

Sickness and Revival of State Level Public Enterprises in West Bengal

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Abstract:

Sickness in Industry in our country has existed along with healthy industrial enterprise. In 1985 the Sick Industrial Companies (Special Provision) Act 1985, was enacted, where interested companies were invited to takeover, lease or amalgamate the sick company into itself. Then in 1993, the public sector companies were brought under the purview of BIFR. Some common problems faced/ being faced by sick and loss-making PSEs include old and obsolete plant and machinery, outdated technology, resource crunch, low capacity utilization, low productivity, excess manpower, heavy interest burden, etc. Therefore, attempts have been made to overcome this problem through various policy initiatives or otherwise from time to time. The PSEs were brought under the purview of Sick Industrial Companies (Special Provision) Act, 1985 (SICA) which was amended in 1991 and made effective from 1992. The Budget Speeches, the Industrial Policy Statements/Resolutions and other documents have addressed this problem and made policy announcements from time to time.

Keywords:Sickness,PSEs,SICA., Policy, Budget

Introduction:

Industrial sickness is the key event of modern industrial age; and incidence of sickness has been growing in such large proportions that in the wake of industrial development, a large number of new units (covering all typed of units in small, medium and large sectors) have been added in this category. The rapid growth and magnitude to industrial sickness is pugging issue not only for present time but also for all time to come; especially for India during the next century. It has become a matter of grave concern for all; concerned directly or indirectly as not only, crore of rupees blocked up in several of sick units but also affected the national growth.

This phenomenon of industrial sickness also effects in terms of unemployment, none availability of goods and services and the prices soaring up. The shareholders lose their hard-earned savings, creditors lose their cash and future prospects of business become completely dark.

Sickness in Public Enterprises:

Industrial sickness is a major problem in the Indian economy. According to the RBI data there were 1773336 units were marked by the banks as “sick with outstanding dues Rs 481895 crore. At the end of 2002 of these 167574 were non-viable units having outstanding loan of Rs 414676 crore. Similarly as per department of Public Enterprises at the end of March 2004, 88 central public sector enterprises incurred a loss of Rs 8399 crore. 70 CPSEs had been registered BIFR owing to complete net worth erosion. The Government as owner and administrator of the economy wants a strong public sector. Turnaround seeks for giving another chance to sick PEs to reverse their sickness and become self sufficient.

Causes of Sickness:

Undoubtedly, the nature and causes of sickness differs from industry to industry, area to area, size to size—small, medium and large units, and because of a host of other factors. Sickness of an industry, generally starts with the gradual erosion of its liquidity due to cash losses on continuing basis, and thereby deterioration in debt, equity and current ratios. The root cause is poor management and the resultant cause in finance. The worsening liquidity position and deteriorating standards of maintenance accelerate the wear and tear of the existing assets, leading the unit to a state of operational thrombosis. The unit is then considered sick. If this process is allowed to continue, it may take the unit to ultimate death, i.e., insolvency and liquidation. A successful entrepreneur has to keep his eye open on the entire gamut of the unit operation so that a tiny rash may not grow into a tumour. So long as sickness is sporadic, it does not cause any social concern. However, its widespread incidence of an epidemic nature becomes a threat to the national economic health.

The causes responsible for the sickness in any unit can be termed as:

- Internal, i.e., Avoidable (Mostly, under control)
- External, i.e., Unavoidable (Mostly, not under control)

There are several causes of industrial sickness which can be classified under two parts.

- External Causes.
- Internal Causes.

External Causes :

Following are the external causes:

- 1) A producer faces many difficulties due to irregularity in the supply of raw material. As a result they are unable to maintain production schedule. Again, uncertain transport facilities and irregular power supply are other causes for dislocation in production process.
- 2) Changes in Government Policies- Changes in Government policies such as industrial licensing, import, export, and direct and indirect taxation one making viable units sick.
- 3) Demand restraints- Decline in demand for certain product is another cause of industrial sickness. Globalization and liberalization import policy is aggravating the situation.

