

**STANDING COMMITTEE ON FINANCE
(2002)**

THIRTEENTH LOK SABHA

**MINISTRY OF FINANCE & COMPANY AFFAIRS
(DEPARTMENT OF ECONOMIC AFFAIRS)**

**THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS)
REPEAL BILL, 2001**

THIRTY THIRD REPORT

**THE SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) REPEAL BILL,
2001**

Presented to Lok Sabha on 19 December, 2002
Laid in Rajya Sabha on 19 December, 2002

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2002/ Agrahayana, 1924 (Saka)

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2001.....

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2002

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Ramsinh Rathwa
3. Shri Rattan Lal Kataria
4. Shri Kirit Somaiya
5. Shri Kharebela Swain
6. Shri Raj Narain Passi
7. Shri S. Jaipal Reddy
8. Shri Ramesh Chennithala
9. Shri Kamal Nath
10. Shri Pravin Rashtrapal
11. Shri Sudarsana E.M. Natchiappan
12. Shri Rupchand Pal
13. Shri Varkala Radhakrishnan
14. Dr. Daggubati Ramanaidu
15. Shri Chada Suresh Reddy
16. Shri Prakash Paranjpe
17. Shri Raashid Alvi
18. Shri T.M.Selvaganapathi
19. Shri Trilochan Kanungo
20. Shri Sudip Bandyopadhyay
21. Shri Sharad Pawar
22. Shri Abdul Rashid Shaheen
23. Capt. Jai Narain Prasad Nishad
24. Shri Prabodh Panda
25. Shri Amir Alam Khan
26. Dr. M.V.V.S. Murthy**
27. Shri Jyotiraditya Madhavrao Scindia***
28. Shri Surender Singh Barwala \$
29. Sh. Nagmani \$\$\$
30. Smt.Renuka Chowdhury %

RAJYA SABHA

31. Dr. Manmohan Singh
32. Shri S.S. Ahluwalia
33. Shri Dina Nath Mishra *
34. Shri Parmeshwar Kumar Agarwalla
35. Dr. Biplab Dasgupta
36. Shri P. Prabhakar Reddy
37. Prof. M. Sankaralingam
38. Shri Raj Kumar Dhoot ##
39. Shri Palden Tsering Gyamtso
40. Shri Prithviraj Dajisaheb Chavan @
41. Shri Praful Patel @@
42. Shri Murli Deora @@@
43. Shri Prem Chand Gupta \$\$
44. Dr. T. Subbarami Reddy #
45. Vacant

* Nominated vice Sh. Narendra Mohan w.e.f. 4.1.2002.
** Nominated w.e.f. 18.1.2002
*** Nominated w.e.f. 11.3.2002
@ Nominated w.e.f. 8.4.2002
@@ Nominated w.e.f. 8.4.2002
@@@ Nominated w.e.f. 10.4.2002
\$ Nominated w.e.f. 19.4.2002
\$\$ Nominated w.e.f. 22.4.2002
Nominated w.e.f. 22.4.2002
Nominated vice Shri Sanjay Nirupam w.e.f. 8.5.2002.
\$\$\$ Nominated w.e.f. 5.7.2002
% Nominated w.e.f. 2.9.2002

SECRETARIAT

- | | | | |
|----|------------------------|---|----------------------|
| 1. | Shri P.D.T. Achary | - | Additional Secretary |
| 2. | Dr. (Smt.) P.K. Sandhu | - | Joint Secretary |
| 3. | Shri R.K. Jain | - | Deputy Secretary |
| 4. | Shri S.B. Arora | - | Under Secretary |
| 5. | Shri Kh. Ginalal Chung | - | Executive Assistant |

INTRODUCTION

I, the Chairman of Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf present this Thirty Third Report on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001.

2. The Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 introduced in Lok Sabha on 30 August, 2001 was referred to the Committee on the same day for examination and report thereon, by the Hon'ble Speaker, Lok Sabha, under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Written views/suggestions/Memoranda on the provisions of the Bill were received from the following organisations/ institutions viz. (i) Centre of Indian Trade Unions (CITU), New Delhi; (ii) All India Manufacturers' Association, Mumbai; (iii) IFCI Ltd. New Delhi; (iv) Oriental bank of Commerce, New Delhi; (v) State Bank of India, Mumbai; (vi) Bank of Baroda, Mumbai; (vii) Industrial Development Bank of India Ltd., Kolkata; (viii) Allahabad Bank, Kolkata; (ix) Confederation of Indian Industry (CII), New Delhi; (x) Punjab National Bank, New Delhi; (xi) IIBI Ltd. New Delhi (xii) PHD Chamber of Commerce and Industry, New Delhi; (xiii) BIFR, New Delhi; (xiv) AAIFR/BIFR Bar Association of India, New Delhi; (xv) Indian Banks Association, Mumbai; and (xvi) Dhir and Dhir Associates, a firm of advocates, New Delhi.

4. The Standing Committee on Finance at their sitting held on 26 August, 2002 heard the views of representatives of the (i) Federation of Indian Chambers of Commerce and Industry (FICCI), (ii) Confederation of Indian Industry (CII), (iii) PHD Chamber of Commerce and Industry (PHDCCI), (iv) Centre of Indian Trade Unions (CITU), (v) Hind Mazdoor Sabha (HMS), (vi) Bhartiya Mazdoor Sangh (BMS), (vii) Indian National Trade Union Congress (INTUC), (viii) All India Trade Union Congress (AITUC) and (ix) All India Manufacturers' Association on the provisions contained in the Bill.

5. At their sitting held on 27 August, 2002 the Standing Committee on Finance took the evidence of representatives of (a) State Bank of India, (b) Punjab National Bank, (c) Bank of Baroda, (d) Allahabad Bank, (e) Oriental Bank of Commerce, (f) Industrial Development Bank of India (IDBI), (g) Indian Finance Corporation of India Ltd. (IFCI), (h) ICICI Ltd., (i) Industrial Investment Bank of India (IIBI) Ltd. The Committee also took the oral evidence of the representatives of the Ministry of Finance and Company Affairs and the representatives of the Ministry of Law and Justice (Department of Legal Affairs) on the provisions of the Bill on the same day.

6. The Committee at their sitting held on 01 October, 2002 took evidence of the representatives of Board for Industrial and Financial Reconstruction (BIFR).

7. The Committee took evidence of the representatives of Ministry of Finance and Company Affairs for the second time at the sitting held on 04 December, 2002.

8. The Committee wish to express their thanks to the representatives of (i) Federation of Indian Chambers of Commerce and Industry, (ii) Confederation of Indian Industry (CII), (iii) PHD Chamber of Commerce and Industry (PHDCCI), (iv) Centre of Indian Trade Unions (CITU), (v) Hind Mazdoor Sabha (HMS), (vi) Bhartiya Mazdoor Sangh (BMS), (vii) Indian National Trade Union Congress (INTUC), (viii) All India Trade Union Congress (AITUC) and (ix) All India Manufacturers' Association (x) State Bank of India, (xi) Punjab National Bank, (xii) Bank of Baroda, (xiii) Allahabad Bank, (xiv) Oriental Bank of Commerce, (xv) Industrial Development Bank of India (IDBI), (xvi) Indian Finance Corporation of India Ltd. (IFCI), (xvii) ICICI Ltd., (xviii) Industrial Investment Bank of India (IIBI) Ltd., (xix) Ministry of Finance & Company Affairs and (xx) Ministry of Law And Justice (Department of Legal Affairs) for co-operation extended in placing before them their considered views and perceptions on the subject and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

9. For facility of reference, recommendations/observations of the Committee have been printed in thick type.

**NEW DELHI;
December, 2002
Agrahayana, 1924 (Saka)**

**N. JANARDHANA REDDY,
Chairman,
Standing Committee on Finance**

REPORT

Background

Industrial sickness is a world-wide phenomenon. Every country has its own laws to tackle this menace effectively. In India, there were multiple laws and agencies dealing with this problem but they lacked co-ordinated approach. Therefore, a need was felt to have a legislation which dealt exclusively with the problem and the matters relating thereto. Accordingly, the Sick Industrial Companies (Special Provisions) Act, 1985 (popularly known as SICA) was enacted 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. Essentially this legislation was enacted to safeguard the economy of the nation and to protect viable sick units. It was aimed at reviving and rehabilitating sick industries; that is to say to resuscitate, revive and rehabilitate potentially viable industries and to suggest ameliorative and recuperatory measures. The law provided for the establishment of Board for Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction besides defining the sick unit. According to the Act (SICA) a sick industrial company is defined as an industrial unit being a company registered for not less than five years which has at the end of financial year accumulated losses equal to or exceeding its entire networth.

Board for Industrial and Financial Reconstruction (BIFR)

2. The BIFR was set up w.e.f. 12.1.1987 to provide speedy mechanism for amalgamation, merger and devise such other solutions as may be necessary to deal with the problems of sick units in the large and medium sector. The onus for reporting sickness would be on the management of the units themselves, who will be required to seek a fresh mandate from their shareholders after 50 per cent of the net worth has been eroded. Once BIFR has taken cognizance of the matter regarding any industrial company, there will be blanket ban on the recovery proceedings against the company.

Appellate Authority for Industrial and Financial Reconstruction (AAIFR)

3. The AAIFR (Appellate Authority) was set up for hearing appeals against the orders of the Board only. Sec. 14 of SICA, 1985 states that the proceedings before the Board and the Appellate Authority would be deemed to be judicial proceedings and it would be deemed as Civil Court for the purpose of s. 195 and Chapter XXVI of Code of Criminal Procedure, 1973 and every proceeding before the court shall be deemed to be judicial proceeding within the meaning of ss. 193 and 228 and for the purpose of s. 196 of the Indian Penal Code.

