

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

**(No. 1 of 1986)<sup>1</sup>**

**(Received the assent of the President on 8th January, 1986)**

**Preamble.**—An Act to make in public interest, special provisions 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.

Be it enacted by Parliament in the thirty-sixth year of the Republic of India as follows:—

## **Chapter I**

### **Preliminary**

**1. Short title, extent, commencement and application:** - (1) This Act may be called the **Sick Industrial Companies (Special Provisions) Act, 1985.**

- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provision.
- (4) It shall apply, in the first instance, to all the scheduled industries other than the scheduled industry relating to ships and other vessels drawn by power.
- (5) The Central Government may, in consultation with the Reserve Bank of India, by notification, apply the provisions of this Act, on and from such date as may be specified in the notification, to the scheduled industry relating to ships and other vessels drawn by power.

#### **Footnotes:**

1. Published in the Gazette of India, Extraordinary No. 1 dated 9 January, 1986, Part II, Section 1.

**2. 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) of Article 39 of the Constitution.

**3. Definitions:** - (1) In this Act, unless the context otherwise requires,—

- (a) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction constituted under section 5;
- (b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4;
- (c) "Chairman" means the Chairman of the Board or, as the case may be, the Appellate Authority;

- (d) "company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) <sup>1</sup>[\* \* \*];
- <sup>2</sup>[(da) "date of finalisation of the duly audited accounts" means the date on which the audited accounts of the company are adopted at the annual general meeting of the company;]
- (e) "industrial company" means a company which owns one or more industrial undertakings;
- (f) "industrial undertakings" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any company but does not include—
- (i) an ancillary industrial undertaking as defined in clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951 (65 of 1951); and
- (ii) a small scale industrial undertaking as defined in clause (/) of the aforesaid section 3;
- (g) "Member" means a member of the Board or, as the case may be, the Appellate Authority and includes the Chairman thereof;

**Footnotes:**

1. The words "but does not include a government company as defined in section 617 of that Act" omitted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1991, w.e.f. 28 December, 1991.
2. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

<sup>1</sup>[ga) "net worth" means the sum total of the paid-up capital and free reserves.

**Explanation:** - For the purposes of this clause, "free reserves" means 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;]

(h) "notification" means a notification published in the Official Gazette;

<sup>2</sup>[(i) "operating agency" means 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;]

(j) "prescribed" means prescribed by rules made under this Act;

<sup>3</sup>[(k) \* \* \*]

(l) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(m) "Scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(n) "Scheduled industry" means any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951);

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
2. Substituted for the following:  
 "(i) "operating agency" means any public financial institution as may be specified by general or special order as its agency by the Board;" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
3. Clause (k) omitted by the Sick Industrial Companies (Special Provisions) Amendment Act,

1993. Prior to omission it read as under:

"(k) "public financial institution" means any of the following institutions, namely:—

- (i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);
- (ii) the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);
- (iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);
- (iv) the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984);
- (v) such other institutions as the Central Government may, by notification, specify:

Provided that no institution shall be so specified unless it has been established or constituted by or under any Central Act, or not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government or by any one or more of the institutions mentioned in sub-clauses (i) to (iv) or partly by the Central Government and partly by one or more of the institutions mentioned in sub-clauses (i) to (iv)

<sup>1</sup>[(o) "sick industrial company" means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

**Explanation:** - For the removal of doubts, it is hereby declared that an industrial company existing immediately before the commencement of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth, shall be deemed to be a sick industrial company;]

(p) "State level institution" means any of the following institutions, namely:—

- (i) State Financial Corporations established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);
- (ii) State Industrial Development Corporations registered under the Companies Act, 1956 (1 of 1956);
- (iii) such other institutions, being companies and not being public financial institutions, engaged in the development or financing of industrial undertakings, as the Central Government may, by notification, specify:

Provided that no institution shall be so specified unless not less than fifty-one per cent of the paid-up share capital thereof is held by any State Government or Governments or by any institution or institutions mentioned in sub-clauses (i) and (ii) or partly by one or more public financial institutions or institutions mentioned in sub-clauses (i) and (ii) and partly by one or more State Governments.

(2)(a) Words and expressions used and not defined in this Act shall have the meanings, if any, respectively assigned to them in the Companies Act, 1956 (1 of 1956);

**Footnotes:**

1. Substituted for the following:

"(o) "sick industrial company" means an industrial company (being a company registered for not less than seven years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year.

**Explanation:** - For the purposes of this clause—

- (i) "cash loss" means loss as computed without providing for depreciation;
- (ii) "net worth" is the sum total of the paid-up capital and free reserves;
- (iii) "free reserves" means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-valuation of assets, write back of depreciation provisions and amalgamations;"

by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

- (b) Words and expressions used but not defined either in this Act or in the Companies Act, 1956 (1 of 1956), shall have the meanings, if any, respectively assigned to them in the Industries (Development and Regulation) Act, 1951 (65 of 1951).
- (3) Any reference in this Act to any other enactment or any provision thereof, shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.
  - 3(1) (a) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction constituted under section 5;
  - (b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4;
  - (c) "Chairman" means the chairman of the Board or, as the case may be, the Appellate Authority;
  - (d) "Company" means a company as defined in section 3 of the Companies Act, 1956<sup>1</sup>[\*\*\*];

**Footnotes:**

1. The words "but does not include a government company as defined in section 617 of that Act" omitted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1991, w.e.f. 28 December, 1991.

<sup>1</sup>[3(1)(da) "date of finalisation of the duly audited accounts" means the date on which the audited accounts of the company are adopted at the annual general meeting of the company;]

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

3(1) (e) "industrial company" means a company which owns one or more industrial undertakings;

- 3(1) (f) "industrial undertaking" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any company but does not include—
- (i) an ancillary industrial undertaking as defined in clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951; and
  - (ii) a small scale industrial undertaking as defined in clause
  - (iii) of the aforesaid section 3.

3(1) (g) "Members" means a Member of the Board or, as the case may be, the Appellate Authority and includes the Chairman thereof;

3(1)<sup>1</sup>[(ga) "net worth" means the sum total of the paid-up capital and free reserves.

**Explanation:** - For the purposes of this clause, "free reserves" means 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;]

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

3(1) (h) "notification" means a notification published in the Official Gazette;

3(1) (i) "operating agency" means 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;]

3(1) (j) "prescribed" means prescribed by rules made under this Act;

<sup>1</sup>[(k) \* \* \*]

**Footnotes:**

1. Clause (k) omitted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993. Prior to omission it read as under:

"(k) "public financial institution" means any of the following institutions, namely:—

- (i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);
- (ii) the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);
- (iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);
- (iv) the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984);
- (v) such other institutions as the Central Government may, by notification, specify:

Provided that no institution shall be so specified unless it has been established or constituted by or under any Central Act, or not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government or by any one or more of the institutions mentioned in sub-clauses (i<sup>1</sup>) to (iv) or partly by the Central Government and partly by one or more of the institutions mentioned in sub-clauses (i) to (iv)

3(1)(l) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(m) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(n) "scheduled industry" means any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951);

3(1)<sup>1</sup>[(o) "sick industrial company" means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

**Footnotes:**

1. Substituted for the following:

"(o) "sick industrial company" means an industrial company (being a company registered for not less than seven years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year.

**Explanation:** - For the purposes of this clause—

(i) "cash loss" means loss as computed without providing for depreciation;

(ii) "net worth" is the sum total of the paid-up capital and free reserves;

(iii) "free reserves" means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-valuation of assets, write back of depreciation provisions and amalgamations;"

by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**Explanation:** - For the removal of doubts, it is hereby declared that an industrial company existing immediately before the commencement of the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, registered for not less than five years and having at the end of any financial year accumulated losses equal to or exceeding its entire net worth, shall be deemed to be a sick industrial company;]

3(1) (p) "State level institution" means any of the following institutions, namely:—

(i) "State Financial Corporations established under section 3 or section 3 A and institutions notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(ii) State Industrial Development Corporations registered under the Companies Act, 1956 (1 of 1956);

(iii) Such other institutions, being companies and not being public financial institutions, engaged in the development or financing of industrial undertakings, as the Central Government may, by notification, specify:

Provided that no institution shall be so specified unless not less than fifty-one per cent of the paid-up share capital thereof is held by any State Government or Governments or by any institution or institutions mentioned in sub-clauses (i) and (ii) or partly by one or more public financial institution or institutions mentioned in sub-clauses (/) and (ii) and partly by one or more State Governments.

3(2) (a) Words and expressions used and not defined in this Act shall have the meanings, if any,

respectively assigned to them in the Companies Act, 1956 (1 of 1956);

(b) Words and expressions used but not defined either in this Act or in the Companies Act, 1956 (1 of 1956) shall have the meanings, if any, respectively assigned to them in the Industries (Development and Regulation) Act, 1951 (65 of 1951);

3(3) Any reference in this Act to any other enactment or any provision thereof, shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

## **Chapter II**

### **Board and Appellate Authority for Industrial and Financial Reconstruction**

**4. Establishment of Board:** - (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established a Board to be known as the "Board for Industrial and Financial Reconstruction" to exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed on the Board by or under this Act.

- (2) The Board shall consist of a Chairman and not less than two and not more than fourteen other Members, to be appointed by the Central Government.
- (3) The Chairman and other Members of the Board shall be persons who are or have been or are qualified to be High Court Judges, or persons of ability, integrity and standing who have special knowledge of, and professional experience of not less than fifteen years in science, technology, economics, banking industry, law, labour matters, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would in the opinion of the Central Government be useful to the Board.

**5. Constitution of Appellate Authority:** - (1) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an appellate authority to be called the "Appellate Authority for Industrial and Financial Reconstruction" consisting of a Chairman and not more than three other Members, to be appointed by that Government, for hearing appeals against the orders of the Board under this Act.

- (2) The Chairman shall be a person who is or has been a Judge of the Supreme Court or who is or has been a Judge of a High Court for not less than five years.
- (3) A Member of the Appellate Authority shall be a person who is or has been a Judge of a High Court or who is or has been an officer not below the rank of a Secretary to the Government of India or who is or has been a Member of the Board for not less than three years.

**6. Term of office, conditions of service, etc., of chairman and other members:** - (1) Before appointing any person as the Chairman or other member, the Central Government shall satisfy itself that the person does not and will not, have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

- (2) The chairman and every other member shall hold office for such period, not exceeding five years, as may be specified by the Central Government in the order of his appointment, but shall be eligible for reappointment:

Provided that no person shall hold office as the chairman or other member after he has attained the age of sixty-five years.

- (3) Notwithstanding anything contained in sub-section (1) a Member may—

- (a) by writing under his hand and addressed to the Central Government resign his office at

any time;

(b) be removed from his office in accordance with the provisions of section 7.

- (4) A vacancy caused by the resignation or removal of the Chairman or any other member under sub-section (3) or otherwise shall be filled by fresh appointment.
- (5) In the event of the occurrence of a vacancy in the office of the chairman by reason of his death, resignation or otherwise, such one of the Members, as the Central Government may, by notification, authorise in this behalf shall act as the chairman till the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
- (6) When the chairman is unable to discharge his functions owing to absence, illness or any other cause, such one of the Members as the chairman may authorise in writing in this behalf shall discharge the functions of chairman, till the date on which the chairman resumes his duties.
- (7) The salaries and allowances payable to and the other terms and conditions of service of the chairman and other members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman or any other Member shall be varied to his disadvantage after his appointment.

- (8) The Chairman and every other Member shall before entering upon his office, make a declaration of fidelity and secrecy in the form set out in the Schedule.
- (9) The Chairman or any other Member ceasing to hold office as such shall not hold any appointment or be connected with the management or administration in any company in relation to which any matter has been the subject-matter of consideration before the Board, or as the case may be, the Appellate Authority, for a period of five years from the date on which he ceased to hold such office.

**7. Removal of members from office in certain circumstances.**—(1) The Central Government may remove from office any Member, who—

- (a) has been adjudged as insolvent, or
  - (b) has been convicted of an offence, which, in the opinion of the Central Government, involves moral turpitude, or
  - (c) has become physically or mentally incapable of acting as a Member, or
  - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or
  - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) Notwithstanding anything contained in sub-section (1), no member, shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has on an enquiry held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such grounds, to be removed.

**8. Secretary, officers, and other employees of Board or Appellate Authority:** - (1) The Central Government shall appoint a Secretary to the Board and a Secretary (by whatever name called) to the Appellate Authority to exercise and perform, under the control of the Chairman, such powers and duties as may be prescribed or as may be specified by the Chairman.

<sup>1</sup>[(2) The Central Government may provide the Board and the Appellate Authority with such other officers and employees as may be necessary for the efficient performance of the functions of



the Board and the Appellate Authority.]

- (3) The salaries and allowances payable to and the conditions of service of the Secretary and other officers and employees of the Board and the Appellate Authority shall be such as may be prescribed:

Provided that such Secretary, officer or other employee shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

**Footnotes:**

1. Substituted for the following:

"(2) Subject to such restrictions and conditions as may be prescribed, the Board, or as the case may be, the Appellate Authority, may appoint such other officers and employees as may be necessary for the efficient performance of its functions." by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**9. Salaries, etc., be defrayed out of the Consolidated Fund of India:** - The Salaries and Allowances payable to the member and the administrative expenses, including salaries, allowances and pension, payable to or in the respect of the officers and other employees of the Board and Appellate Authority shall be defrayed out of Consolidated Fund of India.

**10. Vacancies, etc., not to invalidate proceeding of Board and Appellate Authority:** - No act or proceeding of the Board or, as the case may be, the Appellate Authority shall be questioned on the ground merely of the existence of any vacancy or defect in the constitution of the Board or the Appellate Authority or any defect in the appointment of a person acting as Member of the Board or the Appellate Authority.

**11. Members and staff of Board and Appellate Authority to be public servants:** - The Chairman and other Members and the officers and other employees of the Board and the Appellate Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

**12. Constitution of benches of Board or Appellate Authority:** - (1) The jurisdiction, powers and authority of the Board or the Appellate Authority may be exercised by Benches thereof.

- (2) The Benches shall be constituted by the Chairman and each Bench shall consist of not less than two Members.

<sup>1</sup>[(3) If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman of the Board or, as the case may be, the Appellate Authority who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case including those who first heard it.]

**Footnotes:**

1. Substituted for the following:

"(3) If the Members of a Bench differ in opinion, on any point, they shall state the point or points on which they differ and the case shall be referred by the Chairman of the Board, or as the case may be, the Appellate Authority for hearing on such point or points by one or more other Members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case including those who first heard it."

**13. Procedure of Board and Appellate Authority.**—(1) Subject to the provisions of this Act, the Board, or, as the case may be, the Appellate Authority, shall have powers to regulate—

- (a) the procedure and conduct of the business;
  - (b) the procedure of the Benches, including the places at which the sittings of the Benches shall be held;
  - (c) the delegation to one or more members of such powers or functions as the Board or, as the case may be, the Appellate Authority may specify.
- (2) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Board, or, as the case may be, the Appellate Authority, shall include the power to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceedings.
- (3) The Board or the Appellate Authority shall, for the purposes of any inquiry or for any other purpose under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying suits in respect of the following matters, namely:—
- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
  - (b) the discovery and production of document or other material object producible as evidence;
  - (c) the reception of evidence on affidavit;
  - (d) the requisitioning of any public record from any court or office;
  - (e) the issuing of any commission for the examination of witnesses;
  - (f) any other matter which may be prescribed.

**14. Proceedings before Board or Appellate Authority to be judicial proceedings:** - The Board or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974) and every proceeding before the Board or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860).

### **Chapter III**

#### **References, Inquiries and Schemes<sup>1</sup>**

**15. Reference to Board:** - (1) Where an industrial company has become a sick industrial company, the Board of Directors of the Company, shall, within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial company, make a reference to the Board for determination of the measures which shall be adopted with respect to the company:

Provided that if the Board of Directors had sufficient reasons even before such finalisation to form the opinion that the company had become a sick industrial company, the Board of Directors shall, within sixty days after it has formed such opinion, make a reference to the Board for the determination of the measures which shall be adopted with respect to the company:

<sup>2</sup>[Provided further that no reference shall be made to the Board for Industrial and Financial Reconstruction after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where financial assets have been acquired by any

securitisation company or reconstruction company under sub-section (1) of section 5 of that Act:

Provided also that on or after the commencement of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, where a reference is pending before the Board for Industrial and Financial Reconstruction, such reference shall abate if the secured creditors, representing not less than three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower of such secured creditors, have taken any measures to recover their secured debt under subsection (4) of section 13 of that Act.]

- (2) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Board for determination of the measures which may be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

**Footnotes:**

1. Sections 15 to 34 came into force w.e.f. 15th May, 1987, vide Notification No. SO 444(E) dated 28th April, 1987.
2. Inserted by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, w.r.e.f. 21-6-2002.
  - (a) the government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;
  - (b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to, such company, an interest in such company.

**16. Inquiry into working of sick industrial companies:** - (1) The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company—

- (a) upon receipt of a reference with respect to such company under section 15; or
  - (b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.
- (2) The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matter as may be specified in the order.
  - (3) The Board or, as the case may be the operating agency shall complete its inquiry as expeditiously as possible and endeavour shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

<sup>1</sup>**[Explanation:** - For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.]

- (4) Where the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), <sup>2</sup>[it may 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 <sup>3</sup>[or in the public interest].

<sup>4</sup>[(4A) The Board may issue such directions to a special director appointed under sub-section (4)

as it may deem necessary or expedient for proper discharge of his duties.]

- (5) The appointment of a special director referred to in sub-section (4) shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Board.

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
2. Substituted for the words "it shall appoint" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
3. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act. 1993, w.e.f. 1-2-1994.
4. Ibid.

- (6) Any special director appointed under sub-section (4) shall—
  - (a) hold office during the pleasure of the Board and may be removed or substituted by any person by order in writing by the Board;
  - (b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;
  - (c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement;
  - <sup>1</sup>[(d) not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.]

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act. 1993, w.e.f. 1-2-1994.

**17. Powers of Board to make suitable order on the completion of inquiry:** - (1) If after making an inquiry under section 16, the Board is satisfied that a company has become a sick industrial company, 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 <sup>1</sup>[make its networth exceed the accumulated losses] within a reasonable time.

- (2) If the Board decides under sub-section (1) that it is practicable for a sick industrial company to <sup>2</sup>[make its networth exceed the accumulated losses] within a reasonable time, the Board shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to <sup>3</sup>[make its networth exceed the accumulated losses].
- (3) If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to <sup>4</sup>[make its networth exceed the accumulated losses] within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation

to such company.

(4) The Board may—

- (a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned <sup>5</sup>[or if the company fails to revive in pursuance of the said order], review such order on a reference in that behalf from any agency referred to in sub-section (2) of section 15 or on its own motion and pass a fresh order in respect of such company under sub-section (3);
- (b) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

**Footnotes:**

1. Substituted for the words "make its networth positive" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.
2. Ibid.
3. Ibid.
4. Ibid.
5. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

**18. Preparation and sanction of schemes:** - (1) Where an order is made under sub-section (3) of section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely:—

- <sup>1</sup>[(a) the financial reconstruction of the sick industrial company;]
- (b) the proper management of the sick industrial company by change in or take over of, management of the sick industrial company;
- <sup>2</sup>[(c) the amalgamation of—

**Footnotes:**

1. Substituted for the following:

"(a) the reconstruction, revival or rehabilitation of the sick industrial company;"  
by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

2. Substituted for the following:

"(c) the amalgamation of the sick industrial company with any other industrial company (referred to in this section as 'transferee industrial company');"  
by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

(i) the sick industrial company with any other company, or

(ii) any other company with the sick industrial company (hereafter in this section, in the case of sub-clause (/), the other company, and in the case of sub-clause (ii), the sick industrial company, referred to as 'transferee company');]

(d) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

<sup>1</sup>[(da) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;]

(e) such other preventive, ameliorative and remedial measures as may be appropriate;

- (f) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (e).
- (2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely:—
- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the <sup>2</sup>[transferee company];
  - (b) the transfer to the <sup>3</sup>[transferee company] of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;
  - (c) any change in the Board of Directors, or the appointment of new Board of Directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
  - (d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the "[transferee company] for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
  - (e) the continuation by, or against, the sick industrial company or, as the case may be, the <sup>5</sup>[transferee company] of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 17;

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
2. Substituted for the words "transferee industrial company" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
3. Ibid.
4. Ibid.
5. Ibid.

- (f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;
- (g) the allotment to the shareholders of the sick industrial company, of shares in the sick industrial company or, as the case may be, in the <sup>1</sup>[transferee company] and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder the payment of cash to those shareholders in full satisfaction of their claims—
  - (i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or
  - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
- (h) any other terms and conditions for the reconstruction or amalgamation of the sick

industrial company;

- (i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;
- (j) lease of the industrial undertaking of the sick industrial company to any person including a co-operative society formed by the employees of such undertaking;
- (k) method of sale of the assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;
- (l) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;
- (m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

**Footnotes:**

1. Substituted for the words "transferee industrial company" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

(3)<sup>1</sup>[(a) The scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify;];

(b) The Board may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from <sup>2</sup>[the transferee company] and <sup>3</sup>[any other company] concerned in the amalgamation and from any shareholder or any creditors or employees of <sup>4</sup>such companies];

Provided that where the scheme relates to amalgamation <sup>5</sup>[\* \* \*] the said scheme shall be laid before <sup>6</sup>[the company other than the sick industrial company] in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of <sup>7</sup>[the company other than the sick industrial company].

(4) The scheme shall thereafter be sanctioned, as soon as may be, by the Board (hereinafter referred to as the 'sanctioned scheme') and shall come into force on such date as the Board may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(5) The Board may on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines

as may be specified in the order, to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

**Footnotes:**

1. Substituted for the following:  
"(a) A copy of the scheme prepared by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to the transferee industrial company and any other industrial company concerned in the amalgamation for suggestions and objections, if any, within such period as the Board may specify;"  
by the Sick Industrial Companies (Special provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
  2. Substituted for the words "the transferee industrial company" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
  3. Substituted for the words "any other industrial company" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
  4. Substituted for the words "such industrial companies" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
  5. The words "of the sick industrial company" omitted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
  6. Substituted for the words "the transferee industrial company" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
  7. Ibid.
- (6) When a fresh scheme is prepared under sub-section (5) the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).
- <sup>1</sup>[(6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.];
- (7) The sanction accorded by the Board under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence.
- <sup>2</sup>[(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company, or as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.]
- (9) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Board may, on the recommendation of the operating agency <sup>3</sup>[or otherwise], by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.
- (10) The Board may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to such sick industrial company as may be specified in the order.



**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
2. Substituted for the following:  
"(8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company or, as the case may be, on the transferee industrial company and also on the shareholders of both the companies."  
by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
3. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

(11) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of the Companies Act, 1956 (1 of 1956).

<sup>1</sup>[(12) The Board may monitor periodically the implementation of the sanctioned scheme.]

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**19. Rehabilitation by giving financial assistance:** - (1) Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme 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 (any Government bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.

- (2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation <sup>1</sup>[or within such further period, not exceeding sixty days, as may be allowed by the Board, and if no consent is received within such period or further period, it shall be deemed that consent has been given].
- (3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Board may, as soon as may be, sanction the scheme and from the date of such sanction the scheme shall be binding on all concerned.

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

<sup>1</sup>(3A) On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial

institutions and banks concerned.

- (3B) The financial institution and the bank designated under sub-section (3A) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfillment of the requirement in this regard.].
- (4) Where in respect of any scheme consent under sub-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.

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**<sup>1</sup>[19A. Arrangement for continuing operations, etc., during inquiry: -** (1) At any time before completion of the inquiry under section 16, the sick industrial company or the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs or concessions to the sick industrial company may make an application to the Board—

- (a) agreeing to an arrangement for continuing the operations of the sick industrial company;  
or  
(b) suggesting a scheme for the financial reconstruction of the sick industrial company.

- (2) The Board may, within sixty days of the receipt of the application under sub-section (1), pass such orders thereon as it may deem fit.]

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**20. Winding-up of sick industrial company: -** <sup>1</sup>[(1) Where the Board, after making inquiry under section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.]

- (2) The High Court shall, on the basis of the opinion of the Board, order winding-up of the sick industrial company and may proceed and cause to proceed with the winding-up of the sick industrial company in accordance with the provisions of the Companies Act, 1956 (1 of 1956).
- (3) For the purpose of winding-up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of the sick industrial company and the officer so appointed shall for the purpose of the winding-up of the sick industrial company be deemed to be, and have all the powers of, the official liquidator under the Companies Act, 1956 (1 of 1956).
- (4) Notwithstanding anything contained in sub-section (2) or sub section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with

the provisions of section 529A, and other provisions of the Companies Act, 1956 (1 of 1956).

**Footnotes:**

1. Substituted for the following:

"(1) Where the Board, after making inquiry under section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that it is just and equitable that the sick industrial company should be wound-up, it may record and forward its opinion to the concerned High Court."

by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**21. Operating agency to prepare complete inventory, etc:** - Where, <sup>1</sup>[for the proper discharge of the functions of the Board under this Act], the circumstances so require, the Board may, through any operating agency, cause to be prepared: -

(a) with respect to <sup>2</sup>[a company], a complete inventory of—

(i) all assets and liabilities of whatever nature;

(ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;

(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and the 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.

**Footnotes:**

1. Substituted for the words "in relation to an inquiry or scheme" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

2. Substituted for the words "an industrial company" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**22. Suspension of legal proceedings, contracts, etc:** - (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding-up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof <sup>1</sup>[and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans, or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) Where the management of the sick industrial company is taken over or changed <sup>2</sup>[in pursuance of any scheme sanctioned under section 18], notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or in the memorandum and articles of association of such company or any instrument having

effect under the said Act or other law—

- (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.
2. Ibid.

