not possible, I mean if revival of the company is not possible in such scenario the board may recommend for winding up of the company okay. so that is the basic objective of the legislation okay. So, you can understand the objectives of the legislation from the preamble of the legislation itself Let us look at the objectives. So, one of the basic objectives of legislation is identification of sickness. So, we will discuss the definition of sickness in the subsequent slides.

So, identification of sickness is one of the essential conditions, okay, then registered not less than 7 years. Then the onus of reporting sickness at the stage of erosion of 50% or more of the net worth is on the board of directors of the company. So, which says that whenever in any company, 50% or more of the net worth is eroded or it is evaporated, then in such cases it is the responsibility of the board of directors to recommend such matter to the board under this legislation that is BIFR under this legislation. Another objective of the legislation is BIFR, Establishment of BIFR and Establishment of Appellate Authority. So, first objective is identification of sickness.

Second objective is the board of directors of the company are having responsibility to inform or to refer the matter to the board whenever 50% of the net worth is eroded. and Establishment of the BIFR and Establishment of Appellate Authority. Now let us look at the key definitions under the legislation. First important definition is SICK INDUSTRIAL COMPANY, which is defined under section 2, class O. So, what is SICK INDUSTRIAL COMPANY? An industrial company having at least 5 years of existence, which has accumulated losses equal to or exceeds its entire net worth at the end of the financial year.

So, please remember whenever if I want to call any company as a Sick company, one of the essential condition is that the company must be in existence for at least 5 years. So, within 5 years of the incorporation. You cannot call the company as a sick company under this legislation. Okay. So, if you want to call any company as a sick company under this legislation, at least five years must have elapsed from the date of incorporation of the company.

So that is one condition that you have to remember. And another condition is that it has accumulated losses. Okay. So, which is equal to or exceeding the entire net worth of the net worth of the company. So, if it is exceeding the net worth of the company, 50%, then in such cases, losses are exceeding, the net worth of the company then in such cases such company is called as sick company okay.

Then BIFR that is board for industrial and financial reconstruction, so what is this BIFR? BIFR is a body that is body corporate established under the act to determine the sickness of industrial companies okay so and devise revival and rehabilitation plan. So, from the definition itself we can understand that BIFR is a body like which is having the separate legal entity and the basic function of the BIFR is determination of sickness of the industrial companies and they are going to devise the revival and rehabilitation plan. So, majorly wherever it is possible. First, they have to propose a revival or rehabilitation plan. If revival or rehabilitation plan is not possible, is not viable, then in such cases, you have to give the order for winding up of the company. then appellate authority appellate authority for industrial and financial reconstruction AAIFR. The appellate body to hear appeals against the order of BIFR.

So, if any person is agrieved by the decision given by the BIFR that is board for industrial and financial reconstruction then they can go to the appellate authority that is AAIFR. Now, let us look at the applicability so this legislation that is SICA legislation is applicable only to industrial companies as defined under the Industrial Development and Regulation Act 1951. So, there is an IDR that is also called as IDR Industrial Development Regulation Act. So, there is a definition is there for the industrial companies under the IDR legislation. So, this SICA Act is applicable only to the industrial companies as defined under the IDR Act. Then please remember this

legislation is only applicable to companies registered under the Companies Act. So, the entity must be registered under the Companies Act. If the entity is not registered under the Companies Act, then that is not covered by SICA Act.

Let us look at some key provisions.

Section 4 of the Act speaks about the establishment of the board. As already we discussed BIFR. So, under this legislation BIFR was established. Okay. So, the central government shall establish the board namely called as BIFR through official gazette okay so they are going to notify in the official gazette so by notification in the official gazette they are going to establish the board called as BIFR, okay.

Then what is the composition of BIFR? The board shall consist of one chairman and not less than two or more two and not more than 14 members okay so the board shall have one chairman and minimum two members and which can extend up to 14 members so you can have maximum of 14 members but minimum two members so one chairman two members are required okay. Then constitution of appellate authority so under section 5 if you observe okay so it is speaking about the constitution of appellate authority so this is also one of the objectives of SICA act. So, CG shall constitute appellate authority for industrial and financial reconstruction So what is the composition of Appellate Authority? The Chairman, one Chairman will be there. Okay, so what is the eligibility condition for Chairman? The Chairman shall be a person who is or has been Judge of Supreme Court or who is or has been Judge of High Court for not less than five years. So, who can be the Chairman for the Appellate Authority? Supreme Court Judge.