4. It has, however been the experience that the Act has not proved to be effective up to the desired extent to either check the problem of industrial sickness or find timely solution for restructuring the corporate sector. Many deficiencies were noticed in the operation of SICA, which are as follows :

- (a) restrictive definition of sickness and belated cognizance thereof;
- (b) slow pace of BIFR intervention;
- (c) excessive protection to sick industries under Section 22 of SICA providing for automatic stay of all proceedings;
- (d) necessity of consensus amongst secured creditors before finalisation of revival scheme;
- (e) lack of monitoring of sanctioned revival scheme; and
- (f) delays in the winding up of sick companies.

5. In 1997, the Government brought forward a Bill namely the Sick Industrial Companies (Special Provisions) Bill, 1997 which sought to repeal the Act of 1985 besides strengthening the mechanism of BIFR by making certain far reaching improvements in the existing law. In a nutshell, that Bill addressed almost all the deficiencies noticed in the working of the SICA. But that Bill lapsed on the dissolution of Lok Sabha.

6. In view of the problems noticed in BIFR mechanism, Government has been considering various alternatives including repeal of SICA and enacting a separate legislation to address the problems of industrial sickness more effectively.

7. Accordingly, the Sick Industrial companies (Special Provisions) Repeal Bill, 2001 was introduced in Lok Sabha on 30 April, 2001.

The Bill to repeal SICA contains the following provisions:

- (1) The Bill seeks to repeal SICA;
- (2) BIFR and AAIFR will be dissolved.
- (3) All Proceedings pending before BIFR and AAIFR prior to their dissolution shall stand abated.

8. Another Bill viz., the Companies (Amendment) Bill, 2001 was introduced in the Lok Sabha on 30 April, 2001 with the main objective of facilitating or expediting revival/rehabilitation of sick companies and protection of workers interests and where necessary, winding up of companies. The Bill seeks to provide for the setting up of a National Company Law Tribunal. The powers and jurisdiction presently being exercised by various bodies viz., Company Law Board, Board for Industrial & Financial Reconstruction (BIFR), Appellate Authority for Industrial & Financial Reconstruction (AAIFR) under SICA and powers of High Courts in relation to winding up of companies are proposed to be consolidated and entrusted to the Tribunal with a view to avoid multiplicity of fora to decide the matters regarding revival/ rehabilitation/ mergers/ amalgamation or winding up of companies. The Bill was referred to the Standing Committee on Home Affairs which have approved the provisions of the Bill with slight changes and presented their report to the Parliament.

9. In a written submission to the Committee, the Ministry of Finance furnished the details of cases referred to BIFR (as on 30.06.2002), cases disposed of, cases pending etc. were as under :-

(1) References received

(a) Public Sector	268
(b) Private Sector	5181
TOTAL	5449

(2) Registration Declined : 1371

(3) Cases under Scrutiny : 55

(4) Reference Registered :

(a) Private Sector	3838
(b) Public Sector	185
TOTAL	4023

(5) Accumulated Losses : Rs. 80283 crore
of all the Registered
cases as on 31.07.2002

(6) Year-wise Registration

YEAR	TOTAL
1987	311
1988	298
1989	202

1990	151
1991	155
1992	177
1993	152
1994	193
1995	115
1996	97
1997	233
1998	370
1999	413
2000	429
2001	463
2002	264
Total	4023

(7)	(i)	Dismissed as non-maintainable	900
	(ii)	Winding up recommended to the concerned High Court.	1029
	(iii)	Dropped on becoming the net worth positive	41
	(iv)	Rehabilitation schemes Approved/Sanctioned	555
	(a)	Declared no longer sick/Revival	314
	(b)	Schemes sanctioned/Under Revival	241
		Total	2525

(8)	Details of Pending cases		
	(i)	Draft Schemes Circulated	77
	(ii)	Winding up Notice issues	117
	(iii)	Under Inquiry	1151
	(iv)	Schemes Failed & Reopened	64
	(v)	Pending Cases Remanded by AAIFR	44
	(vi)	Stay ordered by Courts	45
		Total	1498

(9) Age-wise pendency as on 30.06.2002

Less than one year	255
1	370
2	288
3	192
4	157
5	59
6	20
7	15
8	27
9	9
10	24
11	15
12	12
13	20

14	12
15	23
Total	1498

10. The following organisations/ institutions sent their views /suggestion on the provision of the Bill. Viz (i) Centre of Indian Trade Unions (CITU), New Delhi; (ii) All India Manufacturers' Association, Mumbai; (iii) IFCI Ltd. New Delhi; (iv) Oriental bank of Commerce; (v) State Bank of India, Mumbai; (vi) Bank of Baroda, Mumbai; (vii) Industrial Development Bank of India Ltd., Kolkata; (viii) Allahabad Bank, Kolkata; (ix) Confederation of Indian Industry (CII), New Delhi; (x) Punjab National Bank, New Delhi; (xi) IIBI Ltd. New Delhi (xii) PHD Chamber of Commerce and Industry, New Delhi; (xiii) BIFR, New Delhi; (xiv) AAIFR/BIFR Bar Association of India, New Delhi; (xv) Indian Banks Association, Mumbai; and (xvi) Dhir and Dhir Associates, a firm of advocates, New Delhi.

11. After going through the memoranda the Committee took oral evidence of the following organisations/institutions, Trade Unions and Ministries on the provisions of the Bill under examination: (i) PHD Chamber of Commerce and Industry, (ii) Confederation of Indian Industry (CII) and (iii) FICCI; and Trade Unions viz. (a) Indian National Trade Union Congress (INTUC), (b) Hind Mazdoor Sabha (HMS), (c) Centre of Indian Trade Unions (CITU), (d) Bharat Mazdoor Sabha (BMS) (e) All India Trade Union Congress (AITUC) and (f) All India Manufacturers' Organisation (AIMO); Banks viz., (a) Allahabad Bank, (b) Punjab National Bank, (c) State Bank of India, (d) Bank of Baroda and (e) Oriental Bank of Commerce; Financial Institutions viz., (x) IIBI Ltd., (y) IDBI, (z) ICICI Bank Limited, (zz) IFCI Ltd. and the Ministries of Finance & Companies Affairs and Law & Justice (Department of Legal Affairs), The Committee also heard the views of the Board for Industrial & Financial Reconstruction (BIFR).

12. Opposing the Bill, Centre of Indian Trade Unions submitted their views to the Committee as below :

"The present economic situation in the country is to say the least, most inappropriate for doing away with the legislation like the SICA. It is admitted in all quarters that the economy is reeling under a severe demand recession. Hardly 30 per cent of the installed capacity in indigenous industry is being utilised. Removal of Quantitative Restrictions on imports, slashing down of peak rates of custom duty, hiking of excise duty on local manufacturers, have all led to a chronic proliferation of industrial sickness. This situation warrants immediate ameliorative measures for revival/rehabilitation of sick industries. In this context, repeal of the SICA and the

enactment of Companies (Amendment) Bill, 2001, with its main thrust on fast track liquidation and drastically diluted provisions towards revival, will immensely harm the country's economy. Huge industrial manufacturing capacity, installed over several decades, will face instant liquidation. Hence, the Standing Committee is requested to halt the drift sought to be triggered off by the Repeal Bill.

The present move on the part of the Government of India to repeal the SICA is not based on any serious study or review of the working of the Act or functioning of the BIFR (and the AAIFR). Though the SICA contained provision for the BIFR to function with one Chairman and 14 members, the Board had never even once during the last 15 years of its existence had a full compliment of 14 members. For several years, the BIFR functioned with just a Single Bench only. The BIFR had no infrastructure worth the name to carry out its onerous functions. It was not provided with an appropriate fund for revival/rehabilitation at its disposal. Though the BIFR was a quasi-judicial body, it had to go by the consensus process in drawing up sanction of revival packages. It had no powers to compel the creditors, or the Financial Institutions or the Government to undergo any sacrifices for revival of the sick company. In fact, in several cases of Central Public Sector Undertakings, the approved rehabilitation packages could not be put into implementation for want of financial approval from the Government of India. In most cases, the promoters of sick industrial companies had gone to the BIFR only when they were chased by the creditors. Their aim essentially was to avail the protection under Section 22 of the SICA. It benefited them to prolong the proceedings before the BIFR. With the Banking Sector reforms set in motion, as part of the economic reforms measures, the Banks are mostly keen on getting away from the sick companies under some One Time Settlement (OTS) formula, rather than committing funds for revival. A holistic view of all these aspects need to be taken and the BIFR cannot be held exclusively responsible for all that ails the functioning of the SICA."

13. The suggestions made by the BIFR so as to remove the single most important grievances of the workers in respect of the BIFR's procedures were as follow:

"The workers' association/unions have been complaining that the management of sick companies are not prompt in the payment of workers' dues and they, often, delay such payments after the companies are registered with BIFR. It is also alleged the non-payment of statutory dues including wages and salaries or workers' provident fund and ESI dues, gratuity etc. by the sick companies has assumed alarming proportions. BIFR, however, has no authority under SICA to give any direction to a sick

company to pay the workers' dues. It can, at best, accord permission to the workers u/s 22(1) to file cases in the Labour Courts. It was suggested to the Ministry of Finance that SICA may be amended suitably to empower the BIFR to require the sick companies to pay the dues of the workers in whole or in part, as a pre-condition to the continuation of proceedings before BIFR or for grant of continued protection u/s 22 of the Act from its creditors. This would have removed the single most important grievance of the workers in respect of the BIFR's procedures."