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

- (3) <sup>1</sup>[Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

- (4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly;—

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect—

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

- (5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

**Footnotes:**

1. Substituted for the words "During the period" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

<sup>1</sup>[**22A. Direction not to dispose of assets:** - The Board 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 proceedings relating to the winding up before the concerned High Court].

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act. 1993, w.e.f. 1-2-1994.

## **Chapter IV**

### **Proceedings in case of Potentially Sick Industrial Companies, Misfeasance Proceedings, Appeals and Miscellaneous**

**23. Loss of fifty per cent net worth by industrial companies:** - (1) If the accumulated losses of an industrial company, as at the end of any financial year (hereinafter referred to as the relevant financial year) have resulted in erosion of fifty per cent or more of its peak net worth during the immediately <sup>1</sup>[preceding four financial years],—

- (a) the company shall, within a period of sixty days from the date (hereinafter referred to as the relevant date) of finalisation of the duly audited accounts of the company for the relevant financial year—
    - (i) report the fact of such erosion to the Board; and
    - (ii) hold a general meeting of the shareholders of the company for considering such erosion;
  - (b) the board of directors shall, at least twenty-one days before the date on which the meeting under sub-clause (ii) of clause (a) is held, forward, to every member of the company a report as to such erosion and the causes for such erosion;
  - (c) the company may, by ordinary resolution passed at the meeting held under clause (a) remove a director (being a director appointed by the members of the company) and fill the vacancy created by such removal, so far as may be, in accordance with the procedure provided in sub-sections (2) to (6) of section 284 of the Companies Act, 1956(1 of 1956).
- (2) A director removed under sub-section (1) shall not be entitled to any compensation or damages for termination of his appointment as director or of any appointment terminating with that as director.

- (3) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with imprisonment which shall not be less than six months but which may extend to two years and with fine.

**Footnotes:**

1. Substituted for the words "preceding five financial years" by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

**<sup>1</sup>[23A. Proceedings on report, etc. of loss of fifty per cent net worth: -** (1) Without prejudice to the provisions of clause (a) of subsection (1) of section 23, the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that the accumulated losses of any industrial company have resulted in erosion of fifty per cent or more of its peak net worth during the immediately preceding four financial years, report the fact of such erosion to the Board.

2. If the Board has, upon information received or upon its own knowledge, reason to believe that the accumulated losses of any industrial company have resulted in erosion of fifty per cent or more of its peak net worth during the immediately preceding four financial years, it may call for such information from that company, as it may deem fit.
3. Where the Board is of the opinion that an industrial company referred to in sub-section (1) is not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations, and that the company as a result thereof is not likely to become viable in future, it may require by order an operating agency to inquire into and make a report with respect to such matters as may be specified in the order.
4. After consideration of the report of the operating agency, the Board may publish or cause to be published a notice in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify, as to why the company should not be wound up.
5. Where the Board, after consideration of the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof, is not likely to become viable in future and that it is just and equitable that the company should be wound up, the Board may record and forward its opinion to the concerned High Court in relation to the company as if it were a sick industrial company, and the provisions of sub-sections (2), (3) and (4) of section 20 shall apply accordingly.]

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

**<sup>1</sup>[23B. Power of Board to call for periodic information: -** On receipt of a report under sub-clause (/) of clause (a) of sub-section (1) of section 23 or under sub-section (1) of section 23A or upon information or its own knowledge under sub-section (2) of section 23A, the Board may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses and the company shall furnish such information.]

**24. Misfeasance proceedings:** - (1) If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Board that any person who has taken part in the promotion, formation or management of the sick industrial company or its undertaking, including any past or present director, manager or officer or employee of the sick industrial company—

- (a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company; or
- (b) has been guilty of any misfeasance, malfeasance or non-feasance or breach of trust in relation to the sick industrial company, the Board may, by order, direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Board thinks just and also report the matter to the Central Government for any other action which that Government may deem fit.

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

- (2) If the Board is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than a bona fide purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Board shall, by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director (by whatever name called).
- (3) No order shall be made by the Board under this section against any person unless such person has been given an opportunity for making his submissions.
- (4) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.

**25. Appeal:** - (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (2) On receipt of an appeal under sub-section (1), the Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against <sup>1</sup>[or remand the matter to the Board for fresh consideration].

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

**26. Bar of jurisdiction:** - No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

**27. Delegation of powers:** - The Board may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be specified in the order, to any Member or Secretary or other officer or employee of the Board or other person authorised by the Board to manage any industrial company or industrial undertaking or any operating agency, such powers and duties [except the powers and duties under sub-sections (2) and (4) of section 16, section 17, sub-sections (3) and (4) of section 19, sub-sections (1) and (4) of section 20, sub-section (3) of section 22 and section 24] under this Act as it may deem necessary.

**28. Returns and information:** - (1) The Board shall furnish from time to time to the Central Government such returns as the Central Government may require.

- (2) The Board may, for the purpose of efficient discharge of its functions under this Act, collect from, or furnish to,—
- (a) the Central Government,
  - (b) the Reserve Bank,
  - (c) the scheduled bank or any other bank,
  - (d) the public financial institution, <sup>1</sup>[\* \* \*]
  - (e) the State level institution, <sup>2</sup>[or]
  - <sup>3</sup>(f) the sick industrial company and in case of amalgamation, the other company,] such information as it may consider useful for the purpose in such manner and within such time as it may think fit.

**Footnotes:**

1. The word "or" omitted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.
2. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.
3. Ibid.

**29. Power to seek the assistance of Chief Metropolitan Magistrate and District Magistrate:** - (1) The Board or any operating agency, on being directed by the Board may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other documents of such 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 account or other documents; and
  - (ii) cause the same to be entrusted to the Board or the operating agency.
- (2) For the purpose of securing compliance with the provisions of sub section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.



- (3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

**30. Protection of action taken in good faith:** - No suit or other legal proceeding shall lie against the Board or the Appellate Authority or the Chairman or any other member, officer or other employee of the Board or the Appellate Authority, or operating agency or any other person authorised by the Board or the Appellate Authority to discharge any function under this Act for any loss or damage caused or likely to be caused by any action which is in good faith done or intended to be done in pursuance of this Act.

**31. Saving of pending proceedings:** - Where a receiver or an official liquidator has been appointed in any proceeding pending immediately before the commencement of this Act, in any High Court for winding-up of an industrial company such proceeding shall not abate but continue in that High Court <sup>1</sup>[and no proceeding in respect of such industrial company shall lie or be proceeded with further before the Board].

**Footnotes:**

1. Inserted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

**32. Effect of the Act on other laws.**—(1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 <sup>1</sup>(46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

- (2) Where there has been under any scheme under this Act an amalgamation of a sick industrial company with another company, the provisions of section 72A of the Income-tax Act, 1961 (43 of 1961), shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an industrial undertaking with another company. ]

<sup>2</sup>[(3) \* \* \*]

**Footnotes:**

1. The Act has since been repealed and Foreign Exchange Management Act, 1999 has been notified.
2. Omitted by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993. Prior to omission it read as under:  
"(3) Nothing in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) shall apply in relation to—  
(a) the modernisation or expansion of a sick industrial company, or  
(b) the amalgamation or merger of a sick industrial company with another company as a result of a scheme sanctioned in accordance with the provisions of this Act."

**33. Penalty for certain offences:** - (1) Whoever violates the provisions of the Act or any

scheme, or any order of the Board, or the Appellate Authority and whoever makes a false statement or gives false evidence to the Board or the Appellate Authority, shall be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to fine.

<sup>1</sup>[(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of the secretary or any such other officer of the Board or the Appellate Authority or any such officer of an operating agency as may be authorised in this behalf by the Board or the Appellate Authority.].

**Footnotes:**

1. Substituted for the following:

"(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of Secretary or any such other officer of the Board or any such officer of an operating agency as may be authorised in this behalf by the Board." by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993, w.e.f. 1-2-1994.

**34. Offences by companies:** - (1) Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation:** - For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

**35. Power to remove difficulties:** - If any difficulty arises in giving effect to the provisions of this Act or the rules, scheme or orders made thereunder, the Central Government may, by notification remove the difficulty:

Provided that no such notification shall be made by the Central Government after the expiry of a period of three years from the date on which this Act receives the assent of the President.

**36. Power to make rules:** - (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—
- (a) the salaries and allowances payable to and other terms and conditions of service of the Chairman and other members under sub section (7) of section 6;
  - (b) the powers which may be exercised and the duties which may be performed by the Secretary to the Board or the Appellate Authority under sub-section (1) of section 8;
  - (c) the restrictions and conditions subject to which officers and employees may be appointed to the Board or the Appellate Authority under sub-section (2) of section 8;
  - (d) the salaries and allowances and other conditions of service of the Secretary and other officers and employees of the Board or the Appellate Authority under sub-section (3) of section 8;
  - (e) the additional matters referred to in sub-section (3) of section 13;
  - (f) any other matter which is required to be, or may be, prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

### **The Schedule**

**[See sections 6(8) and 8(3)]**

### **Declaration of Fidelity and Secrecy**

1,....., do hereby declare that I will faithfully, truly and to the best of my skills and ability, execute and perform the duties required of me as the Chairman/Member Secretary/other officer or employee of the Board for the Industrial and Financial Reconstruction/The Appellate Authority for the Industrial and Financial Reconstruction and which properly relate to the office or position held by me in or in relation to the said Board/Appellate Authority.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Board/Appellate Authority, nor will I allow any such person to inspect or have access to any books or documents belonging to or in possession of the Board/Appellate Authority or the business of any person having any dealing with the said Board/Appellate Authority.

**Signed before me.**

**Signature**

## **Annexure 1**

### **Statement of Objects and Reasons to the Act**

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 procedures 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 coordinated 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 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.

3. The salient features of the Bill are—

- (i) Application of the legislation to the industries specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, with the initial exception of the scheduled industry relating to ships and other vessels drawn by power, which may however be brought within the ambit of the legislation in due course;
- (ii) identification of sickness in an industrial company, registered for not less than seven years, on the basis of the symptomatic indices of cash losses for two consecutive financial years and accumulated losses equalling or exceeding the net worth of the company as at the end of the second financial year;
- (iii) the onus of reporting sickness and impending sickness at the stage of erosion of fifty per cent, or more of the net worth of an industrial company is being laid on the Board of Directors of such company; where the Central Government or the Reserve Bank is satisfied that an industrial company has become sick, it may make a reference to the Board, likewise if any State Government, scheduled bank or public financial institution having an interest in an industrial company is satisfied that the industrial company has become sick, it may also make a reference to the Board;
- (iv) establishment of Board consisting of experts in various relevant fields with powers to enquire into and determine the incidence of sickness in industrial companies and devise suitable remedial measures through appropriate schemes or other proposals and for proper implementation thereof;
- (v) constitution of an Appellate Authority consisting of persons who are or have been Supreme Court Judges, senior High Court Judges and Secretaries to the Government of India, etc. for hearing appeals against the order of the Board.

### **Statement of objects and reasons to the Sick Industrial Companies (Special Provisions) Amendment Act, 1991**

At present, the Sick Industrial Companies (Special Provisions) Act, 1985, does not apply to Government companies. In view of this, industrial companies in the public sector which are sick but can be revived as well as those which are chronically sick and cannot be turned around do not fall within the purview of the said Act. It has now become necessary to apply the provisions of the said Act to industrial companies in the public sector so that the cases of such sick industrial companies can be referred to the Board for Industrial and Financial Reconstruction for the formulation of revival or rehabilitation schemes or winding up, as the Board may consider necessary.

Accordingly, it is proposed to amend section 3 of the said Act so as to cover such Government companies within the definition of "company" given in clause (d) of sub-section (1) of that section.

**Statement of objects and reasons to the Sick Industrial Companies (Special Provisions) Amendment Act, 1993**

1. The Sick Industrial Companies (Special Provisions) Act, 1985, was enacted with a view to securing timely detection of sick and potentially sick industrial companies. Accordingly, the Board for Industrial and Financial Reconstruction (BIFR) was constituted and vested with powers for speedy determination of preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies. An Appellate Authority for Industrial and Financial Reconstruction (AAIFR) was also constituted.

2. Several issues have arisen in relation to different provisions of the Act and the manner in which these provisions have facilitated the rehabilitation or the winding up of sick industrial companies. Based on a consideration of these issues, a need has been felt to make certain amendments to the Act in order to quicken the process of revival of sick industrial companies and facilitate the smooth working of BIFR.

3. The main features of the amendments proposed in the Bill are—

- (a) jurisdictional amendments which redefine the category of the companies coming within the purview of the Act, and the options which are available for revival, rehabilitation or winding up of sick industrial companies;
- (b) amendments to enhance the effectiveness of BIFR;
- (c) amendments which seek to remove certain ambiguities and to strengthen the internal coherence of the Act by redefining certain provisions which are clarificatory in nature.

4. The Bill seeks to achieve the aforesaid objects.

## **Annexure 2**

### **1992 Guidelines of Board for Industrial and Financial Reconstruction<sup>1</sup> Introduction**

World over sickness in industries is a recognised fact. Often, it is inevitable for various reasons. The vast strides made in 'technological development render old technologies obsolete; industrial recessions make some unviable; international trade policies make some uncompetitive and tardy progress in some related sectors shrink markets for others. These features are generally combated by closing down unviable units, adopting new technologies, diversifying products, nursing a few that are victims of trade cycles till recoveries set in and resuscitate those that are sustainable with appropriate measures.

1.1.2. The circumstances in India have been slightly different as the society has been more conservative and changes have been\* slow compared to the rest of the world. The socio-economic and political objectives have also guided the strategies of industrial and trade policies. The compulsion for maintaining employment, the scarcity of foreign exchange, the need to restrict imports, the urge for self-reliance based on indigenous capability, inhibited India from taking steps like closing down unviable units. At the same time, failures due to mismanagement, non-management, or incompetent management, other constraints due to poor infrastructure development, inadequate investments have caused failures of industrial units at the micro level.

1.2.1. Recognising this, the Industrial Reconstruction Corporation of India Limited (IRCI) was established in April 1971, to strengthen the institutional structure for reconstruction and rehabilitation of ailing units. This was based on a decision at a joint meeting of the Government of India, RBI, IDBI, LIC, Commercial Banks and Government of West Bengal.

1.2.2. The Reserve Bank of India in 1976 attempted an operation for monitoring the industrial units through the commercial banks, which are responsible for funding them, to arrest sickness. The RBI advised commercial banks to set up cells for rehabilitation of sick industrial units and participate in the revival of viable units.

1.2.3. In 1984, Industrial Reconstruction Bank of India (IRBI), a Statutory Corporation, was set up to function as the Central Agency for rehabilitation of sick Industrial units and coordinate similar efforts with other institutions and to assist/promote industrial development etc. The functions of IRCI were transferred to IRBI.

1.2.4. The IRBI's main mandate was to inject additional funds help revive ailing units. The role of IRBI being limited, it was inadequate for total rehabilitation. Other factors were beyond its control. Consequently, sickness in Indian industries persisted; effective and quick rescue operations or diagnosis for closure became urgent.

1.3.1. The IRCI, Financial Institutions and the Commercial Banks were finding a lot of constraints in combating industrial sickness and initiating the process of rehabilitation. The Reserve Bank of India constituted a high powered committee under the Chairmanship of Shri P. Tiwari, Chairman of IRCI, in May 1981. The Committee found that the existing institutional arrangements and procedures for revival and rehabilitation of potentially viable sick industrial companies were both inadequate and time consuming. Multiplicity of laws and agencies made adoption of a coordinated approach for dealing with sick industrial companies difficult. It was necessary in public interest to enact 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 despatch. The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), was enacted as Act No. 1 of 1986 on 8-1-1986.

#### **Footnotes:**

1. Issued by BIFR, New Delhi. These guidelines have been issued prior to the amendments made by the Sick Industrial Companies (Special Provisions) Amendment Act, 1993.

## **SICA and BIFR: -**

2.2.1. The main objective of SICA is to determine sickness and expedite the revival of viable units or closure of unviable units. By revival, idle investments in sick units will become productive and by closure the locked up investments in sick units will become productive and by closure the locked up investments in unviable units would get released.

2.1.1. SICA provides for the establishment of a Board of experts to discharge this function as a quasi-judicial body: Section 4(2) lays down that the Board shall consist of a Chairman, and not less than two and not more than fourteen other Members to be appointed by the Central Government and sub-section 3 further lays down—

"The Chairman and other Members of the Board shall be persons who are or have been or are qualified to be High Court Judges, or persons of ability, integrity and standing who have special knowledge of, and professional experience of not less than fifteen years of science, technology, economics, banking, industry, law, labour matters, industrial finance, industrial management, industrial reconstruction administration, investment accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would in the opinion of the Central Government be useful to the Board."

2.2.1. The BIFR is deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure. Every proceeding before the Board shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (section 14 of SICA).

2.3.1. Section 32 of SICA lays down that the provisions of the Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith, contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973, and the Urban Land (Ceiling and Regulation) Act, 1976.

2.4.1. Section 22 of SICA provides for suspension of all legal proceedings, contracts etc. in respect of sick industrial companies registered and under process with BIFR. No proceedings for winding up of the sick industrial company or for the sale of any assets of the company or for the appointment of a receiver, therefor, shall lie with any authority except with the consent of the Board. Section 22 further lays down that BIFR may order the change of management which is binding on the shareholders.

2.4.2. Sub-section (3) of section 22 lays down that during the period of consideration/implementation of any revival scheme, the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or instruments in force shall remain suspended, as also all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder. In both cases the Board has to pass specific orders.

2.5.1. The orders passed by BIFR under SICA can only be taken up in appeal to the appellate authority under SICA, namely, Appellate Authority for Industrial and Financial Reconstruction (AAIFR) as provided in section 25 of SICA. Jurisdiction for any civil court to pass any injunction or stay the orders of the BIFR or the AAIFR has been barred under section 26.

2.6.1. Finally, any violation of the provisions of this Act or any scheme or any order of the Board or the Appellate Authority etc. is punishable as provided under section 33. The punishment is simple imprisonment for a term which may extend upto three years, and shall also be liable to fine. Any such offence can be taken cognizance by a court only on a complaint in writing by the Secretary of the Board or any other officer authorised in this behalf by the Board. If the offence is committed by a company, then, the persons incharge of the company at the time of committing of offence, will be deemed guilty of the offence and liable to be proceeded against and punished [section 34].

2.7.1 Further, any mis-feasance, mal-feasance or non-feasance or breach of trust in relation to the sick industrial company is punishable as laid down in section 24. The Board can direct in such cases the financial institutions, scheduled banks, state level institutions etc. not to provide any financial assistance for a period of 10 years to such person or any firm or company or body corporate of which such person is partner/director.

2.8.1. The BIFR, a quasi-judicial body comprising experts from various disciplines, is empowered to diagnose sickness of industrial companies and prescribe schemes for revival or winding up without the interference of any other Acts or bodies and also punish anybody mis-representing to the Board or not complying with the orders of the Board. The appeals against

the orders of the BIFR lie with the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

### **Registration with BIFR Registration: -**

3.1.1 The references received by the Board are scrutinised by the Registrar as to whether prima facie they conform to the provisions of the Act. Defects, if any, are brought to the notice of the informant for rectification. Those which conform to the provisions are registered. Any application not conforming to the provisions of the Act is declined registration. In cases where registration has been declined by the Registrar, the applicant can make an appeal to the Secretary, BIFR, within 15 days for review of the decision of the Registrar. In the event of the Secretary also declining registration an appeal lies to the Chairman, BIFR, whose decision is final.

3.1.2 Registered cases are placed before the Chairman, BIFR, for allocation to one of the Benches for further action under the Act. The jurisdiction, powers and authority of the Board are exercised by Benches, constituted by the Chairman; each Bench shall consist of not less than 2 Members (section 12 of the Act).

### **Jurisdiction: -**

3.2.1 The jurisdiction of SICA comprises the following:

- (i) The jurisdiction of BIFR extends to the industries falling under the First Schedule to the Industries (Development and Regulation) Act, 1951, excluding the industry relating to ships and other vessels drawn by power [section 1(4) of SICA]
- (ii) The list of industries included under the First Schedule to the IDR Act is printed as Appendix-I. SICA does not cover small scale and ancillary industrial units, the present investment limits of which are Rs. 60 lakhs and Rs. 75 lakhs respectively.
- (iii) In order to be eligible to register with BIFR an industrial undertaking qualifying as a scheduled industry should be employing not less than 50 persons if it uses power or 100 persons if it is not using power [section 3(c)(r) & (») of IDR Act.]
- (iv) The industrial undertaking should be a company registered under section 3 of Indian Companies Act, 1956. For purposes of section 3(1)(/) of SICA the industrial undertaking is construed to have employed 50 or more persons if on any working day in the preceding 12 months of the date of reference to the BIFR it has employed more than 50 persons.

3.2.2. To sum up the jurisdiction of BIFR extends to large and medium industries employing more than 50 persons and included in the First Schedule to the IDR Act.

### **Definition of Sickness: -**

3.3.1 Sickness of an industrial undertaking is defined in section 3(1) (0) of SICA. The features are:—

- (i) The company should have completed 7 years after its incorporation at the time of reference to BIFR.
- (ii) The company should have incurred loss and the accumulated losses should be more than the net worth (paid up capital plus free reserves).
- (iii) The company should have incurred cash loss for 2 consecutive years at the time of reference to the BIFR.

3.3.2 The company should submit its annual accounts for the last completed financial year, which would be the second year of cash loss [the determination of sickness in respect of points (ii) & (iii) above is based on the annual accounts].

3.3.3 In order to arrest sickness at an earlier stage, potentially sick industrial companies are required to report to shareholders of the company and BIFR if the peak net worth in the immediately preceding 5 financial years has been eroded by 50 per cent or more as laid down in section 23 of SICA.

3.3.4 While the sick companies are registered with BIFR for further process under the various provisions of the Act, potentially sick companies are not registered. On a selective basis they



are advised on measures for arresting sickness.

### **Reporting Sickness: -**

3.4.1 The onus of reporting sickness to the BIFR is laid on the Board of Directors of the company (section 15). It has also been provided that they shall do so within 60 days from the date of finalisation of the duly audited accounts of the company for the relevant financial year. The date on which the accounts have been approved at the Annual General Meeting is deemed as the date of finalisation of accounts. Even before finalisation of the duly audited accounts, the Board of Directors can make a reference to BIFR if they form the opinion, based on provisional accounts, that the company has become sick.

3.4.2. It has also been provided that a reference regarding sickness of an industrial company may be made by the Central Government, RBI, State Government, Public Financial Institutions, State Level Institutions or a Scheduled Bank, if it has sufficient reasons to believe that an industrial company has become sick.

3.4.3. The Board may also make suo motu inquiry as it may deem fit.

3.4.4. The Companies Act has been amended requiring statutory auditors to make a mention in their certificate attached to the annual report of the company whether it has become sick in terms of SICA, and if so, the requisite reference has been made to the Board.

3.4.5. To sum up, the onus for referring a sick company to BIFR is on the Board of Directors of the company, while the Central and State Governments, RBI, other Financial Institutions etc. can also make a reference or a suo motu inquiry can be made by the BIFR.

3.4.6. The form in which references are to be made by the Board of Directors or by Banks are set out in Forms A & B respectively forming part of BIFR Regulations, 1987. The format for Government companies is Forms AA & BB respectively.

3.4.7. In the case of potentially sick industrial companies the reporting is to be done in Form C/CC by private sector companies and Government companies respectively. It may be mentioned that the BIFR Regulations lay down that an application has to be given in six copies.

3.4.8. Not reporting sickness as required under section 15 of the Act or misreporting would amount to violation of the Act which will invite penalty under section 33 of the Act.

### **Procedure in BIFR: -**

4.1.1 The references made to BIFR are scrutinised and registered (as per details explained in the previous section) under section 15. It has also been mentioned that the Chairman assigns the registered case to one of the Benches.

4.1.2 The Bench notifies the date of hearing of the case assigned to it. The representatives of the informant company, the trade union representatives in the company, the financial institutions and commercial banks relevant to the company and representatives of departments of the Central/State Governments are invited to the hearing.

4.2.1 The inquiry is made under section 16 of the Act.

4.2.2 The inquiry commences with the hearing of the parties invited by the Bench as per notice issued.

4.2.3 Generally, the parties are heard first to determine whether the company is a sick industrial company in terms of section 3(1) (0) of the Act.

4.2.4 If the company is not found to be sick, the reference is dismissed as 'not maintainable'. This could arise when—

- the industrial undertaking is not a scheduled industry under the I.D.R. Act, or does not employ 50 or more persons;
- is an ancillary or small scale unit;
- has started making cash profits;
- has not completed seven years of incorporation;
- its net worth is more than the accumulated losses as per the definition accepted in the Act.

4.2.5 On the other hand, if the Bench determines that the industrial undertaking is sick in terms of SIC A, the reference is taken up for further process under sections 16, 17, 18, 19 and 20 of the Act.

5.1.1 Under section 16(4) of the Act the Bench shall appoint one or more persons as Special Director(s) on the Board of the sick company for safeguarding the financial and other interests of the company.

5.2.1 The Bench thereafter proceeds to analyse the sickness of the company to determine whether it is practicable and in public interest to make the net worth of the company positive or is not feasible to do so.