Internal Causes :

- 1) **Labour Problem** - in most of cases strikes by labour and lockout created by management causes dislocation in production process. Such problems may lead to sickness of units if they are not solved in time.
- 2) **Technological Obsolescence** – In many cases old machines are not replaced by new ones as a result industrial unit become sick.
- 3) **Financial Problems** – Financial problem creates weak equity base. Disturbed capital markets Can make the unit sick.
- 4) **Management problem**- Lack of professionalism and lack of coordination among various departments of the organization are also the important causes of industrial sickness.
- 5) **Defective Planning** – Any organization should be established at a place where all type of infrastructural facilities like power, transport, banking and insurance are available. If these facilities are absent then units may become non-viable.

The problem of industrial sickness has assumed serious proportions, and the compounding growth of industrial sickness has seriously affected the profitability of the banking system with high proportion of nonperforming asset. Substantial amount of loan able funds of banks and financial institution has been locked up in sick industrial units at various size groups and lines of activities. Huge amount of investment has been made in this unit with no or little returns. As a result the performance of the industrial sector in the state as a whole has been greatly affected.

Impact of Sickness - The rate of industrial growth has been lower than possible, employment has shrunk, production has been lower than usual which have caused widespread labour unrest, export has decreased and market is high due to shortage. Besides, the blocking of invisible funds of financial institution leads to the fall of savings. As a result the health of growth of the state economy has been highly affected.

Companies that have gone sick have bad consequences on the economy of the nation. The following are the effects of industrial sickness.

- There is under utilization of capital assets.
- The entrepreneurship level declines. In economics land, labour and capital are referred to as the factors of production. It is only entrepreneurship of project promoters that brings together the factors of production for accomplishing the task of nation building. Increase in industrial sickness discourages entrepreneurship.
- The investor confidence reaches lower. Thus, capital is not put to productive use.
- Companies' sickness results in large scale unemployment and industrial unrest.

Therefore, prevention of sickness and rehabilitating sick projects assume greater importance. The number of working SLPEs and non working SLPEs are shown on Table – 1

TABLE – 1
STATEMENT SHOWING NUMBER OF WORKING AND NON-WORKING SLPEs

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Working SLPEs	76	75	74	73	71	65	69	72	72
Non Working SLPEs	08	09	10	13	14	20	21	23	20
Total	84	84	84	86	85	85	90	95	92

Source: Report of the Comptroller and Auditor General of India, Government of West Bengal (Commercial)

From Table – 5.c it is clear that number of working SLPEs is more or less same. But number of Non-working SLPEs has gone up steadily over the years that led to the establishment of Board for Industrial and Financial Reconstruction (BIFR) in the year 1987 and it also implies that new SLPEs are incorporated.

Board of industrial and Financial Reconstruction (BIFR) was established by the Central Government, under section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985. BIFR deals with issues like revival and rehabilitation on sick companies, winding up of sick companies, institutional finance to sick companies, and amalgamation of companies etc.

BIFR is a quasi judicial body.

The role of BIFR as envisaged in the SICA (Sick Industrial Companies Act) is:

- (a) Securing the timely detection of sick and potentially sick companies
- (b) Speedy determination by a group of experts of the various measures to be taken in respect of the sick company
- (c) Expeditious enforcement of such measures.

Industrial Reconstruction Department (IRD) has interfaced in the case of industrial 'sicknesses of around 349 units registered with BIFR from the state in the year 2009. This includes 25 central undertaking and remaining 324 units relate to private sector.

However no State PSU has so far been referred to BIFR from West Bengal as state government has taken the task of their revival of its own as matter of policy.