14. In regard to the reasons for the delay in winding up sick companies the BIFR has submitted as below :

"Delays in winding up of sick companies have been erroneously attributed to BIFR. There seems to be a popular misconception that the delays in the winding up sick industrial companies (which cannot be rehabilitated) take place at the level of the Board. However, as per Sec. 20 of SICA, BIFR is only a recommendatory body and on coming to the conclusion that a particular sick company cannot be rehabilitated within a reasonable time frame, it has only to record and forward its opinion to the concerned High Court. The main causes of delay in the winding up of such industrial companies are in fact, attributable to the High Courts, which very often entertain fresh rehabilitation proposals from the companies or remit the cases back to BIFR for de-novo consideration, quite often after a gap of 3-5 years, thereby starting the whole cycle afresh. According to an ADB (Asian Development Bank) study, (1995), as many as 59% of all winding up cases were pending in various High Courts in India for 10-50 years and even more, whereas remaining 41% were pending for 0-10 years.

After the BIFR has recommended winding up of a company to the concerned High court, it allows in terms of provisions of Sec. 20(4) sale of assets of the sick industrial company and to forward the sales proceeds to the High Court for orders to distribute the same in accordance with the provisions of Sec. 529(a) of the Companies Act, 1956. FIs/banks are generally unwilling to accept the responsibility for selling the assets with the result that by the time the liquidator appointed by the High Courts takes up the disposal of the assets, these are considerably deteriorated

and the sales bring negligible returns. It was proposed by the BIFR that the delays involved at the High Court level in the liquidation of company's assets which are ordered for winding up could be considerably reduced if official liquidator or other similar organisation could be provided to BIFR to facilitate sale of assets of the sick industrial companies u/s 20(4) of SICA."

15. Banks and Financial Institutions have acknowledged that BIFR under SICA has not been effective enough in tackling industrial sickness. A representative of Oriental Bank of Commerce has stated inter alia :

"Sir, out of 70 cases that are referred (to BIFR) not one company has come out successfully. We have been able to recover only from two companies that too out of court settlement. Very large number of cases were dismissed but after a struggle of three to five years. They were dismissed because the companies came out with unclean hands. To prove that they have come with unclean hands, we had invest a very large substantial amount of money."

16. Industrial Investment Bank of India Ltd. (IIBI) supporting the repeal Bill has given the following submission :

" The general principle has been that industrial units which are potentially viable may have to be given need based relief/concessions by the lenders/involved agencies to turnaround and non-viable units should be speedily wound up and their properties sold to recover the dues of secured creditors. It has been our experience that the BIFR process has taken much more time both implementing a rehabilitation plan or for recommending winding up of non-viable entities. Sick Industrial Companies (Special Provisions) Act (SICA) has been a hurdle in recovery of dues by IIBI, thereby impairing IIBI's own profitability.

In IIBI, there are 166 cases involving an amount of Rs. 479 crores where references are pending before BIFR. Out of these, in 53 cases involving an amount of Rs. 199.88 crores, recovery proceedings initiated by IIBI could not proceed further because of the restriction contained in section 22 of SICA. An amount of Rs. 81.16 crores has already been provided for against these loans. In this connection, it may be noted that Sec. 22 of SICA precludes banks and financial institutions from initiating or

proceedings with recovery action against borrower concerns and guarantors. Undue advantage of the provisions of SICA is taken by some of the borrowers in order to thwart the efforts of banks and financial institutions for recovery of dues.

Sometimes, when a reference made by a company to BIFR is dismissed, an appeal is preferred before AAIFR. When this is also dismissed, a writ petition is filed in the High Court challenging the decision of BIFR/AAIFR and obtaining an interim stay of the order of BIFR/AAIFR. When High Court dismisses such writ petition, one more reference is made to BIFR on the basis of annual accounts of the company for the subsequent year. This process is repeated several times with the result that, all the while, banks and financial institutions are prevented from filing recovery petition or proceeding with such action already initiated. In ten cases involving an amount of amount of Rs. 70.92 crores, such multiple references made by the borrower concerns are holding up recovery action by IIBI.

In the statement of objects and reasons, the deficiencies noticed in the operation of SICA have been listed. IIBI agrees with the same.

It is therefore, felt that repeal of SICA and dispensing with the regime of BIFR is a step in the right direction.”

17. During evidence the representatives of Ministry of Finance & Company Affairs gave their comments on the proposed alternative i.e. Companies (Amendment) Bill, 2001 as below :

“The Bill makes very strong provisions to strengthen the rehabilitation provisions. In fact, rehabilitation is the first effort. Only when the rehabilitation effort fails, that the case will go for winding up. But as the Finance Secretary was mentioning, we have to take a very reasonable position even on the possibility of rehabilitation. There are companies which are rehabilitable and there are companies which are beyond rehabilitation. Just prolonging the whole procedure indefinitely is not in the interest of the labour. So, rehabilitation provisions have been strengthened. In fact, the entire part 6(a) of the Bill, consisting of several sections running over 4-5 pages, deal entirely with rehabilitation. They, in

fact, strengthen the rehabilitation by some of the provisions which I had mentioned that even if two-thirds of the creditors agree to a rehabilitation scheme, it becomes binding on the remaining creditors. It is not necessary to go in for hundred per cent creditors to agree for a particular scheme. If a scheme is agreed and then that scheme is not implemented, there are provisions for penalty. It was not there earlier. There is also, of course, the contempt power with the Appellate Tribunal.

A fund has been created which will be the Rehabilitation Fund. It will be available for rehabilitation purposes. It will be available for meeting the claims of the workers which was a thing that was not there in the BIFR. So, even the labour concerns have been taken care of in several ways. Every Bench which is going to deal with rehabilitation or with winding up must necessarily have a labour Member so that he takes care of the labour interest. The labour dues will enjoy the same high priority as they enjoy at present. First of all, if it is during the process of rehabilitation, the fund can be used to provide relief to the labour. But even at the winding up stage, the labour dues will enjoy high priority. I think, it is section 5(29)(a) of the Companies Act. That has been preserved. So, in these ways, the Bill will take care of the labour interests. It will continue to give priority for rehabilitation.”

18. During evidence, the representative of BIFR gave the following oral submission in regard to strengthening of BIFR :

“As a matter of fact, we had all along been insisting that the Board should be suitably strengthened as all the delays that are taking place and other connected problems are due to the fact that the Board was working with minimal strength and was expected to deliver goods.”

19. The Committee wanted to know whether the provisions of Companies (Amendment) Bill, 2001 to replace SICA would bring improvement and ensure effective tackling of corporate sickness. The Chairman, BIFR submitted his views as follows :

“A perusal of the Bill would reveal that almost all the relevant provisions of SICA have been replicated in the Bill in toto and only cosmetic changes have been effected, which instead of simplifying matters

would further complicate the problems encountered in the implementation of SICA as may be seen from the following :-

- (i) The problem of undue delays in the disposal of cases by BIFR has not been fully addressed in the Bill under consideration. On the contrary, the scope for further delays has increased. While SICA lays down the total time-limit of 270 days between the time for detection of sickness and filing of a reference by a sick company and sanctioning of a scheme by the Board, this time-limit has been further increased to 381 days, extendable to 580 days in the Companies (Amendment) Bill, 2001. It seems a far cry that the new legislation would ensure speedier rehabilitation of sick companies or that the winding up process of unviable units would be completed within two years as claimed.
- (ii) The proposed new legislation confers the powers of winding up sick companies on the NCLT instead of the High Courts, thereby claiming that the levels of litigation would stand reduced. Further, appeals against the orders of the Appellate Tribunal would lie only with the Supreme Court. It may, however, be noted that so long the writ jurisdiction of the High Courts under Art. 226/227 of the Constitution is not ousted, the aggrieved parties would continue to exercise their right of filing writ petitions before the High Courts or Supreme Court, causing delays as is the case with the BIFR.
- (iii) While the strength of Benches in the NCLT is proposed to be substantially augmented, keeping in view the fact that the Tribunal would be dealing with cases hitherto being handled by the Company Law Board and BIFR and regional Benches are also proposed to be created, only one Appellate Tribunal is proposed to be created to hear the appeals against the orders of all the Benches of NCLT which may number upto 25. Further, the number of appeal cases coming before the Appellate Tribunal will go up manifold with the change in the criteria of sickness from total erosion to 50% erosion of networth. Besides, appeals will also be generated against

the orders of the NCLT, relating to cases which were being earlier dealt with by CLB. It would, thus, be impossible for one Appellate Tribunal to dispose of such a large number of cases expeditiously. Delays would be inherent in such a set-up.

