

The Sick Industrial Companies (Special Provisions) Act, 1985

UNION OF INDIA

India

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Act 1 of 1986

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The Sick Industrial Companies (Special Provisions) Act, 1985(1 OF 1986)

22.

/987Statement of Objects and Reasons.-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 optimize 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 a co-ordinated 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 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 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 a 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 orders of the Board.

Amendment Act 57 of 1991-Statement of Objects and Reasons.-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 the 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.

Amendment Act 12 of 1994-Statement of Objects and Reasons.-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 re-define 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 strengthen internal coherence of the Act by re-defining certain provisions which are clarificatory in nature.

[8th January, 1986]

An Act to make, in the 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:-

The Act (except Sections 15 to 34) came into force w.e.f. 12.1.1987 vide Notification No. G.S.R. 24(E), dated 12.1.1987 and Sections 15 to 34 came into force w.e.f. 15.5.1987 vide Notification No. S.O. 444(E), dated 28.4.1987.

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.

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) [* * *]; (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;] [Insertd by Act 12 of 1994, Section 2 (w.e.f. 1.2.1994).] (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 (j) 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;(ga)["net worth" means the sum total of the paid-up capital and free reserves. [Insertd by Act 12 of 1994, Section 2 (w.e.f. 1.2.1994).]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;(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;] [Substituted by Act 12 of 1994, Section 2, for Clause (i)(w.e.f. 1.2.1994).](j)"prescribed" means prescribed by rules made under this Act;[* * *] [Clause (k) omitted by Act 12 of 1994, Section 2 (w.e.f. 1.2.1994).](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);(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. [Substituted by Act 12 of 1994, Section 2, for Clause (o)(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] [1st February, 1994.][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;] [Substituted by Act 12 of 1994, Section 2, for Clause (o)(w.e.f. 1.2.1994).](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 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).(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.

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 be 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 re-appointment: 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 the 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 ceases 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 inquiry 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.

(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.

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

10. Vacancies, etc., not to invalidate proceedings 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 a 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.(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.]

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

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:[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] [21st June, 2002.][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 sub-section (4) of section 13 of that Act.] [Inserted by Act 54 of 2002, Section 41 and Sch. (w.e.f. 21.6.2002).](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-(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 matters 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.[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), [it may appoint] [Substituted by Act 12 of 1994, Section 5, for " it shall appoint" (w.e.f. 1.2.1994).] 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 or in the

public interest. [(4-A) 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.] [Inserted by Act 12 of 1994, Section 5 (w.e.f. 1.2.1994).] (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. (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; (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.] [Inserted by Act 12 of 1994, Section 5 (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 [make its net worth 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 [make its net worth exceed the accumulated losses] [Substituted by Act 12 of 1994, Section 6, for "make its net worth positive" (w.e.f. 1.2.1994).] 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 [make its net worth exceed the accumulated losses] [Substituted by Act 12 of 1994, Section 6, for "make its net worth positive" (w.e.f. 1.2.1994).] (3) If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to [make its net worth exceed the accumulated losses] [Substituted by Act 12 of 1994, Section 6, for "make its net worth positive" (w.e.f. 1.2.1994).] 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, [or if the company fails to revive in pursuance of the said order,] [Inserted by Act 12 of 1994, Section 6 (w.e.f. 1.2.1994).] 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.