5.3.1 The sick company may need protection from the operation of legal proceedings, contracts etc. during the pendency of its inquiry with the BIFR. Under section 22(1) special permission of the Board is required to initiate any legal proceedings against the sick company if an inquiry is pending or a scheme of revival is under preparation or consideration or a sanctioned scheme is under implementation.

5.3.2 The Board is empowered under section 22(3) during the period of consideration of any scheme or during the implementation of the scheme, to suspend the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force to which such sick company is a party or which may be applicable to such sick industrial company, immediately before such orders.

5.3.3 The Board uses its discretion in insulating the sick company from legal proceedings, enforcement of contracts in order not to frustrate the process of rehabilitation and at the same time not to shelter a sick company undeserved. Consequently, the Board examines the circumstances under which permission to institute legal proceedings is requested and the circumstances under which the sick company seeks such protection.

5.4.1 The Board being satisfied on the basis of inquiries under section 16 that the company is 'sick' in terms of section 3(1) (0), sets forth to examine whether the sick company whose accumulated losses have exceeded the net worth making it negative, is capable of making the net worth positive within a reasonable period and wiping out the accumulated losses within a period of 10 years.

## **Process for Rehabilitation**

### **Sick company found prima facie feasible of rehabilitation: -**

6.1.1 If in the process of analysing the nature and causes of sickness and the circumstances available to the company, the Board finds that it is feasible to rehabilitate the company and the rehabilitation is in public interest, the Board sets forth to consider proposals for rehabilitation.

6.1.2 The sick company can submit a rehabilitation proposal for the consideration of the Board under section 17(2). If it is found satisfactory, the Board takes note of the scheme and gives an order in writing under section 17(2) approving the company's scheme for rehabilitation.

6.2.1 In other cases where the company has not submitted a proposal for rehabilitation and the Board is satisfied that it is in public interest to rehabilitate the sick company, the Board appoints an Operating Agency under section 17(3) to prepare a scheme for revival of the company. The Operating Agency is also given the measures required to be taken for revival of the company and guidelines for preparation of the revival scheme. These are set out in sections 18(1) and 18(2), and briefly explained below.

### **Measures: -**

- (a) Restructuring of capital, in view of the total erosion of net worth and heavy losses suffered.
- (b) Possibility of sale of surplus assets, including machinery, land and buildings, if any.
- (c) Proper management of sick industrial company by change/takeover or

strengthening of management. In case of change over or take over, the new promoters should have adequate capabilities to bring in sufficient/required stake.

- (d) Merger/amalgamation with any other healthy company or some group etc.
- (e) Sale/lease of the unit to any other person or body of persons, to bring in sufficient funds to revive the unit.
- (f) Examine the possibility of a workers' cooperative being entrusted to run the unit by transferring the shares of the management.

**Guidelines: -**

(a) A detailed techno-economic study be conducted on the following lines, either through a reputed consultant engaged in the industry line or in-house expertise:

- (i) feasibility of the product(s) manufactured/to be manufactured by the company, in relation to technology, availability of raw materials, capacities assumed, market and adequacy of the infrastructure,
- (ii) if the existing infrastructure is found inadequate, measures required to update the infrastructure and costs involved therein,
- (iii) sensitivity analysis with regard to adverse factors,
- (iv) detailed market/demand study, keeping in view the current industry profile perspective over the next 5 to 7 years, with appropriate demand forecasting and competitive conditions might be worked out.

(b) Reliefs/concessions to be worked out according to extent parameters under the guidelines of RBI to banks and those of financial institutions, Central/State Government, PF/gratuity authorities etc. shortfall(s), if any, in the acceptable level of DSCR, the requirement of interest free funds should be worked out. The promoters' contribution should have linkage with the monetary value of sacrifices involved. The co-promoters should also perform their role not only in this regard but also in evolving the future plan of action for the company's revival.

(c) The scheme should indicate the reliefs/concessions required from the banks, State level institutions, State Government and others separately and the same may be quantified detailing the extent of sacrifices by each.

(d) If the existing promoters are not in a position to raise the requisite long term interest-free funds, they may take an associate and/or an alternate promoter, in terms of the measures outlined above. OA should also explore the possibility of change in management who may be capable of inducting the required quantum of assessed funds. A profile of the new promoters along with details of terms and conditions coupled with a resume of their group comprising financial and performance be also submitted.

(e) The period of rehabilitation should not be too long.

(f) Working capital needs be arrived at, in consultation with the Banks/State level FIs and a consensus be arrived at on the method of lending, quantification of irregular component and other connected issues, like margins required, permissible bank finance as per latest credit policy of RBI.

(g) Details regarding consumption norms and yields at industry level be furnished, along with comparison of the same with consumption norms prevailing in the company. Variances, if any, be explained with rationale.

(h) Efforts should be made to hold meetings and discussions with the concerned parties, including the promoters, State Government, State level FIs and major creditors etc., so as to know their suggestions/reactions and arrive at a consensus, if possible, in order to avoid delay in the matter. The submission of the report should be preceded by usual joint meeting.

(i) Special attention should be paid to the aspect of managerial competence of the promoters and the executive level suggesting improvements therein or any other related remedial measures. These should clearly be spelt out.

(j) Any other supplemental/incidental or consequential matter in order to secure the needed revival of the company may be considered.

6.2.2 Normally, the Operating Agency is given a period of 90 days to compile the data, hold inter-institutional meetings and submit its report to the Board on the proposal for the revival of the

company.

6.3.1 The Operating Agency may come to the conclusion that the company is not capable of rehabilitation. If this comment of the Operating Agency is accepted by the Board, the case will be treated for process according to section 20(1) which will be explained shortly.

6.3.2 On the other hand, if the Operating Agency gives a report laying down the various factors on the basis of which rehabilitation is feasible, the Board calls all the parties concerned for their consensus on the proposal and circulates a draft scheme for their consideration.

6.3.3 Short particulars of the scheme are published in two dailies to give an opportunity to the creditors, employees etc. to send their comments, if any, to the Board.

6.3.4 The Board also permits inspection of the records of the Board in respect of the company including the draft scheme by concerned parties to give them access to full information about the case.

6.3.5 Interested parties may also seek permission of the Board to appear at the hearing.

6.3.6 The Parties should give their consent to the proposal or for other comments within a period of 60 days.

6.4.1 If there is a consensus based on the draft schemes the Board sanctions a scheme for rehabilitation of the company under section 18(4).

6.4.2 The implementation of the scheme is monitored by the Board of Directors of the company, the Special Director appointed by the BIFR and the Operating agency. The BIFR may also hold review meetings to ascertain the progress of the implementation of the sanctioned scheme and suggest appropriate remedial measures.

6.5.1 In the event of BIFR not being satisfied with the implementation of the scheme, the case can be reopened for a de novo inquiry.

6.5.2 In the event of the draft scheme requiring modification based on the comments of the interested parties, the Board may order the preparation of a modified draft scheme for further consideration.

6.6.1 In the event of there being no consent for the draft scheme, the Board may either consider revival as 'not feasible' and take it up for action under section 20 (1) or take it up for consideration of other measures set out under sections 18 and 19 and order a revised draft scheme to be submitted by the Operating Agency and follow the same course as explained earlier to arrive at the stage of sanctioning a scheme for rehabilitation.

### **Sick companies prima facie not found feasible for rehabilitation: -**

7.1.1 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 issued. Copies of this are sent to banks, institutions, governments etc.

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

7.2.1 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.

7.3.1 However, if at the time of the hearing it is 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 SICA.

7.4.1 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 SICA and conduct the sale and deposit the proceeds with the concerned High Court.

## **Pattern of the rehabilitation scheme: -**

8.1.1 The process in the BIFR has been explained in the previous sections. In the event of there being some possibility of revival on the basis of the statements made by the parties appearing before the Bench, further decisions on the process of revival are taken. On the other hand, if the conclusion is that the company cannot be revived, then, the process to wind up the affairs of the company will be ordered by the Bench.

8.2.1 The main criterion for determination of the viability of a sick industrial company (SIC) is the feasibility of the company being able to make profit after implementing the Rehabilitation package for a given period of time. It will not be worth while to implement the relief package if the unit cannot earn profit, when the concessions included in the relief package cease to operate. Normally, the relief is spread over a period not exceeding 7 years. This involves concessions from Banks, Financial Institutions, Central/State Governments, Government agencies, shareholders, labour, suppliers of goods/services and other creditors as may be necessary. These concessions are as agreed upon between all parties included as relevant for the package.

8.2.2 The repayment period for the restructured debt should not exceed 10 years, within which the net worth should become positive. The average debt service coverage (i.e. repayment of principal and payment of interest) should be not less than 1.33.

8.3.1 The package of reliefs, in respect of FIs/banks, might comprise:

- (i) Interest on existing term loans might be reduced by not more than 2 per cent below the document rate.
- (ii) Conversion of the irregularities in working capital accounts, relating to the core-portion, into working capital terms loan (WCTL), carrying interest between 1.5 per cent and 3 per cent below the prevailing minimum lending rate.
- (iii) Conversion of the irregularities in working capital accounts, relating to arrears of interest at a rate 6.5 per cent below the prevailing minimum lending rate.
- (iv) Interest on working capital might be charged at a rate of 1.5 per cent below the prevailing minimum lending rate.
- (v) Interest on fresh rehabilitation term loan might be charged at a rate of 1.5 per cent below the prevailing minimum lending rate.

8.3.2 The ratios used for computation are given in Appendix II.

8.3.3 In the case of PF and ESI dues the standard package allows 20 per cent down payment, with balance to be cleared in 12 equal instalments with interest at 12 per cent and a revolving bank guarantee.

8.4.1 The standard packages formulated by a number of State Governments relate to sales tax loan, purchase tax loan, relief from electricity duty, power cuts etc. A gist of the packages of reliefs/concessions as accepted by different State Governments is given in Appendix III.

8.5.1 In all rehabilitation packages, the promoters are required to make adequate contributions, by way of equity/subordinate un-secured loans (USL), to the extent of 30 per cent as minimum contribution, of the cost of rehabilitation and money value of the sacrifices envisaged under the package of reliefs. 50 per cent of their contribution has to be brought in at the time of commencement of the scheme and the balance within a period of 6 months. The proceeds from sale of assets already charged to FIs/banks are not treated as promoters contribution. In other words, their contribution would have to be made by way of fresh cash contribution. However, in cases where the promoters happen to be technocrats/professionals or where management is changed, the promoters' contribution could be retained at 20 per cent.

8.6.1 It has been accepted that as long as a unit is availing of interest rate concessions /reliefs, it should not be allowed to declare a dividend; this restriction forms part of the covenants of the rehabilitation package.

8.6.2 In the course of implementation of SICA, a lot of experience has been gained on the rehabilitation of sick companies, etc. Based on the experience it has been found necessary to bring some amendments to certain provisions of SICA. The Sick Industrial Companies (Special Provisions) Amendment Bill, 1992, has been placed before the Parliament for consideration.

8.6.3 The main provisions to be amended include redefinition of "sick industrial company", including potentially sick units for rehabilitation, enlarging the panel of Operating Agencies,

providing for merger of healthy units with sick units leading to reverse merger, streamlining monitoring of implementation of the rehabilitation packages, including provision for greater restraint on the disposal of assets by the promoters of a sick industrial company; introduction of "single window" concept for release of funds by Financial Institutions and Banks, etc.

## **Appendix I**

### **The First Schedule**

**[See section 2 and 3(i)]**

Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following heading or sub-headings namely:—

#### **1. Metallurgical Industries: -**

##### **A. Ferrous**

(1) Iron and steel (metal); (2) Ferro-alloys; (3) Iron and steel castings and forgings; (4) Iron and steel structural; (5) Iron and steel pipes; (6) Special steels; (7) Other products of iron and steel.

##### **B. Non-ferrous**

(1) Precious metals, including gold and silver, and their alloys; (1A) Other non-ferrous metals and their alloys; (2) Semi-manufactures and manufactures.

#### **2. Fuels: -**

(1) Coal, lignite, coke and their derivatives.

(2) Minerals oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oil and their blends including synthetic fuels, lubricating oils and the like.

(3) Fuel gases—(coal gas, natural gas and the like).

#### **3. Boilers and Steam Generating Plants: -**

Boilers and steam generating plants.

#### **4. Prime Movers other than Electrical Generators: -**

(1) Steam engines & turbines; (2) Internal combustion engines.

#### **5. Electrical Equipment: -**

(1) Equipment for generation, transmission and distribution of electricity including transformers; (2) Electrical motors (3) Electrical fans; (4) Electrical lamps; (5) Electrical furnaces; (6) Electrical cables and wires; (7) X-ray equipment; (8) Electronic equipment; (9) Household appliances such as electric irons, heaters and the like; (10) Storage batteries; (11) Dry cells.

#### **6. Telecommunications: -**

(1) Telephones; (2) Telegraph equipment; (3) Wireless communication apparatus; (4) Radio receivers, including amplifying and public address equipment; (5) Television sets; (6) Teleprinters.

#### **7. Transportation: -**

(1) Aircraft; (2) Ships and other vessels drawn by power; (3) Railway locomotives; (4) Railway rolling stock; (5) Automobiles (motor cars, buses, trucks, motor cycles, scooters and the like); (6) Bicycles; (7) Others such as fork lift trucks and the like.

## **8. Industrial Machinery: -**

A. Major items of specialised equipment used in specific industries

(1) Textile machinery (such spinning frames, carding machines, powerloom and the like) including textile accessories; (2) Jute machinery; (3) Rayon machinery; (4) Sugar machinery; (5) Tea machinery; (6) Mining machinery; (7) Metallurgical machinery; (8) Cement machinery; (9) Chemical machinery; (10) Pharmaceuticals machinery; (11) Paper machinery.

B. General items of machinery used in several industries, such as the equipment required for various "unit processes"

(1) Size reduction equipment—crushers, ball mills and the like; (2) Conveying equipment—bucket elevators, skip hoists, cranes, derricks and the like; (3) Size separation units—screens, classifiers and the like; (4) Mixers and reactors—kneading mills, turbo mixers and the like; (5) Filtration equipment—filter presses, rotary filters and the like; (6) Centrifuge machines; (7) Evaporators; (8) Distillation equipment; (9) Crystallisers; (10) Driers; (11) Power driven pumps—reciprocating centrifugal and the like; (12) Air and gas compressors and vacuum pipes (excluding electrical furnaces); (13) Refrigeration plants for industrial use; (14) Fire fighting equipment and appliances including fire engines.

C. Other items of Industrial Machinery

(1) Ball, roller and tapered bearings; (2) Speed reduction units; (3) Grinding wheels and abrasives

## **9. Machine Tools: -**

(1) Machine tools

## **10. Agricultural Machinery: -**

(1) Tractors, harvesters & the like; (2) Agricultural implements.

## **11. Earth-Moving Machinery: -**

(1) Bulldozers, dumpers, scrapers, loaders, shovels, drag lines, bucket wheel excavators, road rollers & the like.

## **12. Miscellaneous Mechanical and Engineering Industries: -**

- (1) Plastic moulded goods.
- (2) Hand tools, small tools and the like
- (3) Razor blades
- (4) Pressure Cookers
- (5) Cutlery
- (6) Steel furniture.

## **13. Commercial, Office and Household Equipment: -**

(1) Typewriters; (2) Calculating machines; (3) Air conditioners and refrigerators; (4) Vacuum cleaners; (5) Sewing and knitting machines; (6) Hurricane lanterns.

## **14. Medical and Surgical Appliances: -**

(i) Surgical instruments—sterilisers, incubators and the like.

**15. Industrial Instruments: -**

(1) Water meters, steam meters, electricity meters and the like; (2) Indicating, recording and regulating divces for pressure temperature, rate of flow, weights, levels and the like; (3) Weighing machines.

**16. Scientific Instruments: -**

(1) Scientific instruments.

**17. Mathematical, Surveying and Drawing Instruments: -**

(1) Mathematical, surveying and drawing instruments.

**18. Fertilisers: -**

(1) Inorganic fertilisers; (2) Organic fertilisers: (3) Mixed fertilisers.

**19. Chemicals (other than Fertilisers): -**

(1) Inorganic heavy chemicals; (2) Organic heavy chemicals; (3) Fine chemicals including photographic chemicals; (4) Synthetic resins and plastics; (5) Paints, varnishes and enamels; (6) Synthetic rubbers; (7) Man-made fibres including regenerated cellulose-rayon, nylon and the like; (8) Coke oven by products; (9) Coal tar distillation products like nephthalene, authracene and the like; (10) Explosives including gun powder and safety fuses; (11) Insecticides, fungicides, weedicides and the like; (12) Textile auxiliaries; (13) Sizing materials including starch; (14) Miscellaneous chemicals.

**20. Photographic Raw Film and Paper**

(1) Cinema film; (2) Photographic amateur film; (3) Photographic printing paper.

**21. Dye-stuffs: -**

(1) Dye-stuffs.

**22. Drugs and Pharmaceuticals: -**

(1) Drugs and Pharmaceuticals.

**23. Textiles (including those dyed, printed or otherwise processed): -**

(1) Made wholly or in part of cotton, including cotton yarn, hosiery and rope; (2) Made wholly or in part of jute, including jute, twine and rope; (3) Made wholly or in part of wool, including wool tops woollen yarn, hosiery, carpets and druggets; (4) Made wholly or in part of silk, including silk yarn and hosiery; (5) Made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres.

**24. Paper and Pulp including Paper Products: -**

(1) Paper—writing, printing and wrapping; (2) Newsprint; (3) Paper board and straw board; (4) Paper for packaging (corrugated paper, kraft paper, paper bags, paper containers and the like); (5) Pulp—wood pulp, mechanical, chemical, including dissolving pulp.

**25. Sugar: -**

(1) Sugar.



**26. Fermentation Industries: -**

(1) Alcohol; (2) Other products of fermentation industries.

**27. Food Processing Industries: -**

(1) Canned fruits and fruit products; (2) Milk foods; (3) Malted foods; (4) Flour; (5) Other processed foods.

**28. Vegetable Oils and Vanaspathi: -**

(1) Vegetable oils, including solvent extracted oils; (2) Vanaspathi.

**29. Soaps, cosmetic and Toilet Preparations: -**

(1) Soaps; (2) Glycerine; (3) Cosmetics; (4) Perfumery; (5) Toilet preparations.

**30. Rubber Goods: -**

(1) Tyres and tubes; (2) Surgical and medical products including prophylactics;  
(3) Footwear; (4) Other rubber goods.

**31. Leather, leather Goods and Pickers: -**

(1) Leather, Leather Goods and Pickers.

**32. Glue and Gelatin: -**

(1) Glue and gelatin.

**33. Glass: -**

(1) Hollow ware; (2) Sheet and plate glass; (3) Optical glass; (4) Glass wool; (5) Laboratory ware; (6) Miscellaneous ware.

**34. Ceramics: -**

(1) Fire bricks; (2) Refractories; (3) Furnance lining bricks—acidic, basic and neutral;  
(4) China ware and pottery; (5) Sanitary ware; (6) Insulators; (7) Tiles; (8) Graphite  
Ceramics (from 33.12.78 Amend. Act, 17 of 1979).

**35. Cement and Gypsum Products: -**

(1) Portland cement; (2) Asbestos cement; (3) Insulating boards; (4) Gypsum boards, wall  
boards and the like.

**36. Timber Products: -**

(1) Plywood; (2) Hardboard, including fibre-board, chip-board and the like;  
(3) Matches; (4) Miscellaneous (furniture components, bobbins, shuttles and the like).

**37. Defence Industries: -**

(1) Arms and ammunition.

**38. Miscellaneous Industries:** - (1) Cigarettes; (2) Linoleum, whether felt based or jute based; (3) Zip fasteners; (4) Oil Stoves; (5) Printing, including litho printing industry.

**Explanation 1:** — The articles specified under each of the heading nos. 3, 4, 5, 6, 7, 8, 10, 11 and 13 shall include their component parts and accessories.

**Explanation 2:** — The articles specified under each of the heading Nos. 18, 19, 21 and 22 shall include the intermediates required for their manufacture.]

## Appendix II

### Selected commonly used ratios and their computation

Sl. No.	Ratio	Method of Computation
(1)	Net Worth	Paid up Share capital and shares premium, if any + free reserves (credited out of profits, excluding revaluation reserve, write back of depreciation provisions and amalgamation) – accumulated losses after providing for arrears of depreciation, if any
(2)	Fixed Assets Coverage (Times): Indicators of overall coverage/ security cover available for future borrowing (FACR)s	Net fixed Assets (NFA) + Capital work in progress (CWIP) – term liabilities
(3)	Current ratio (CR); Indicator of liquidity	Current Assets + Current liabilities.
(4)	Contribution	Net Sales—variable costs (i.e. RM, Stores and Spares, power/fuel charges etc.)
(5)	Break even point of Capacity utilisation	Fixed and semi fixed cost: Contribution % capacity utilisation.
(6)	Net Working Capital (NWC)	Current Assets—Current liabilities
(7)	Cash loss	Profit after interest (before depreciation)
(8)	Net loss	Profit after interest—depreciation.
(9)	Gross Cash Accruals (GCA)	Profit after tax but before dividend + depreciation.
(10)	Net cash accruals (NC A)	Profit after tax and dividend (i.e. retained profit) + depreciation + preliminary expenses written off.
(11)	Debt Equity Ratio (DER)	Total Term liabilities + Preference share redeemable within three years: net worth (i.e. paid up capital + free reserves).
(12)	Debt Service Coverage Ratio (DSCR)	(Gross cash accruals + interest on term loans + lease rental) + repayment of term debt + Interest on term debt + lease rental.
(13)	1st method of lending for SIC (recommended) Tondon Committee appointed by RBI:	(Current assets— current liabilities by trade/market creditors) = working capital gap, to be financed from permissible bank finance (PBF) + margin money (MM) to be provided by the unit from out of cash generations from the operations.
(14)	Drawing power method (DPM)	Current assets, without considering trade/market credits, to be financed from PBF and MM generated from operations of the unit.

### Appendix III

#### Reliefs/concessions extended by State Governments for revival of Sick Companies

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SI. No.	Non-Fiscal Measures	State
1.	Declaration as relief undertaking	Andhra Pradesh, Kerala, Madhya Pradesh, Maharashtra, West Bengal.
2.	Exemption/preferential treatment in case of power cut restriction and reconnection	Gujarat, Haryana, Karnataka, Kerala Madhya Pradesh, Maharashtra, Tamil Nadu, Uttar Pradesh, Orissa.
3.	Permission to: (a) Sell/mortgage/lease surplus factory premises and  (b) Sell land under Urban Land (Ceiling & Regulation) Act, 1976	(a) Andhra Pradesh, Gujarat, Madhya Pradesh, Uttar Pradesh, Karnataka, Kerala, West Bengal, (Policy under formulation) Orissa.  (b) Andhra Pradesh, Gujarat, Madhya Pradesh.
4.	Permission for relocation of unit	Kerala
5.	No coercive steps/Non-recourse to revenue recovery action.	Andhra Pradesh, Kerala Gujarat, Karnataka, Kerala
6.	Non-insistence of Bank guarantee for State Govt. dues	Madhya Pradesh, Maharashtra, Orissa.
7.	Govt. guarantee for fresh loan/incremental funding	Kerala
8.	Assistance in resolving disputes/reaching settlement with workers including retrenchment/voluntary retirement scheme/rationalisation	Andhra Pradesh, Gujarat, Haryana Karnataka, Kerala, Maharashtra, Tamil Nadu, Uttar Pradesh, Orissa, West Bengal.
9.	Price preference and where necessary marketing support	Kerala, Tamil Nadu.
10.	Assistance in supply of controlled raw materials	Kerala

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SI. No.	Fiscal Measures	State
1.	Exemption/deferment of Sales Tax, Purchase Tax and Electricity duty for a period of 2 years at a time upto a maximum of 5 years on case to case basis.	Andhra Pradesh, (Only ST) Gujarat, Haryana, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Orissa.
2.	Waiver of minimum demand charges /penal charges for closure periods in respect of power.	Gujarat, Haryana, Kerala, Madhya Pradesh, Maharashtra, West Bengal, Orissa.
3.	Additional Concession viz. deferment of Octroi Duty, Water Charges, Turnover tax, reduced interest rate on delayed payment etc.	Gujarat, Kerala.
4.	Deferment of recovery of past State Excise Dues	Kerala, Uttar Pradesh.
5.	Sanction of identical incentives as are granted for setting up new industries.	Kerala.
6.	Consideration of sanction of additional funds, if called for & reschedulement of past dues.	Karnataka.
7.	Conversion of State Govt. loans into equity capital not exceeding 45% of total share capital	Madhya Pradesh
8.	Entitlement of Capital Investment subsidy @ 15% of additional capital investment as contained in the rehabilitation project.	West Bengal.
9.	Special Reliefs & Concessions for composite Cotton Textile Mills consisting of reschedulement of arrears as at 1 over and above period of 5 years on liberal terms. No change in other reliefs.	Maharashtra.

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SI. No.	Other Measures	State
1.	Liaison with various agencies like Financial Institutions, Banks, Management (Present and Prospective) & labour to revive the company.	West Bengal, Madhya Pradesh.
2.	Render assistance in organizing workers industrial cooperatives (WICs)	Andhra Pradesh, Kerala, West Bengal.
3.	Extension of Soft loan not exceeding Rs. 25,000 per worker either from State Govt. or in collaboration with NCDC.	Andhra Pradesh.
4.	Equity contribution on a matching basis with IDBI not exceeding 50% of the equity of the WICs or Rs. 150 lakhs, whichever is lower.	Kerala, Maharashtra.

