

INDUSTRIAL SICKNESS AND ROLE OF BOARD OF INDUSTRIAL AND FINANCIAL RECONSTRUCTION (BIFR)

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ABSTRACT

Industrial sickness is the key event of modern industrial age; and incidence of sickness has been growing in such large proportions that in the wake of industrial development, a large number of new units (covering all typed of units in small, medium and large sectors) have been added in this category. The rapid growth and magnitude to industrial sickness is pugging issue not only for present time but also for all time to come; especially for India during the next century. It has become a matter of grave concern for all; concerned directly or indirectly as not only, crores of rupees blocked up in several of sick units but also affected the national growth. Industrial sickness is growing at an annual rate of about 28% and 13% respectively in terms of number of units and outstanding number of bank credit. It is reckoned that as of today there are more than 2 lakhs sick units with an outstanding bank credit of over Rs7000crore nearly 29000 units are added to sick list every year. This paper covers the study of industrial sickness and role of BIFR to control that sickness.

Keywords: Industry, Sick units, Sickness, BIFR, Large and Small-Scale Industries

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INTRODUCTION

Industrial sickness specially in small-scale Industry has been always a demerit for the Indian economy because more and more industries like – cotton, Jute, Sugar, Textiles small steel and engineering industries are being affected by this sickness problem.

As per an estimate 300 units in the medium and large scale sector were either closed or were on the stage of closing in the year 1976. About 10% of 4 lakhs unit were also reported to be ailing. And this position also remains same in the next decades. At the end of year 1986, the member of sick units in the portfolio of scheduled commercial banks stood at 1,47,740 involving an outstanding bank credit of Rs. 4874 crores.

- Where the total numbers of large Industries which are sick were 637 units at the end of year 1985 increased to 714 units in the end of next year 1986.
- Likewise on the other hand the number of sick small scale units was also increased 1.18 lakhs at the end of 1985 to 1.46 lakhs at the end of 1986.
- The bank amount which was outstanding in case of large industries for the same period also increased from Rs.2,900 crores to Rs. 3287 crores at the end of year 1986
- Dues of Small Scale sector also increased from Rs.1071 crores to Rs.1306 crores at the end of the year 1986.
- Of the 147,740 sick industrial units which contain large medium as well as small scale involving the total bank loan (credit) of Rs. 4874 at the end of the year 1986.

Industrial sickness relates to *uneconomic functioning of industrial units*. It suggests something seriously wrong as regards the normal working of an industrial unit. A sick unit may not work to its full capacity, may not earn reasonable profit, may not pay fair wages and dividends and may face financial, marketing and other problems in a continuous manner. Such sick units are harmful to employees, corporate sector and the entire economic system. Some business units are born sick whereas some others are made sick. As the name indicates, industrial sickness relates to industrial/manufacturing/production units and not relates to other type of business activities. Industrial sickness relates to large scale or small-scale industrial/manufacturing units.

Meaning

Industrial sickness is defined in India as "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 and has also suffered cash

losses in such financial year and the financial year immediately preceding such financial year"

Meaning for Companies

According to Companies (Second Amendment) Act, 2002

"Sick Industrial Company' means an industrial company which has

- i) The Accumulated losses in any financial year equal to 50 per cent or more of its average net worth during four years immediately preceding such financial year; or
- ii) Failed to repay its debts within any three consecutive quarters on demand made in writing for its repayment by a creditor or creditors of such company."

Definition

According to **Sick Industries (Special Provisions) Act, 1985**, "Sick Industrial Company indicates an industrial company (registered for not less than 7 years) which is showing accumulated losses equal to or exceeding its net worth at the end of any financial year and has suffered cash losses also during that financial year and the immediately preceding year."

According to **Reserve Bank of India (RBI)**, an unit may be regarded as sick, "if it has incurred cash loss for one year and in the judgement of the bank, if it is liable to continue to incur cash loss in the two following years and it has imbalance in its financial structure such as current equity-debt ratio of 1:1 and indicates signs of worsening in years to come."