Role of Government of West Bengal in revival/restructuring of Public Sector Sick Companies :

Recognizing the socio-economic role being played by Public Sector Enterprises in the development of the state, Government of West Bengal has evolved a number of strategies from time to time strengthening PSEs. Some of the strategies for restructuring /revival of PSEs including sick units on long-term basis include:

- Financial restructuring wherever appropriate;
- Formation of joint ventures by inductions of partners capable of providing technical, financial and marketing inputs;
- Infusion of fresh funds;
- Organizational and business restructuring;
- Human resources development including manpower rationalization through approved Voluntary Retirement Scheme (VRS).
- Improved marketing strategies;
- Modernization and technological innovations;
- Cost control measures

The major strategies for restructuring of PSEs including sick units on long term basis are as follows:

- (i) **Financial restructuring:** Investment is made in PSEs by the Government in the form of equity participation, providing loan or plan / non-plan assistance/grants or through the revival packages which involve substantial outgo from the Government or write-off of past losses and infusion of fresh capital, etc. Generally the plan assistance is provided for expansion or undertaking new projects by the PSEs. Measures such as waiver of loan/interest/penal interest, conversion of loan into equity, conversion of interest including penal interest into loan, moratorium or payment of loan/interest, Government guarantee, etc are also taken to improve the financial strength of the company particularly in the case of sick and loss-making enterprises.
- (ii) **Business Restructuring:** Change of management, organizational restructuring, hiving off viable units from PSEs for formation of joint ventures by induction of partners capable of providing technical, financial and marketing inputs, change in product mix, improving marketing strategy, etc. are the steps taken under the business restructuring process as per need on case to case basis.
- (iii) **Manpower rationalization:** In order to shed excess manpower, the Voluntary Retirement Scheme (VRS) is introduced by the PSEs from time to time. In case of PSEs found unviable and decided to be closed, the Voluntary Separation Scheme is introduced in such units. Retrenchment is adopted as the last resort in exceptional circumstances.

Barriers of Restructuring :

- i) **Adverse Public Opinion** - The public opinion is influenced by the media against the restructuring and privatisation. The Government has not taken adequate steps to improve its communication with workers, customers, suppliers and general public to impress upon them the benefit of restructuring and privatisation.
- ii) **Inadequate Mechanism** - The nodal agency for SLPEs is the Department of Public Enterprise of the State Government and acts as the chief organ handling matters concerning, restructuring and privatisation. It is necessary that the Department of Public Enterprises deals solely with the SLPEs and is fully equipped with the skills of carrying out restructuring and privatisation. They should be exposed to the process of restructuring and privatisation through appropriate training for the purpose of capacity building.
- iii) **Political and Civil Executive** - Privatisation and restructuring are also not accepted by the political parties and civil servants.
- iv) **Readying SLPEs** - The restructuring and privatisation is a complex and very elaborate process. Minimum requirements for privatisation and restructuring is up to date accounts i.e. not having their accounts in arrears. The position of the enterprises under study was very discouraging about the finalization of the accounts.
- v) **Trade Unions** - A panic has created among the trade unions regarding unemployment. For this reason, restructuring and privatisation are not welcomed by the trade unions.

Legal Framework :

Depending on the modalities of privatisation some of the laws requiring fulfilment of their specific provisions in this matter include the Indian Companies Act, 1956, the Monopolies and the Restrictive Trade Practices Act, Industrial Relations Act, the Board for Industrial and Financial Reconstruction Act etc.

In this section we discuss with some of the steps taken at the Central Government Level which also effect on the performance of SLPEs in West Bengal.

i) Industrial (Development and Regulation) Act, 1951:

After independence the first enactment is Industrial (Development and Regulation) Act, 1951 (IDRA, 1951) which empowers the governments to take over the management of companies becoming sick. According to its various provision no suit or legal proceedings shall be instituted or continued against such sick companies.

ii) The Industrial Reconstruction Corporation of India Ltd. 1971

The Industrial Reconstruction Corporation of India Ltd. 1971 (IRCI) was established in 1971 for providing financial health to sick units. The organisation was transferred to the Industrial Reconstruction Bank of India (IRBI) in 1985 under the IRBI Act 1984.

