



## **Revival and Rehabilitation - Legislative Changes & Challenges**

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# PREFACE

- ❖ Companies Second (Amendment) Act, 2002 (**Second Amendment Act**) - Part-VI A (Section 424A to 424L) were introduced in the Companies Act, 1956 but not made effective.
- ❖ NCLT and NCLAT were to replace BIFR and AAIFR through the Second Amendment Act.
- ❖ SICA was to be repealed through Sick Industrial Companies (Special Provisions) Repeal Act 2003- Not made effective.
- ❖ JJ Irani Committee recommendations on revival and rehabilitation find place in the Companies Act, 2013 (**New Act**)

# Key changes in Revival & Rehabilitation

<b>Particulars</b>	<b>Companies Act, 2013</b>	<b>SICA, 1985</b>
<b>Tribunal/ Appellate Tribunal</b>	NCLT/NCLAT	BIFR/AAIFR
<b>Sickness</b>	The inability of the company to pay or secure or compound the payment on demand by its secured creditors representing 50% of the outstanding debts within 30 days of notice of demand. The secured creditors of the company in such an event may file an application with the Tribunal to declare the company sick. (section 253 (1)).	No such provision

Particulars	Companies Act, 2013	SICA, 1985
<b>Sick Company</b>	<ul style="list-style-type: none"> <li>• The term “Sick Company” is not defined in the New Act.</li> <li>• Sickness criteria is given in section 253(1).</li> <li>• Tribunal to declare a company as “Sick Company” within 60 days.</li> </ul>	<p>Any <b>industrial company</b> (being a company registered for not less than five years) which has at the end of any financial year <b>accumulated losses equal to or exceeding its entire net worth</b>. Section 3 (o).</p>
<b>Potentially Sick Industrial Company</b>	No such provision	<p>Section 23 specifies that if the accumulated losses of an industrial company, as at the end of any financial year have resulted in erosion of 50% or more of its peak net worth during immediately preceding 4 financial years such company shall be considered as potentially Sick Company.</p>

Particulars	Companies Act, 2013	SICA, 1985
<b>Stay on pending proceedings</b>	<ul style="list-style-type: none"> <li>• Only on application under section 253 (2), the Tribunal may order <b>to stay</b> any proceedings as specified under section 253 (2) w.r.t the company.</li> <li>• The stay would be operative for <b>120 days.</b> (section 253 (3)).</li> </ul>	<ul style="list-style-type: none"> <li>• Once a reference is admitted in BIFR, all the proceedings shall stand suspended as prescribed under section 22.</li> <li>• No time period for stay order.</li> </ul>
<b>Non disposable obligation.</b>	<p>On filing an application, the company shall not;</p> <ul style="list-style-type: none"> <li>• dispose of any assets, or;</li> <li>• otherwise enter into any obligation with regard to, its properties or assets</li> </ul> <p><b>except,</b> if done in the normal course of business. (section 253(6))</p>	<p>BIFR may by order in writing, direct the sick company to not dispose of its assets, except with the consent of BIFR. (refer section 22A)</p>

<b>Particulars</b>	<b>Companies Act, 2013</b>	<b>SICA, 1985</b>
<b>Limitation period</b>	Stay order period shall be excluded in calculation of the period of limitation. (section 255)	No such provision.
<b>Application by a Secured Creditor to the Tribunal for Revival and Rehabilitation of the Company.</b>	Once the company has been determined as a sick company, then the secured creditors may make an application within a period of 60 days to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of the such Company. (section 254(3))	No such provision.

<b>Particulars</b>	<b>Companies Act, 2013</b>	<b>SICA, 1985</b>
<b>Overriding effect of the SARFAESI Act</b>	<p>SARFAESI Act has an overriding effect on the provisions of Chapter XIX for abatement of any reference made or to be made under section 253, if;</p> <ul style="list-style-type: none"> <li>• secured creditors representing 75% of outstanding debt have taken measures to recover their debts under the SARFAESI Act, or;</li> <li>• financial assets is taken over by the AMC under section 5(1) of the SARFAESI Act. (section 254)</li> </ul>	<p>Similar provisions are provided under section 15 of SICA.</p>
<b>Appointment of Interim Administrator (section 256)</b>	<p>Once declared as a sick company on receipt of application for revival and rehabilitation, the Tribunal shall appoint a interim administrator (IA) within 7 days from the receipt such application</p>	<p>An operating agency (OA) was appointed by BIFR to undertake an enquiry into the affairs of the Company.</p>

Particulars	Companies Act, 2013	SICA, 1985
<b>Duties &amp; Powers of the Interim Administrator</b>	<ul style="list-style-type: none"> <li>• To convene meetings of the committee of creditors within 45 days.</li> <li>• To provide report to the Tribunal within 60 days.</li> <li>• To takeover the management of the company, if directed by the Tribunal. (section 256)</li> </ul>	<p>No such powers with the BIFR to direct the OA to takeover the management of the company on the ground that there is no scheme of revival and rehabilitation (<b>Scheme</b>) of the Company filed by the company along with the application.</p>
<b>Committee of Creditors</b>	<p>The IA shall appoint a committee of creditors before calling the meeting with maximum 7 members constituting a representative each of every class of creditors as far as possible.(section 257)</p>	<p>No such provision.</p>



<b>Particulars</b>	<b>Companies Act, 2013</b>	<b>SICA, 1985</b>
<b>Company Administrator or</b>	On the date of hearing fixed by the Tribunal and after considering the report of the IA, the Tribunal if thinks it feasible to revive or rehabilitate the company, then it shall appoint a company administrator (CA). (section 258)	No such Provision.
<b>Preparation of the Scheme by a Company Administrator or</b>	CA, shall prepare or cause to prepare a scheme of revival and rehabilitation after considering the measures, if any as recommended by the creditors in their meeting. (section 258)	No such provision in SICA. However the OA appointed by BIFR is responsible to prepare the Scheme.