- (iv) While it is true that automatic protection against recovery of dues by secured creditors u/s 22 of SICA has been misused by unscrupulous promoters, the remedy would not lie in doing away with the provision altogether but by retaining it with suitable safeguards. Each case should be considered on merit and the protection restricted to a maximum period of six months to a year as was proposed by BIFR. If the protection is completely taken away, scores of secured and unsecured creditors would file recovery suits against the sick companies in different courts all over the country. If the sick companies are called upon to defend all these cases, they might as well forget that they can be revived through the process listed out in the new legislation.
- (v) In order to allay the fears of the workers that on becoming sick, companies stop making payments to the workers, the NCLT Bill has proposed the establishment of a Rehabilitation Fund by levying a cess on the 'turnover of every company'. This Fund is proposed to be used for making interim payment of workmen dues pending the revival or rehabilitation of the sick industrial company or for protecting assets of sick industrial companies or revival or rehabilitation of sick companies. The number of employees of sick companies presently registered with BIFR, excluding those of the public sector undertakings, comes to around 10 lacs. Even if a subsistence allowance of Rs. 1,000 p.m. is paid to each worker, the monthly bill alone would come to around Rs. 100 crores. With the change in the criteria of sickness, the number of sick companies reporting to the Tribunal (NCLT) would go up substantially, creating further additional burden on the fund. The expenditure on protection of assets of sick companies and their revival/rehabilitation would involve

another tidy sum. According to rough estimates, revenue collection from the proposed cess would work out to a round Rs. 75-150 crores p.a. How practical would it be to collect the cess and use it for the purposes indicated in the Bill needs to be gone into very carefully as the Govt. would be committing themselves to paying the workmen dues for the interim period, once the Fund is established.

- (vi) It also requires serious consideration whether the functions of two independent Tribunals, viz., Company Law Board and BIFR with no overlapping responsibilities, should be entrusted to a single Tribunal, i.e. NCLT as envisaged in the Companies (Amendment) Bill, 2001. In most countries, bankruptcy laws are administered by independent agencies. It is felt that combining the functions of two independent authorities, i.e. Company Law Board and Board for Industrial and Financial Reconstruction would be retrograde step.”

20. As regard abatement of cases pending with BIFR and AAIFR, the Chairman, BIFR stated as under :

“The Companies (Amendment) Bill, 2001 provides that all cases pending with the Company Law Board shall stand transferred to the NCLT. No such provision has been made in respect of cases pending with BIFR. On the other hand, the SICA Repeal Bill lays down that any reference made to the Board or any inquiry pending before the Board or any other authority or any proceedings of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of SICA Repeal Act shall stand abated. However, clauses 5(1) (c),(d) and (e) of SICA Repeal Bill provide that repeal of SICA shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment, or affect any order made by the BIFR, for preparation and sanction of the schemes, or otherwise affect any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceedings in respect thereof.

These rights can be enforced only if the sick company can get the rehabilitation scheme prepared and sanctioned and further has the right to appeal against any adverse decision. The absence of any transitional

provisions would tantamount to taking away these legal rights of sick companies and may provide scope for litigation.”

21. In his oral submission, a representative of Federation of Indian Chambers of Commerce and Industry (FICCI) stated as under :

“We have interacted with members of FICCI to get their views about the repeal of the SICA. The basic anxiety is about what would happen to the cases before the BIFR once the BIFR ceases to exist because the fear is that the chances of survival or revival of these companies might also be jeopardised. The funding, financial reconstruction and amalgamation of these units would also be uncertain.

Secondly, we are afraid what would happen to the assets of the companies. Under the present dispensation, some assets are protected by the BIFR. Now, if the BIFR is scrapped, what would be the dispensation for management of those assets? We presume that once the BIFR goes, these companies would possibly be referred to the new Company Law

Board, which we fear is a big body and might not be exactly in a position to address the questions of rehabilitation.

There is also an issue of creation of a rehabilitation and retraining fund, in which companies do not see much merit because some of the efficient profit-earning companies are being penalised for the sickness of others, whatever is the reason.”

22. Another representative of Federation of India Chambers of Commerce and Industry further supplemented as below :

“The most important aspect is that the Company Law Board also provides for the creation of a fund. Shri Roy also just now mentioned about it, that there is a resistance on the part of the healthy industries that why should they give portion of their profit as a cess for the creation of such a fund. But, I think, we cannot ignore the fate of the workers of these units. It is because the studies of Reserve Bank, when SICA was enacted, revealed that the mismanagement on the part of the workers or the workers agitation constituted only two per cent of the companies going to sick. The other reasons were far heavier. So, my submission is that before it is considered to repeal the existing SICA, there should be a provision for

taking care of the assets of the existing sick units. You may also kindly consider whether the powers of the proposed National Company Law Tribunal should be such that it can take care of the sick companies on the basis of the recommendations of the loopholes which the Eradi Commission noticed.

After fulfilling that , if it can still be revived, then it can be considered. I think, for the time being, this is enough.”

23. During evidence the representative of Confederation of Indian Industry (CII) expressed their reservations on the Bill on two accounts as stated below :-

“While CII welcomes the Sick Industrial Companies Repeal Bill *per se*, there are two immediate concerns of the CII. One is that it is proposed that all the pending references before BIFR or the Appellate Tribunal will stand abated, in the sense they will all stand withdrawn and the companies will have to make fresh references to the National Company Law Board, proposed to be set up by another Bill, that is, Companies (Amendment) Bill, 2001. Our submission is that some of the references may be in advanced stages of implementation in the sense that a lot of financial commitments might have already been made by the promoters or the banks or the financial institutions towards rehabilitation of such sick units. So, although, they may be at final stages of finalisation, but immediately on the repeal Bill becoming an Act, they will stand withdrawn. So, whatever hard work, the time and the financial commitment, etc., will be nullified. So, this is one concern. Therefore, the statute should provide that the pending cases before the BIFR or the Appellate Authority should stand automatically transferred to National Company Law Tribunal proposed to be set up under the Companies (Amendment) Bill which will be responsible for rehabilitating the sick industrial companies thereafter.

Sir, another concern is that under the existing Sick Industrial Companies Act, there is a Section 22. This Section provides some kind of immunity to such companies which are under consideration of BIFR or the Appellate Authority for rehabilitation, in the sense the courts are not supposed to take cognizance where the companies have already filed references with BIFR. Although it has been reported that this section has been misutilised by the companies, but our concern is that in limited manner if some kind of immunity is provided to the companies or the cases

which are under consideration of the proposed National Company Law Board Tribunal, then we will avoid the multiplicity of the recovery proceedings, like recovery proceedings can also be undertaken by the Debt Recovery Tribunal, under the new proposed ordinance which will deal with the NPAs etc. So, to avoid multiplicity of the proceedings under various statutes, some kind of immunity may be provided to the companies, which will file references with the National Company Law Tribunals. So, these are the two immediate concerns, otherwise, we welcome the Bill *per se*.”

24. AAIFR/BIFR Bar Association of India, constituted by learned advocates, chartered accountants and consultants representing banks, financial institutions and sick industrial companies, submitted their written views/suggestion as below :

“In our opinion, the Repeal of Sick Industrial Companies (Special Provisions) Act 1985 (SICA) is not warranted and all that is necessary is that some changes be made so that the misuse of some of the provisions of SICA can be cured and at the same time, the said Act can serve the public interest for which it was intended.

The SICA serves a very substantial public interest and there is substantial socio-economic justification for continuation of such a legislation. World over similar legislations are promulgated in various jurisdictions, which are in the nature of Bankruptcy Protection Legislations. The basic purpose behind such legislature is that an attempt is made to revive the financially distressed companies winding-up of which may have very negative impact on the economy. Through the said process, interest of the workmen is protected, the capital assets of the Companies, which constitute the wealth of the Nation are saved, the revenue to the Central and State Exchequer are protected and the dues of the Banks and FIs stuck up in these companies can be recovered “to the extent possible”. If this Act is repealed all these public interest will suffer.

However, SICA has lent itself to misuse in the Indian context. The principal misuse is that companies enjoy the protection under Section 22(1) for long period of time, which goes against interest of its creditors. The said problem can be easily solved by modification of Section 22(1) to ensure that the protection can be availed by the companies for a limited period of time, to say one year and having availed such a benefit at any point of time in terms of any reference which such companies may have

filed, they would not be entitled to any benefit in future unless the BIFR for reasons recorded in writing grant such protection.

The second area, which needs to be tackled, is co-operation between the creditors to enable the decision-making for rehabilitation at quicker pace and to create an atmosphere and environment for the creditors to take decision about rescheduling, restructuring, waiver, without threat of CVC and unnecessary questioning in this regard.

Another aspect which needs to be covered is that in case more than 75% of the creditors agree to an arrangement with sick industrial companies, the same would be binding on all concerned.

With the above three modifications, the SICA can be used as an effective tool for fulfilling socio-economic purposes, for which it was promulgated.”

25. A representative of PHD Chambers of Commerce and Industry appearing before the Committee has expressed his apprehensions about the proper functioning of the proposed NCLT. He has inter-alia deposed as under :

“If CLB have also to come into NCLT, as has been the desire of the Bill, the plethora of the work that is involved will be substantial. There may be as many as 20,000 or more cases – CLB, BIFR cases and High Court cases are likely to come into NCLT.”

26. He further gave his views in regard to the 1500 cases and 222 cases pending before the BIFR and AAIFR as below :

“As it stands now, our understanding is that even those companies, which are already with BIFR, they will have to again file an application with NCLT and again the monitoring system would start. This will only delay the rehabilitation of the units, which are viable.”

27. During evidence another representative of the PHD Chambers of Commerce and Industry has also given the following oral submission :

“In any case, if you look at the experience of formation of such bodies, you would notice that it takes some time to stabilise a bit. In case of the proposed NCLT, it is proposed that 62 members would be functioning as members of this Board and it will take a lot of time to recruit those persons to put them in place to build the infrastructure. My humble

estimate is that it will not be less than one to two years before this barely starts functioning after the passage of the Bill.”