iii) Section 72A of the Income Tax Act, 1961

In 1977, the Income Tax Act, 1961 was amended with the inclusion of Section 72A by which tax benefits could be given to healthy units when they took over sick units. The tax benefits is in the form of carry forward of accumulated losses and unprovided depreciation of sick industries by the healthy company who take over the sick company.

iv) Sick Industrial Companies (Special Provisions) Act, 1985:

- In the wake of sickness in the country's industrial climate prevailing in the eighties, the Government of India set up in 1981, a Committee to examine the matter and recommend suitable remedies. Based on the recommendations of the Committee, The Government of India enacted a special legislation namely, the sick industrial Companies (Special Provisions) Act, 1985 commonly known as the SICA.
- The main objective of SICA is to determine sickness and expedite the revival of potentially viable units or closure of unviable units (unit here in refers to a Sick Industrial Company). It was expected that by revival, idle investments in sick units will become productive and by closure, the locked up investments in unviable units would get released for productive use elsewhere. For Industrial Companies becoming sick in India, the Government formulated the 'Sick Industrial Companies (Special Provisions) Act, 1985' (or SICA) which got amended in the year 1993, with the following prime objectives:
 - To timely detect the sick and potentially sick industrial companies,
 - To speedily take preventive, ameliorative, remedial & other measures and
 - To enforce the measures so determined.

The other main objectives of this Act(SICA) as incorporated in its preamble, emphasizes the following points:

- SICA had been enacted in the public interest to deal with the problems of industrial sickness with regard to the crucial sectors where public money is locked up.
- It contains special provisions for timely detection of sick and potentially sick industrial companies, speedy determination and enforcement of preventive, remedial and other measures with respect to such companies.
- Those measures are to be taken by a body of experts.
- The measures are mainly.
 - (a) Legal.
 - (b) Financial restructuring.
 - (c) Managerial.

The 1993 Amendment to the Act lies down that an inquiry shall be deemed to have commenced upon receipt by the Board of any reference of information or upon its own knowledge reduced to writing by the Board

Important Provision of SICA

- The implementation of SICA involved setting up of two bodies:
 1. BIFR- The Board for Industrial and Financial Reconstruction.
 2. AAIIFR-The Appellate Authority for Industrial and Financial Reconstruction.

The Board for Industrial and Financial Reconstruction (BIFR):

Board of Industrial and Financial Reconstruction (BIFR) was established by the Central Government, under section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985. BIFR deal with issues like revival and rehabilitation on sick companies, winding up of sick companies, institutional finance to sick companies, and amalgamation of companies etc.

BIFR is a quasi-judicial body.

The role of BIFR as envisaged in the SICA (Sick Industrial Companies Act) is:

- (a) Securing the timely detection of sick and potentially sick and potentially sick companies
- (b) Speedy determination by a group of experts of the various measures to be taken in respect of the sick company
- (c) Expedition's enforcement of such measures.
 - The SICA provides for the establishment by the Central Government of a Board of Industrial and Financial Reconstruction (BIFR) to exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed on the Board by the Act.
 - It consists of a chairman and not less than two and not more than fourteen members appointed by the Central Government.
 - The Board of experts named the Board for Industrial and Financial Reconstruction (BIFR) was set up in January, 1987 and functional with effect from 15th May 1987.

Reference to the BIFR under the SICA:

Under the Act, other than the Board of Directors of the Company, the following authorities/institutions may refer a sick company to the BIFR:

- The Central Government.
- The Reserve Bank of India.
- State Government (where all or any of the undertakings belonging to such company are situated in such State).
- Public financial institution (where it has an interest in the Company by any financial assistance or obligation, rendered by it or undertaken by it).
- A State Level Institution (where it has an interest in the Company by any financial assistance or obligation rendered by it or undertaken by it).
- A Scheduled bank (where it has an interest in the Company by any financial assistance or obligation rendered by it or undertaken by it).