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:-

(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;(c)[the amalgamation of- [Substituted by Act 12 of 1994, Section 7, for Clauses (a) and (c)(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 (i), 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;](da)[the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;] [Inserted by Act 12 of 1994, Section 7 (w.e.f. 1.2.1994).](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 [transferee company] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f. 1.2.1994).];(b)the transfer to the [transferee company] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f. 1.2.1994).] 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] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f. 1.2.1994).] 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] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f. 1.2.1994).] 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;(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 [transferee company] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f. 1.2.1994).] 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.(3)[(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.] [Substituted by Act 12 of 1994, Section 7, for Clause (a)(w.e.f. 1.2.1994).](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 the [transferee company] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f. 1.2.1994).] and [any other company] [Substituted by Act 12 of 1994, Section 7, for " any other industrial company" (w.e.f. 1.2.1994).] concerned in the amalgamation and from any shareholder or any creditors or employees of [such companies] [Substituted by Act 12 of 1994, Section 7, for " such industrial companies" (w.e.f. 1.2.1994).]:Provided that where the scheme relates to amalgamation [* * *] [The words " of the sick industrial company" omitted by Act 12 of 1994, Section 7 (w.e.f. 1.2.1994).], the said scheme shall be laid before [the company other than the sick industrial company] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f. 1.2.1994).] 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 company other than the sick industrial company] [Substituted by Act 12 of 1994, Section 7, for " transferee industrial company" (w.e.f.

1.2.1994).](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.(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).[(6-A) 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.] [Inserted by Act 12 of 1994, Section 7 (w.e.f. 1.2.1994).](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.(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.] [Substituted by Act 12 of 1994, Section 7, for sub-Section (8)(w.e.f. 1.2.1994).](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 [or otherwise] [Inserted by Act 12 of 1994, Section 7 (w.e.f. 1.2.1994).], 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.(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 529-A and other provisions of the Companies Act, 1956 (1 of 1956).(12)[The Board may monitor periodically the implementation of the sanctioned scheme.] [Inserted by Act 12 of 1994, Section 7 (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 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 on and from the date of such sanction the scheme shall be binding on all concerned. [(3-A) 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. (3-B) The financial institution and the bank designated under sub-section (3-A) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfilment 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. [19-A. 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.]

20. Winding up of sick industrial company .- [(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 purposes 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 529-A, and other provisions of the Companies Act, 1956 (1 of 1956).

21. Operating agency to prepare complete inventory, etc .-Where, [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 [a company] [Substituted by Act 12 of 1994, Section 11, for " an industrial company" (w.e.f. 1.2.1994).], 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)pro forma accounts, where no up-to-date audited accounts are available.

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

[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 [in pursuance of any scheme sanctioned under section 18] [Substituted by Act 12 of 1994, Section 12, for certain words (w.e.f. 1.2.1994).], 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; (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board. (3) [Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] [Substituted by Act 12 of 1994, Section 12, for certain words (w.e.f. 1.2.1994).] 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. [22-A. 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 upto commencement of the proceedings relating to the winding up before the concerned High Court.]

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 [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.[23-A. Proceedings on report, etc., of loss of fifty per cent. net worth.-(1) Without prejudice to the provisions of clause (a) of sub-section (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 the 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.

23.

-B. Power of Board to call for periodic information .-On receipt of a report under sub-clause (i) of clause (a) of sub-section (1) of section 23 or under sub-section (1) of section 23-A or upon information or its own knowledge under sub-section (2) of section 23-A, 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.(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 alongwith 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 [or remand the matter to the Board for fresh consideration].

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, [*](e)the State-level institution, [or] [Inserted by Act 12 of 1994, Section 17 (w.e.f. 1.2.1994).](f)[the sick industrial company and, in case of amalgamation, the other company,] [Inserted by Act 12 of 1994, Section 17 (w.e.f. 1.2.1994).]such information as it may consider useful for the purpose in such manner and within such time as it may think fit.

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 [and no proceeding in respect of such industrial company shall lie or be proceeded with further before the Board].

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 (46 of 1973)], and the [Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976)] [[This Act has now been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (15 of 1999)].

]] 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 72-A 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.[* * *] [Sub-Section (3) omitted by Act 12 of 1994, Section 19 (w.e.f. 1.2.1994).]

33. Penalty for certain offences .-(1) Whoever violates the provisions of this 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.

(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.]

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, schemes 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
DECLARATION OF FIDELITY AND SECRECY [Sections 6(8) and 8(3)] I,, 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.