Industrial sickness

- ◆ **According to RBI** : A sick unit is one which incurs cash losses for 1 year & which, in the judgment of the bank, is likely to incur losses for the current year as well as the following year, & which has imbalances in its financial structure, like worsening debt equity ratio.
- ◆ **Magnitude of sickness**

By End of	Large & medium	Small	Total
Mar 1980	22269	21,828	2,21,097
Mar 1998	2476	2,21,536	2,24,012
Mar 1999	2792	3,06,221	3,09,013
Mar 2000	3164	3,04,235	3,07,399
Mar 2001	3317	2,49,630	2,52,947

The total bank credit locked up in sick units increase from Rs 13134 crore as the end of Mar 1993 to Rs 13748 as on mar 1996.

CAUSES OF INDUSTRIAL SICKNESS:**Internal Causes:****1. Mismanagement:**

The most important internal cause of sickness is mismanagement. Faulty managerial decision regarding production, finance, marketing and personnel and poor control can ruin a business. According to a study of the Reserve Bank of India sickness of more than 52 per cent of large industrial units can be attributed to mismanagement, 23 per cent to market recession, 14 per cent to faulty initial planning and other technical defects and 11 per cent to other causes.

2. Faulty Initial Planning:

Wrong location of an industrial unit might lead to its ruin. If the place of industrial location lacks infrastructural facilities, the industry is bound to face difficulties. Another fault is lack of proper demand forecasting for the products to be sold. Small industries start production without making a market survey and plunge into difficulties later. Some industries start with a defective capital structure and some spend lavishly on unproductive assets. Moreover, inability to raise adequate finance to withstand operational losses is a severe constraint.

3. Financial Problems:

A growing shortage of working capital appears to be a real constraint. The equity base of many small scale units is very weak and slight disturbance in the market puts them into trouble and turns them into sick units.

4. Improper Choice of Technology:

Small entrepreneurs cannot afford to take technical guidance from experts in choosing proper machinery. An improper choice of technology, unsuitable product mix and single product technology contribute to industrial sickness.

5. Labour Problems:

Bad employer-employee relations result in strikes, lockouts and even closure of industrial units. If wages, bonus and dearness allowances problems are tackled promptly to the satisfaction of labour, these problems may not cause sickness. The Tiwari Committee in its report on industrial sickness (1984) pointed out the cause of sickness of industrial units. Sickness of 52 per cent large scale industrial units is due to mismanagement, 23 per cent to market recession and environmental factors, 14 per cent to technical factors and faulty initial planning, 9 per cent to infrastructural factors and 2 per cent to labour troubles.

Major reasons of sickness reported

Reason for sickness	Proportion of sick units
Lack of demand	41.94%
Shortage of working capital	20.49%
Non availability of raw material	5.11%
Power shortage	5.71%
Labour problems	5.64%
Marketing problems	11.48%
Equipment Problems	3.17%
Management Problems	6.46%

Source: Report of Fourth All India Census of Micro, Small & Medium Enterprises

The table shows that there are different reasons for industrial sickness in which lack of demand for the product contributes up to 41.94%. 3.17% is due to equipment problems. Besides, power, labour and marketing problems also contribute to this.

EXTERNAL CAUSES:

1. Power Cuts:

A large number of industrial units, particularly in West Bengal and Bihar, face power cuts from time to time. Power cuts are necessitated by the fact that generation of power is much below its actual requirements.

2. Erratic Supply of Inputs:

Lack of regular supply of raw materials and other inputs disturb the production schedule causing losses to the unit. This is particularly the case of units depending upon the supply of imported inputs. Also transport bottlenecks sometimes affect the supply of inputs.

3. Recession:

General recessionary trends in the market adversely affect the demand for most of the goods resulting in unsold stocks and losses to individual units. Products with high prices like cars, tractors, VCR etc. depend for their sustained demand on easy availability of credit to buyers. If credit is restrained, the buyers are not able to arrange for finance and consequently the demands for such products suffer and ultimately such manufacturing units get sick.

4. Official Policy:

Sudden and unfavourable changes in the government policy regarding taxation, export and import can turn viable units into sick units. For example, liberal import policy for a particular product might cause damage on domestic units producing similar products.

CONSEQUENCES OF INDUSTRIAL SICKNESS

Industrial sickness has been resulting in serious consequences in underdeveloped economy as India. These are:

1. Increase in unemployment due to closure on industrial units;
2. Increase in labour unrest due to closure of Industrial units;
3. Wastage of scarce resources invested in these units;
4. Huge financial losses to banks and other financial institutions;
5. Locking up of huge funds into these sick units;
6. Restricts prospective entrepreneurs due to widespread closure of units;
7. Creates adverse impact on the other related units.

SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

The most important piece of legislation dealing with industrial sickness was the **Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)**. It applies to industrial undertakings both in the public and private sectors. SICA pertains to the industries specified in the First Schedule to the **Industries (Development and Regulation) Act, 1951, (IDR Act)** subject to the exceptions specified in the Act. SICA, including any rules or schemes made thereunder, had overriding provisions over other laws except the provisions of the **Foreign Exchange Regulation Act, 1973** and the **Urban Land (Ceiling and Regulation) Act, 1976**.

The basic rationale of enacting SICA was to determine sickness in the industrial units. It also aimed at expediting the revival of potentially viable units so as to make the investments in such units profitable. At the same time, to ensure the closure of unviable units so as to release the investments locked up in such units for productive use elsewhere.

Thus, the broad objectives of SICA were:-

- Timely detection of sick and potentially sick companies.
- Speedy determination by a body of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies.
- The expeditious enforcement of the measures so determined and for all matters connected therewith or incidental thereto.

BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION (BIFR):

It provided for the constitution of two quasi-judicial bodies, that is, **Board for Industrial and Financial Reconstruction (BIFR)** and Appellate Authority for Industrial and Financial Reconstruction (AAIFR). BIFR was set up as an apex board to tackle industrial sickness and

was entrusted with the work of taking appropriate measures for revival and rehabilitation of potentially sick undertakings and for liquidation of non-viable companies. While, AAIFR was constituted for hearing the appeals against the orders of the BIFR.

- BIFR would make an inquiry as it may deem fit for determining whether any industrial company had become sick, under the following conditions:-
 - If the Board of Directors of a sick industrial company made a reference to the BIFR for determination of the remedial measures with respect to their company. Such reference was to be made within sixty days from the date of finalization of the duly audited accounts of the company for the financial year at the end of which the company had become sick. For filing the reference, the Board of Directors must have sufficient reasons to form the opinion that the company had become sick; or
 - On receiving such information (reference) with respect to a sick company or upon its own knowledge as to the financial condition of a company. Such a reference to the board may be made by:- (i) The Central Government; (ii) The **Reserve Bank of India**; (iii) State Governments; (iv) Public financial institutions; (v) State level institutions; or (vi) Scheduled banks.
- If the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company, it may appoint one or more persons as special director(s) of the company for safeguarding the financial and other interests of the company. The appointment of a special director shall be valid and effective notwithstanding anything to the contrary contained in the **Companies Act, 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.

Any special director so appointed shall :- (i) hold office during the pleasure of the Board and may be removed or substituted by any person by order in writing by the Board; (ii) 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; (iii) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement; (iv) 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.

- If after making an inquiry, the Board is satisfied that the company has become sick, it shall, after considering all the relevant facts and circumstances of the case, may take either of the following decisions:-
 - If the Board decides that it is practicable, it 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.
 - If the Board decides that it is not practicable for the sick company to make its net worth 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 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 a scheme providing for such measures in relation to that company.
 - If the Board 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 and forward its opinion to the concerned High Court. The High Court shall, on the basis of the opinion of the Board, order winding-up of the sick industrial company in accordance with the provisions of the **Companies Act, 1956**.
- Where in respect of an industrial company, an inquiry is pending, or any scheme referred is under preparation or consideration or a sanctioned scheme is under implementation, then 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 shall be made. Also, 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.
- Under the Act, whosoever violates its provisions or any scheme or any order of the Board or of the Appellate Authority, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine. No court shall take cognizance of any offence mentioned 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 authorized in this behalf by the Board or the Appellate Authority.

Table1: Details of References received by BIFR

as on 30-09-2010 (Year-wise Performance)

Year	Total cases Registered	Cases Disposed off during the year			
		Cases under Revival	Cases Revived	Winding up Recommended	Dismissed
1	2	3a	3b	3c	3d
1987	311	0	0	0	8
1988	298	0	1	12	29
1989	202	0	1	31	77
1990	151	1	3	42	45
1991	155	1	5	47	27
1992	177	3	7	30	43
1993	152	3	13	63	59
1994	193	2	38	77	48
1995	115	6	25	61	29
1996	97	6	92	83	25
1997	233	2	34	81	21
1998	370	5	21	49	36
1999	413	4	11	61	72
2000	429	8	37	142	156
2001	463	10	47	113	126
2002	559	21	34	107	212
2003	430	08	42	99	190
2004	399	06	29	50	70
2005	180	17	71	19	180
2006	118	63	91	22	296
2007	78	66	81	13	205
2008	57	80	64	19	130
2009	64	192	82	22	125