Reporting to the BIFR:

- The Board of Directors of a sick industrial company is required, by law, to report the sickness to the BIFR within 60 days of finalization of audited accounts, for the financial year at the end of which the company has become a sick.
- BIFR has prescribed a format for this report. While reporting by a company of its sickness to the BIFR is mandatory as per the provisions of the law, any other interested person / party can also report the fact of sickness of a company to the BIFR.
- Such interested parties may be the financial institutions / bank that has lent loan to the company, the RBI, the Central/State Governments.
- The BIFR has prescribed a different format for the report to be submitted by such interested parties. When a company has been financed by a consortium of banks, it is the Lead Bank that should report to the BIFR about the sickness under advice to other participating banks in the consortium.

Enquiry by the BIFR

- When a case is referred to the BIFR, it is verified by the Registrar of the BIFR as to whether the fact of the case falls within the provisions of the Sick Industrial (Special Provisions) Act, 1985.
- If so, the BIFR accepts the case and notifies a date for hearing the case. For rehabilitating a sick unit, cooperation of various connected agencies is a must. This co-ordination is achieved by the BIFR.
- The BIFR invites the representatives of the informant sick company, the representatives of concerned financial institutions and commercial banks, representatives of the Central/State Governments, trade union representatives etc., to the hearing and enquiry is made under section 16 of the Act.
- After the hearing, the BIFR itself may conduct a study or entrust the work to an 'operating agency' appointed by it to determine whether the company is in fact sick. Normally, the lead financial institutions (IDBI, ICICI, IFCI, and SFC) or the lead public sector bank that has financed the company is nominated as the operating agency.
- Lead institution is one that has major financial stake in the sick company. The enquiry is to be completed within 60 days. On completion of the enquiry, the BIFR will declare whether the company is sick or not.

Revival Package:

- Once a company has been found sick, the BIFR may grant time to the sick company to enable it to make its net worth positive and bring the company out of sickness, without any external financial assistance.
- If it is found infeasible for company to make its net worth positive without any external financial assistance, or if the BIFR decides the company cannot make its net worth positive Rehabilitation of Sick Units within a reasonable time, the BIFR will direct the operating agency to prepare a suitable revival package for the restoration of the health of the company.
- The operating agency prepares a suitable revival package. The revival package may vary from case to case depending on the nature of the problem and may include additional financial assistance, postponement of recovery of loan already lent by banks and financial institutions, change in management, amalgamation, and sale of redundant assets, lease of assets or any other suitable measure.
- The revival package should be submitted to the BIFR within a time limit of 90 days or such extended period as may be granted by the BIFR. On submission of the revival package by the operating agency, the BIFR sends the revival package in a draft form to all the interested parties (i.e., the sick industrial company, the banks/financial institutions who have

given financial assistance to the sick company, the operating agency, the transferee company (if there is a recommendation in the revival package for amalgamation) etc., eliciting their views/suggestions on the revival package.

- The BIFR will also publish particulars of the draft revival package in newspapers inviting suggestions/objections, if any, from the shareholders of the sick company, creditors and employees of the sick company, transferee company and any other interested party. On receipt of views/suggestions /objections on the draft revival scheme, the BIFR may, if deemed fit, afford an opportunity to the interested parties to be heard.
- After careful examination of all the aspects, the BIFR will sanction the revival scheme with or without any modifications.
- The scheme, as sanctioned, will come into force from the specified date and all the concerned parties are required to abide by the provisions of the revival scheme.
- The BIFR may also order the operating agency to implement the sanctioned revival scheme. When the revival package is finalized by the BIFR. The scheme will be circulated to the concerned agencies for their consent to be received within a period of 60 days.
- Once the various agencies involved in the revival scheme give their consent to the scheme, it will become binding on the consenting parties to implement the recommendations contained in the revival scheme.
- However, when any of the involved agencies does not give its consent to the scheme, The BIFR has no power to force the agency to accord its consent. If in the opinion of the BIFR, the revival package cannot be successful without the consent from one or more of the agencies involved, the BIFR has no other option but to recommend for winding up of the company. In fact, the threat of actual winding up of the company is the only weapon in the hands of the BIFR to make the various agencies to extend suitable reliefs and concessions as may be deemed necessary by the BIFR.
- BIFR itself cannot initiate the winding up proceedings. It can only forward its opinion to the concerned High Court will initiate the winding up proceedings.

