

The Board for Industrial and Financial Reconstruction Regulations, 1987

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Regulation THE-BOARD-FOR-INDUSTRIAL-AND-FINANCIAL of 1987

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Central Government ActThe Board for Industrial and Financial Reconstruction Regulations, 1987
BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION REGULATIONS, 1987¹

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.

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 15¹ [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,² [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 [*] **company within the meaning of clause (c) of sub-section (1) of section 18, any other [*] company** concerned in the amalgamation, any shareholder, any creditor or employee of such [***] companies;(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. The proceedings of the Board shall be conducted in English or Hindi.

6. No reference, application, representation, document or other matters 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 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. Board, unless the same is accompanied by a true translation thereof in English or Hindi.

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 mis-carriage 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 or 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 acknowledgement 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) to 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.³ [(5) The [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 a meeting of the Board.] Explanation. This regulation shall not apply to a Bench, sitting as a Bench.

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 any other member, 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 of the Board shall be communicated under the signature of the Secretary or any other officer of the Board duly empowered by 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. [He shall, from time to time, assign] the cases

to be dealt with by the respective Benches, provided that [he] may constitute, as and when deemed fit, a Bench for dealing with a particular case or batch of cases. [He] may also transfer a case from one Bench to another. [Provided 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.

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.

19. ⁴ [(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. ⁴ [(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.[(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.(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 or assigning it to a Bench. Simultaneously, remaining information/documents required, if any, shall be called for from the informant.(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.(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.

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 investigation 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 matters 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.(5)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.(6)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.(7)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 the 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 who 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.

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, or after considering the report or, as the case may be, the further report of the operating agency, is satisfied that the industrial company has become a sick industrial company, it shall hold further proceedings in accordance with the procedure prescribed in these regulations.

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.

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 another⁵ [*] company [or vice-versa], a copy thereof shall also be sent to the transferee⁵ [*] company and any other⁵ [*] 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 the 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 such time as may be mentioned in the notification, from the shareholders, creditors and employees of the sick industrial company, the transferee ⁶ [*] company as well as any other ⁶ [*] 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 ⁷ [*] company and any other ⁷ [*] company concerned in the amalgamation and from any shareholder, creditor, or employee, of such industrial companies.

31. Where the draft scheme envisages amalgamation ⁸ [*], the Board shall not proceed with the scheme, unless the board of directors of the ⁹ [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.

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 or 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 ¹⁰ [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 ¹¹ [or when such consent is 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.

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.

12. [36 [(1)] Industrial Companies required to report the erosion of their net worth under section 23 shall do so in the following manner: (i) Companies other than Government company in Form C'.

(ii) Government Company in Form CC'. [(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 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.]]

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: ¹³ [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.](3)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.(4)Copying charges shall be worked out at the rate of [Rs.10] for a folio or part thereof, of material not involving typing of statements and figures and at the rate of 2 [Rs. 20] per folio or part thereof, involving typing of statements or figures. Fees for inspection shall be worked out at the rate of [Rs.100] per hour of inspection.(5)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 of extracts.[(6) Secretary may delegate the powers to allow inspection and supply copies of records, including documents referred to in sub-regulations (1) and (2) of this regulation 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 the 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 or 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 relief 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 submission 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 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.

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.

- 1. Added by BIFR (Amendment) Regulations, 1994.**
- 2. Added by BIFR (Amendment) Regulations, 1994.**
- 3. Ins. by BIFR (Second Amendment) Regulations, 1993.**
- 4. Subs. by BIFR (Amendment) Regulations, 1992.**
- 5. Omitted by BIFR (Amendment) Regulations, 1994.**
- 6. Omitted by BIFR (Amendment) Regulations, 1994.**
- 7. Omitted by BIFR (Amendment) Regulations, 1994.**
- 8. Omitted by BIFR (Amendment) Regulations, 1994.**
- 9. Subs. by BIFR (Amendment) Regulations, 1994.**
- 10. Ins. by BIFR (Amendment) Regulations, 1994.**
- 11. Added by BIFR (Amendment) Regulations, 1994.**
- 12. Subs. by BIFR (Amendment) Regulations, 1994.**
- 13. Added by BIFR (First Amendment) Regulations, 1995.**