Okay, so either Supreme Court Judge or else if high court judge is appointed, then he should be high court judge for a minimum period of 5 years. So as a high court judge, he should have the experience of 5 years or else he should be a supreme court judge. Then, in such cases, such person is eligible to be appointed as a chairman for appellate authority. Then who can be the member? Who is or has been okay so maybe existing or has been previous okay has been a judge of high court or officer not below the rank of secretary to the government of India.

So, who can be the member? So, if someone wants to be a member in High Court, someone wants to be a member in the Appellate Authority, then he should be a judge, maybe acting judge or former judge, okay? An officer not below the rank of Secretary to the Government of India. Then they are eligible to be appointed as a member in the Appellate Authority. Section 15 reference to BIFR by the SICK company. So, this is another one of the important section under the legislation Okay, so reference to BIFR. So where an industrial company has become SICK industrial company the board of directors of the company shall within 60 days from the date of finalization of the duly audited records possibilities there even before the finalization of the company for the financial

year as at the end of which the company has become sick industrial company make a reference to the board for determination of the measures which shall be adopted with respect to the company.

So, if you observe section 15 okay which clearly provides that it is the responsibility of the board of directors okay so within 60 days from the finalization of the duly audited accounts. So, in case of company the company has to close the books of accounts on 31st March of every year. So, once the books of accounts are closed then they are going to prepare okay they are going to prepare the accounts then subsequently they are going to place it before the general meeting at the general meeting okay. At the general meeting they are going to adopt and they are going to finalize the books of accounts okay they are going to adopt it at the general meeting. Generally, as per the Companies Act you are expected to conduct the general meeting before 6 months, that is within 6 months from the closure of the financial year.

So, before 30th September of every year you are expected to conclude the AGM or you are expected to conduct the AGM within 6 months. So, when you finalize the duly audited financial statements, so from that date onwards within 60 days. So, if the board of directors are of the opinion that the company has become sick industrial company. So, what is the meaning of sick industrial company? So, SICK industrial company means your losses are exceeding or which is equal to, either your losses are equal to or your losses are exceeding your net worth, then in such cases, such company is called a SICK company. Obviously, board of directors will be knowing If the board of directors found that any company is a SICK company, within 60 days you are expected to refer the matter to the BIFR. Possibility is there even before closing the financial statements also.

Even before closing the financial statements also, if board of directors are of the opinion that the company is getting the losses and such losses are equal to or more than the net worth of the company, then in such cases under section 15 of the Act, the board of directors are having a responsibility to refer the matter to the BIFR under section 15. Now let us look at the section 16. Enquiry into working of SICK companies by BIFR. Okay, so under section 16, we are having the provisions where once the matter is, once the company is referred to the board, that is BIFR, by the board of directors of the company. Then, in such cases, under section 16, the board, that is BIFR will enquire into the working of sick companies. So, is it working properly or not? Then is there any requirement to appoint another person to run the company? So, all these things will be verified by the board.

Then under section 17, we are having the provisions relating to preparation and sanction of scheme for the revival and rehabilitation. So, once the enquiry is conducted under section 16 then subsequent to the enquiry the board along with the with the help of the board of directors of the company and also other professionals. Okay, they are going to

prepare a scheme. okay the scheme can be for the revival of the company and rehabilitation okay. So, what they are going to do the board shall after considering all the relevant facts and circumstances of the case decide as soon as may be by order in writing whether it is practicable for the company to make its net worth exceeds the accumulated losses within a reasonable time okay. So, it is the responsibility of the board when I am using the word board here BIFR okay so in case of board of the company I will use the word board of directors okay so in case of board of the company I will use the word board of directors. In case BIFR, I will use the word board.