In order to cure the ailments of the SLPEs, a number of steps in the meantime have been taken. The government of constituted Board for Industrial and Financial Reconstruction (BIFR) in the year 1987 to consider cases referred to Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), covering both government and non-government companies. With the growing importance of the role of the government enterprises in the overall economic scenario in the State, two standing bodies, viz. , Advisory Committee (SAC) on Government Corporations and Standing Selection Board (SSB) were constituted by the State Government to guide and advise the undertaking, as and when necessary, in vital matters pertaining to their financial operations, evaluation of projects and programs and development of managerial talent and competence. Standing Advisory Committee has been designed to play the role of an agency to supplement the efforts of various State governments departments administratively controlling the respective government enterprises by way of scanning the projects for turn around and rehabilitation, making recommendations thereon, monitoring and overseeing their financial operations and examining all matters connected with their operational viability. Similarly, the Standard Selection Board has been entrusted with the important task of looking into the aspects of right choice of managerial personnel in the identified key posts of government enterprises from internal and outside sources.

During the period under review, this department has interfaced in the cases of industrial 'sicknesses of around 372 units registered with the BIFR from this state. This includes 25 Central undertakings and remaining 347 units relate to private sectors. No SLPEs, however has so far been referred to BIFR from this State, as the State Government has taken the task of their revival of its own Status of PSU as on 31st December 2012 is given on the following Table.

Table-2
Status of PSU cases referred to BIFR as on December 31, 2012

Status		PRIVATE		CENTRAL SECTOR		TOTAL	
		Unit	Employees involved	Unit	Employees involved (BIFR-source)	Unit	Employees involved (BIFR-source)
A	Units revived /ceased to be sick and have come out of BIFR	43	61125	6	17000	49	78125
B	Ceased to be sick under SICA but not revived as yet	7	11700	0	0	0	11700
C	BIFR- approved revival packages at various stages of implementation/failed/revised scheme under consideration by BIFR	29	69000	9	28250	38	97250

D	Pending	108	35645	1	2550	109	38195
E	Closed units for which final order of winding-up has been passed by BIFR/appeals pending against the order of BIFR/assets are being sold by the Officer Liquidator under Direction of the High Court	81	NA	9	NA	90	Note at A
F	Rejected/dropped/non-maintainable	44	NA	0	NA	44	Note at B
G	Factory outside/HO/Reg. office located in the State	35	NA	0	NA	35	Note at C
	Total	347	177470	25	47800	372	225270

Source: Report of Industrial Reconstruction Department , Government of West Bengal

Conclusion :

Since 1990s new economic regime has started with an attempt to make PSUs competitive and sustainable. However there are no sign of improvement of all these attempts. So some believe in getting rid of the PSUs by selling them even at throw out prices. Some believe that they have their importance. They must be made to stand on their own foot. Our study is in that backdrop.

The global meltdown affected the performance of Indian Corporate Sector severely during 2008-2009. Growth rate for the period April 2008-2009 decreased to 2.8% as compared to that of the same period of previous year (8.8%). That in crisis only the public sector undertaking can save us as shock absorber is thus proved once again. We all perceive it but perhaps not yet feel. A look back to this performance of SLPEs has been thus pertinent. This is humble attempt towards that end.

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