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### **Annexure 3**

## **The Sick Industrial Companies (Special Provisions) Repeal Act, 2003**

**[No. 1 of 2004]**

### **An Act to repeal the Sick Industrial Companies (Special Provisions) Act, 1985.**

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

**1. Short title and commencement:** - (1) This Act may be called **the Sick Industrial Companies (Special Provisions) Repeal Act, 2003.**

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions:** - In this Act, unless the context otherwise requires,—

- (a) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction constituted under section 5 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (c) words and expressions used herein and not defined but defined in the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), shall have the meanings respectively assigned to them in that Act.

**3. Repeal of Act 1 of 1986 and dissolution of Appellate Authority and Board:** - The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) (hereinafter referred to as the repealed enactment) is hereby repealed and the Appellate Authority and the Board stand dissolved.

**3. Consequential provisions:** - On the dissolution of the Appellate Authority and the Board,—

- (a) (i) the persons appointed as Chairman and Member of the Appellate Authority or the Board; and
- (ii) every other person appointed by the Central Government, Appellate Authority or the Board,

and holding office as such immediately before the commencement of this Act, shall vacate his office and no such Chairman, Member or other person shall be entitled to claim any compensation for premature termination of the term of his office or of any contract of service:

Provided that any officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, appointed on deputation basis to the Appellate Authority or the Board, shall stand reverted to his parent cadre, Ministry or Department, as the case may be:

Provided further that every officer or employee who has been, immediately before the dissolution of the Appellate Authority or the Board, employed on regular basis by the Appellate Authority or the Board, shall become, on and from the date of such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Appellate Authority or the Board had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947

(14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee, employed in the Appellate Authority or the Board, to the Central Government, shall not entitle such officer or employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Appellate Authority or the Board has established a provident fund, superannuation, welfare or other fund for the benefit of the officers and employees employed in the Appellate Authority or the Board, the monies relatable to the officers and employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Appellate Authority or the Board, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by that Government in such manner as may be prescribed;

- (b) any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated:

Provided that a company:—

- (i) in respect of which such appeal or reference or inquiry stand abated under this clause may make a reference under PART VIA of the Companies Act, 1956 (1 of 1956) within one hundred and eighty days from the commencement of this Act in accordance with the provisions of the Companies Act, 1956;
- (ii) which had become a sick industrial company as defined in clause (46AA) of section 2 of the Companies Act, 1956 (1 of 1956), before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003) may make a reference under PART VIA of the Companies Act, 1956 within one hundred and eighty days from the commencement of the Companies (Second Amendment) Act, 2002 or within sixty days of final adoption of accounts after such commencement, whichever is earlier,

and reference so made shall be dealt with in accordance with the provisions of the Companies Act, 1956 (1 of 1956):

Provided further that no fee shall be payable for making such reference under PART VIA of the Companies Act, 1956 (1 of 1956) by a company whose appeal or reference or inquiry stand abated under this clause:

Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the repealed enactment shall be deemed to be a scheme sanctioned or under implementation under section 424D of the Companies Act, 1956 (1 of 1956) and shall be dealt with in accordance with the provisions contained in PART VIA of that Act;

- (c) the balance of all monies (including any fee) received by, or advanced to the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to and vest in the Central Government and shall be utilised for the purposes of clauses (e) and (f);
- (d) all property of whatever kind owned by, or vested in, the Appellate Authority or the Board, as the case may be, and not spent by it before the commencement of this Act shall, on the commencement of this Act, stand transferred to, and shall vest in the Central Government;
- (e) all liabilities and obligations of whatever kind incurred by the Appellate Authority or the Board and subsisting immediately before the commencement of this Act shall, on and from the commencement of this Act, be deemed to be the liabilities or obligations, as the case may be, of the Central Government; and any proceeding or cause of action, pending or existing immediately



before the commencement of this Act by or against the Appellate Authority or the Board in relation to such liability or obligation may, as from the commencement of this Act, be continued or enforced by or against the Central Government;

- (f) all monies vested in the Central Government under clause (c) shall, after deducting the amount incurred for discharging the liabilities and obligations referred to in that clause be refunded by the Central Government to the person to whom such amount is due.

**5. Saving:** - (1) The repeal by this Act of the repealed enactment shall not:—

- (a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;
- (b) affect the previous operation of the repealed enactment or anything duly done or suffered thereunder;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment;
- (d) affect any order made by the Board for sanction of the schemes;
- (e) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;
- (f) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed enactment, affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such privilege, forfeiture or punishment may be imposed as if this Act had not been passed;
- (g) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from the repealed enactment;
- (h) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

(2) Save as otherwise provided in section 4 and in sub-section (1) of this section, the mention of particular matters in the said section and sub-section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal.

**6. Power to make rules:** - (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner in which the monies standing to the credit of provident fund, superannuation, welfare or other fund of officers and employees on their transfer to the Central Government, shall be dealt with by that Government under the fourth proviso to clause (a) of section 4;
- (b) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## Annexure 4

### Chapter XXVI of Code of Criminal Procedure, 1973

**340. Procedure in cases mentioned in section 195:** - (1) When upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry if any, as it thinks necessary.—

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed.—

- (a) where the court making the complaint is a High Court, by such officer of the Court as the court may appoint;
  - (b) in any other case, by the presiding officer of the court.
- (4) In this section, "court" has the same meaning as in section 195.

**341. Appeal:** - (1) Any person on whose application any court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the court to which such former court is subordinate within the meaning of sub-section (4) of section 195, and the superior court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or as the case may be, making of the complaint which such former court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340 shall be final, and shall not be subjected to revision.

**342. Power to order costs:** - Any court dealing with an application made to it for filing a complaint under section 340 or an appeal under section 341, shall have power to make such order as to costs as may be just.

**343. Procedure of Magistrate taking cognizance:** - (1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit at any stage, adjourn the hearing of the case until such appeal is decided.

**344. Summary procedure for trial for giving false evidence:** - (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every case the court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

**345. Procedure in certain cases of contempt:** - (1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code, 1860 (45 of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the court may cause the offender to be detained in custody and may, at any time before the rising of the court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code, 1860 (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the court interrupted or insulted was sitting, and the nature of the interruption or insult.

**346. Procedure where court considers that case should not be dealt with under section 345:** - (1) If the court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such court is for any other reason, of the opinion that the case should not be disposed of under section 345, such court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.

**347. When Registrar or Sub-Registrar to be deemed a civil court:** - When the State Government so directs, any Registrar or any Sub-Registrar appointed under the Registration Act, 1908 (16 of 1908), shall be deemed to be a Civil Court within the meaning of sections 345 and 346.

**348. Discharge of offender on submission of apology:** - When any court has under section 345 adjudged an offender to punishment, or has under section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such court, or on apology being made to its satisfaction.

**349. Imprisonment or committal of person refusing to answer or produce document:** - If any witness or person called to produce a document or thing before a criminal court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the court requires him to produce, and does not, after a reasonable opportunity has been given to him to do so, offer any reasonable excuse for such refusal, such court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

**350. Summary procedure for punishment for non-attendance by a witness in obedience to summons.—(1)** If any witness being summoned to appear before a criminal court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the court before which the witness is to appear is satisfied that it is expedient in the interest of justice that such a witness should be tried summarily, the court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to a fine not exceeding one hundred rupees.

(2) In every such case the court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

**351. Appeals from convictions under sections 344, 345, 349 and 350:** - (1) Any person sentenced by any court other than a High Court under section 344, section 345, section 349 or section 350 may, notwithstanding anything contained in this Code appeal to the court to which decrees or orders made in such court are ordinarily appealable.

(2) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes shall lie to the Court of Sessions for the sessions division within which such court is situate.

(4) An appeal from such conviction by any Registrar or Sub-Registrar deemed to be a Civil Court by virtue of a direction issued under section 347 shall lie to the Court of Sessions for the sessions division within which the office of such Registrar or Sub-Registrar is situate.

**352. Certain Judges and Magistrates not to try certain offences when committed before themselves:** - Except as provided in sections 344, 345, 349 and 350, no Judge of Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

## Annexure 5

### Relevant Provisions of IPC

#### Section 196 of Indian Penal Code

**196. Using evidence known to be false:** - Whoever corruptly uses or attempts to use as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Section 21 of IPC — Definition of Public Servant

**21. "Public servant":** - The words "public servant" denotes a person falling under any of the descriptions hereinafter following, namely —

First: - [Repealed by the Adaptation of Laws Order, 1950.]

Second: - Every Commissioned Officer in the Military, Naval or Air Forces of India.

Third: - Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.

Fourth: - Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties.

Fifth: - Every juryman, assessor or member of a panchayat assisting a Court of Justice or public servant.

Sixth: - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority.

Seventh: - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.

Eighth: - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience.

Ninth: - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interest of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government.

Tenth: - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

Eleventh: - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.

Twelfth: - Every person:

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service of pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

#### Illustration

A Municipal Commissioner is a public servant.

**Explanation 1:** - Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

**Explanation 2:** - Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

**Explanation 3:** - The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

## Annexure 6

### Relevant provisions of Code of Civil Procedure

**30. Power to order discovery and the like:** - Subject to such conditions and limitations as may be prescribed, the Court may, at an time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

**31. Summons to witness:** - The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

**32. Penalty for default:** - The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest;
- (b) attach and sell his property;
- (c) impose a fine upon him not exceeding five thousand rupees;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

## Order XI

### Discovery and Inspection

**1. Discovery by interrogatories:** - In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

**2. Particular interrogatories to be submitted:** - On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court and that Court shall decide within seven days from the day of filing of the said application. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

**3. Costs of interrogatories:** - In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

**4. Form of interrogatories:** - Interrogatories shall be in Form No. 2 in Appendix C, with such



variations as circumstances may require.

**5. Corporation:** - Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

**6. Objections to interrogatories by answer:** - Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground, may be taken in the affidavit in answer.

**7. Setting aside and striking out interrogatories:** - Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

**8. Affidavit in answer, filing:** - Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

**9. Form of affidavit in answer:** - An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

**10. No exception to be taken:** - No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

**11. Order to answer or answer further:** - Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer or answer further, either by affidavit or by viva voce examination, as the Court may direct.

**12. Application for discovery of documents:** - Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

**13. Affidavit of documents:** - The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

**14. Production of documents:** - It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

**15. Inspection of documents referred to in pleadings or affidavits:** - Every party to a suit shall be entitled at or before the settlement of issues to give notice to any other party, in whose pleadings or affidavits reference is made to any document, or who has entered any document in any list annexed to his pleadings, to produce such document for the inspection of the party giving such notice, or of his

pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

**16. Notice to produce:** - Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

**17. Time for inspection when notice given:** - The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the document, or such of them as he does not object to produce, may be inspected the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he object to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

**18. Order for inspection:** - (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspect elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit:

Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

**19. Verified copies:** - (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations:

Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege, unless the document relates to matters of State.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or, are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

**20. Premature discovery:** - Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the

suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

**21. Non-compliance with order for discovery:** - (1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.

**22. Using answers to interrogatories at trial:** - Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer:

Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

**23. Order to apply to minors:** - This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

### **Order XIII**

#### **Production, Impounding and Return of Documents**

**1. Original documents to be produced at or before the settlement of issues:** - (1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

- (a) produced for the cross-examination of the witnesses of the other party; or
- (b) handed over to a witness merely to refresh his memory.

<sup>1</sup>**[2. Effect of non-production of documents:** - Omitted by the Code of Civil Procedure (Amendment) Act, 1999, w.e.f. 1-7-2002.]

**3. Rejection of irrelevant or inadmissible documents:** - The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

**4. Endorsements on documents admitted in evidence:** - Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and

(d) a statement of its having been so admitted;  
and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

**5. Endorsements on copies of admitted entries in books, accounts and records: -**

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

**Footnotes:**

1. Prior to the omission, rule 2 read as under:

"2. Effect of non-production of documents: - (1) No documentary evidence in the possession or power of any party which should have been but has not been, produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

- (2) Nothing in sub-rule (1) shall apply to documents,—  
(a) Produced for the cross-examination of the witnesses of the other party, or  
(b) handed over to a witness merely to refresh his memory."

- (a) where the record, book or account is produced on behalf of a party, then by that party, or  
(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

**6. Endorsements on documents rejected as inadmissible in evidence: -** Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

**7. Recording of admitted and return of rejected documents: -** (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

**8. Court may order any document to be impounded: -** Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

**9. Return of admitted documents:** - (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

- (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and
- (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

- (a) delivers to the proper officer for being substituted for the original,—
  - (i) in the case of a party to the suit, a certified copy, and
  - (ii) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and
- (b) undertakes to produce the original, if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

**10. Court may send for papers from its own records or from other Courts:** - (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any documents which under the law of evidence would be inadmissible in the suit.

**11. Provisions as to documents applied to material objects:** - The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

## **Order XVI**

### **Summoning and Attendance of Witnesses**

**1. List of witnesses and summons to witnesses:** - (1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).

**1A. Production of witnesses without summons:** - Subject to the provisions of sub-rule (3) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.

**2. Expenses of witness to be paid into Court on applying for summons:** - (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed which shall not be later than seven days from the date of making application under sub-rule (4) of rule 1, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) Experts: - In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(3) Scale of expenses: - Where the Court is subordinate to a High Court; regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

(4) Expenses to be directly paid to witnesses: - Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (1) shall be paid to the witness by the party of his agent.

**3. Tender of expenses to witness:** - The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

**4. Procedure where insufficient sum paid in:** - (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Expenses of witnesses detained more than one day.—Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

**5. Time, place and purpose of attendance to be specified in summons:** - Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

**6. Summons to produce document:** - Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

**7. Power to require persons present in court to give evidence or produce document:** - Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

**7A. Summons given to party for service:** - (1) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(2) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment or service or for any reason such summons cannot be served personally, the court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.

**8. Summons how served:** - Every summons under this Order, not being a summons delivered to a party for service under rule 7 A, shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

**9. Time for serving summons:** - Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for traveling to the place at which his attendance is required.

**10. Procedure where witness fails to comply with summons:** - (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—

(a) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(b) may, if the certificate of the serving officer has been so verified,

examine on oath the serving officer or the party or his agent, as the case may be, who has effected service, or cause him to be so examined by any Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

**11. If witness appears attachment may be withdrawn:** - Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend, the Court shall

direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

**12. Procedure if witness fails to appear:** - (1) The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

(2) Notwithstanding that the Court has not issued a proclamation under sub-rule (2) of rule 10, nor issued a warrant nor ordered attachment under sub-rule (3) of that rule, the Court may impose fine under sub-rule (1) of this rule after giving notice to such person to show cause why the fine should not be imposed.

**13. Mode of attachment:** - The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

**14. Court may of its own accord summon as witness strangers to suit:** - Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person, including a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

**15. Duty of persons summoned to give evidence or produce document:** - Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

**16. When they may depart:** - (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

**17. Application of rules 10 to 13:** - The provision of rules 10 to 13, shall so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

**18. Procedure where witness apprehended cannot give evidence or produce document:** - Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

**19. No witness to be ordered to attend in person unless resident within certain limits:** - No one shall be ordered to attend in person to give evidence unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than one hundred or (where there is railway or steamer



communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than five hundred kilometres distance from the Court house:

Provided that where transport by air is available between the two places mentioned in this rule and the witness is paid the fare by air, he may be ordered to attend in person.

**20. Consequence of refusal of party to give evidence when called on by Court:** - Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

**21. Rule as to witnesses to apply to parties summoned:** - Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

## Order XVIII

### Hearing of the Suit and Examination of Witnesses

**1. Right to begin:** - The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

**2. Statement and production of evidence:** - (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

(3A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.

<sup>1</sup>[(4) \* \* \*

**3. Evidence where several issues:** - Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

**3A. Party to appear before other witnesses:** - Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.

**4. Recording of evidence:** - (1) In every case, the examination-in-chief of a witness shall be

on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit:

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as he thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

#### **Footnotes:**

1. Omitted by the Code of Civil Procedure (Amendment) Act, 1999, w.e.f. 1-7-2002. Prior to the omission, sub-rule (4), as inserted by Act 104 of 1976, w.e.f. 1-2-1977, read as under:

"(4) Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage."

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.

**5. How evidence shall be taken in appealable cases:** - In cases in which an appeal is allowed, the evidence of each witness shall be,—

(a) taken down in the language of the Court,—

(i) in writing by, or in the presence and under the personal direction and superintendence of the Judge, or

(ii) from the dictation of the Judge directly on a typewriter; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.

**6. When deposition to be interpreted:** - Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

**7. Evidence under section 138:** - Evidence taken down under section 138 shall be in the form

prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

**8. Memorandum when evidence not taken down by Judge:** - Where the evidence is not taken down in writing by the Judge, or from his dictation in the open Court, or recorded mechanically in his presence, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

**9. When evidence may be taken in English:** - (1) Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down.

(2) Where evidence is not given in English but all the parties who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence being taken down in English, the Judge may take down, or cause to be taken down, such evidence in English.

**10. Any particular question and answer may be taken down:** - The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

**11. Questions objected to and allowed by Court:** - Where any question put to a witness in objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

**12. Remarks on demeanour of witnesses:** - The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

**13. Memorandum of evidence in unappeasable cases:** - In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record.

**[14. Judge unable to make such memorandum to record reasons of his inability:** - Repealed by the Code of Civil Procedure (Amendment) Act, 1976, (104 of 1976), section 69 (w.e.f. 1-2-1977).]

**15. Power to deal with evidence taken before another Judge:** - (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

**16. Power to examine witness immediately:** - (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day, fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall; if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

**17. Court may recall and examine witness:** - The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

**<sup>1</sup>[17A. Production of evidence not previously known or which could not be produced despite due diligence:** - Omitted by the Code of Civil Procedure (Amendment) Act, 1999, w.e.f. 1-7-2002.]

**18. Power of Court to inspect:** - The Court may at any stage of a suit inspect any property or thing concerning which any question may arise and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit.

**Footnotes:**

1. Prior to the omission, rule 17A, as inserted by Act 104 of 1976, w.e.f. 1-2-1977, read as under:

"17A. Production of evidence not previously known or which could not be produced despite due diligence.—Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just."

**19. Power to get statements recorded on commission:** - Notwithstanding anything contained in these rules, the Court may, instead of examining witnesses in open Court, direct their statements to be recorded on commission under rule 4A of Order XXVI.]

**Order XIX**

**Affidavits**

**1. Power to order any point to be proved by affidavit:** - Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such condition as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

**2. Power to order attendance of deponent for cross-examination:** - (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

**3. Matters to which affidavits shall be confined:** - (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statement of his belief may be admitted:

Provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

## **Order XXVI**

### **Commissions**

#### **Commissions to examine witnesses**

**1. Cases in which Court may issue commission to examine witness:** - Any Court may in any suit issue a commission for the examination in interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

**Explanation:** - The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.

**2. Order for commission:** - An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

**3. Where witness resides within Court's Jurisdiction:** - A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

**4. Persons for whose examination commission may issue:** - (1) Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of—

- (a) any person resident beyond the local limits of its jurisdiction;
- (b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and
- (c) any person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service:

Provided that where, under rule 19 of Order XVI, a person cannot be ordered to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

**4A. Commission for examination of any person resident within the local limits of the jurisdiction of the Court:** - Notwithstanding anything contained in these rules, any Court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.

**5. Commission or request to examine witness not within India:** - Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within India is satisfied that the evidence of such person is necessary, the court may issue such commission or a letter of request.

**6. Court to examine witness pursuant to commission:** - Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

**7. Return of commission with depositions of witnesses:** - Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of rule 8) form part of the record of the suit.

**8. When depositions may be read in evidence:** - Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a person in the service of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

### **Commissions for local investigations**

**9. Commissions to make local investigations:** - In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued the Court shall be bound by such rules.

**10. Procedure of Commissioner:** - (1) The Commissioner, after such local inspection he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit.—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Commissioner may be examined in person.—Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

### **Commissions for scientific investigation, performance of ministerial act and sale of movable property**

**10A. Commission for scientific investigation:** - (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report

thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

**10B. Commission for performance of a ministerial act:** - (1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

**10C. Commission for the sale of movable property:** - (1) Where, in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(3) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.

#### **Commissions to examine accounts**

**11A. Commission to examine or adjust accounts:** - In any suit in which an examination or adjustment of the accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

**12A. Court to give Commissioner necessary instructions:** - (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) Proceedings and report to be evidence. Court may direct further inquiry.—The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

#### **Commissions to make partitions**

**13. Commission to make partition of immovable property:** - Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the right as declared in such decree.

**14. Procedure of Commissioner:** - (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or

reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

### **General Provisions**

**15. Expenses of commission to be paid into Court:** - Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

**16. Powers of Commissioners:** - Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (b) call for and examine documents and other things relevant to the subject of inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

**16A. Questions objected to before the Commissioner:** - (1) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting:

Provided that the Commissioner shall not take down the answer to a question which is objected to on the ground of privilege but may continue with the examination of the witness leaving the party to get the question of privilege decided by the Court, and, where the Court decides that there is no question of privilege, the witness may be recalled by the Commissioner and examined by him or the witness may be examined by the Court with regard to the question which was objected to on the ground of privilege.

(2) No answer taken down under sub-rule (1) shall be read as evidence in the suit except by the order of the Court.

**17. Attendance and examination of witnesses before Commissioner:** - (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court:

Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

**18. Parties to appear before Commissioner:** - (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.



**18A. Application of Order to execution proceedings:** - The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order.

**18B. Court to fix a time for return of commission:** - The Court issuing a commission shall fix a date on or before which the commission shall be returned to it after execution, and the date so fixed shall not be extended except where the Court, for reasons to be recorded, is satisfied that there is sufficient cause for extending the date.

### **Commissions issued at the instance of foreign Tribunals**

**19. Cases in which High Court may issue commission to examine witness.—(1)** If a High Court is satisfied—

- (a) that a foreign court situated in a foreign country wishes to obtain the evidence of a witness in any proceeding before it,
  - (b) that the proceeding is of a civil nature, and
  - (c) that the witness is residing within the limits of the High Court's appellate jurisdiction,
- it may, subject to the provisions of rule 20, issue a commission for the examination of such witness.

(2) Evidence may be given of the matters specified in clauses (a), (b) and (c) of sub-rule (1)—

- (a) by a certificate signed by the consular officer of the foreign country of the highest rank in India and transmitted to the High Court through the Central Government, or
- (b) by a letter of request issued by the foreign Court and transmitted to the High Court through the Central Government, or
- (c) by a letter of request issued by the foreign court and produced before the High Court by a party to the proceeding.

**20. Application for issue of commission:** - The High Court may issue a commission under rule 19—

- (a) upon application by a party to proceeding before the foreign court, or
- (b) upon an application by a law officer of the State Government acting under instructions from the State Government.

**21. To whom commission may be issued:** - A Commission under rule 19 may be issued to any Court within the local limits of whose jurisdiction the witness resides, or, where the witness resides within the local limits of the ordinary original civil jurisdiction of the High Court, to any person whom the Court thinks fit to execute the commission.

**22. Issue, execution and return of commissions and transmission of evidence to foreign Court:** - The provisions of rules 6, 15, sub-rule (1) of rules 16A, 17, 18 and 18B of this Order in so far as they are applicable shall apply to the issue, execution and return of such commissions, and when any such commission has been duly executed it shall be returned, together with the evidence taken under it, to the High Court, which shall forward it to the Central Government, along with the letter of request for transmission to the foreign court.

## Annexure 7

### Relevant provisions of the Companies Act, 1956

**244. Proceedings for recovery of damages or property:** - (1) If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest to be brought by the company or any body corporate whose affairs have been investigated in pursuance of clause (a), (b) or (c) of section 239,—

- (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or
- (b) for the recovery of any property of such company, or body corporate, which has been misapplied or wrongfully retained;

the Central Government may itself bring proceedings for that purpose in the name of such company or body corporate.

(2) The Central Government shall indemnify such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (1).

**284. Removal of directors:** - (1) A company may, by ordinary resolution, remove a director (not being a director appointed by the Central Government in pursuance of section 408) before the expiry of his period of office:

Provided that this sub-section shall not, in the case of a private company, authorise the removal of a director holding office for life on the 1st day of April, 1952, whether or not he is subject to retirement under an age limit by virtue of the articles or otherwise:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 265 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) Special notice shall be required of any resolution to remove a director under this section, or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.

(4) Where notice is given of a resolution to remove a director under this section and the director concerned makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so,—

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company);

and if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting:

Provided that copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application<sup>1</sup> either of the company or of any other person who claims to be aggrieved, the <sup>2</sup>[Central Government] is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the <sup>3</sup>[Central Government] may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board in pursuance of section 262, be filled by the appointment of another director in his stead by the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

A director so appointed shall hold office until the date up to which his predecessor would have held office if he had not been removed as aforesaid.

(6) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions, so far as they may be applicable, of section 262, and all the provisions of that section shall apply accordingly:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of directors.

(7) Nothing in this section shall be taken—

- (a) as depriving a person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director; or
- (b) as derogating from any power to remove a director which may exist apart from this section.

**391. Power to compromise or make arrangements with creditors and members:** - (1) Where a compromise or arrangement is proposed—

- (a) between a company and its creditors or any class of them; or
- (b) between a company and its members or any class of them;

the <sup>4</sup>[Tribunal] may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the <sup>5</sup>[Tribunal] directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and

**Footnotes: -**

1. Fees prescribed is Rs. 500, w.e.f. 1-4-2000. On notification of the commencement of the amendment, power will be transferred to the Central Government.
2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.
3. Ibid.
4. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
5. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

voting either in person or, where proxies are allowed <sup>1</sup>under the rules made under section 643], by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the <sup>2</sup>[Tribunal], be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company:

<sup>3</sup>[Provided that no order sanctioning any compromise or arrangement shall be made by the <sup>4</sup>[Tribunal] unless the <sup>5</sup>[Tribunal] is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the <sup>6</sup>[Tribunal], by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.]