2010	43	690	70	22	118
Total	5,687	1,199	899	1,262	2,327

Source: Website of BIFR

Since its inception in May 1987 and till the end of September 2006, the BIFR has received 6,991 references under the SICA, 1985. The gross disposal cases by BIFR declined from 188 in 1997 to 141 in 1998. However, it rose to 1,567 in 2006. During the current year, as on March, 2005, the gross disposal of cases reached to 4,115

Sick Industrial Companies (Special Provisions) Act,1985 (SICA) was repealed and replaced by **Sick Industrial Companies (Special Provisions) Repeal Act,2003**. The new Act diluted some of the provisions of SICA and plugged certain loopholes. It aimed not only to combat industrial sickness but also to reduce the same by ensuring that companies do not view declaration of sickness as an escapist route from legal provisions after the failure of the project or similar other reasons and thereby gain access to various benefits or concessions from financial institutions. Under it, the **Board for Industrial and Financial Reconstruction (BIFR)** and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) were dissolved and replaced by National Company Law Tribunal (NCLT) and National Law Appellate Tribunal (NCLAT) respectively.

Magnitude or Extent of Industrial Sickness in India

Form the given table following observations can be made:

1. In the case of small-scale industries, the number of sick units has increased from 23,149 in December 1980 to 3,06,221 in March 1991 but after that showing decreasing trend and it is 85,153 in March 2008.
2. It is observed that in case of sick small-scale industrial units, the amount outstanding from those units in commercial banks was Rs. 306 crore and at the end of December 1980; the amount of outstanding rose to Rs. 5,380 crore by the end of March 2005 but decreased to Rs. 4,981 crore in March 2006, but again increased to Rs. 13,841 crore in March 2008.
3. In the case of non-SSI sick and weak units, their no. was 1,401 at the end of December 1980 and the number rose to 5,658 by the end of March 2005 but declined to 3,992 at the end of March 2007.
4. The amount outstanding in the case of non-SSI sick and weak units was Rs. 1,502 crore at the end of December 1980 and the amount rose to Rs. 36,635 crore by the end of March 2005, but declined to Rs. 25,066 crore in 2007.

5. If we consider the amount outstanding in the case of all types of sick industrial units, it rose to Rs. 1,809 crore at the end of December 1980 to Rs. 30,333 crore at the end of March 2007.

Table2: Industrial Sickness in India

At the End of	Sick/Weak Units		
	Large and Medium	Small	Total
December 1980	1,40,123,149	24,550	
March 1990	2,269,218,828	2,21,097	
March 1995	2,391,268,815	2,71,206	
March 1999	2,792,306,221	3,09,013	
March 2000	3,164	3,04,235	3,07,399
March 2004	5,658	1,38,041	1,43,699
March 2006	4,729	1,26,824	1,31,553
March 2007	3,992	1,14,132	1,18,124
March 2008	N.A.	85,153	N.A.

Outstanding Bank Credit (Rs. Crore)

Year	Large	Small	Total
December 1980	1,502	306	1,809
March 1990	6,926	2,427	9,353
March 1995	10,192	3,547	13,739
March 1999	15,150	4,313	19,463
March 2000	19,047	4,608	23,656
March 2004	25,742	5,285	31,027
March 2006	36,635	5,380	42,015
March 2007	25,066	5,267	30,333
March 2008	N.A.	13,841	N.A.

CONCLUSION

Industrial Sickness is a global phenomenon though its incidence in the developed countries of the world may be low as compared to the less developed nations where industrialization, as a result of low capital base and low level of technological and managerial know-how, has not been an exhilarating experience. India, in particular, has suffered from this malady and during

the last decade, industrial sickness has assumed unmanageable dimensions and there is no sign of abatement. The growing industrial sickness in the country is causing great concern to the government and financial institutions because it is sucking the blood of the industry gradually and sapping economic vitality and thereby baffling all the useful programme of economic development. In fact industrial sickness pervades all around and is posing a very serious problem to different sectors of the economy.

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