28. During their deposition before the Committee held on 27 August, 2002, representatives of State Bank of India gave the following oral submission on the need for replacement of the BIFR with a better mechanism to deal with industrial sickness:

“.... the purpose of the Bill is for repeal of SICA and also for BIFR to be abolished. If you go through the background, there have been six or seven major reasons which have prompted this action for the repeal of SICA.

As far as the working of the BIFR is concerned, we have seen that there have been major problems experienced by banks and also, to some extent, by the corporates who go to the BIFR for rehabilitation and protection.

Number one thing is that the definition of sickness has been very restrictive and company will go to the BIFR only after the entire network has been fully wiped out, which is little too late for any meaningful rehabilitation plan to be drawn up. Also, there was a lot of delay in the recognition of the sickness of the company.

Next point has been the very slow pace of BIFR intervention. We have seen that a very large number of cases have been there for several years. Also, we have seen that the BIFR perhaps provided more than reasonable protection in the case of sick industries, particularly, those which were not really viable, because all other proceedings get stayed automatically.

Also, there have been cases of a lot of rehabilitation proposals which have been approved but the monitoring of these proposals, the implementation of these proposals has not been very effective.

Finally, even when the companies which are not found viable and are required to be wound up, there has been a considerable amount of delays in completion of process of winding up and realisation of whatever dues are there. In this process, the values get eroded to the detriment of the lenders and also the other stake holders.

We have also seen it from our own personal experience. If I give you the example of the State Bank of India, we have about 295 cases which are pending in BIFR. The total amount involved is Rs. 3, 071 crore. Forty-three units have been there for more than five years; 72 units have been there between three and five years; and 180 units are there for about three years.

So, this shows the delay which takes place. And, in the process when the proper rehabilitation is not possible in good time, the condition of the industry and also the interests of the lenders get very adversely affected. So, we have seen that if we have been able to work out an alternate mechanism which ensures recognition of the sickness of the company in a very reasonable time; a corrective action can be taken within a reasonable time; and there is a proper and positive discouragement to some of the companies seeking shelter under the BIFR.

There have been several cases where we have seen that the borrowers have gone to the BIFR with incorrect books of accounts for seeking the protection. So, those cases also can be effectively dealt with. So, we think that perhaps the purpose for which the BIFR was set up has not been adequately fulfilled. And, there is a need for more effective and better mechanism for early detection and rehabilitation of the sickness so that the banks' interests get protected; the investment in the corporate and companies also is protected; and the interest of all other stake holders are also protected."

29. During their evidence before the Committee, Financial Institutions such as IDBI and IFCI submitted that BIFR under SICA was not effective enough to deal with industrial sickness and that economic review, change and legislation is needed. They, therefore, stated that Sick Industrial Companies (Special Provisions) Act, 1985 be repealed and a suitable replacement may be made. A representative of ICICI also further gave his oral submission as below :-

"Sir, I concur with my colleagues from IDBI and IFCI. So, I will be very brief. I will make only three points.

One is that the purpose, by which the Act was brought in to detect sickness and to find an expeditious resolution in our view, has not been met. So, the revival of sick units, as envisaged under the Act, has not really happened. In fact, the opposite has happened in a way because this has impaired the overall industrial health. These companies which are not resorting to sickness, as Shri Singh pointed out, are distorting the market place by offering products at prices which are completely out of tune with market realities because these sick companies treat as if it has equity with it, has not to be service, it has not to be repaid to the distortion that is costing the industrial health. But the real worry going beyond this is

the health of the financial system because if this continues not only will the long-term be under threat, but also the banking will come under threat. There will be continuous capital erosion of these equities and the lending institutions will create a situation, which will then call for other remedies.

So, in view of the fact that this has an impact on the industrial and financial health of the system, our belief is that we need to find a solution, and for that reason, we will be fully in line with our colleagues from the IFCI and the IDBI.”

30. The Committee felt the need and decided to take oral evidence of the representatives of the Ministry of Finance and Company Affairs (Department of Company Affairs) for the second time as they want some clarifications on certain issues on the provisions of Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 and the Companies (Amendment) Bill, 2001. Accordingly the representatives of the Ministry of Finance and Company Affairs (Department of Company Affairs) deposed before the Committee on 4th December, 2002.

31. During their evidence before the Committee, the representatives of Ministry of Finance and Company Affairs stated the relevance of the Companies (Amendment) Bill, 2001 as recommended by the Eradi Committee to replace the Sick Industrial Companies (Special Provisions) Act, 1985. The representatives stated as under :-

“It is after that the Eradi Committee came to its conclusions and made these recommendations on which the Company Law Amendment Bill is based. They also saw the situation prevailing in other countries and to what extent those are applicable or not applicable in our country. Then, *inter alia* they expressed two views. One was that the BIFR and the AAIFR have not served the purpose for which they were set up. That is the considered view given in the report of the Committee.

Secondly, they said that as is the situation in many other countries, here also there should be a single body looking into the insolvency and into the winding up. Having separate platforms or fora for the two purposes was not such a good idea. Like in many other countries, we should have a single agency. There would be various benefits of the single agency and the benefits briefly, if I may say, are that the proposed Tribunal will combine the authority of Company Law Board, the BIFR and the Company judge of the High Court. So, it will adjudicate between shareholders or other stake holders whenever such issues arise like what the Company

Law Board does. If a company falls sick, then it will view whether the company could be revived or not and will try to make a revival scheme. If it fails, then it itself will undertake the winding up. It is an integrated body which will look into all aspects of it. Advantages would be that whenever a company falls sick and comes there for revival it will be able to take a holistic view of the entire thing. Even at the stage when there are disputes between shareholders or stakeholders, that dispute itself is likely to lead to sickness and it would be able to know the genesis of that sickness.”

32. When the Committee asked regarding the differences between SICA and the Companies (Amendment) Bill, 2001 provisions during the evidence, the representatives of Ministry of Finance and Company Affairs (Department of Company Affairs) gave the following reply below:

“Sir, you asked, what are the differences between SICA and this particular Bill. I may just point out to you that there is not protection of section 22 which is generally regarded as a heavily misused provision. Secondly, as I pointed out, there will be a body which will be combining all the functions. Thirdly, the management is required to submit a scheme along with its reference. It is a must. A reference will not be accepted if it is not accompanied by a rehabilitation scheme.”

33. The Committee were apprehensive about constituting one authority (i.e. the NCLT) to handle varied problems of industrial sickness. The Committee also contented that the Eradi Committee, on which recommendation the Companies (Amendment) Bill, 2001 has been brought out, have not considered the views and welfare of the workers and revival of sick companies were not considered as these were not in the purview of the terms of reference of the Committee (The Eradi Committee). However, on the above views, the representatives of the Ministry of Finance and Company Affairs (Department of Company Affairs) deposed as under:

“I would beg you to please consider this. It is a very superior arrangement. Instead of bifurcating or splitting the authority, by having one authority there is a considerable amount of advantages to be had. This should not be overlooked at any cost. I urge upon the hon. Committee that this is a very well-considered proposal by Justice Eradi and his Committee after going through a lot of thinking and interaction including international practices.

There is one last point. There is a cess provided over here and based on that cess, there would be a Revival Fund. That Fund can be used for the benefit of labour as well as for the revival of the company.

I had said it last time also before the hon. Committee that the Tribunal will first make an effort at the revival of the company. But after an unbiased judgement, if the Tribunal comes to a view that this is not reviveable, then it is in the interest of the nation that it should be wound up. There is no point in just allowing unreviveable units and their managements to continue.”

34. The Ministry further added that in SICA the assets of a sick companies are left with the very same management that brought the company into sickness, but the NCLT on the other hand has certain limits of powers in disposing of those assets even during the inquiry situations. When the Committee wanted to know from the Ministry regarding the time limit/the time to be taken to solve a case by the NCLT and the time taken by BIFR under SICA, the representatives submitted as below:

“If you compare the time limit, to our mind, the time that will be taken by the tribunal should be around 390 days and not 381 days. If you look at SICA – we can go through the provisions one by one – then actually the time limit is approximately between 12 and 22 months because there are some provisions which give time limits in gaps. This is not taking into account some provisions of the SICA which are open-ended. We found in our study of the Act that actually the time limit set in the tribunal is shorter than what was set in SICA. In SICA we have seen that the time limits never worked because there were two-three open-ended provisions.”

Time Taken Under SICA

(a)	Technico-economic viability study of the sick industrial company	2-3 months
(b)	Preparation of implementation scheme for rehabilitation with assistance of Operating Agencies : (i) Submission of a proposal by the company for revival : (ii) Draft scheme for rehabilitation :	1 month 3-6 months
(c)	Obtaining consent of creditors and parties	3-6 months
(d)	Notice u/s 19 and final hearing : (including period of notice u/s 19)	3-6 months
	Total	12-22 months

Time Frame Under NCLT

Stage I	425 B(4) Enquiry to be completed including appointment of an Operating Agency (Operating Agency, if appointed, shall file its report within 21 days) (Where special director is appointed he will report in 60 days)	60+30 days	90 days
Stage II	42 D(1) On order of the Tribunal, the Operating Agency will draw a scheme for revival.	60+30 days	90 days
Stage III	42 D (3) The Scheme prepared by the O.A. shall be examined and sanctioned by the Tribunal.	60+30 days	90 days
Stage IV	42 E (2) Circulation of sanctioned scheme amongst concerned.	60+60 days	120 days
		240+150	390

35. During the evidence held on 4 December, 2002, clarifying before the Committee the Objects and Reasons of the Companies (Amendment) Bill, 2001, the Bill proposed to replace SICA, whether it is limited to winding up of companies only, the representatives of Ministry of Finance and Company Affairs, (Department of Company Affairs) *inter alia* stated as under:

“On the issue that the focus of the Bill is only on the winding up, I would draw your attention, as I did last time, to para three of the Statement of Objects and Reasons. Very clearly it says: ‘On the basis of the recommendations of the Committee, the present Bill has been prepared with the main objective of facilitating of expediting revival/rehabilitation of sick companies and protection of workers’ interests. And where necessary winding up of companies.”