(3) An order made by the <sup>7</sup>[Tribunal] under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with subsection (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>8</sup>[one hundred rupees] for each copy in respect of which default is made.

(6) The <sup>9</sup>[Tribunal] may, at any time after an application has been made to it under this section, stay

the commencement or continuation of any suit or proceeding against the company on such terms as the<sup>10</sup>[Tribunal] thinks fit, until the application is finally disposed of.

<sup>11</sup>[(7) \* \* \*]

<sup>12</sup>[\* \* \*]

**Footnotes:**

1. Inserted by Act 65 of 1960, section 151.
2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
3. Inserted by Act 31 of 1965, section 48, w. e. f. 15-10-1965.
4. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
5. Ibid.
6. Ibid.
7. Ibid.
8. Substituted for "ten rupees" by the Companies (Amendment) Act, 2000, w. e. f. 13-12-2000.
9. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
10. Ibid.
11. Omitted by the Companies (Second Amendment) Act, 2002. Prior to omission it read as under:

"(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction."

12. Omitted by the Companies (Second Amendment) Act, 2002. Prior to omission it read as under:

"The provisions of sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application."

**<sup>1</sup>[392. Power of Tribunal to enforce compromise and arrangement.—**

(1) Where the Tribunal makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it—

- (a) shall have power to supervise the carrying out of the compromise or an arrangement; and
- (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of the Companies (Second Amendment) Act, 2002 sanctioning a compromise or an arrangement.]

**393. Information as to compromises or arrangements with creditors and members:** - (1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391,—

- (a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect, and in particular, stating any material interests of the directors, managing director,<sup>2</sup>[\* \* \*] or manager of the company, whether in their capacity as such or as members or creditors of

the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

**Footnotes:**

1. Substituted by the Companies (Second Amendment) Act, 2002 for the following:

"392. Power of High Court to enforce compromises and arrangements.—(1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it—

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement."

2. Omitted by the Companies (Amendment) Act, 2000 as provisions relating to managing agents, etc. had become redundant after abolition of system by Act 17 of 1969.

(b) in every notice calling the meeting which is given by the advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>1</sup>[fifty thousand rupees]; and for the purpose of this sub section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, <sup>2</sup>[\* \* \*] manager or trustee for debenture holders, to supply the necessary particulars as to his material interests.

(5) Every director, managing director, <sup>3</sup>[\* \* \*] or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matter relating to himself as may be necessary for the purposes of this section; and if he fails to do so, he shall be punishable with fine which may extend to <sup>4</sup>[five thousand rupees].

**<sup>5</sup>394. Provisions for facilitating reconstruction and amalgamation of companies: -** (1) Where an

application is made to the <sup>6</sup>[Tribunal] under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the <sup>7</sup>[Tribunal],

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and
- (b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another company (in this section referred to as the "transferee company");

**Footnotes:**

1. Substituted for "five thousand rupees" by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.
2. Omitted by the Companies (Amendment) Act, 2000 as provisions relating to managing agents, etc. had become redundant after abolition of system by Act 17 of 1969.
3. Ibid.
4. Substituted for "five hundred rupees" by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.
5. See e-Form 61, Companies (Central Government's) General Rules and Forms, 1956.
6. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
7. Ibid.

the <sup>1</sup>[Tribunal] may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters:—

- (i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;
- (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (iv) the dissolution, without winding up, of any transferor company;
- (v) the provision to be made for any person who, within such time and in such manner as the <sup>2</sup>[Tribunal] directs, dissent from the compromise or arrangement; and
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

<sup>3</sup>[Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up. with any other company or companies, shall be sanctioned by the <sup>4</sup>[Tribunal] unless the <sup>5</sup>[Tribunal] has received a report from <sup>6</sup>[\* \* \*] the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the <sup>7</sup>[Tribunal] unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the <sup>8</sup>[Tribunal] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.]

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within <sup>9</sup>[thirty] days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

**Footnotes:**

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
2. Ibid.
3. Inserted by Act 31 of 1965, section 49, w.e.f. 15-10-1965.
4. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
5. Ibid.
6. The words "the Company Law Board or" omitted by the Companies (Second Amendment) Act, 2002.
7. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
8. Ibid.
9. Substituted by Act 31 of 1965, section 62 and Schedule, for "fourteen" w.e.f. 15-10-1965.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>1</sup>[five hundred rupees].

(4) In this section—

- (a) "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description; and
- (b) "transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

<sup>2</sup>[**394A. Notice to be given to Central Government<sup>3</sup> for applications under sections 391 and 394: -** The <sup>4</sup>[Tribunal] shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.]

**395. Power and duty to acquire shares of shareholders dissenting from scheme or contract approved by majority<sup>5</sup>:** - (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary), the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner<sup>6</sup> to any dissenting shareholder, that it desires to acquire his shares; and when such a notice is given, the transferee company shall, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given, the <sup>7</sup>[Tribunal] thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company:

Provided that where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of the values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless—

- (a) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

**Footnotes:**

1. Substituted for "fifty rupees" by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.
2. Inserted by Act 31 of 1965, section 50, w.e.f. 15-10-1965.
3. Powers delegated to Regional Directors vide Notification No. GSR 288(E), dated 31-5-1991.
4. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
5. See rule 12, Companies (Central Government's) General Rules and Forms, 1956.
6. See Form 35, Companies (Central Government's) General Rules and Forms, 1956.
7. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held at the date of the transfer by, or by a nominee for, the transferee company or its subsidiary comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then,—

- (a) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and
- (b) any such holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question;

and where a shareholder gives notice under clause (b) with respect to any shares, the transferee company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the <sup>1</sup>[Tribunal] on the application of either the transferee company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee company under sub-section (1) and the <sup>1</sup>[Tribunal] has not, on application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the <sup>2</sup>[Tribunal] by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire; and <sup>3</sup>[the transferor company shall—

- (a) thereupon register the transferee company as the holder of those shares, and
- (b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company:]

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other considerations were respectively received.

<sup>4</sup>[(4A)(a) The following provisions shall <sup>4</sup>apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company, namely:—

**Footnotes:**



1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
2. Ibid.
3. Substituted by Act 31 of 1965, section 51, for certain words, w.e.f. 15-10-1965.
4. Inserted by Act 31 of 1965, section 51, w.e.f. 15-10-1965.

- (i) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information as may be prescribed <sup>1</sup>;
- (ii) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available;
- (iii) every circular containing or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered;
- (iv) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (i) or which sets out such information in a manner likely to give a false impression; and
- (v) an appeal shall lie to the <sup>2</sup>[Tribunal] against an order of the Registrar refusing to register any such circular.

(b) Whoever issues a circular referred to in sub-clause (iii) of clause (a) which has not been registered, shall be punishable with fine which may extend to <sup>3</sup>[five thousand rupees].

(5) In this section—

- (a) "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract;
- (b) "transferor company" and "transferee company" shall have the same meaning as in section 394.

(6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect.—

- (a) with the substitution, in sub-section (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section;
- (b) with the omission of sub-section (2);
- (c) with the omission in sub-section (3) of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that sub-section; and
- (d) with the omission of clause (b) of sub-section (5).

**396. Power of Central Government to provide for amalgamation of companies in national interest:** - (1) Where the Central Government is satisfied that it is essential in the <sup>4</sup>[public interest] that two or more companies should amalgamate, then, notwithstanding anything contained in sections 394 and 395 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution; with such property, powers, rights, interests, authorities and privileges; and with such liabilities, duties, and obligations; as may be specified in the order.

**Footnotes:**

1. See e-Form 35A, Companies (Central Government's) General Rules and Forms, 1956.
2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
3. Substituted for "five hundred rupees" by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.

4. Substituted by Act 65 of 1960, section 152 for "national interest".

<sup>1</sup>[The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and may also] contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority <sup>2</sup>[as may be prescribed<sup>3</sup> and every such assessment shall be published in the Official Gazette].

The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

<sup>4</sup>[(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the <sup>5</sup>[Tribunal) and thereupon the assessment of the compensation shall be made by the <sup>6</sup>[Tribunal].]

(4) No order shall be made under this section, unless—

(a) a copy of the proposed order has been sent in draft to each of the companies concerned; <sup>7</sup>[\* \* \*]

<sup>8</sup>(aa) the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and]

(b) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

#### **Footnotes:**

1. Substituted by the Companies (Amendment) Act, 1985 (35 of 1985) for the words "The order aforesaid".
2. Substituted by the Companies (Amendment) Act, 1985 (35 of 1985) for the words "as may be prescribed".
3. Joint Director (Accounts), Department of Company Affairs is the prescribed authority vide rule 12A, Companies (Central Government's) General Rules and Forms, 1956.
4. Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).
5. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.
6. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.
7. The word "and" omitted by the Companies (Amendment) Act, 1985.
8. Inserted, *ibid*.

(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

**408. Powers of Government to prevent oppression or mismanagement<sup>1</sup>:** - <sup>2</sup>[(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the <sup>3</sup>[Tribunal] may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for

such period, not exceeding three years on any one occasion, as it may think fit, if the <sup>3</sup>[Tribunal] on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

Provided that in lieu of passing an order as aforesaid, the <sup>3</sup>[Tribunal] may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the <sup>3</sup>[Tribunal].

(2) In case the <sup>3</sup> [Tribunal] passes an order under the proviso to sub-section (1) it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the <sup>3</sup>[Tribunal] may, by orders specify as being necessary to effectively safeguard the interests, of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors].

### **Footnotes:**

1. Fees prescribed is Rs. 2500, w.e.f. 1-4-2000. On notification of the commencement of the amendment, power will be transferred to the National Company Law Tribunal.
2. Substituted by the Companies (Amendment) Act, 1988, section 53, w.e.f. 15-6-1988 for sub-sections (1) and (2) which read as under:

"(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Central Government of its own motion or, on the application of not less than one hundred members of the company or of members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

Provided that in lieu of passing an order as aforesaid, the Central Government may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Central Government.

(2) In case the Central Government passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interest of the company, or its shareholders or the public interest specified by the Central Government shall hold office as additional directors of the company."

3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.

(3) For the purposes of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account.

<sup>1</sup>[(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of directors by rotation; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the

case may be, an additional director.

(5) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the <sup>2</sup>[Tribunal].

<sup>3</sup>[(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs <sup>4</sup>[and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.]

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.]

**447. Effect of winding up order:** - An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made out on the joint petition of a creditor and of a contributory.

### Official liquidators

<sup>5</sup>[**448. Appointment of Official Liquidator:** - (1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who—

- (a) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or
- (b) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or
- (c) may be a whole-time or a part-time officer appointed by the Central Government:

Provided that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen.

(2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be—

- (a) approved by the Tribunal for those appointed under clauses (a) and (b) of sub section (7), subject to a maximum remuneration of five per cent of the value of debt recovered and realisation of sale of assets;
- (b) approved by the Central Government for those appointed under clause (c) of sub section (7) in accordance with the rules made by it in this behalf.

Where the Official Liquidator is an officer appointed by the Central Government under clause (c) of sub-section (7), the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidators or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidators and the remuneration payable to them shall also be in accordance with the rules made by the Central Government.

All references to the "Official Liquidator" in this Act shall be construed as reference to the Official Liquidator specified in sub-section (7) or to the Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section (3), as the case may be.

The amount of the remuneration payable shall—

- (a) form part of the winding up order made by the Tribunal;
- (b) be treated as first charge on the realisation of the assets and be paid to the Official Liquidator

or to the Central Government, as the case may be.

(6) The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf.

Provided that the Tribunal may—

- (a) transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing;
- (b) remove the Official Liquidator on sufficient cause being shown;
- (c) proceed against the Official Liquidator for professional misconduct.

**Footnotes:**

1. Inserted by Act 65 of 1960, section 155.
2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.
3. Inserted by Act 41 of 1974, section 31, w.e.f. 1-2-1975.
4. Inserted by the Companies (Amendment) Act, 1988, section 53 w.e.f. 15-6-1988.
5. Substituted by the Companies (Second Amendment) Act, 2002 for the following:

"448. Appointment of Official Liquidator: - (1) For the purposes of this Act. so far as it relates to the winding up of companies by the Court,—

- (a) there shall be attached to each High Court, an Official Liquidator appointed by the Central Government, who shall be a whole-time officer, unless the Central Government considers that there will not be sufficient work for a whole-time officer in which case a part-time officer may be appointed; and
- (b) the Official Receiver attached to a District Court for insolvency purposes, or if there is no such Official Receiver, then, such person as the Central Government may, by notification in the Official Gazette appoint for the purpose, shall be the Official Liquidator attached to the District Court.

<sup>1</sup>[(1A) The Central Government may appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions.]

(2) All references to the "Official Liquidator" in this Act shall be construed as references to the Official Liquidator referred to in clause (a) or clause (b), as the case may be, of sub-section (1) <sup>2</sup>[and as including references to Deputy or Assistant Official Liquidators appointed under sub-section (1A)]."

**2<sup>nd</sup> Footnotes:**

1. Inserted by Act 65 of 1960, section 166.
2. Ibid.

**449. Official Liquidator to be liquidator:** - On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company.

**450. Appointment and powers of provisional liquidator:** - (1) At any time after the presentation of a winding up petition and before the making of a winding up order, the <sup>1</sup>[Tribunal] may appoint the Official Liquidator to be liquidator provisionally.

(2) Before appointing a provisional liquidator, the <sup>1</sup>[Tribunal] shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the <sup>1</sup>[Tribunal] thinks fit to dispense with such notice.

(3) Where a provisional liquidator is appointed by the <sup>1</sup>[Tribunal], the <sup>1</sup>[Tribunal] may limit and restrict his powers by the order appointing him or by a subsequent order; but otherwise he shall have the same powers as a liquidator.

(4) The Official Liquidator shall cease to hold office as provisional liquidator, and shall become the liquidator, of the company, on a winding up order being made.

**451. General provisions as to liquidators:** - (1) The liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the <sup>1</sup>[Tribunal] may impose.

Where the Official Liquidator <sup>2</sup>[referred to in clause (c) of sub-section (7) of section 448] becomes or acts as liquidator, there shall be paid to the Central Government out of the assets of the company such fees as may be prescribed.

The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification:

Provided that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

**457. Powers of liquidator:** - (1) The liquidator in a winding up by the <sup>1</sup>[Tribunal] shall have power, with the sanction of the <sup>1</sup>[Tribunal],—

- to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company;
- to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
- to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels;

**Footnotes:**

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
2. Inserted by the Companies (Second Amendment) Act, 2002.

<sup>1</sup>[(ca) to sell whole of the undertaking of the company as a going concern;]

(d) to raise on the security of the assets of the company any money requisite;

(e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the <sup>2</sup>[Tribunal] shall have power—

(i) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;

<sup>3</sup>[(ia) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;]

(ii) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(iii) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(iv) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in

all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General.

(v) to appoint an agent to do any business which the liquidator is unable to do himself.

<sup>4</sup>[(2A) The liquidator shall—

appoint security guards to protect the property of the company taken into his custody and to make out an inventory of the assets in consultation with secured creditors after giving them notice;

appoint, as the case may be, valuer, chartered surveyors or chartered accountant to assess the value of the company's assets within fifteen days after taking into custody of property, assets referred to in sub-clause (a) and effects or actionable claims subject to such terms and conditions as may be specified by the Tribunal;

give an advertisement, inviting bids for sale of the assets of the company, within fifteen days from the date of receiving valuation report from the valuer, chartered surveyors or chartered accountants referred to in clause (b), as the case may be.

**Footnotes:**

1. Inserted by the Companies (Second Amendment) Act, 2002.
2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
3. Inserted by Act 65 of 1960, section 170.
4. Inserted by the Companies (Second Amendment) Act, 2002.

(2B) The liquidator shall, immediately after the order for winding up or appointing the liquidator as provisional Liquidator is made, issue a notice requiring any of the persons mentioned in sub-section (2) of section 454, to submit and verify a statement of the affairs of the company and such notice shall be served by the liquidator.

(2C) The liquidator may apply to the Tribunal for an order directing any person who, in his opinion, is competent to furnish a statement of the affairs under sections 439A. and 454 and such person shall for the said purpose be served a notice by the liquidator in the manner as may be prescribed.

(2D) The liquidator may, from time to time, call any person for recording any statement for the purpose of investigating the affairs of the company which is being wound up and it shall be the duty of every such person to attend to the liquidator at such time and place as the liquidator may appoint and give the liquidator all information which he may require and answer all such questions relating to winding up of company as may be put to him by the liquidator.

(2E) Every bidder shall, in response to advertisement referred to in clause (c) of subsection (2A), deposit, his offer in the manner as may be prescribed, with liquidator or provisional liquidator, as the case may be, within forty-five days from the date of the advertisement and the liquidator or provisional liquidator shall permit inspection of property and assets in respect of which bids were invited:

Provided that such bid may be withdrawn within three days before the last day of closing of the bid:

Provided further that the inspection of property shall be open for not more than five days before closing of the bid.

(2F) The advertisement inviting bids shall contain the following details, namely:—

- (a) name, address of registered office of the company and its branch offices, factories and plants and the place where assets of the company are kept and available for sale;
- (b) last date for submitting bids which shall not exceed ninety days from the date of advertisement;
- (c) time during which the premises of the company shall remain open for inspection;

- (d) the last date for withdrawing the bid;
- (e) financial guarantee which shall not be less than one-half of the value of the bid;
- (f) validity period of the bids;
- (g) place and date of opening of the bids in public;
- (h) reserve price and earnest money to be deposited along with the bid;
- (i) any other terms and conditions of sale which may be prescribed.

(2G) The liquidator appointed shall—

- (a) maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company;
- (b) maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half-yearly return of receipts and payments to the Tribunal.]

(3) The exercise by the liquidator in a winding up by the <sup>1</sup>[Tribunal] of the powers conferred by this section shall be subject to the control of the <sup>1</sup>Tribunal]; and any creditor or contributory may apply to the <sup>1</sup>[Tribunal] with respect to the exercise or proposed exercise of any of the powers conferred by this section.

**529. Application of insolvency rules in winding up of insolvent companies: -** (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—

- (a) debts provable;
- (b) the valuation of annuities and future and contingent liabilities; and
- (c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

<sup>2</sup>[Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts opts to realise his security,—

the liquidator shall be entitled to represent the workmen and enforce such charge;

any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

so much of the debts due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.]

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

<sup>3</sup>[Provided that if a secured creditor instead of relinquishing his security and proving for his debts proceeds to realise his security, he shall be liable to <sup>4</sup>[pay his portion of the expenses] incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.]

<sup>5</sup>[**Explanation: -** For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.]

<sup>6</sup>[(3) For the purposes of this section, section 529A and section 530.—

**Footnotes:**

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.



2. Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).
3. Inserted by Act 65 of 1960, section 183.
4. Substituted by the Companies (Amendment) Act, 1985 (35 of 1985) for the words "pay the expenses".
5. Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).
6. Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).

"workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947);

"workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

- (i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);
  - (ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;
  - (iii) unless the company is being wound-up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;
  - (iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;
- (c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of—
- (i) the amount of workmen's dues; and
  - (ii) the amounts of the debts due to the secured creditors.

### **Illustration**

The value of the security of a secured creditor of a company is Rs. 1, 00,000. The total amount of the workmen's dues is Rs. 1, 00,000. The amount of the debts due from the company to its secured creditors is Rs. 3, 00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4, 00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security that is Rs. 25,000.]

**<sup>1</sup>[529A. Overriding preferential payments: -** (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company,—

- (a) workmen's dues; and
- (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues,

shall be paid in priority to all other debts.

### **Footnotes:**

1. Inserted by the Companies (Amendment) Act, 1985 (35 of 1985).

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.]

<sup>1</sup>[543. **Power of Tribunal to assess damages against delinquent directors, etc:** - (1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company—

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Tribunal may, on the application of the Official Liquidator, or the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal thinks just.

(2) An application under sub-section (/) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust as the case may be, whichever is longer.

(5) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.]

**Footnotes:**

1. Substituted by the Companies (Second Amendment) Act, 2002 for the following:

"543. *Power of Court to assess damages against delinquent directors, etc:* - (1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, <sup>1</sup>[\* \* \*] manager, liquidator or officer of the company—

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company;

the Court may, on the application of the Official Liquidator, of the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, <sup>2</sup>[\* \* \*], manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof, respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

(3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable."

**2<sup>nd</sup> Footnotes:**

1. Omitted by the Companies (Amendment) Act, 2000 as provisions relating to managing agents, etc. had become redundant after abolition of system by Act 17 of 1969.

2. Ibid.

## Annexure 8

### Part VI of the Companies Act, 1956

#### PART VI

#### Revival and rehabilitation of sick industrial companies

**424A. Reference to Tribunal:** - (1) Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a reference to the Tribunal and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal along with an application containing such particulars as may be prescribed for determination of the measures which may be adopted with respect to such company:

Provided that nothing contained in this sub-section shall apply to a Government company:

Provided further that a Government company may, with the prior approval of the Central Government or a State Government, as the case may be, make a reference to the Tribunal in accordance with the provisions of this sub-section and thereafter all the provisions of this Act shall apply to such Government company:

<sup>1</sup>[Provided also that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004<sup>2</sup>, such reference shall abate if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002):

Provided also that no reference shall be made under this section if the secured creditors representing three-fourth in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under subsection (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).]

(2) The application under sub-section (1) shall be accompanied by a certificate from

(a) an auditor from a panel of auditors prepared by the Tribunal indicating—

the reasons of the net worth of such company being fifty per cent or less than fifty per cent; or  
the default in repayment of its debt making such company a sick industrial company,

(b) as the case may be.

(3) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company:

#### **Footnotes:**

1. Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, w.r.e.f. 11-11-2004.
2. 11-11-2004.

Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;

a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.

(4) A reference under sub-section (1) or sub-section (5) shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank, as the case may be, came to know, of the relevant facts giving rise to causes of such reference or within sixty days of final adoption of accounts, whichever is earlier.

(5) The Tribunal may, on receipt of a reference under sub-section (I), pass an order as to whether a company in respect of which a reference has been made has become a sick industrial company and such order shall be final.

**424B. Inquiry into working of sick industrial companies: -** (1) The Tribunal may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company—

- (a) upon receipt of a reference with respect to such company under section 424A; or
- (b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2) The Tribunal may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (I), require by order any operating agency to enquire into the scheme for revival and make a report with respect to such matters as may be specified in the order.

(3) The operating agency shall complete its inquiry as expeditiously as possible and submit its report to the Tribunal within twenty-one days from the date of such order:

Provided that the Tribunal may extend the said period to forty days for reasons to be recorded in writing for such extension.

(4) The Tribunal shall conclude its inquiry as expeditiously as possible and pass final orders in the proceedings within sixty days from the commencement of the inquiry:

Provided that the Tribunal may extend the said period to ninety days for reasons to be recorded in writing for such extension.

**Explanation: -** For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Tribunal of any reference or information or upon its own knowledge reduced to writing by the Tribunal.

Where the Tribunal deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (7) or, as the case may be, under sub section (2), it may appoint one or more persons who possess knowledge, experience and expertise in management and control of the affairs of any other company to be a special director or special directors on the board of such industrial company on such terms and conditions as may be prescribed for safeguarding its financial and other interests or in the public interest.

The special director or special directors appointed under sub-section (5) shall submit a report to the Tribunal within sixty days from the date of appointment of such director or directors, about the state of affairs of the company in respect of which reference has been made under sub-section (1) and such special director or directors shall have all the powers of a director of a company under this Act, necessary for discharge of his or their duties.

The Tribunal may issue such directions to a special director appointed under sub section (5) as it may deem necessary or expedient for proper discharge of his duties.

The appointment of a special director referred to in sub-section (5) shall be valid and effective notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any special director or directors appointed by the Tribunal.

Any special director appointed under sub-section (5), shall—

- (a) hold office during the pleasure of the Tribunal and may be removed or substituted by any person

by order of the Tribunal;

- (b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;
- (c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement;
- (d) not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.

**424C. Powers of Tribunal to make suitable order on completion of inquiry:** - (1) If after making an inquiry under section 424B, the Tribunal is satisfied that a company has become a sick industrial company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 424A within a reasonable time.

If the Tribunal decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses or pay its debt referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth exceed the accumulated losses or make repayment of the debts.

If the Tribunal decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 424A, within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 424D in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

The Tribunal may,—

If any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section (3) of section 424A or on its own motion and pass a fresh order in respect of such company under sub-section (3);

if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

**424D. Preparation and sanction of schemes:** - (1) Where an order is made under sub-section (3) of section 424C in relation to any sick industrial company, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of sixty days from the date of such order, having regard to the guidelines framed by the Reserve Bank of India in this behalf, a scheme with respect to such company providing for any one or more of the following measures, namely:—

the financial reconstruction of such industrial company;

the proper management of such industrial company by change in, or take over of, the management of such industrial company;

the amalgamation of—

(i) such industrial company with any other company; or

(ii) any other company with such industrial company (hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), such industrial company, referred to as "transferee-company");

(d) the sale or lease of a part or whole of any industrial undertaking of such industrial company;

(e) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;

(f) such other preventive ameliorative and remedial measures as may be appropriate;

- (g) repayment of debt;
- (h) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (g):

Provided that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension.