<b>Particulars</b>	<b>Companies Act, 2013</b>	<b>SICA, 1985</b>
<p><b>Appointment of Administrators</b> (section 259)</p>	<ul style="list-style-type: none"> <li>• The administrators appointed by the Tribunal shall be appointed from a databank to be maintained by the CG or any institute or agency authorized by CG in a prescribed manner .</li> <li>• The databank will consist of Company Secretaries, Chartered Accountant, Cost Accountant and such other professionals as may be specified by CG.</li> </ul>	<p>No such provision. BIFR normally appoints an institution as the OA which are generally banks and financial institutions.</p>
<p><b>Takeover of the Sick Company</b></p>	<p>Takeover of the sick company by any other solvent company may form a part of the Scheme. (section 261 (2)(d)).</p>	<p>No such Provision.</p>

<b>Particulars</b>	<b>Companies Act, 2013</b>	<b>SICA, 1985</b>
<b>Approval of the Scheme by the Secured Creditors and Unsecured Creditors</b>	The revival and rehabilitation through a scheme will now be only possible if the scheme is approved by 75 % of secured creditors in a meeting convened by the CA along with 25% of unsecured creditors. (section 262(2))	No such provision.
<b>Process for approval of the Scheme</b>	<p>Process is defined in section 262 of the New Act.</p> <ul style="list-style-type: none"> <li>• Meeting within 60 days of the appointment of CA.</li> <li>• Maximum extension by Tribunal -120 days.</li> <li>• Separate meetings for secured and unsecured creditors.</li> </ul>	No such provision.

<b>Particulars</b>	<b>Companies Act, 2013</b>	<b>SICA, 1985</b>
<b>Scheme to be binding.</b> (section 263)	Once approved, the Scheme shall have a binding effect from the date it becomes operative.	No such provision.
<b>Monitoring the Scheme.</b>	The CA appointed by the Tribunal shall on order by the Tribunal monitor the implementation of the Scheme. (section 264(2)).	OA appointed by BIFR was responsible for monitoring the Scheme
<b>Winding up of the Company if the Scheme is not approved by the Creditors.</b>	If the Scheme is not approved, the CA shall file its report with the Tribunal and then the Tribunal shall conduct the proceedings of the winding up under Chapter XX of the New Act. (section 265)	Winding up powers are with BIFR.

Particulars	Companies Act, 2013	SICA, 1985
<p><b>Winding up of the Company if the approved Scheme fails to implement.</b></p>	<ul style="list-style-type: none"> <li>• Winding up by the Tribunal if 75% of secured creditors agree to it. (section 258 (a)).</li> <li>• Tribunal may modify the terms of the scheme.</li> </ul>	<p>No creditors approval was required, the OA in case where the Scheme is not implementable may seek for the change in management (“COM”) of the company and if the COM does not takes place then winding up is recommended to the High Court.</p>
<p><b>Fund</b></p>	<p>Rehabilitation and Insolvency Fund. (section 269)</p>	<p>Rehabilitation Fund</p>

Particulars	Companies Act, 2013	SICA, 1985
<p><b>Punishment/ Penalty</b> (section 267)</p>	<p>➤ Whoever violates the provisions of chapter XIX, <b>or;</b></p> <ul style="list-style-type: none"> <li>• makes a false statement, <b>or;</b></li> <li>• gives false evidence before the Tribunal or the Appellate Tribunal, <b>or;</b></li> <li>• attempts to tamper with the records of reference or appeal filed under this Act</li> </ul> <p>shall be punishable with imprisonment <b>up to 7 years</b> and fine which may extend to <b>Rs. 10 Lacs</b></p> <p>➤ No such provision for cognizance.</p>	<p>➤ Whoever violates the provisions of this Act <b>and;</b></p> <ul style="list-style-type: none"> <li>• whoever makes a false statement, <b>or;</b></li> <li>• gives false statement to the board or the Appellate Authority</li> </ul> <p>shall be punishable with imprisonment <b>up to 3 years</b> and which may be coupled with fine.</p> <p>➤ No cognizance by any court of any offence mentioned above, except on a complaint by such persons.</p>



## **Challenges- Revival and Rehabilitation**



- **Transitional provision**
  - Any **appeal, reference or proceedings** pending before BIFR/AAIFR shall **stand abated**. Company is allowed to make reference to the Tribunal **within 180 days** from the commencement of the New Act.(section 434)
  
- **Overriding powers of SICA over other Rules/Acts/Statue/Legislation etc., missing in the New Act.**



# Challenges



- ❖ **Unsecured creditors-how far protected?**
- ❖ **Reporting under CARO in respect of erosion of the net worth will continue.**
- ❖ **Stipulated timelines-whether mandatory or directory?**



## ❖ **Qualification criteria for administrators.**

- having special knowledge or experience in matters related to revival and rehabilitation of sick companies or insolvency for **at least 10 years**;
- total receipts, from rendering of professional services, **not less than 15 lakh rupees** in each of the **previous 3 years** according to the audited financial statements;
- free from any professional or other mis-conduct, past and present, committed under the respective statute under which he is governed;
- **met the fit and proper person criteria** specified by the Central Government from time to time.



**Time for us to gear up**

# Thank You



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