36. The Committee wanted to know whether the proposed NCLT under Companies (Amendment) Bill, 2001 would really serve the purpose for which the BIFR was set up and if the NCLT can be considered an improvement of the BIFR.

“At the beginning, when I was making my presentation, I pointed out a number of improvements. In fact, I pointed out two different kinds of

improvements. One such improvement is the administratively superior arrangement of having one uniform body. The second improvement is that of the law itself.

There is an improvement in the law itself for rehabilitation. I would go to the extent of saying that all the provisions within BIFR regarding rehabilitation more or less find a place over here without any dilution of labour interests and, in fact, there are provisions here which strengthen the ability to make a revival, strengthen the ability of the tribunal to take action against managements which want to play tricks and serve the labour interests better. A fund is there for meeting labour interests. There will be a labour member in every bench which is dealing with rehabilitation which is not there in BIFR. If three-fourth of the creditors agree and one-fourth of the creditors do not agree, even then rehabilitation cannot be settled. So, all these things are definitely superior and the labour dues retain the same priority as before. So, there is no dilution of labour interests and not dilution of the first priority of rehabilitating and only taking up winding up as a last resort.”

37. One major issue that caused great concern to the Committee was as to what would be the fate of those cases presently pending before the BIFR which would stand automatically abated if SICA was repealed. However, the representatives inter alia stated as under on the issue:

“As a matter of fact, the legal position is quite clear. Since these companies stand referred to the BIFR, their net worth is divided by hundred per cent. Therefore, they are hit by clause 4(ii)(a) of the Companies law. They have to necessarily come to the NCLT. It is not that they have been left in the lurch. They have to come to the NCLT, but they have to come. It is abated in front of the BIFR because the BIFR is not there. They have to necessarily come to the NCLT, but they will have to report. Otherwise, it is the violation of the law. The NCLT will consider it. Taking into account the similar expression made in the Committee on Home Affairs, we have already made an amendment in the Bill to say that the sanctioned schemes will be monitored by the new National Company Law Tribunal. Of course, as I said, the legal position is that they have to come to the NCLT.

Further, a point was also made that some of these companies have spent a lot of money towards filing fee, advocate fee, etc. in the Ministry,

internally we are examining the possibility of exempting them from any filing fee when they come to the NCLT if they have already paid the filing fee before the BIFR. We are examining that. We are very hopeful that we will get the approval for that. So there is no question of any company being left in the lurch. They have to present themselves before the NCLT. We will help them. In the rules, we will provide it in such a manner that coming before it is expedited and eased to the extent possible.”

38. The Committee asked if certain provisions of the BIFR safeguarding the interest and welfare of the workers were there in the new system, NCLT. The representatives of the Ministry gave the oral submission as below:

“As far as the workers’ interests are concerned, everything that is there in the BIFR has been taken care of in the new law. As I pointed out, the new law goes even beyond a few steps by creating the fund and by making it in such a way that even if three-fourths of the creditors agree, etc. and if somebody does not agree or comply with the sanctioned scheme, penal action may be taken against him. So, the workers’ interest is in no way diluted. In the new Tribunal, we have said that every Bench, which will deal with winding up or rehabilitation, must have a representative of the workers. So, with these things, I feel that the workers’ interests are more than taken care of.”

39. The Committee have dwelt at length on the provisions of the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001. They have heard the arguments for and against the repeal in great detail. While there is a broad consensus in the Committee that BIFR under SICA has to a large extent failed to achieve its purpose/objectives because of its inherent deficiencies they do not think that the proposed alternative mechanism – the NCLT which is going to replace the BIFR through the provisions of the Companies (Amendment) Bill, 2001 can appropriately address the issue of revival and rehabilitation of the sick industries.

40. The Committee are deeply concerned to note that the issue of pending cases with BIFR and AAIFR which shall abate on the repeal of SICA has not been addressed in the above mentioned Bill. They find that the transitional provisions are conspicuous by their absence in the proposed NCLT set-up. This, the Committee feel, will cause great hardships to the sick

companies whose cases are pending with BIFR/AAIFR and they are of the opinion that a lot of time will be wasted in registering the said abated cases afresh with NCLT. Hence, they recommend that Govt. should bring a suitable amendment in the present Bill itself to deal with the abated cases.

41. Despite a great divergence of opinion among the members of the Committee about the provisions of the Bill, the Committee, however, feel that the SICA may be repealed and hence approve the present Bill.

**NEW DELHI;
18 December, 2002
27 Agrahayana, 1924 (SAKA)**

**N. JANARDHANA REDDY,
Chairman,
STANDING COMMITTEE ON FINANCE**

**NOTE OF DISSENT ON THE SICA (REPEAL BILL, 2001 RECEIVED FROM
SHRI RUPCHAND PAL, MP AND SHRI PRABODH PANDA, MP**

I am opposed to the SICA Repeal Bill 2002 on the following grounds

- a) As is evident from submissions of important witnesses including the Chairman of BIFR, the representatives of the Central Trade Unions and others, the repealing of SICA Bill is not going at all to serve any purpose.
- b) Although there have been cases of misuse of certain provisions of SICA (particularly Section 22) by unscrupulous promoters and management of Companies in the Manufacturing Sector the basic objectives of the Bill could not be satisfactorily fulfilled because of inadequate response of the Union government in the matter of setting up required number of Benches and providing the necessary infrastructure staff etc. The Union government had miserably failed to provide necessary number of people for the required number of Benches. For all these years of existence of BIFR at no point of time there have been required number of people for all the benches rather of late the number had come down to as low as a single member.
- c) The Quasi Judicial character of the BIFR suffered immensely because of the intervening role of the judiciary which was not properly looked into by the concerned authorities and taken care of in the existing Bill where necessary amendment was urgently required. The Union government did not bring forward proposals for necessary changes in the law inspite of repeated requests from the labour side.
- d) The NPA of the P.S. Banks involving companies referred to BIFR is pretty small in the comparison with huge sum locked up in respect of non-BIFR Companies. So lack of productive use of scarce capital does not hold good for BIFR companies alone where the locked up amount is pretty low.
- e) The sickness of Companies particularly in the Manufacturing Sectors have been due to several chronic and seasonal shortcoming in the overall economic and industrial situation prevailing in the country and the main objectives of the SICA Bill was rehabilitation and revival of the sick units but the new amended Companies (Second Amendment) Bill has no focus on this revival and rehabilitation aspect which was the primary concern of the SICA.

- f) The new proposed Amended Company Law has emphasized on provision of closure and the solvency clause but in the SICA winding up or closure of Unit was considered to be the last resort in the case of absolutely hopeless Units with no future at all. But in the proposed new Amended Company Law the revival and rehabilitation has been largely ignored. Hence SICA has still some important role to play in the matter of revival and rehabilitation of the sick Units which have such potential with necessary financial and other supporting package.

The have been several studies on sickness of industries in the country. Their conclusion was that sickness was basically due to mismanagement, unscrupulous siphoning off of companies fund etc. there have been deliberate moves by unscrupulous promoters and management to make units sick and refer them to BIFR. It has been observed by some responsible commentators that in the Indian situation no industrialist has grown sick rather they have become richer while their units have become sick.

- g) Hence SICA has still some positive role to play in the revival and rehabilitation of sick units with necessary supporting package.
- h) Of course, SICA needs some amendment to remove the inadequacies and the lacunae which was sought to be done on an earlier occasion but for some unknown reasons the amendment in the right direction did not materialise. There is a feeling that interested lobbies had some hand in this deferment of amendment in the right direction in order to make SICA an appropriate instrument and BIFR an independent dynamic responsive body for contributing to the early revival and rehabilitation of sick Units. Ironically, the same set of promoters and management who misused the SICA in self interest and contributed substantially to the sickness of their units and referred them to BIFR and resorted to all sorts of manipulations.

From BIFR to AFIR to Civil Court and back are very enthusiastic about the repeal SICA while on the other hand the representatives of all Central units representing millions of victims of sickness of industries and who lost their jobs and livelihood strongly demanded that SICA should not be repealed. Rather it should be properly and adequately amended to serve the purpose for which the BIFR was set up.

- i) The New proposed Tribunal (as proposed in the Amendment Company Law) is expected to fulfill the basic task of three bodies including the Company Law Board and BIFR. It will never be able to do justice to contribute towards early revival and rehabilitation of sick Units. Rather it will further complicate the situation and worsen the industrial scenario. The proposed measure is bound to fail and any experimentation on this score will ruin the already afflicted industrial sector of the country.
- j) Lastly, the prospects of the cases which are already in the process of consideration or in the process of revival and rehabilitation through various packages will also be ruined and only beneficiaries of the proposed amendment of the Company Law and repealing of SICA will be the same people who misused SICA and ruined their Units and accumulated huge wealth by looting public money, by siphoning off Company Fund. The same offenders are now sermonizing on the urgency of repealing SICA to facilitate winding up and provide solvency opportunities.