(2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely:—

- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee company;
- (b) the transfer to the transferee company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;
- (c) any change in the Board of directors, or the appointment of a new Board of directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made;
- (d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee company for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
- (e) the continuation by or against the sick industrial company or, as the case may be, the transferee company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 424C;
- (f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Tribunal considers necessary in the interests of the reconstruction, revival or rehabilitation or repayment of debts of such sick industrial company or for the maintenance of the business of such industrial company;
- (g) the allotment to the shareholders of the sick industrial company, of shares in such company or, as the case may be, in the transferee company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims—
  - (i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or
  - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
- (h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;
- (i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale;
- (j) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;
- (k) method of sale of assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;
- (l) issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of such sick industrial company;
- (m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3) (a) The scheme prepared by the operating agency shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.

(b) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(c) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies:

Provided that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee company.

(4) The scheme may thereafter be sanctioned, within sixty days by the Tribunal (hereinafter referred to as the sanctioned scheme) and shall come into force on such date as the Tribunal may specify in its behalf.

Provided that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension:

Provided further that different dates may be specified for different provisions of the scheme.

The Tribunal may, on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines including the guidelines framed by the Reserve Bank of India in this behalf in order to prepare afresh scheme providing for such measures as the operating agency may consider necessary.

When afresh scheme is prepared under sub-section (5), the provisions of sub sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

(8) The sanction accorded by the Tribunal under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise), be admitted as evidence.

(9) A copy of the sanctioned scheme referred to in sub-section (8) shall be filed with the Registrar within the prescribed time by the company in respect of which such scheme relates.

On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

The creditors of a sick industrial company may also prepare a scheme for revival or rehabilitation of such sick industrial company and submit the same to the Tribunal for its sanction:

Provided that no scheme shall be submitted by the creditors to the Tribunal unless such scheme has been approved by atleast three-fourth in value of creditors of the sick industrial company.

All the provisions relating to the preparation of scheme by the operating agency and sanction of such scheme by the Tribunal shall, as far as may be, apply to the scheme referred to in sub-section (11).

The scheme referred to in sub-section (11) if sanctioned by the Tribunal shall be binding on all the

creditors and on other concerned.

If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Tribunal may, on the recommendation of the operating agency or otherwise, by order, do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

The Tribunal may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to the sick industrial company as may be specified in the order.

Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Tribunal may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of this Act.

The Tribunal may monitor periodically the implementation of the sanctioned scheme.

**424E. Rehabilitation by giving financial assistance:** - (1) Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to the sick industrial company, the scheme 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 (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.

(2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by the Tribunal, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

(3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Tribunal may, as soon as may be, sanction the scheme and on and from the date of such sanction the scheme shall be binding on all concerned.

(4) On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance, shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(5) The financial institution and the bank designated under sub-section (4) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfillment of the requirement in this regard.

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

**424F. Arrangement for continuing operations, etc., during inquiry:** - (1) At any time before completion of the inquiry under section 424B, the sick industrial company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs, or concessions to such industrial company may make an application to the Tribunal—

- (a) agreeing to an arrangement for continuing the operations of the sick industrial company; or
- (b) suggesting a scheme for the financial reconstruction of the sick industrial company.

(2) The Tribunal may, within sixty days of the receipt of the application under subsection (1), pass such orders thereon as it may deem fit.

**424G. Winding up of sick industrial company:** - (1) Where the Tribunal, after making inquiry



under section 424B and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record its findings and order winding up of the company.

(2) For the purpose of winding up of the sick industrial company, the Tribunal may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of such industrial company and the officer so appointed shall for the purpose of the winding-up of such sick industrial company be deemed to be, and have all the powers of, the official liquidator under this Act.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and pass orders for distribution in accordance with the provisions of section 529A, and other provisions of this Act.

(4) Without prejudice to the other provisions contained in this Act, the winding up of a company shall, as far as may be, concluded within one year from the date of the order made under sub-section (1).

**424H. Operating agency to prepare complete inventory, etc:** - Where for the proper discharge of the functions of the Tribunal under this Part, the circumstances so require, the Tribunal may, through any operating agency, cause to be prepared—

- (a) with respect to a company a complete inventory of-
  - (i) all assets and liabilities of whatever nature;
  - (ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;
- (b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors 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;
- (e) proforma accounts, where no up-to-date audited accounts are available.

**424-I.Direction not to dispose of assets:** - The Tribunal may, if it is of the 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, direct such company not to dispose of, except with the prior approval of the Tribunal, any of its assets during the period of inquiry under section 424B or during the period of preparation or consideration of the scheme under section 424C.

**424J. Power of Tribunal to call for periodic information:** - On receipt of reference under section 424A, the Tribunal may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses or to make repayment of its debts referred to in that section, as the case may be, and the company shall furnish such information.

**424K. Misfeasance proceedings:** - (1) If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick industrial company or its undertaking, including any past or present director, manager or officer or employee of the sick industrial company—

- (a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company; or
- (b) has been guilty of any misfeasance, malfeasance or non-feasance or breach of trust in relation to the sick industrial company,

the Tribunal may, by order, direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person, entitled thereto by way of compensation in respect of the misapplication,

retainer, misfeasance or breach of trust as the Tribunal thinks just, and also report the matter to the Central Government for any other action which that Government may deem fit.

(2) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or alongwith, others liad diverted the funds or other property of such company for any purpose other than a bona fide purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period often years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director (by whatever name called).

(3) No order shall be made by the Tribunal under this section against any person unless such person has been given an opportunity for making his submissions.

(4) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.

**424L. Penalty for certain offences:** - (1) Whoever violates the provisions of this Part or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence to the Tribunal or the Appellate Tribunal, and attempts to tamper the records of reference or appeal filed under this Act, he shall be punishable with simple imprisonment for a term which may extend to three years or shall be liable to fine not exceeding ten lakh rupees.

(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint in writing of an officer of the Tribunal or the Appellate Tribunal or any officer of the Central Government authorised by it or any officer of an operating agency as may be authorised in this behalf by the Tribunal or the Appellate Tribunal, as the case may be.]

## Annexure 9

### Various provisions under IDRA — Powers of Central Government with regard to working of industrial companies

#### **15. Power to cause investigation to be made into scheduled industries or industrial undertakings:** - Where the Central Government is of the opinion that:—

- (a) in respect of any scheduled industry or industrial undertaking or undertakings:—
  - (i) there has been, or is likely to be, a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which, having regard to the economic conditions prevailing, there is no justification, or
  - (ii) there has been, or is likely to be, a marked deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided, or
  - (iii) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification, or
  - (iv) it is necessary to take any action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilised in the industry or the industrial undertaking or undertakings, as the case may be, or
- (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest,

the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose.

**15A. Power to investigate into the affairs of a company in liquidation:** - (1) Where a company, owning an industrial undertaking, is being wound up by or under the supervision of the High Court, and the business of such company is not being continued, the Central Government may, if it is of opinion that it is necessary, in the interests of the general public and, in particular, in the interests of production, supply or distribution of articles or class of articles relatable to the concerned scheduled industry, to investigate into the possibility of running or re-starting the industrial undertaking, make an application to the High Court praying for permission to make, or cause to be made, an investigation into such possibility by such person or body of persons as that Government may appoint for the purpose.

(2) Where an application is made by the Central Government under sub-section (1), the High Court shall notwithstanding anything contained in the Companies Act, 1956, or in any other law for the time being in force, grant the permission prayed for.

#### **16. Powers of Central Government on completion of investigation under section 15:**

- (1) If after making or causing to be made any such investigation as is referred to in section 15 the Central Government is satisfied that action under this section is desirable, it may issue such directions to the industrial undertaking or undertakings concerned as may be appropriate in the circumstances for all or any of the following purposes, namely.—

- (a) regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production;
- (b) requiring the industrial undertaking or undertakings to take such steps as the Central Government may consider necessary to stimulate the development of the industry to which the undertaking or undertakings relates or relate;
- (c) prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production, capacity or economic value;
- (d) controlling the prices, or regulating the distribution, of any article or class of articles which have been the subject-matter of investigation.

(2) Where a case relating to any industry or industrial undertaking or undertakings is under investigation, the Central Government may issue at any time any direction of the nature referred to in sub-section (1) to the industrial undertaking or undertakings concerned, and any such direction shall have effect until it is varied or revoked by the Central Government.

**17. Special provisions for direct control by Central Government in certain cases: -** [Repealed by section 12 of the Industries (Development and Regulation) Amendment Act, 1953 (26 of 1953), with effect from 1 October, 1953].

**18. Power of person or body of persons appointed under section 15 to call for assistance in any investigation: -** (1) The person or body of persons appointed to make any investigation under section 15 or section 15A may choose one or more persons possessing special knowledge of any matter relating to the investigation to assist him or it in holding the investigation.

(2) The person or body of persons so appointed shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which he or it is hereby empowered to administer) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the person or body of persons shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, (5 of 1898) (now see, Code of Criminal Procedure, 1973).

### Chapter IIIA

#### Direct Management or Control of Industrial Undertakings by Central Government in Certain Cases

**18B. Effect of notified order under section 18A: -** (1) On the issue of a notified order under section 18A authorizing the taking over the management of an industrial undertaking.—

- (a) all persons in charge of the management, including persons holding office and managers or directors of the industrial undertaking immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;
- (b) any contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;
- (c) the managing agent if any, appointed under section 18A shall be deemed to have been duly appointed as the managing agent in pursuance of the Indian Companies Act, 1913, (now see, Companies Act, 1956) and the memorandum and articles of association of the industrial undertaking, and the provisions of the said Act and of the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly but no such managing agent shall be removed from office except with previous consent of the Central Government;
- (d) the person or body of persons authorized under section 18A to take over the management shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the industrial undertaking is or appears to be entitled, and all the property and effects of the industrial undertaking shall be deemed to be in the custody of the person or, as the case may be, the body of persons as from the date of notified order; and
- (e) the persons, if any authorized under section 18A to take over the management of an industrial undertaking which is a company shall be for all purposes the directors of the industrial undertaking duly constituted under the Indian Companies Act, 1913 (now see, Companies Act, 1956) and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source.

(2) Subject to the other provisions contained in this Act and to the control of the Central Government, the person or body of persons authorized to take over the management of an industrial undertaking, shall take such steps as may be necessary for the purpose of efficiently managing

the business of the industrial undertaking and shall exercise such other powers and have such other duties as may be prescribed.

(3) Where any person or body of persons has been authorised to exercise any functions of control in relation to industrial undertaking, the undertaking shall be carried on pursuant to any directions given by the authorized person in accordance with the provisions of the notified order, and any person having any functions of management in relation to the undertaking or part thereof shall comply with all such directions.

(4) The person or body of persons authorized under section 18A shall, notwithstanding anything contained in the memorandum or articles of association of the industrial undertaking, exercise his or their functions in accordance with such directions as may be given by the Central Government, so however, that he or they shall not have any power to give any other person any directions under this section inconsistent with the provisions of any Act or instrument determining the functions of the authority carrying on the undertaking except insofar as may be specifically provided by the notified order.

**18C. Contracts in bad faith, etc. may be cancelled or varied:** - Without prejudice to the provisions contained in section 18B, the person or body of persons authorized under section 18A to take over the management of an industrial undertaking may, with the previous approval of the Central Government, make an application to any court having jurisdiction in this behalf for the purpose of cancelling or varying any contract or agreement entered into, at any time before the issue of the notified order under sections 18A, between the industrial undertaking and any other person and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial undertaking, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement, and the contract or agreement shall have effect accordingly.

**18D. No right to compensation for termination of office or contract:** - Notwithstanding anything contained in any law for the time being in force, no person who ceases to hold any office by reason of the provisions contained in clause (a) of section 18B, or whose contract of management is terminated by reason of the provisions contained in clause {b} of that section, shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management:

Provided that nothing contained in this section shall effect the right of any such person to recover from the industrial undertaking moneys recoverable otherwise than by way of such compensation.

**18E. Application of Act 7 of 1913:** - (1) Where the management of an industrial undertaking, being a company as defined in the Indian Companies Act, 1913 (now see, Companies Act, 1956) is taken over by the Central Government, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such undertaking.—

- (a) it shall not be lawful for the shareholder of such undertaking or any other person to nominate or appoint any person to be a director of the undertaking;
- (b) no resolution passed at any meeting of the shareholders of such undertaking shall be given effect to unless approved by the Central Government;
- (c) no proceeding for the winding-up of such undertaking or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of the Central Government.

(2) Subject to the provisions contained in sub-section (1), and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1913, (now see, Companies Act, 1956) shall continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under section 18A.

**18F. Power of Central Government to cancel notified order under Section 18A:** - If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under section ISA has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the industrial undertaking shall vest in the owner of the undertaking.

## Chapter IIIAB

### Power to Provide Relief to Certain Industrial Undertakings

**18FB. Power of Central Government to make certain declarations in relation to industrial undertakings, the management or control of which has been taken over under section 18A, section 18AA or section 18FA:** - (1) The Central Government may, if it is satisfied, in relation to an industrial undertaking or any part thereof, the management or control of which has been taken over under section 18A, whether before or after the commencement of the Industries (Development and Regulation) Amendment Act, 1971 (72 of 1971) or under section 18AA or section 18FA, that it is necessary so to do in the interests of the general public with a view to preventing fall in the volume of production of any scheduled industry, it may, by notified order, declare that—

- (a) all or any of the enactments specified in the Third Schedule shall not apply or shall apply with such adaptations whether by way of modification, addition or omission (which does not, however, affect the policy of the said enactments) to such industrial undertaking, as may be specified in such notified order, or
- (b) the operation of all or any of the contracts, assurances of property, agreements settlements, awards, standing orders or other instruments in force (to which such industrial undertaking or the company owning such undertaking is a party or which may be applicable to such industrial undertaking or company) immediately before the date of issue of such notified order shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified in the notified order.

(2) The notified order made under sub-section (1) shall remain in force, in the first instance, for a period of one year, but the duration of such notified order may be extended from time to time by a further notified order by a period not exceeding one year at a time:

Provided that no such notified order shall, in any case, remain in force.—

- (a) after the expiry of the period for which the management of the industrial undertaking was taken over under section 18A, section 18AA or section 18FA, or
- (b) for more than eight years in the aggregate from the date of issue of the first notified order, whichever is earlier.

(3) Any notified order made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order.

(4) Any remedy for the enforcement of any right, privilege obligation or liability referred to in clause (b) of sub-section (1) and suspended or modified by a notified order made under that sub-section shall, in accordance with the terms of the notified order, remain suspended or modified, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall accordingly remain stayed or be continued subject to such adaptations so, however, that on the notified order ceasing to have effect—

- (a) any right, privilege, obligation or liability so remaining suspended or modified shall become revived and enforceable as if the notified order had never been made;
- (b) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability referred to in clause (b) of sub-section (1), the period during which it or the remedy for the enforcement thereof remained suspended shall be excluded.

## Chapter IIIAC

### Liquidation or Reconstruction of Companies

**18FC. Power of Central Government to call for report on the affairs and working of managed company:** - Where the management or control of an industrial undertaking has been taken over under section 18A, whether before or after the commencement of the Industries (Development and Regulation) Amendment Act, 1971 (72 of 1971), or under section 18AA or section 18FA, the Central Government may, at any time during the continuance of such management or control, call for a report from the authorised person on the affairs and working of the industrial undertaking and in submitting the report the authorised person shall take into account the inventory and the lists of members and creditors prepared under section 18FG.

**18FD. Decision of Central Government in relation to managed company:** - (1) If, on receipt of the report submitted by the authorised person, the Central Government is satisfied,—

- (a) in relation to the company owning the industrial undertaking, which is not being wound-up by the High Court, that the financial condition and other circumstances of the company are such that it is not in a position to meet its current liabilities out of its current assets, that Government may, if it considers necessary or expedient in the interests of the general public so to do, by order, decide that the industrial undertaking should be sold as a running concern as provided in section 18FE and proceedings should simultaneously be started for the winding-up, by the High Court, of the company;
- (b) in relation to the company, owning the industrial undertaking, which is being wound-up by the High Court, that its assets and liabilities are such that in the interests of its creditors and contributories the industrial undertaking should be sold as a running concern as provided in section 18FE, it may, by order, decide accordingly.

(2) Notwithstanding anything contained in sub-section (1), if, on receipt of the report submitted by the authorised person, the Central Government is satisfied that—

- in the interests of the general public, or
- in the interests of the shareholders, or

(a) to secure the proper management of the company owning the industrial undertaking, it is necessary so to do, that Government may, by order, decide to prepare a scheme for the reconstruction of the company owning the industrial undertaking:

Provided that no such scheme shall be prepared in relation to a company which is being wound-up by or under supervision of the High Court, except with the previous permission of that court.

(3) The powers exercisable by the Central Government under section 18F, in relation to an undertaking taken over under section 18 A, shall also be exercisable in relation to an undertaking taken over under section 18AA or section 18FA, but such powers shall not be exercised after the making of an order under sub-section (1) or, as the case may be, under sub-section (2) of this section.

**18FE. Provisions where Government decides to follow the course of action specified in section 18FD (1):** - (1) The provisions hereinafter laid down shall apply where the Central Government decides that the course of action specified in sub-section (1) of section 18FD should be followed, namely:—

- (a) the decision of the Central Government that the course of action specified in clause (a) of sub-section (1) of section 18FD should be followed in relation to a company owning an industrial undertaking, shall be deemed to be a ground specified in section 433 of the Companies Act, 1956 (1 of 1956), on which the company may be wound-up by the High Court;
- (b) the authorised person shall, as soon as may be, after the decision specified in clause (a) of sub-section (1) of section 18FD has been taken by the Central Government, present an application to the High Court for the winding-up of the company owning the industrial undertaking;
- (c) when an application is made by the authorised person under clause (b), for the winding-up, by the High Court, of the company owning the industrial undertaking, the High Court shall order the winding-up of the company and shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), appoint the authorised person as the official liquidator in relation to such undertaking;
- (d) whenever the Central Government decides under clause (b) of sub-section (1) of section 18FD that the industrial undertaking should be sold as a running concern, it shall cause a copy of its decision to be laid before the High Court;

(e) until the industrial undertaking referred to in clause (a) or clause (b) of sub section (1) of section 18FD is sold or purchased in pursuance of this section, the authorised person shall continue to function as the official liquidator in relation to the said undertaking in the winding-up proceedings of the company and thereafter the official liquidator appointed by the Central Government under section 448 of the Companies Act, 1956 (1 of 1956), shall take over and, function as the official liquidator in the said proceedings.

(2) The authorised person shall make a report to the Central Government as to what should be the reserve price for the sale of the industrial undertaking as a running concern.

(3) In making a report under sub-section (2), the authorised person shall have regard to—

(a) the financial condition of the company owning the industrial undertaking on the date on which the order under section 18FD is made—

(i) as disclosed in its books of account.

(ii) as disclosed in its balance sheet and profit and loss account during a period of five years immediately preceding the said date.

(b) the condition and nature of the plant, machinery, instruments and other equipment from the point of view of their suitability for profitable use in the running of the industrial undertaking;

(c) the total amount of liability on account of secured and unsecured debts including overdrafts, if any, drawn on banks, liabilities on account of terminal benefits to the employees and other borrowings and other liabilities of the company; and

(d) other relevant factors including the factor that the industrial undertaking will be sold free from all encumbrances.

(4) Notice of the reserve price determined by the authorised person shall be given in such manner as may be prescribed to the members and creditors of the company owning such industrial undertaking to make representations within a specified time to the Central Government through the authorised person and the Central Government shall, after considering the representations received and the report of the authorised person, determine the reserve price.

(5) The authorised person shall thereafter, with the permission of the High Court, invite tenders from the public in such manner as may be determined by the High Court for the sale of the industrial undertaking as a running concern subject to the condition that it will be sold to the person offering the highest price which shall not be less than the reserve price determined under sub-section (4):

Provided that the High Court shall not refuse to grant such permission if it is satisfied that the company is not in a position to meet its current liabilities out of its current assets.

(6) The industrial undertaking shall be sold to the highest bidder, as a running concern, only if the price offered by him therefor is not less than the reserve price.

(7) Where no offer of price is equal to, or more than, the reserve price, the industrial undertaking shall be purchased by the Central Government at the reserve price.

(8) (a) The amount realised from the sale of the industrial undertaking as a running concern together with any other sum which may be realised from any contributory, purchases or any other person from whom any money is due to the company shall be utilised in accordance with the provisions of the Companies Act, 1956 (1 of 1956), in discharging the liabilities of the company and distributing the balance, if any, amongst the members of the company.

(b) In other respects the provisions of the Companies Act, 1956, (1 of 1956) relating to the winding-up of a company by the High Court shall, as far as may be, apply.

(9) When an industrial undertaking is sold to any person under sub-section (6), or purchased by the Central Government under sub-section (7), there shall be transferred to and vested in the purchaser, free from all encumbrances, all such assets relating to the industrial undertaking as are referred to in sub-clause (0 of clause (a) of section 18FG and existing at the time of the sale or purchase.

**18FF. Provisions where Government decides to follow the course of action specified in section 18FD(2):** - (1) Where in any case the Central Government decides that the course of action specified in sub-section (2) of section 18FD should be followed, it shall, subject to the provisions of that sub-section, cause to be prepared, by the authorised person, a scheme for the reconstruction of the company, owning the industrial undertaking, in accordance with the provisions hereinafter contained and the authorised person shall submit the same for the approval of that Government.



(2) The scheme for the reconstruction of the company owning the industrial undertaking may contain provisions for all or any of the following matters, namely:

- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the company on its reconstruction;
- (b) any change in the board of directors, or the appointment of a new board of directors of the company on its reconstruction and the authority by whom, the manner in which and the other terms, and conditions on which, such change or appointment shall be made and in the case of appointment of a new board of directors or of any directors, the period for which such appointment shall be made;
- (c) the vesting of controlling interest in the reconstructed company, in the Central Government either by the appointment of additional directors or by the allotment of additional shares;
- (d) the alteration of the memorandum and articles of association of the company, on its reconstruction, to give effect to such reconstruction;
- (e) subject to the provisions of the scheme, the continuation by or against the company, on its reconstruction, of any action or proceedings pending against the company immediately before the date of its reconstruction;
- (f) the reduction of the interest or rights which the members and creditors have in or against the company before its reconstruction to such extent as the Central Government may consider necessary in the interests of the general public or in the interests of the members and creditors or for the maintenance of the business of the company:

Provided that nothing contained in this clause shall be deemed to authorise the reduction of the interest or rights of any creditor (including Government) in respect of any loan or advance made by that creditor to the company after the date on which the management of the industrial undertaking of the company has been taken over under section 18A, section 18AA, or section 18FA;

- (g) the payment in cash or otherwise to the creditors in full satisfaction of their claim—
  - (i) in respect of their interest or rights in or against the company before its reconstruction; or
  - (ii) where their interest or right in or against the company has or have been reduced under clause (/), in respect of such interest, or rights as so reduced;
- (h) the allotment to the members of the company for the shares held by them therein before its reconstruction [whether their interest in such shares has been reduced under clause (/) or not], of shares in the company on its reconstruction and where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—
  - (i) in respect of their interest in shares in the company before its reconstruction; or
  - (ii) where such interest has been reduced under clause (/), in respect of their interest in shares as so reduced;
- (i) the offer by the Central Government to acquire by negotiations with the members of the company their respective shares on payment in cash to those members who may volunteer to sell their shares to the Central Government in full satisfaction of their claim—
  - (1) in respect of their interest in shares in the company before its reconstruction; or
  - (2) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;
- (j) the conversion of any debentures issued by the company after the taking over of the management of the company under section 18A or section 18AA or section 18FA or of any loans obtained by the company after that date or of any part of such debentures or loans, into shares in the company and the allotment of those shares to such debenture-holders or creditors, as the case may be;
- (k) the increase of the capital of the company by the issue of new shares and the allotment of such new shares to the Central Government;
- (l) the continuance of the services of such of the employees of the company as the Central Government may specify in the scheme in the company itself, on its reconstruction, on such terms and conditions as the Central Government thinks fit;
- (m) notwithstanding anything contained in clause (I), where any of the employees of the company whose services have been continued under clause (I) have, by notice in writing given to the company at any time before the expiry of one month next following the date on which the

scheme is sanctioned by the High Court, intimated their intention of not becoming employees of the company, on its reconstruction, the payment to such employees and to other employees whose services have not been continued on the reconstruction of the company, of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, (14 of 1947) and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the company before the date of its reconstruction;

- (n) any other terms and conditions for the reconstruction of the company;
  - (o) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction of the company shall be fully and effectively carried out.
- (3) (a) A copy of the scheme, as approved by the Central Government shall be sent in draft to the company, to the registered trade unions, if any, of which the employees of the company are members and to the creditors thereof for suggestions and objections, if any, within such period as the Central Government may specify for this purpose.
- (b) The Central Government may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the company, from the registered trade unions of which the employees of the company are members and from any members or creditors of the company.

(4) The scheme shall thereafter be placed before the High Court for its sanction and the High Court, if satisfied that the scheme is in the interests of the general public or in the interests of the shareholders, or for securing proper management of the company and that the scheme is designed to be fair and reasonable to the members and creditors of the company, may, after giving a reasonable opportunity to the company, and to its members and creditors of showing cause, sanction the scheme without any modification or with such modifications as it may consider necessary.

(5) The scheme, as so sanctioned by the High Court, shall come into force on such date as that Court may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

The sanction accorded by the High Court under sub-section (4) shall be conclusive evidence that all the requirements of this section relating to the reconstruction of the company have been complied with, and a copy of the sanctioned scheme certified by the High Court to be a true copy thereof, shall, in all legal proceedings (whether original or in appeal or otherwise), be admitted as evidence to the same extent as the original scheme.

On and from the date of coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the company and also on all the members and other creditors and employees of the company and on any other person having any right or liability in relation to the company.