So here the BIFR after considering the relevant facts and circumstances of the case because already under section 15 already it is referred. Now they are having the financial statements and every detail about the company. Then after considering all these things, then if board is of the opinion that if it is practicable for the company to make net worth exceeds the accumulated losses. So, what was happened actually previously, you are a sick company, when you are a sick company, when your losses are equal to net worth or losses are more than the net worth. Now your losses are more than the net worth or your losses are equal to net worth Now what we are saying under section 17 is, if it is practicable for you to increase your net worth, okay or to reduce the losses otherwise, okay to reduce the losses okay whereby your net worth is more than the losses okay if it is practicable, then in such cases please you have you are supposed to prepare a scheme for the revival and rehabilitation okay.

then the board may give such time to make its network exceeding it to exceed the accumulated losses. So, to happen this okay so why because now your losses are more than net worth or else your losses are equal to net worth now to ensure that your net worth is more than the losses okay so obviously you need to have some time okay so you need to run the business you need to have some time. So, for this purpose the board can give some time to ensure that the net worth is exceeding the accumulated losses. So, under section 17 so the board is having power to approve the scheme.

For the revival and rehabilitation and, also to happen this okay so there is a requirement to happen this we need to give some more time so under section 17 okay so they can approve the scheme and, also they can give the time to happen this. now let us look at section 18 preparation and sanction of scheme so what can be there so as already we have discussed under section 17 okay the board is going to sanction the scheme then how to prepare the scheme so under section 18. Okay, so, we have in detail provision is there. So, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of 90 days. So as already I told you that once the matter is referred to the board, they are going to appoint the persons.

Okay, so that is operating agency. This operating agency, they shall prepare within a period of 90 days a scheme with respect to such company providing for any one of the

following measures. So, they are going to propose a scheme within a period of 90 days, maybe you have to close down the company or else maybe you have to merge the company with another person, maybe company okay maybe you have to go for merger amalgamation okay. So, like that various permutations and combinations can be possible so such permutations and combinations can be referred or can be specific can be proposed by the operating agency within 90 days, so what they can propose? They can propose the financial reconstruction of sick industrial companies so you can concentrate on financial reconstruction maybe you can raise further capital that is also possible. Or, else you can convert the existing debt into equity. So, like that you can have various permutations and combinations whereby you can go for financial deconstruction. Then the proper management of SICK industrial company by change in or take over of the management of SICK industrial company.

So, the operating agencies have the opinion that the existing management is not working properly, then in such cases they may recommend to change the existing management. Okay, so they may recommend to change existing management or else other management may take over, that is other company may take over this existing management of the SICK company. Even that is also possible. Then the amalgamation of SICK company with other company. So, you can amalgamate the SICK company with another company or any other company with the SICK company.

So, possibility is there sometimes with the SICK company, you can merge another company. So, this is also called as reverse merger. Generally, loss making company will be merged into profit making company. That is the general tendency. But there is another possibility is there whereby profit-making company can be merged into loss making company.

Generally, it is called as reverse merger. okay. So, the operating agency can propose even reverse merger also whereby it is a sick company now other companies merged into sick company even that is also possible. Then they can propose the sale or lease of part or whole of any undertaking of the sick industrial company So they can propose to sell or lease the part of any undertaking Maybe the industry is having good property So maybe that is located in prime area So instead of keeping in idle, maybe you can propose to lease the property. Okay, so they can propose the sale or lease of a part or whole of any industry undertaking of the SICK company. Okay, then the rationalization of managerial personnel, supervisory-staff and workmen in accordance with the law. So sometimes even the operating agency can propose HR issues also, that is human resource management issues whereby they can rationalize the things.

Okay, so instead of having so many people, maybe you can try to reduce the workforce or else it is like re-organization. So, I cannot say that always it is only reducing the workforce so maybe you can utilize in a proper manner even that is also possible. then

such other preventive, ameliorative and remedial measures as may be appropriate so depending on circumstances you can propose anything in the scheme. then such incidental, consequential or supplementary measures as may be necessary are expedient in connection with or for the purpose of measures specified in clauses A to E. So, if you observe previous things, that is sale, maybe you can go for sale, maybe you can go for rationalization of managerial personnel or else if you look at the previous slide, you can go for merger and you can change the management and you can go for financial reconstruction, okay, to do all these things. maybe some incidental things are also possible okay so you are expected to some incidental things also okay so all these things maybe.

Let me take one example. Okay, so, you are going for financial reconstruction okay so when you are going for financial reconstruction maybe you have to increase the authorised share capital okay so if you have to increase the authorised share capital obviously you are supposed to alter the MOA existing memorandum of association so these things can be recommended in a scheme. Okay, then section 19 rehabilitation by giving financial assistance so there is another possibility you can give the financial assistance also to the sick company so that they can revive. then section 19 winding up of sick industrial companies so under section 20. Sorry, section 20 okay, so the board can give the order for winding up. Then, under section 22 suspension of legal proceedings and contracts during the period so this is nothing but mandatory period so under section 22 so once the Once the company is admitted or once the company is referred to the board, when SICA Act was implemented, I mean to say it is referred to the board and the board is taking care of that, then during that period, no legal proceedings can be there against the company. Okay, so it is like it will act as a moratorium period whereby no suit can be filed against the company during the enquiry period.