We strongly oppose the repealing of SICA and this Note of Dissent of mine should be considered as the part of the Report of the Standing Committee of SICA Bill, 2002.

We express our strong resentment to the method of assigning the task of consideration of Company Law (2nd Amendment) to one Standing Committee (Home Affairs) and giving the responsibility of considering SICA (Repeal) Bill, 2002 to Standing Committee on Finance.

Both the Bills should have been given to one Committee only as they are closely related and the Company Law (2nd Amendment) is considered the (so called) alternative to SICA which is proposed to be repealed.

Strangely enough, the SICA was taken as repealed in the alternative proposal of the Company Law (2nd Amendment) even before the Standing Committee on Finance has considered SICA (Repeal) Bill and expressed its views in the Report.

Since the Bill to set up NCLT has already been passed in Lok Sabha even as the Standing Committee on Finance was seized with the subject of Sica Repeal Bill, 2001 this Committee is unable to spell out its considered views on the SICA (Repeal) Bill, 2001.

Such denigration of the rights and the authorities of the Standing Committee (Finance) is a sad commentary on the state of affairs prevailing in the attitude of Union Government towards the status of Parliamentary Committees.

We are sorry that we are constrained to make such observation.

-SD/-

(RUPCHAND PAL)

-SD/-

(PRABODH PANDA)

MINUTES OF THE FIFTEENTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, 22 July, 2002 from 1600 hours to 1700 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Ramsinh Rathwa
3. Shri Rattan Lal Kataria
4. Shri Kirit Somaiya
5. Shri Kharebela Swain
6. Shri Sudarsana E.M. Natchiappan
7. Shri Rupchand Pal
8. Shri Sharad Pawar
9. Shri Abdul Rashid Shaheen
10. Capt. Jai Narain Prasad Nishad
11. Shri Jyotiraditya Madhavrao Scindia
12. Sh. Nagmani

RAJYA SABHA

13. Dr. Manmohan Singh
14. Shri Parmeshwar Kumar Agarwalla
15. Dr. Biplab Dasgupta
16. Shri P. Prabhakar Reddy
17. Shri Raj Kumar Dhoot
18. Shri Palden Tsering Gyamtso
19. Shri Prithviraj Dajisaheb Chavan
20. Dr. T. Subbarami Reddy

SECRETARIAT

- | | | | |
|----|------------------------|---|----------------------|
| 1. | Shri P.D.T. Achary | - | Additional Secretary |
| 2. | Dr. (Smt.) P.K. Sandhu | - | Joint Secretary |
| 3. | Shri R.K. Jain | - | Deputy Secretary |
| 4. | Shri S.B. Arora | - | Under Secretary |

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. The Chairman then introduced the recently nominated Members - Shri Nagmani, MP and Shri Raj Kumar Dhoot, MP to the Committee and welcomed them to the sitting of the Committee.

3. Before the Committee could deliberate on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 the Chairman informed the

Committee that the Secretariat had received a letter from the Ministry of Statistics and Programme Implementation intimating that the recommendations made by Standing Committee on Finance in paragraphs 38 & 39 of their 31st Report (2002-2003) on MPLADS were forwarded to the MPLADS Committee of Lok Sabha and the Rajya Sabha. The MPLADS Committee of Lok Sabha have in turn, intimated the Ministry that they were seized of the problems which had emerged in the implementation of the Scheme and that there was no need for the recommendation of Standing Committee on Finance to be brought before them. The Committee did not appreciate the stand taken by the MPLADS Committee and authorised the Chairman to take up the matter with the Chairman, MPLADS Committee.

4. The Chairman then informed the Committee that he had received a communication from the Ministry of Finance and Company Affairs desiring him to agree to the proposal to defer the transfer of the Department of Company Affairs from the Committee on Home Affairs to the Committee on Finance till the reports on the Competition Bill, 2001 and the Companies (Amendment) Bill, 2001 were presented to the Parliament by the Committee on Home Affairs as they were at the final stages of presenting the reports.

5. The Committee then took up for consideration the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001. There was difference of opinion among the Members. The Members were of the opinion that as the Companies (Amendment) Bill, 2001 was closely connected with the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 it would be appropriate if the Companies (Amendment) Bill, 2001 was also referred to the Standing Committee on Finance and examined by them simultaneously after the work relating to the Department of Company Affairs was transferred to the Standing Committee on Finance.

6. Since it was the prerogative of the Hon'ble Speaker to alter the Fifth Schedule to the Rules of Procedure and Conduct of Business in Lok Sabha specifying the jurisdiction of each of the Standing Committees of Lok Sabha, the Committee authorised the Chairman to take up the matter with Hon'ble Speaker.

The Committee then adjourned.

MINUTES OF THE SIXTEENTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 08 August, 2002 from 1500 hours to 1555 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Ramsinh Rathwa
3. Shri Rattan Lal Kataria
4. Shri Kirit Somaiya
5. Shri Kharebela Swain
6. Shri Ramesh Chennithala
7. Shri Sudarsana E.M. Natchiappan
8. Shri Rupchand Pal
9. Shri Varkala Radhakrishnan
10. Shri Chada Suresh Reddy
11. Shri T.M.Selvaganapathi
12. Capt. Jai Narain Prasad Nishad
13. Shri Prabodh Panda

RAJYA SABHA

14. Shri Parmeshwar Kumar Agarwalla
15. Dr. Biplab Dasgupta
16. Shri P. Prabhakar Reddy
17. Prof. M. Sankaralingam
18. Shri Raj Kumar Dhoot
19. Shri Palden Tsering Gyamtso
20. Shri Praful Patel
21. Shri Murli Deora
22. Dr. T. Subbarami Reddy

SECRETARIAT

1. Shri P.D.T. Achary - Additional Secretary
2. Shri R.K. Jain - Deputy Secretary
3. Shri S.B. Arora - Under Secretary

2. At the outset, the Committee expressed their profound grief and sorrow on the sad demise of Shri Krishna Kant, Vice President of India and Chairman, Rajya Sabha on 27 July, 2002. The Committee then stood in silence for a short while as a mark of respect in memory of the deceased.

3. Thereafter, the Committee took up for consideration the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 and after deliberations decided to invite suggestions/memoranda from the Trade Unions, Banks, Financial Institutions and Chambers of Commerce on the provisions of the Bill. The Committee also decided to hear the views of the said organisations/institutions and to take oral evidence of the Ministries of (i) Finance (Deptts of Economic Affairs and Company Affairs) and (ii) Law and Justice on the Bill on 26 and 27 August, 2002.

4. Then the Committee decided to undertake study tour to Patna, Lucknow, Bhopal, Ahmdabad, Jaipur, Mumbai and Bangalore from 10 to 18 September, 2002 in connection with the examination of (i) the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2000, (ii) the Financial Companies Regulation Bill, 2000 (iii) Credit flow to agriculture – Crisis in rural economy and (iv) Crop Insurance Scheme.

The Committee then adjourned.

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, the 26th August, 2002 from 11.00 hours to 12.45 hrs.

PRESENT

Shri N. Janardhana Reddy - Chairman

MEMBERS

LOK SABHA

2. Shri Ramsinh Rathwa
3. Shri Rattan Lal Kataria
4. Shri Kirit Somaiya
5. Shri Kharebela Swain
6. Shri Raj Narain Passi
7. Shri Rupchand Pal
8. Shri Varkala Radhakrishnan
9. Shri T.M.Selvaganapathi
10. Shri Trilochan Kanungo
11. Capt. Jai Narain Prasad Nishad
12. Shri Prabodh Panda
13. Shri Jyotiraditya Madhavrao Scindia
14. Sh. Nagmani

RAJYA SABHA

15. Dr. Manmohan Singh
16. Shri S.S. Ahluwalia
17. Shri Dina Nath Mishra
18. Shri Parmeshwar Kumar Agarwalla
19. Dr. Biplab Dasgupta
20. Prof. M. Sankaralingam
21. Shri Prithviraj Dajisaheb Chavan
22. Shri Prem Chand Gupta
23. Dr. T. Subbarami Reddy

SECRETARIAT

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|----|-------------------|---|----------------------|
| 1. | Sh. P.D.T. Achary | - | Additional Secretary |
| 2. | Sh. R.K. Jain | - | Deputy Secretary |
| 3. | Sh. S.B. Arora | - | Under Secretary |

WITNESSES

At 1100 hours

Federation of Indian Chamber of Commerce and Industries (FICCI)

1. Sh. Anjan Roy, Advisor
2. Sh. Dilip Goswami

Confederation of Indian Industry (CII)

1. P.K. Rustagi, Company Secy., J.K. Industries Ltd.
2. Shri Ilam Kamboj, Company Secy., Hero Honda Motors Ltd.

PHD Chamber of Commerce and Industry

1. Shri R.P. Jhalani, Member, Managing Committee
2. Shri S.L. Kapur, Advisor to President

At 1500 hours

Centre of Indian Trade Unions

Shri W.R. Varada Rajan, Secretary

Hind Mazdoor Sabha (HMS)

Shri Umraomal Purohit, General Secretary
Shri R.A. Mital, Secretary

Bhartiya Mazdoor Sangh (BMS)

Shri S.S. Sharma

Indian National Trade Union Congress (INTUC)

Shri Chandidas Sinha, Secretary

All India Trade Union Congress (AITUC)

H. Mahadevan, Deputy General Secretary

All India Manufacturers' Organisation

Shri P.S. Kalani, President

Part I

2. At the outset, the Chairman welcomed the representatives of the Federation of Indian Chamber of Commerce and Industries (FICCI), Confederation of Indian

Industry (CII), PHD Chamber of Commerce and Industry to the sitting of the Committee and invited their attention to the provisions contained in Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives of the above Chambers of Commerce on 'the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001'. The Chairman asked them to furnish information on certain issues on which clarifications were sought by the Members during the sitting of the Committee.