(8) On the coming into operation of the scheme or any provision thereof, the authorised person shall cease to function, and the management of the reconstructed company shall be assumed by the board of directors as provided in the scheme.

(9) Copies of the scheme shall be laid before each House of Parliament, as soon as may be, after the scheme has been sanctioned by the Court.

(10) The provisions of this section and of any scheme made thereunder shall have effect notwithstanding anything contained in sections 391 to 394A (both inclusive) of the Companies Act, 1956 (1 of 1956).

**18FG. Preparation of inventory of assets, liabilities and list of members and creditors of managed company:** - For the purposes of this Act, the authorised person shall, as soon as may be, after taking over the management of the industrial undertaking of a company under section 18A or section 18AA or section 18FA,—

- (a) prepare a complete inventory of—
  - (i) all properties, movable and immovable, including lands, buildings, works, workshops, stores, instruments, plant, machinery, automobiles and other vehicles, stocks of materials in the course of production, storage or transit raw materials, cash balances, cash in hand, deposits in bank or with any other person or body or on loan, reserve funds, investments and book debts and all other rights and interests arising out of such property as were immediately

before the date of taking over of the industrial undertaking, in the ownership, possession, power or control of the company, whether within or without India; and all books of account, registers, maps, plans, sections, drawings, records, documents or titles of ownership of property, and all other documents of whatever nature relating thereto; and

- (ii) all borrowings, liabilities and obligations of whatever kind of the company including liability on account of terminal benefits to its employees subsisting immediately before the said date;
- (b) prepare separately a list of members, and a list of creditors, of such company as on the date of taking over of the management of the industrial undertaking showing separately in the list of creditors the secured creditors and the unsecured creditors:

Provided that where the management of the industrial undertaking of a company has been taken over under the said section 18A before the commencement of the Industries (Development and Regulation) Amendment Act, 1971 (72 of 1971), the aforesaid functions shall be performed by the authorised person within six month from such commencement.

**18FH. Stay of suits and other proceedings:** - In the case of a company in respect of which an order under section 18FD has been made, no suit or other legal proceeding shall be instituted or continued against the company except with the previous permission of the Central Government or any officer or authority authorised by that Government in this behalf.

## Annexure 10

### Board for Industrial and Financial Reconstruction Regulations, 1987<sup>1</sup>

#### Chapter I

#### General

**1. Short title and commencement:** - (1) These regulations may be called, the **Board for Industrial and Financial Reconstruction Regulations, 1987**.

(2) They shall come into force on the date of their publication in the Official Gazette.<sup>2</sup>

**2. Interpretation:** - (1) The General Clauses Act, 1897 (10 of 1897) shall apply to the interpretation of these regulations.

(2) Words and expressions used but not defined in these regulations, in the Act, in the Companies Act, 1956 (1 of 1956) and in the Industries (Development and Regulation) Act, 1951 (65 of 1951) shall have the meanings, if any, respectively assigned to them in the General Clauses Act, 1897 (10 of 1897).

**3. Definitions:** - In these regulations, unless the context otherwise requires.—

- (a) "Act" means the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4 and includes, where the context so requires, a Bench exercising the jurisdiction, powers and authority of the Board;
- (c) "Bench" means a Bench of the Board constituted under sub-section (2) of section 12;
- (d) "Chairman" means the Chairman of the Board appointed under section 4;
- (e) "Informant" means the person making a reference to the Board on behalf of the sick industrial company under sub-section (1) of section 15 or on behalf of the Central Government, the Reserve Bank, a State Government, a public financial institution, a State level institution, or as the case may be, a scheduled bank under sub-section (2) of section 15<sup>3</sup>[and a person making a report to the Board under sub-section (1) of section 23A];
- (f) "Member" means a Member of the Board;
- (g) "Operating agency" means any public financial institution, <sup>4</sup>[state level institution, scheduled bank, or any other person] as may be specified by general or special order, as its agency, by the Board;
- (h) "Persons interested" includes a sick industrial company, a transferee <sup>5</sup>[\* \* \*] company within the meaning of clause (c) of sub-section (1) of section 18, any other <sup>6</sup>[\* \* \*] company concerned in the amalgamation, any shareholder, any creditor or employee of such <sup>7</sup>[\* \* \*] companies;

#### **Footnotes:**

- 1. Vide Notification No. 2(4)/BIFR-86, dated 27<sup>th</sup> April, 1987.
- 2. Published in Gazette of India, Extraordinary, No. 13 dated 27-4-87 part III, Section 4.
- 3. Inserted by Notification dated 24 March, 1994.
- 4. Ibid.
- 5. The word "industrial" omitted vide Notification dated 24 March, 1994.
- 6. The word "industrial" omitted vide Notification dated 24<sup>th</sup> March, 1994.
- 7. Ibid.

- (i) "Registrar" means an officer appointed by the Chairman as the Registrar and includes any officer to whom powers and functions of the Registrar have been entrusted by the Secretary and such

other person who is for the time being discharging the functions of the Registrar;

- (j) Reference to "Court", while applying the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall be understood to refer to the Board and similarly reference to "Plaintiff or "Defendant" shall be understood to refer to appropriate parties before the Board;
- (k) Reference to "suits or petitions", while applying the provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall be understood to refer to appropriate proceedings under the Act;
- (l) "Secretary" means a Secretary to the Board appointed by the Central Government under sub-section (1) of section 8.
- (m) "Section" means a section of the Act.

**4. Board's Office:** - (1) The Central Office of the Board shall be at Delhi.

(2) The Central Office of the Board shall be open at such times, as the Chairman may direct.

**5. Language of the Board:** - The proceedings of the Board shall be conducted in English or Hindi.

**6.** No reference, application, representation, document or other matter contained in any language other than English or Hindi shall be accepted by the Board, unless the same is accompanied by a true translation thereof in English or Hindi.

**7. Filing of references, letters, etc:** - All references, letters, replies, rejoinders, documents or papers required to be filed before or submitted to the Board shall be written, or as the case may be, typewritten, cyclostyled or printed neatly, and legibly on one side of the foolscap size paper, in double space, provided that true copies of documents prepared by any other mechanical or chemical process, including photocopying may be filed or submitted.

**8. Holiday:** - Where the last day for doing any act falls on a day on which the office of the Board is closed and by reason thereof, the act cannot be done on that day, it may be done on the next day on which that office is open.

**9. Adjournments:** - The Board may, if sufficient cause is shown, at any stage of any inquiry or proceeding, grant time to the parties or to any of them and may from time to time adjourn the inquiry or hearing of the proceedings.

**10. Ex-parte proceedings:** - Where on the day fixed for hearing, any of the parties does not appear, the proceedings, unless adjourned by the Board, shall continue in the absence of the party not so appearing.

**11. Extension or abridgement of time:** - Subject to the provisions of the Act, the time prescribed by these regulations or by an order of the Board, for doing any act:

- (a) may be extended by an order of the Board (whether it has already expired or not) or;
- (b) may be abridged by an order of the Board, after giving notice to the concerned parties.

**12. Effect of non-compliance and application of Code of Civil Procedure:** - (1) Failure to comply with any requirement of these regulations shall not invalidate the proceeding merely by reason of such failure, unless the Board is of the view that such failure has resulted in miscarriage of justice.

(2) Subject to the provisions of sub-section (3) of section 13, where no specific provision has been made in these regulations, the Code of Civil Procedure, 1908 (5 of 1908), to the extent as may be deemed expedient by the Board, shall apply to the proceeding.

**13. Service of notices and other documents:** - (1) Every notice or other document required to be served on or delivered to any person may be sent by registered post addressed to the person or his agent empowered to accept service at the address furnished by him for service or at the place where the person or his agent ordinarily resides or carries on business or personally works for gain, and every notice or other document required to be delivered to or filed with the Secretary, may be delivered at the office of the Board or sent by registered post to the Secretary at the office of the Board. An acknowledgment purporting to be signed by the person or the agent or an endorsement by a postal employee that the person or the agent has refused to take delivery may be deemed by the Board to be prima facie proof of service and section 27 of the General Clauses Act, 1897 (10 of 1897) shall apply.

(2) Any notice or other document required to be served on or delivered to a company may be sent to the Chairman, Managing Director, Secretary, Manager or other principal officer of the company at the registered office of the company, by registered post or by leaving it at its registered office.

(3) Every notice or other document required to be served on the Central Government or, as the case may be, the State Government, shall be addressed and sent to the Secretary of the appropriate Ministry or Department and shall be served in the manner specified in sub-regulation (1) of this regulation.

**14. Meetings of the Board:** - (1) The Board may meet at such times and places, for conduct of its business, as it may think fit provided that in the absence of a decision of the Board to the contrary, the Chairman shall decide the time and place for the sittings of the Board.

(2) A minimum number of three Members personally present at a meeting of the Board shall be the quorum for that meeting of the Board.

(3) In the case of difference of opinion among the Members of the Board, the opinion of the majority of the Members present at the meeting shall prevail and orders of the Board shall be expressed in terms of the views of the majority. Any Member dissenting from the majority view may record his reasons separately. If the Members are evenly divided in their opinions, the Chairman shall have a second or casting vote.

(4) The proceedings of each meeting of the Board shall be signed and dated by the Chairman, or in his absence, by the Member presiding over the meeting as soon as may be, after the conclusion of the meeting and the proceedings so signed shall be conclusive evidence of the proceedings recorded therein.

**Explanation:** - This regulation shall not apply to a Bench, sitting as a Bench.

<sup>1</sup>[(5) The <sup>2</sup>[chairman] may, by general or special order, direct that any matter which is required to be considered by it may be disposed of by circulation, instead of at a meeting of the Board.]

**15. Authentication and communication of orders of the Board:** - (1) All orders and decisions of the Board shall be authenticated by the signature of the Chairman or <sup>3</sup>[member concerned], or the Secretary, or any other officer empowered in this behalf by the Chairman, and bear the official seal of the Board.

(2) Every order <sup>4</sup>[or decision] of the Board shall be <sup>4</sup>[communicated] under the signature of the Secretary or any other officer of the Board duly empowered by the Secretary, in this behalf.

**16. Benches:** - (1) Each Bench shall consist of not less than two Members. The Chairman of the Board shall by order constitute such number of Benches, as he may deem fit. <sup>5</sup>[He shall, from time to time, assign] the cases to be dealt with by the respective Benches, provided that <sup>6</sup>[he] may constitute, as and when deemed fit, a Bench for dealing with a particular case or batch of cases. The Chairman may also transfer a case from one Bench to another:

<sup>7</sup>[Provided that if at any stage of proceedings in a case pending before a Bench, it appears to the Members of the said Bench, that having regard to the importance, complexity, or other relevant considerations thereof, that case should be heard and dealt with by a larger Bench, the matter may be referred by the concerned Bench to the Chairman for constitution of such a Bench, and the Bench reconstituted as deemed fit by the Chairman, shall thereafter hear and deal with that case.]

(2) The places, at which the Benches shall sit, shall be such as the Chairman may, by order, specify.

(3) Subject to the other provisions of these regulations, every order made or act done by a Bench in exercise of its powers shall be deemed to be the order or act, as the case may be, of the Board.

(4) There shall be a separate official seal indicating that it is the seal of a Bench of the Board and such Bench shall be provided with a seal which shall also indicate the Bench to which it relates.

(5) Each such seal shall be kept under the custody of the Registrar and shall be used under his directions.

(6) Every order, communication or notice issued or certified copy granted by any Bench shall be stamped with the seal of the Bench and shall be authenticated by the Registrar.

(7) The Registrar shall have the custody of the records of the Bench.

(8) The Registrar shall discharge such other functions, as are entrusted to him by the Secretary.

**Footnotes:**

1. Inserted by the Board for Industrial and Financial Reconstruction (Second Amendment) Regulations, 1993, w.e.f. 28 January, 1993.
2. Substituted for "Board" vide Notification dated 24 March, 1994.
3. Substituted for "any other Member" by Notification No. 10/2002/SD/BIFR, dated 13-8-2002.
4. Inserted, *ibid*.
5. Substituted for 'The order, so made, shall specify' by the Board for Industrial and Financial Reconstruction (Amendment) Regulations, 1987.
6. Substituted for 'the Chairman', *ibid*.
7. Inserted by the Board for Industrial and Financial Reconstruction (First Amendment) Regulations, 1995, w.e.f. 12 June, 1995.

**17. Publication of orders:** - Such of the orders of the Board, as are deemed fit for publication in any authoritative report or the Press, may be released for such publication on such terms and conditions, as the Chairman may specify.

**18. Power to remove difficulties:** - If any difficulty arises in giving effect to any of the provisions of these regulations, the Board may, by general or special order, do anything, not being inconsistent with the provisions of the Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

## **Chapter II**

### **References under Section 15**

- 19.** <sup>1</sup>[(1) Every reference to the Board under sub-section (1) of section 15 shall be made—
- (i) in Form A in respect of an industrial company other than a Government company;
  - (ii) in Form AA in respect of a Government company,]

and shall be accompanied by five further copies thereof alongwith four copies each of all the enclosures thereto.

<sup>2</sup>[(2) Every reference to the Board under sub-section (2) of section 15 shall be made—

- (i) in Form B in respect of an industrial company other than a Government company;
- (ii) in Form BB in respect of a Government company,]

and shall be accompanied by five further copies thereof alongwith four copies each of all the enclosures thereto.

(3) A reference may be filed, either by delivering it at the office of the Board or by sending it by registered post.

<sup>3</sup> [(4) On receipt of a reference, the Secretary, or as the case may be, the Registrar shall cause to be endorsed on each reference, the date on which it is filed or received in the office of the Board.]

**Footnotes:**

1. Substituted for

"(1) Every reference to the Board under sub-section (1) of section 15 shall be made in Form 'A' and shall be accompanied by five further copies thereof along with four copies each of all the enclosures thereof." by the Board for Industrial and Financial Reconstruction (Amendment) Regulations, 1992, w.e.f. 6 March, 1992.

2. Substituted for

"(1) Every reference to the Board under sub-section (2) of section 15 shall be made in Form 'B' and shall be accompanied by five further copies thereof along with four copies each of all the enclosures thereto." by the Board for Industrial and Financial Reconstruction (Amendment) Regulations, 1992, w.e.f. 6 March, 1992.

3. Substituted for

"On receipt of a reference, in the office of the Board, the date on which it is filed or received in the office of the Board alongwith the endorsement "received subject to verification that the reference is in order" shall be stamped." by notification dated 23 June, 1994.

<sup>1</sup>[(5) If on scrutiny, the reference is found to be in order it shall be registered, assigned a serial number and submitted to the Chairman for assigning it to a Bench. Simultaneously, remaining information/documents required, if any, shall be called for from the informant.]

<sup>2</sup>[(6) If on scrutiny, the reference is not found to be in order, the Secretary or as the case may be, the Registrar may by order decline to register the reference and shall communicate the same to the informant.]

<sup>3</sup> [(7) A reference declined to be registered shall be deemed not to have been made.]

(8) (1) An appeal against the order of the Registrar declining to register a reference shall be made by the aggrieved person to the Secretary within fifteen days of communication to him of such an order.

(2) An appeal against the order of the Secretary declining to register a reference shall be made by the aggrieved person to the Chairman within fifteen days of communication to him of such an order and the Chairman's decision thereon shall be final.

### Chapter III

#### General Provisions Regarding Enquiries

**20.** (1) The Board or, as the case may be, the operating agency, may call for such additional information as it considers necessary in connection with any enquiry or investigations under the Act or any of these regulations from the informant or any authority, public financial or other institution, or any other person.

(2) The Board may address communications to the informant, to the sick industrial company, if it is not the informant, the concerned Government Department, the operating agency and such other authorities, institutions or persons as considered appropriate, calling for such other particulars and information, as in the opinion of the Board, may be relevant to the matter under consideration by the Board. The replies to such communications of the Board shall be submitted by the addressees, in quadruplicate.

(3) The Board may call the informant, the Board of Directors of the industrial company, or their authorised representative, if any, any Government official or any other person for such discussion, as it may consider necessary in connection with the matters under consideration.

(4) The Board may visit any establishment, including that of the informant, as it may consider necessary and hold discussions with the representative of the informant, if in the opinion of the Board, such visits and discussions may be expedient in the interest of proper determination of matters under consideration.

#### **Footnotes:**

1. Substituted for

"(5) If on scrutiny, the reference is found to be defective and the defect noticed is formal in character, the Secretary, or as the case may be, the Registrar, may allow the concerned informant to rectify the defect, within such time, as he may deem reasonable." by notification dated 24 March, 1994.



2. Substituted for

"(6) If, on scrutiny, the reference is found to be in order, it shall be duly registered, assigned a serial number and put up before the concerned Bench." by notification dated 24 March, 1994.

3. Substituted for

"(7) If the informant fails to rectify the defect within the time allowed under sub-regulation (5), the Secretary, or as the case may be, the Registrar, may, by order decline to register the reference. The reference, so declined to be registered, shall be deemed not to have been made." by notification dated 24 March, 1994.

The Board may depute such of its officers and staff to such places to meet such persons, as it may deem appropriate, for investigating and discussing matters under its consideration and call for reports from them.

The informant, the concerned industrial company when it is not the informant, and other interested persons, who have sent their comments or suggestions to the Board, and expressed the desire that they would like to be heard and whom the Board may determine to hear shall be intimated about the date of hearing. The persons who have sent their comments or suggestions and intimation that they would like to participate in the hearing shall file with the Board, not less than 10 days before the date of hearing, a written statement containing the gist of the submissions that they would like to make at the hearing.

Where there are a large number of persons having common interest, the persons having common interest may select one or more persons for appearing in the proceedings on their behalf or for their benefit:

Provided that intimation in this regard shall be sent to the Board within time prescribed in sub-regulation (1) of this regulation.

(8) The Board shall hear the persons to whom an intimation of hearing has been sent and present themselves for hearing.

(9) In the proceedings before the Board, the informant or the operating agency shall be entitled to be represented by such officer or officers as it may depute. The other persons concerned may either be heard by themselves or be represented by a legal practitioner, specially authorised by them to act on their behalf.

## Chapter IV

### Inquiry under Section 16

**21.** Upon a reference with respect to an industrial company under section 15 or upon information received with respect to such company, or upon its own knowledge as to the financial condition of the company, the Board may—

- (a) itself make such inquiry, as it may deem fit, for determining whether the industrial company has become a sick industrial company; or
- (b) if it deems necessary or expedient so to do, for the expeditious disposal of inquiry mentioned at (a) above, direct by an order, an operating agency, to be specified in the order, to enquire into and make a report with respect to such matters, as may be specified in the order:

Provided that reasonable opportunity for making submissions shall be given by the Board to the informant, and to the concerned industrial company, if it is not the informant, before deciding whether the said company has become a sick industrial company or not.

**22.** Where the Board, after considering the report submitted by the operating agency and report thereon, if any, of the Secretary submitted in pursuance of an order made by the Board or the Chairman or in accordance with the rules made under the Act, is of the opinion that the report of the operating agency is not complete with respect to any of the matters referred to it for inquiry by the Board, the Board may direct the operating agency to make such further inquiry, as it may deem necessary and submit a further report to the Board.

**23.** The operating agency shall complete its inquiry, as expeditiously as possible, and make endeavour so to do, within sixty days of the commencement of the inquiry.

**24.** Where the Board after completion of its inquiry or after considering the report, or as the case may be, the further report of the operating agency, is satisfied that no case exists for coming to the conclusion that the industrial company has become a sick industrial company, it shall drop further proceedings in the reference.

**25.** Where the Board after completing its enquiry, after considering the report or as the case may be, the further report of the operating agency is satisfied that industrial company has become a sick industrial company, it shall hold further proceedings in accordance with the procedure prescribed in these regulations.

## **Chapter V**

### **Proceedings under Section 17**

**26.** The Board shall after giving to the informant and to the sick industrial company, if it is not the informant, a reasonable opportunity of making their submissions, pass such order as deemed fit under sub-sections (1), (2), (3) or (4) of section 17.

## **Chapter VI**

### **Procedure for Preparation and Sanction of Scheme under Section 18**

**27.** On receipt of an order of the Board in terms of sub-section (3) of section 17 of the Act, in relation to a sick industrial company, the specified operating agency shall prepare a scheme having regard to the guidelines specified in the said order, within the time prescribed under sub-section (1) and in terms of sub-sections (1) and (2) of section 18:

Provided that the Board may at the request of the concerned operating agency and on sufficient cause being shown, suitably extend the time for submission of the scheme.

**28.** The Board, after considering the scheme prepared by the operating agency and report thereon if any, of the secretary, submitted in pursuance of an order made by the Board, on the point as to whether the scheme has been prepared in accordance with the guidelines specified in the order of the Board made under sub-section (3) of section 17 shall prepare a draft scheme and cause a copy of the same to be sent to the sick industrial company and the operating agency:

Provided that in case the said scheme envisages amalgamation of the sick industrial company with another <sup>1</sup>[\* \* \*] company <sup>2</sup>[or vice-versa], a copy thereof, shall also be sent to the transferee <sup>3</sup>[\* \* \*] company and any other <sup>4</sup>[\* \* \*] company concerned in the amalgamation, for suggestions and objections, if any. The suggestions and objections, if any, shall be furnished to the Board within such time, as may be specified by the Board:

Provided that the Board may, at the request of the concerned party and on sufficient cause being shown, suitably extend time for submission of suggestions and objections.

**29.** The Board shall publish or cause to be published short particulars concerning the draft scheme, by way of notification, in such daily newspapers and periodicals, as it may consider necessary, inviting suggestions and objections regarding the draft scheme, within

#### **Footnotes:**

1. The word "industrial" omitted by Notification dated 24 March, 1994.
2. Inserted by Notification dated 24 March, 1994.
3. The word "industrial" omitted by Notification dated 24 March, 1994.
4. Ibid.

such time, as may be mentioned in the notification, from the shareholders, creditors and employees of the sick industrial company, transferee <sup>1</sup>[\*\*\*] company as well as any other <sup>2</sup>[\* \* \*] company concerned in the amalgamation.

**30.** The Board shall consider the suggestions and objections received from the sick industrial company, the operating agency or, as the case may be, from the transferee <sup>3</sup>[\* \* \*] company and any other <sup>4</sup>[\* \* \*] company concerned in amalgamation and from any shareholder, creditor or employee of such <sup>5</sup>[\* \* \*] companies.

**31.** Where the draft scheme envisages amalgamation <sup>6</sup>[\* \* \*], the Board shall not proceed with the scheme, unless the board of directors of the <sup>7</sup> [company other than the sick industrial company] shall have placed the draft scheme before the transferee industrial company in the General Meeting of its shareholders and the shareholders shall have approved the draft scheme, with or without modification, by a special resolution.

**32.** The Board may, thereafter, by order in writing sanction the scheme, with or without any modification, in terms of sub-section (4) of section 18.

**33.** For modification of the sanctioned scheme or preparation of a fresh scheme in pursuance of the order of the board under sub-section (5) of section 18, the procedure prescribed in regulations 28, 29, 30, 31 and 32 of these regulations shall, as far as may be, be followed, as it applies to a scheme prepared under regulation 28.

## **Chapter VII**

### **Procedure for Sanctioning Schemes under Section 19**

**34.** (1) A scheme under sub-section (1) of section 19, which provides for financial assistance to the sick industrial company by way of loans, advances, guarantees, reliefs, concessions or sacrifices from the Central Government, a State Government, any scheduled or other Bank, a public financial institution, State level institution, or any institution or other authority shall be sanctioned by the Board, with the consent of the Government, bank, institutions or other authorities called upon to provide loans, advances, guarantees, reliefs, concessions or sacrifices.

(2) The Board shall cause the scheme to be circulated to every person required by the scheme, to provide financial assistance by way of loans, advances, guarantees, reliefs, concessions or sacrifices for giving his consent, latest, within a period of sixty days from the date of such circulation <sup>8</sup>[, or within such further period not exceeding 60 days as may be allowed by the Board. If no such consent is received, it shall be deemed to have been given.]

(3) Upon receipt of consent from every person <sup>9</sup>[or when consents deemed to have been given] in terms of sub-regulation (2), the Board may, as soon as may be, sanction the scheme, which shall be binding on all concerned on and from the date of such sanction.

#### **Footnotes:**

1. The word "industrial" omitted by Notification dated 24 March, 1994.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. The word "of the sick industrial company with another industrial company" omitted by Notification dated 24 March, 1994.
7. Substituted for the words "transferee industrial company" omitted by Notification dated 24 March, 1994.
8. Inserted by Notification dated 24 March, 1994.
9. Ibid.

**35.** Where consent under sub-section (2) of section 19 is not given by any person required by the scheme to provide loans, advances, guarantees, reliefs, concessions or sacrifices, with respect to the sick industrial company, the Board may adopt such other measures, including winding-up of the industrial company, as it may deem fit.

## **Chapter VIII**

### **Report under Section 23 <sup>1</sup>[And 23A]**

<sup>2</sup>[36. (1) Industrial companies required under section 23 to report the erosion of their net worth shall do so in the following manner:—

- (i) Companies other than a Government company in Form 'C';
- (ii) Government company in Form 'CC'.]

<sup>3</sup>[(2) Reports of erosion of net worth within the meaning of sub-section (1) of section 23A shall be made in Form 'D' in respect of an industrial company other than a Government company and in Form 'DD' in respect of a Government company and shall be accompanied by five further copies thereof.

(3) On receipt of a report in Form 'D' or, as the case may be, in Form 'DD' the same shall be submitted through the Secretary, to the Chairman for assigning the case to a Bench for dealing with the same in accordance with the provisions of the Act.]