Okay, now let us look at the repeal.

So, SICA was repealed by SICK Industrial Company Special Provisions Repeal Act 2003. But please remember, though it was passed in the year of 2003, but repeal act did not come into enforcement till the 2016. Okay, so when after implementation of the IBC okay so insolvency bankruptcy code only SICA was repealed okay till that time SICA was there actually. Okay, then what is the present status okay the functions were transferred to NCLT under the insolvency bankruptcy code 2016. So, previously BIFR was there then you are also having applied authority so the functions of BIFR right now were transferred to the NCLT under the IBC. Okay, then Appellate Authority, anywhere right now we don't have the Appellate Authority, now we are having under the IBC NCLT, above that we are having NCLAT, then if you are aggrieved by the decision taken, given by the NCLAT, then you can go to the Supreme Court.

Okay, so NCLT, NCLAT, Supreme Court. So, this is the hierarchy under the existing IBC. Okay, so SICA was repealed, please remember. Then, let us discuss few notable cases. Okay, why these are all important though SICA was repealed but in the subsequent lessons we are going to discuss and we are going to learn about IBC Okay. So, SICA was basis for IBC because SICA failed to redress the SICK companies or redress the issues within the time framework, because we don't have proper time framework under the SICA. So, that's why okay we learned from the we learned the lessons from the SICA failure so that's why now we are having IBC so that's why it is essential for us to know about the SICA, so that is one of the reason why we are learning in this lesson about the SICA okay.

So, let us discuss few judgments.

Okay, so in the case of Real Value Appliances Limited versus Canara Bank, the supreme Court held that that the moment a reference is registered with BIFR protection under section 22 occurs. So, as already we have discussed under section 22 moratorium provision okay though they don't they have not used explicitly the word moratorium but you cannot file a case against the company okay once the company was referred to the BIFR no one can file a case against the company okay. So, once the reference is registered with the BIFR then immediately the protection under section 22 will be applicable okay.

Then, in another case law Rama Narang versus Ramesh Narang, okay, 2006 judgment. Okay, so please remember where it was clarified that so though under section 22, we are having moratorium that is you cannot file a case against the company but criminal proceedings are not part okay. So, it is only for the civil cases so please remember SICA is civil in nature So, that's why, all the civil proceedings are barred against the company, but criminal proceedings are not barred.

So, in another case law, NGEF Limited versus Chandra Developers Private Limited, it was held that BIFR is a final authority for deciding the matters concerning the sick company. So once the decision is taken by the BIFR, that is final. So, unless there are procedural lapses are there, unless legal issues are there, generally you cannot go for an appeal against the company. So, against the decision given by the BIFR.

The decision given by the BIFR will be final. So let us recap what we have discussed in today's lesson. In, today's lesson we have discussed about the objectives of the SICA. Then, we have discussed the key definitions like SICK industry, SICK company, etc. Then we have discussed about the applicability of SICK. So, this is applicable to the SICK industries, industrial companies under the Industrial Development Regulation Act. And, also the company must be a company registered under the Companies Act.

Then we have discussed about the establishment of BIFR. Then reference to BIFR by SICK company. So, we have discussed that. it is the responsibility of Board directors to refer the matter to the BIFR when they found that the losses are equal to or exceeding the net worth. Okay, then preparation and sanction of the scheme so the operating agency is going to prepare the scheme and subsequently it is going to be sanctioned and they are going to implement the scheme.

Then, rehabilitation of sick company so we have discussed about how they are going to go for rehabilitation. So, while in the process of rehabilitation, they can propose maybe merger, amalgamation, takeover, changes in the management. So, anything they can propose. Then if revival is not possible, then in such cases, BIFR can give the order for winding up of the company.

So, this is last resort. Please remember, if revival is not possible, revival is not viable, then only we can give the order for winding up. Okay, So, winding up of the company must be the last source okay so unless you try all other measures okay you cannot go for winding up of the company.

thank you.