

COMPANIES ACT,2013

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**REVIVAL  
AND  
REHABILITATION  
OF  
SICK COMPANY**

# JURISDICTION

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Jurisdiction with  
NCLT  
instead of  
BIFAR

# Determination of Sickness (Section 253)

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- ❖ Any kind of company can be declared as sick, not only industrial undertaking.
- ❖ Not on the basis of erosion of networth.
- ❖ If company fails to pay 50% or more of outstanding of secured creditors within 30 days from the service of notice of demand.
- ❖ Such creditors can apply to Tribunal.
- ❖ Company can also apply for sickness.

# Determination of Sickness (Section 253)

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- ❖ Such creditors or company can apply to Tribunal
  - ❖ for stay of any proceeding of the winding up OR
  - ❖ for execution against any property and assets of the company OR
  - ❖ For the appointment of receiver.
  - ❖ No suit for recovery of any money or for the enforcement of any security against the company shall lie or be processed with.

# Determination of Sickness (Section 253)

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- ❖ When any application is pending for declaration of sickness
  - ❖ Company shall not dispose off any property / asset
  - ❖ Company shall not take any action likely to prejudice the interest of the creditors.

# Determination of Sickness (Section 253)

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- ❖ Tribunal shall give notice to company for not less than 30 days to represent.
- ❖ The Tribunal shall order on the application within 60 days whether company is sick or not.

# Revival & Rehabilitation (Section 254)

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- ❖ Application for revival **by company / creditor** within **60 days** from the **date of order** of determination of sickness.
- ❖ Reference to tribunal **shall abate** if secured creditors (3/4<sup>th</sup> in value) have taken measure to recover secured debts against the company u/s 13(4) of the SERFASI Act.
- ❖ No reference will be made if secured creditors (3/4<sup>th</sup> in value) have taken measures for recovery of debts against the company u/s 13(4) of the SERFASI Act.



# Revival & Rehabilitation (Section 254)

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- ❖ If financial assets have been acquired by a scrutinization company under SARFAESI Act, consent of such agency shall be attached with Application.
- ❖ Application shall be supported by:
  - ❖ Audited financial statement.
  - ❖ Scheme for revival and rehabilitation.
- ❖ Declaration for no scheme (if no scheme is prepared).

# Appointment of Interim Administrator (Section 256)

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- ❖ Tribunal **shall fix date** of hearing within **7 days** from the receipt of application.
- ❖ The **date of hearing** shall not be later than **90 days from the date of receipt** of application
- ❖ On first date of hearing Tribunal may **appoint interim Administrator** to:
  - ❖ To hold meetings of creditors within 45 days from the date of appointment.
  - ❖ To consider whether it is possible to revive or rehabilitate the sick company?
  - ❖ To submit his **report to Tribunal** within **60 days** from the date of order.
- ❖ In case no scheme is filed by company, Tribunal may direct the Interim Administrator to takeover the management of the company.

# Committee of Creditors (Section 257)

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- ❖ Interim Administrator shall appoint a committee of creditors (not more than 7 in number).
- ❖ Representatives of each class of creditors should be represented.
- ❖ Interim Administrator shall decide the procedure to be followed for meetings.
- ❖ Interim Administrator may direct any Promoter, Director, KMPs to attend any meeting and to furnish all the information, as required.

# ORDER OF TRIBUNAL (Section 258)

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## Order of Tribunal on the date of hearing fixed

- ❖ On the basis of report of Interim Administrator, Tribunal shall order for
  - ❖ Proceedings for winding up of company be initiated or
  - ❖ Shall appoint Company Administrator for the company to prepare scheme of Revival & Rehabilitation.
- ❖ Tribunal may direct the company administrator to take over the assets and management of the company.
- ❖ Administrator may with the approval of Tribunal take services of experts.

# Powers & Duties of Company Administrator (Section 260)

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- ❖ To prepare:
  - ❖ Inventory of assets / liabilities.
  - ❖ Inventory of books and accounts and other records.
  - ❖ List of shareholders, secured / unsecured creditors.
  - ❖ Valuation Report for shares / assets of the company.
  - ❖ Provisional accounts if upto date audit is not done.
  - ❖ List of workmen with dues.

# Scheme of Revival & Rehabilitation (Section 261)

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- ❖ Company administrator shall prepare scheme of Revival and Rehabilitation considering the scheme filed by company (in existing act operating agency)
- ❖ Scheme shall provide following:
  - ❖ Financial restructuring of sick company.
  - ❖ Change in management or taking over of Management of sick co.
  - ❖ Amalgamation of sick company with any other company or any other company with sick company.
  - ❖ Takeover of sick company by solvent company.
  - ❖ Sale or lease of part or whole of Assets or business of sick co.
  - ❖ Rationalization of Managerial Personnel, supervisor, staff, workmen in accordance with law.
  - ❖ Repayment and rescheduling or restructuring of debts and obligation of sick co. to any of its creditors or class of creditors.



# Approval of Scheme (Section 262)

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- ❖ The revival and rehabilitation scheme, prepared by company administration shall be approved atleast by:
  - ❖  $\frac{3}{4}$ <sup>th</sup> of secured creditors and
  - ❖  $\frac{1}{4}$ <sup>th</sup> of unsecured creditors
- ❖ If scheme involves amalgamation of sick company with other company, approval in General Meeting of both the companies also required.
- ❖ If approved:-
  - ❖ the scheme shall be submitted to Tribunal within 60 days from the appointment (extendable to 120 days).
  - ❖ Tribunal shall send scheme to company, company administrator, other company (in case of amalgamation).

# Approval of Scheme (Section 262)

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- ❖ Tribunal may direct to publish draft scheme in newspaper for suggestion / objection within such period as Tribunal may specify.
- ❖ Complete draft scheme shall be kept at registered office.
- ❖ Tribunal shall pass the order after considering the suggestion, within 60 days from the receipt of suggestions.
- ❖ Copy of sanctioned scheme shall be filed with ROC within 30 days from the date of receipt of copy of order.
- ❖ The sanctioned scheme shall be final and binding on company, employees, creditors, shareholders and guarantors and transferee company ( if any).



# Approval of Scheme (Section 262)

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- ❖ If scheme is not approved Company Administrator shall report to Tribunal within 15 days and Tribunal shall pass the order for winding up.



# THANK YOU