## **Chapter IX**

### **Restriction on Disclosure of Information**

**37.** No member, officer or employee of the Board shall disclose any information obtained, or received by him or otherwise in his possession, being an information relating to the affairs of the Board or relating to an industrial company or industrial undertaking concerned in any proceedings before the Board, except to persons legally entitled thereto.

**38. Inspection and copies of documents, etc:** - (1) A party to any proceeding before the Board may, subject to regulation 37 of these regulations, on an application made by him in that behalf addressed to the Secretary, be allowed, during office hours, to inspect or get copies of records, including documents in the proceedings, on payment of the fees and charges, as prescribed by these regulations.

(2) The Secretary may, subject to the provisions of regulation 37, on the application of a person, who is not a party to the proceedings on good cause shown, allow such inspection or to obtain such copies, as are mentioned in the last preceding sub-regulation, on payment of the fees/charges, as prescribed by these regulations:

<sup>4</sup>[Provided that such inspection or furnishing of copies of documents may be allowed without any fees/charges, to reputed research institutions, bona fide scholars or academicians, subject to such restrictions and conditions as may be deemed necessary to ensure proper use of the information/material or the copies, as the case may be, so obtained, or to prevent their misuse.]

#### **Footnotes:**

1. Inserted by Notification dated 24 March, 1994.

2. Substituted for

"36. Every industrial company required under section 23 to report the erosion of its net worth shall do so in Form 'C'." by the Board for Industrial and Financial Reconstruction (Amendment) Regulations, 1992, w.e.f. 6 March, 1992.

3. Inserted by Notification dated 24 March, 1994.

4. Inserted by the Board for Industrial and Financial Reconstruction (First Amendment) Regulations, 1995, w.e.f. 12 June, 1995.

An inspection shall be allowed only in the presence of an officer of the Board and copies of documents, etc. shall not be allowed to be taken, but notes of inspection may be taken.

Copying charges shall be worked out at the rate of <sup>1</sup>[Rs. 10] for a folio or part thereof, material not involving typing of statements and figures and at the rate of <sup>2</sup>[Rs. 20] per folio or part thereof, involving typing of statements or figures. Fees for inspection shall be worked out at the rate of <sup>3</sup>[Rs. 100] per hour of inspection.

Every duly authorised officer of the Central Government, a State Government or a person duly authorised by a public financial institution, State level institution, the Reserve Bank or, as the case may be, a scheduled bank shall be entitled, on authorisation by the Secretary, at all reasonable times, to

inspect the file of the proceedings before the Board and to take copies or extracts from any document therein and to be furnished such copies or extracts.

<sup>4</sup> [(6) Secretary may delegate powers to allow inspection and supply copies of records, including documents referred to in sub-regulations (1) and (2) of these regulations to the Registrar.]

**39. Investigations, etc. by officers of the Board:** - The Board may, at any time, direct the Secretary, or any one or more of its officers to study, investigate and report or furnish information with respect to any matters under consideration by the Board in relation to their functions under the Act. The Board may, for this purpose give such other directions, as it may deem fit, and specify time within which the report is to be submitted or information furnished. If any such report or information appears to the Board to be insufficient or inadequate, the Board may give directions for giving a further report of information:

Provided that, if the report or information so obtained or any part thereof is brought on record of any inquiry and is proposed to be relied upon by the Board, for forming its opinion or view, the party or parties to the enquiry, shall be given a reasonable opportunity for making his or their submissions with respect thereto.

**40. Assistance to the Board:** - The Board may, at any time, take the assistance of public financial institutions, banks, or other institutions, consultants, experts, chartered accountants, surveyors and such other technical and professional persons, as it may consider necessary and ask them to submit report or reports or furnish any information:

Provided that, if the report or information so obtained or any part thereof is brought on record of any inquiry and is proposed to be relied upon by the Board for forming its opinion Or view, the party or parties to the inquiry shall be given a reasonable opportunity of making his or their submissions with respect thereto.

**Footnotes:**

1. The words and figures "Rs. 5", "Rs. 10" and "Rs. 20" substituted respectively by the Board for Industrial and Financial Reconstruction (Second Amendment) Regulations, 1992, w.e.f. 19 July, 1992.
2. The words and figures "Rs. 5", "Rs. 10" and "Rs. 20" substituted respectively by the Board for Industrial and Financial Reconstruction (Second Amendment) Regulations, 1992, w.e.f. 19 July, 1992.
3. Ibid.
4. Inserted by the Board for Industrial and Financial Reconstruction (First Amendment) Regulations, 1993, w.e.f. 28 January, 1993.

**41.** Nothing in these regulations shall bar the Board from adopting, in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these regulations, if the Board, in view of the special circumstances of a case or a class of cases and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a case or class of cases.

## **Annexure 11**

### **Board for Industrial and Financial Reconstruction (Financial and Administrative Powers) Rules, 1987<sup>1</sup>**

In exercise of the powers conferred by section 36 read with sub-section (1) of section 8, of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Economic Affairs No. GSR 68(E), dated the 28th January, 1987, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely.—

**1. Short title and commencement:** - (1) These rules may be called the **Board for Industrial and Financial Reconstruction (Financial and Administrative Powers) Rules, 1987.**

(2) They shall come into force on the date of their publication in the Official Gazette.<sup>2</sup>

**2. Definitions:** - In these rules, unless the context otherwise requires,—

- (a) "Act" means the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (b) "Board" means the Board for Industrial and Financial Reconstruction;
- (c) "Chairman" means the Chairman of the Board;
- (d) "Secretary" means the Secretary of the Board.

**3. Powers of the Chairman and Secretary:** - (1) The Chairman shall have the same powers as are conferred on a Department of the Central Government in respect of the Delegation of the Financial Powers Rules, 1978, the General Financial Rules, 1963, the Fundamental and Supplementary Rules, the Central Civil Services (Leave) Rules, 1972, the Central Civil Services (Joining Time) Rules, 1979, the Civil Services (Pension) Rules, 1972, the Central Civil Services (Conduct) Rules, 1964, the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the General Provident Fund (Central Services) Rules, 1960, as amended from time to time.

(2) The Secretary shall have the same powers as are conferred on a head of the department in respect of the Delegation of the Financial Powers Rules, 1978, the General Financial Rules, 1963, the Fundamental and Supplementary Rules, the Central Civil Services (Leave) Rules, 1972, the Central Civil Services (Joining Time) Rules, 1979, the Civil Services (Pension) Rules, 1972, the Central Civil Services (Conduct) Rules, 1964, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the General Provident Fund (Central Services) Rules, 1960, as amended from time to time:

Provided that the exercise of the powers by the Chairman or Secretary under these rules shall be subject to such instructions as may be issued from time to time by the Central Government.

**Footnotes:**

- 1. Notification No. G.S.R. 368 (E) dated 2nd April, 1987.
- 2. Published in the Gazette of India, Extraordinary, No. 174 dated 2nd April, 1987, Pt II, section 3 (i).

## Annexure 12

### **Board for Industrial and Financial Reconstruction (Secretary's Powers and Duties) Rules, 1987<sup>1</sup>**

In exercise of the powers conferred by section 36 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby makes the following rules, namely:—

**1. Short title and commencement:** - (1) These rules may be called the **Board for Industrial and Financial Reconstruction (Secretary's Powers and Duties) Rules, 1987.**

(2) They shall come into force on the date of their publication in the Official Gazette.<sup>2</sup>

**2. Definitions:** - In these rules, unless the context otherwise requires—

- (a) "Act" means the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (b) "Bench" means a Bench of the Board constituted under sub-section (2) of section 12;
- (c) "Board" means the Board for Industrial and Financial Reconstruction, established under section 4 of the Act, and includes, where the context so requires, a Bench exercising the jurisdiction, powers and authority of the Board;
- (d) "Chairman" means the Chairman of the Board;
- (e) "operating agency" means any public financial institution specified by the Board, by general or special order, as its agency;
- (f) "reference" means reference made to the Board under section 15 of the Act;
- (g) "Secretary" means the Secretary to the Board appointed under sub-section (1) of section 8 of the Act.

**3. General:** - (1) The Secretary shall be the principal officer of the Board who shall exercise his powers and perform his duties under the control of the Chairman.

- (a) The Board in discharge of its functions under the Act, may take such assistance from the Secretary, as it may deem fit, and the Secretary shall be bound to assist the Board.
- (b) In particular and without prejudice to the generality of the provisions of this rule, the Secretary shall have the following powers and perform the following duties, namely:—

(I) It shall be the duty of the Secretary to scrutinise the report submitted by any operating agency, in pursuance of the order of the Board made under sub-section (2) of section 16 of the Act and submit a report to the Board on the point as to whether the said report is complete with respect to matters which the operating agency was required by the Board to enquire into or not, and seek directions of the Board as to carrying out of further inquiry if any, by the operating agency and submission by it of a further report.

### **Footnotes:**

- 1. Vide Notification No. G.S.R. 506(E) dated 15 May, 1987.
- 2. Published in the Gazette of India, Extraordinary No. 262 dated 15<sup>th</sup> May, 1987, Pt. II, section 3(i)

- (b) It shall be the duty of the Secretary to scrutinise the scheme prepared by any operating agency in pursuance of the order of the Board under sub-section (3) of section 17 or a fresh scheme prepared by an operating agency in pursuance of the order of the Board under sub-section (5) of section 18 of the Act, and submit a report on the point as to whether the said scheme has been prepared in accordance with the guidelines specified in the order of the Board.
- (c) The Secretary shall have the right to collect from the Central Government, the Reserve Bank, any scheduled bank or any other bank, the public financial institutions or the state level institutions, or other offices, institutions, companies, firms, such information as may be considered useful for the purpose of efficient discharge of the functions of the Board under the Act and place the said information before the Board.
- (d) The Secretary may call upon any industrial company to furnish within such time, as may be

specified by him, information in relation to compliance by the company of the provisions of sub-section (1) of section 23 and seek the directions of the Chairman as to further action, if any, to be taken in the matter.

- (e) The official seal of the Board shall not be affixed to any order, summons, other process or any certified copy issued by the Board or any other document save under the authority in writing of the Secretary.
- (f) The secretary shall have the custody of the records of the Board.
- (g) The official seal of the Board shall be in the custody and control of the Secretary.

**4. Additional powers and duties of the Secretary:** - (1) In addition to his powers and duties specified in rule 3, the Secretary shall have the following additional powers and perform the following duties, namely:

- (i) receive all references, applications, reports, letters, representations and other documents;
- (ii) decide all questions arising out of any reference to the Board before the same is registered in the office of the Board;
- (iii) require any reference to be amended in accordance with the Act or the regulations made under section 13 of the Act;
- (iv) subject to the directions of the Chairman, or the respective Benches, as the case may be, fix dates for hearing of references, applications or other proceedings;
- (v) direct formal amendment of records; (vi) grant leave to inspect the records of the Board;
- (vii) dispose of all matters relating to the service of the notice, summons, other process, applications for issue of fresh notices, summons or other process, or for extending time for ordering a particular mode of service including the substituted service by publication of the notice, summons or other process by way of advertisement in the newspapers.

(2) An appeal against the decision of or direction issued by the Secretary under clauses (ii), (iii), (v), (vi) and (vii) shall be made to the Chairman by the aggrieved party within 15 days from the date on which such decision or direction is communicated to him and the decision thereon of the Chairman shall be final.

**5. Powers exercisable under these rules to be in addition to other powers of the Secretary:** - (1) The powers exercisable and duties to be performed by the Secretary under these rules shall be in addition to those prescribed under any other rules as have already been made or as may be made from time to time, by the Central Government under section 36 of the Act.

(2) The power exercisable and duties to be performed by the Secretary under these rules are without prejudice to those as may be specified by the Chairman or delegated to the Secretary, by the Board under section 27 of the Act.



## **Annexure 13**

### **Board for Industrial and Financial Reconstruction (Salaries and Allowances and Conditions of Service of Chairman and other Members) Rules, 1987**

In exercise of the powers conferred by clause (a) of sub-section (2) of section 36 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby makes the following rules namely:—

**1. Short title and commencement:** - (1) These rules may be called the **Board for Industrial and Financial Reconstruction (Salaries and Allowances and Conditions of Service of Chairman and other Members) Rules, 1987.**

(2) They shall come into force on the date of their publication in the official Gazette.

**2. Definitions:** - In these rules, unless the context otherwise requires—

- (a) "Act" means the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (b) "Board" means the Board for industrial and Financial Reconstruction, established under section 4 of the Act;
- (c) "Chairman" means the Chairman of the Board appointed under section 4 of the Act;
- (d) "Member" means a Member of the Board appointed under section 4 of the Act.

**3. Pay:** - (1) The Chairman shall receive pay as admissible to a Judge of a High Court.

(2) A Member shall receive pay as admissible to the Secretary to the Government of India:

Provided that in the case of an appointment of a person as a Chairman, or as a Member, who was retired as a judge of a High Court or who has retired from service under the Central Government or a State Government and who is in receipt of or has received or has become entitled to receive any retirement benefit by way of pension, gratuity, employer's contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such Chairman or Member shall be reduced by the gross amount of pension and pension equivalent of gratuity or employer's contribution to the Contributory Provident Fund or any other form of retirement benefits, if any, drawn or to be drawn by him.

**4. Dearness allowance and city compensatory allowance:** - (1) The Chairman shall receive dearness allowance and city compensatory allowance at the rate admissible to a Judge of the Delhi High Court.

(2) A Member shall receive dearness allowance and city compensatory allowance at the rate admissible to a Group 'A' officer of the Central Government drawing an equivalent pay.

**5. Leave:** - (1) Person, on appointment in the Board as Chairman or a Member shall be entitled to have leave as follows:

(i) Earned leave at the rate of thirty days for every completed calendar year of service or a part thereof:

Provided that the leave account shall be credited with earned leave in advance, in two instalments of fifteen days each on the first day of January and July of every calendar year:

Provided further that the earned leave at the credit at the close of previous half year shall be carried forward to next half year, subject to the condition that the leave so carried forward plus credit for the half year do not exceed the maximum limit of one hundred and eighty days.

(II) Half pay leave on medical certificate or on private affairs at the rate of twenty days in respect of each completed year of service and the leave salary for half pay leave shall be equivalent to half of the leave salary admissible during the earned leave;

(iii) Leave on half pay may be commuted to full pay leave at the discretion of the Chairman or a Member, provided it is taken on medical grounds and is supported by a medical certificate by a competent medical authority;

(iv) Extraordinary leave without pay and allowances up to a maximum period of one hundred and eighty days in one term of office.

**6. Leave sanctioning authority:** - The Chairman shall be the authority competent to sanction leave to a Member and the President of India shall be the authority competent to sanction leave to the Chairman.

**7. Provident Fund:** - The Chairman or a Member shall be entitled to subscribe to the General Provident Fund at his option and in case of his so opting, shall be governed by the provision of the General Provident Fund (Central Services) Rules.

**8. Travelling Allowances:** - (1) The Chairman while on tour or on transfer (including the journey undertaken to join the Board or on the expiry of his term with Board to proceed to his home town) shall be entitled to the travelling allowances, daily allowances, transportation of personal effect and other similar matters at the same scale and the same rates as are prescribed in the High Court Judge (Travelling Allowances) Rules, 1956.

(2) A Member while on tour or on transfer (including the journey undertaken to join the Board or on the expiry of his term with the Board to proceed to his home town) shall be entitled to the travelling allowances, daily allowance, transportation of personal effects and other similar matters at the same scales and at the same rates as are applicable to a Group 'A' officer of the Central Government drawing an equivalent pay.

**9. Leave travel concession:** - The Chairman shall be entitled to leave travel concession at the same rates and at the same scales as are applicable to a Judge of the Delhi High Court.

(2) A Member shall be entitled to leave travel concession at the same rates and at the same scales as are applicable to Group 'A' officer of the Central Government drawing an equivalent pay.

**10. Accommodation:** - (1) Every person appointed to the Board as a Chairman or a Member shall be eligible, subject to availability, to the use of official residence from the general pool accommodation of the type admissible to a Group 'A' officer of the Central Government drawing an equivalent pay and stationed at Delhi on payment of the licence fee at the rates specified by the Central Government from time to time.

(2) Where a Chairman or a Member occupies an official residence beyond permissible period he shall be liable to pay additional licence fee or penal rent, as the case may be, and he will be liable to eviction in accordance with the rules applicable to Central Government servants.

<sup>1</sup>[(3) If the Chairman does not avail himself of the official residence from the general pool accommodation, he shall be entitled to house rent at the rate admissible to a judge of the High Court.

(4) If the Member does not avail himself of the official residence from the general pool accommodation, he shall be entitled to house rent at the rate admissible to a judge of the High Court.

(5) The Chairman who avails himself of the use of an official residence shall be entitled to use of a furnished residence (including electrical appliances) free of rent at his residence at the rate admissible to a judge of a High Court. He shall also be entitled to reimbursement of charges on account of water and electricity consumed at his residence not exceeding rupees twelve thousand per annum.

(6) A Member who avails himself of the use of an official residence shall be entitled to use of a furnished residence (including electrical appliances) free of rent at his residence at the rate admissible to a judge of a High Court. He shall also be entitled to reimbursement of charges on account of water and electricity consumed at his residence not exceeding rupees twelve thousand per annum.]

**11. Facility of conveyance:** - (1) The Chairman shall be entitled to a staff car and <sup>2</sup>[two hundred] litres of petrol every month or actual consumption of petrol per month whichever is less.

(2) A Member shall be entitled to get a conveyance allowance of rupees seven hundred and fifty per mensem.

**12. Facilities for medical treatment:** - The Chairman or other Members shall be entitled to medical treatment and hospital facilities as provided in the Contributory Health Services Scheme Rules, 1954 and in places where the Central Health Services Scheme is not in operation, the Chairman and Members shall be entitled to the facilities as provided in the Central Services Medical Attendance Rules.

**13. Residuary provision:** - Matter relating to the conditions of service of the Chairman or other Members with respect to which no express provision has been made in these rules shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be binding on the Chairman or the other Member.

**14. Powers to relax:** - The Central Government shall have power to relax the provisions of any of these in respect of any class or categories of persons.

***Footnotes:***

1. Inserted by Notification No. 700(E), dated 12-12-1997.
2. Substituted by Notification No. 700(E), dated 12-12-1997 for "one hundred and fifty".

## Annexure 14

### **Appellate Authority for Industrial and Financial Reconstruction (Secretary's Powers and Duties) Rules, 1988<sup>1</sup>**

In exercise of the powers conferred by section 36 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby makes the following rules, namely:—

**1. Short title and commencement:** - (i) These rules may be called the **Appellate Authority for Industrial and Financial Reconstruction (Secretary's Powers and Duties) Rules, 1988.**

(ii) They shall come into force on the date of their publication in Official Gazette.<sup>2</sup>

**2. Definitions:** - In these rules, unless the context otherwise requires—

- (a) "Act" means the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (b) "Bench" means a Bench of the Appellate Authority constituted under sub-section (2) of section 12 of the Act;
- (c) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction, constituted under section 5 of the Act and includes, where the context so requires, a Bench exercising the jurisdiction, powers and authority of the Appellate Authority;
- (d) "Chairman" means the Chairman of Appellate Authority;
- (e) "Secretary" means the Secretary to the Appellate Authority appointed under sub section (1) of section 8 of the Act.

**3. General:** - (1) The Secretary shall be principal officer of the Appellate Authority who shall exercise his powers and perform his duties under the control of the Chairman.

The Appellate Authority, in discharge of its functions under the Act, may take such assistance from the Secretary as it may deem fit and the Secretary shall be bound to assist the Appellate Authority.

In particular and without prejudice to the generality of the provisions of this rule, the Secretary shall exercise the following powers and perform the following duties, namely :—

It shall be the duty of the Secretary to assist the Appellate Authority in making such enquiry as it deems fit in connection with any appeal before the Appellate Authority.

The Secretary shall have the right to collect from the Central Government, the Reserve Bank, any scheduled bank or any other bank, public financial institutions or State level institutions or other offices, institutions, companies, firms, such information as may be considered useful for the purpose of discharge of the functions of the Appellate Authority under the Act and place the said information before the Appellate Authority.

**Footnotes:**

1. Vide Notification No. G.S.R. 463 (E) dated 18th April, 1988.

2. Gazette of India, Extraordinary No. 204 dated 18th April, 1988, Part II section 3(i).

(c) The official seal of the Appellate Authority shall not be affixed to any order, summons, other process or any certified copy issued by the Appellate Authority or any other document save under the authority in writing of the Secretary.

(d) The Secretary shall have the custody of the records of the Appellate Authority.

(e) The official seal of the Appellate Authority shall be in the custody and control of the Secretary.

**4. Additional powers and duties of the Secretary:** - (1) In addition to his powers and duties specified in rule, 3 the Secretary shall have the following additional powers and perform the following duties, namely:—

- (i) receive all references, applications, reports, letters, representations and other documents;
- (ii) decide all questions arising out of any reference to the Appellate Authority before the same is registered in the office of the Appellate Authority;
- (iii) require any reference to be amended in accordance with the Act, or the regulations made under section 13 of the Act.
- (iv) subject to the directions of the Chairman, or the respective Benches, as the case may be, fix dates for hearing of references, applications or other proceedings;
- (v) direct formal amendment of records;
- (vi) grant leave to inspect the records of the Appellate Authority;
- (vii) dispose of all matters relating to the service of the notice, summons, other process, applications for issue of fresh notices, summons or other process or for extending time for ordering a particular mode of service including the substituted service by publication of the notice, summons or other process by way of advertisement in the newspapers.

(2) An appeal against the decision of, or direction issued by, the secretary under clause (ii), (vi), (v), (vi) and (vii) shall be made to the Chairman by the aggrieved party within 15 days from the date on which such decision or direction is communicated to him and the decision thereon of the Chairman shall be final.

**5. Powers exercisable under these rules to be in addition to other powers of the Secretary:** - (1) The powers exercisable and duties to be performed-by the Secretary under these rules shall be in addition to those prescribed under any other rules as have already been made or as may be made from time to time, by the Central Government under section 36 of the Act.

(2) The powers exercisable and duties to be performed by the Secretary under these rules are without prejudice to those as may be specified by the Chairman or delegated to the Secretary by the Appellate Authority under section 27 of the Act.

## Annexure 15

### Appellate Authority for Industrial and Financial Reconstruction (Conditions of Service of the Secretary and Other Officers and Employees) Rules, 1989<sup>1</sup>

In exercise of the powers conferred by sub-section (1) read with clause (d) of subsection (2) of section 36 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), the Central Government hereby makes the following rules, namely:—

**1. Short title and commencement:** - (1) These rules may be called the **Appellate Authority for Industrial and Financial Reconstruction (Conditions of Service of the Secretary and other Officers and Employees) Rules, 1989.**

(ii) They shall come into force on the date of their publication in the Official Gazette.<sup>2</sup>

**2. Definitions:** - In these rules, unless the context otherwise requires:

- (a) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction;
- (b) "Secretary" means the Secretary to the Appellate Authority.

**3. Pay of Secretary:** - The Secretary shall receive pay as admissible to an Additional Secretary to the Government of India or where an officer of the Government is appointed on deputation to the Appellate Authority as Secretary, he shall receive the pay admissible to such officer while on deputation.

**4. Other staff of the Appellate Authority:** - The nature and categories of other officers and employees of the Appellate Authority and the scales of pay thereof shall be as specified in the Schedule appended to these rules.

**5. Conditions of service:** - The conditions of service of the Secretary and other officers and employees of the Appellate Authority in the matter of pay, allowances, leave, joining time, joining time pay, provident fund, age of superannuation, pension and retirement benefits, medical facilities and other conditions of service, shall be regulated in accordance with such rules and regulations as are, from time to time, applicable to officers and employees of the Central Government belonging to Group 'A', Group 'B', Group 'C and Group 'D' as the case may be, and drawing the corresponding scales of pay.

SI. No.	Name of the Post	Scale of Pay
1	2	3
1.	Director	Rs. 4500-150-5700
2.	Deputy Secretary	Rs. 3700-125-4700-150-5000
3.	Under Secretary	Rs. 3000-100-3500-125-4500
4.	Section Officer	Rs. 2000-60-2300-EB-75-3200-100-3500
5.	Assistant	RS.-1400-40-1600-50-2300-EB-60-7600
6. and Members	Private Secretary to 4500	Rs. 3000-100-3500-125- Chairman
7.	Stenographer Gr. 'A' /Grade 'B'	Rs. 2000-60-2300-EB-75-3200-100-3500
8.	Stenographer Gr. 'C'	Rs. 1400-40-1600-50-2300-EB-60-2600
9.	Stenographer Gr. 'D'	Rs. 1200-30-1560-EB-40-2040
10.	Upper Division Clerk	Rs. 1200-30-1560-EB-40-2040
11.	Lower Division Clerk	Rs. 950-20-1150-EB-25-1500

12.	Staff Car Driver	Rs. 950-20-1150-EB-25-1500	
13. Photo-copier	Gestetner Operator Rs. 800-15-1010-EB-20-1150		cum-
14.	Jamadar	Rs. 775-12-955-EB-14-1025	
15.	Daftry	Rs. 775-12-955-EB-14-1025	
16.	Peon	Rs. 750-12-870-EB-14-940	
17.	Frash	Rs. 750-12-870-EB-14-940	
18.	Sweeper	Rs. 750-12-870-EB-14-940	

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**Footnotes:**

1. Vide Notification No. G.S.R. 313(E), dated 7<sup>th</sup> March, 1989.
2. Gazette of India, Extraordinary No. 120, dated 7<sup>th</sup> March 1989, Part II, Section 3(i).