The evidence was concluded.

A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned to meet again at 1500 hours.

PART II

2. At the outset the Chairman welcomed the representatives of the Centre of Indian Trade Unions, Hind Mazdoor Sabha (HMS), Bhartiya Mazdoor Sangh (BMS), Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC) and All India Manufacturers' Organisation to the sitting of the Committee and invited their attention to the provisions contained in direction 55(I) of the Directions of Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives of the above trade unions and All India Manufacturers' Organisation on 'the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001'. The Chairman then asked the representatives to furnish written information on certain issues on which clarifications were sought by the Members.

The evidence was concluded.

A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

MINUTES OF THE EIGHTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, the 27th August, 2002 from 11.00 hours to 1730 hrs.

PRESENT

Shri N. Janardhana Reddy - Chairman

MEMBERS

LOK SABHA

2. Shri Ramsinh Rathwa
3. Shri Rattan Lal Kataria
4. Shri Kirit Somaiya
5. Shri Kharebela Swain
6. Shri Raj Narain Passi
7. Shri Pravin Rashtupal
8. Shri Sudarsana E.M. Natchiappan
9. Shri Rupchand Pal
10. Shri Varkala Radhakrishnan
11. Shri Chada Suresh Reddy
12. Shri T.M.Selvaganapathi
13. Shri Trilochan Kanungo
14. Shri Sudip Bandyopadhyay
15. Shri Abdul Rashid Shaheen
16. Capt. Jai Narain Prasad Nishad
17. Shri Prabodh Panda
18. Shri Amir Alam Khan
19. Sh. Nagmani

RAJYA SABHA

20. Shri S.S. Ahluwalia
21. Shri Dina Nath Mishra
22. Shri Parmeshwar Kumar Agarwalla
23. Dr. Biplab Dasgupta
24. Prof. M. Sankaralingam
25. Shri Amar Singh
26. Shri Raj Kumar Dhoot
27. Shri Prithviraj Dajisaheb Chavan
28. Shri Prem Chand Gupta
29. Dr. T. Subbarami Reddy

SECRETARIAT

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|----|-----------------------|------------------------|
| 1. | Sh. P.D.T. Achary | - Additional Secretary |
| 2. | Dr.(Smt.) P.K. Sandhu | - Joint Secretary |
| 3. | Sh. R.K. Jain | - Deputy Secretary |
| 4. | Sh. S.B. Arora | - Under Secretary |

WITNESSES

At 1100 hours

State Bank of India

1. Sh. Janki Ballabh, Chairman
2. Sh. P.N. Venkatachalam, Dy. Managing Director

Punjab National Bank

Shri S.S. Kohli, CMD

Bank of Baroda

Shri P.S. Shenoy, Chairman & Managing Director

Allahabad Bank

1. Dr. B. Samal, CMD
2. Shri K.K. Rai, Executive Director

Oriental Bank of Commerce

1. Shri B.D. Narang, Chairman & Managing Director
2. Shri V.K. Chopra, Executive Director

At 1430 hours

Industrial Development Bank of India (IDBI)

1. Shri P.P. Vohra, CMD
2. Shri T.M. Nagarajan, Dy. MD

IFCI Ltd.

1. Shri V.P. Singh, Chairman & Managing Director
2. Shri M.V. Muthu, Executive Director

ICICI Bank

1. Shri K.V. Kamath, Managing Director & CEO
2. Shri S. Mukherji, Executive Director
3. Ms. Kalpana Morparia, Executive Director

Industrial Investment Bank of India Limited (IIBI)

1. Dr. B. Samal, CMD
2. Shri D.K. Guha Roy, CGM
3. Dr. Tamal Datta Chowdhury, CGM
4. Dr. Arya Kumar, CGM

At 1600 hours

I. MINISTRY OF FINANCE & COMPANY AFFAIRS

1. Shri S. Narayan, Finance Secretary
2. Shri Vinod Dhall, Secretary (Department of Company Affairs)
3. Shri D.C. Gupta, Secretary (Banking & Insurance)
4. Dr. K.B.L. Mathur, Economic Adviser & Joint Secretary (IF)

5. Shri U.K. Sinha, Joint Secretary (CM)
6. Shri Shekhar Aggarwal, Joint Secretary (BO&A)
7. Shri Rajiv Mahershi, Joint Secretary
8. Shri S.B. Mathur, Consultant

II. MINISTRY OF LAW & JUSTICE (DEPTT. OF LEGAL AFFAIRS)

1. Shri R.L. Meena, Law Secretary
2. Shri K.D. Singh, Additional Secretary

Part I

2. At the outset, the Chairman welcomed the representatives of the State Bank of India, Punjab National Bank, Bank of Baroda, Allahabad Bank, Oriental Bank of Commerce to the sitting of the Committee and invited their attention to the provisions contained in Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives of the above Banks on 'the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001'. The Chairman asked them to furnish information on certain issues on which clarifications were sought by the Members during the sitting of the Committee.

The evidence was concluded.

A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned to meet again at 1430 hours.

PART II

2. At the outset the Chairman welcomed the representatives of the Industrial Development Bank of India (IDBI), IFCI Ltd., ICICI Bank Ltd., and Industrial Investment Bank of India Limited (IIBI) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives of the above financial institutions on 'the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001'. The Chairman then asked the trade unions to present their views and send information on certain issues on which clarifications were sought by the Members.

The evidence was concluded.

A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned to meet again at 1600 hours.

PART III

2. At the outset the Chairman welcomed the representatives of the Ministries of Finance & Company Affairs and Law & Justice (Deptt. of Legal Affairs) and invited their attention to the provisions contained in Direction 55 (1) of the Directions by the Speaker, Lok Sabha.

3. Since the Chairman had to leave the meeting due to an important assignment elsewhere, the Committee chose Trilochan Kanungo to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha. Thereafter, Sh. Kanungo chaired the meeting.

4. The Committee then took oral evidence of the representatives of the above Ministries on 'the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001'. The Chairman asked the trade unions to present their views information on certain issues on which clarifications were sought by the Members.

The evidence was concluded.

A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

5. A suggestion was made by some of the Members to hear the views of the Chairman, BIFR. The Committee, however, authorised the Chairman to decide whether the representatives of BIFR should be invited to depose before the Committee.

The Committee then adjourned.

MINUTES OF THE NINETEENTH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, 01 October, 2002 from 1000 hours to 1120 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Ramsinh Rathwa
3. Shri Rattan Lal Kataria
4. Shri Kirit Somaiya
5. Shri Kharebela Swain
6. Shri Raj Narain Passi
7. Shri S. Jaipal Reddy
8. Shri Sudarsana E.M. Natchiappan
9. Shri Rupchand Pal
10. Shri Varkala Radhakrishnan
11. Dr. Daggubati Ramanaidu
12. Shri Chada Suresh Reddy
13. Shri Raashid Alvi
14. Shri T.M.Selvaganapathi
15. Shri Trilochan Kanungo
16. Shri Sudip Bandyopadhyay
17. Capt. Jai Narain Prasad Nishad
18. Dr. M.V.V.S. Murthy
19. Sh. Nagmani
20. Smt.Renuka Chowdhury

RAJYA SABHA

21. Shri S.S. Ahluwalia
22. Shri Parmeshwar Kumar Agarwalla
23. Prof. M. Sankaralingam
24. Shri Prithviraj Dajisaheb Chavan
25. Shri Murli Deora
26. Shri Prem Chand Gupta
27. Dr. T. Subbarami Reddy

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu - Joint Secretary
2. Shri R.K. Jain - Deputy Secretary

WITNESSES

1. Shri P.P. Chauhan - Chairman, Board for Industrial and Financial Reconstruction (BIFR)
2. Shri. N.P. Singh - Member, Board for Industrial and Financial Reconstruction (BIFR)
3. Shri Vinay Vasistha - Secretary, Board for Industrial and Financial Reconstruction (BIFR)

2. At the outset, the Chairman welcomed the representatives of Board for Industrial and Financial Reconstruction (BIFR) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of representatives of Board for Industrial and Financial Reconstruction (BIFR) on the provisions of the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001.

4. The Chairman asked the representatives to furnish written replies to the points raised by the Members of the Committee during the evidence on which the representatives could not give reply due to paucity of time.

5. The evidence was concluded

6. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TWENTIETH SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Monday, 21 October, 2002 from 1600 hours to 1640 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Rattan Lal Kataria
3. Shri Kirit Somaiya
4. Shri Kharabela Swain
5. Shri Raj Narain Passi
6. Shri Ramesh Chennithala
7. Shri Pravin Rashtrapal
8. Shri Sudarsana E.M. Natchiappan
9. Shri Varkala Radhakrishnan
10. Shri Chada Suresh Reddy
11. Shri Trilochan Kanungo
12. Capt. Jai Narain Prasad Nishad
13. Shri Prabodh Panda

RAJYA SABHA

14. Shri Dina Nath Mishra
15. Shri Parmeshwar Kumar Agarwalla
16. Prof. M. Sankaralingam
17. Shri Palden Tsering Gyamtso
18. Shri Prithviraj Dajisaheb Chavan
19. Dr. T. Subbarami Reddy

SECRETARIAT

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|----|--------------------|---|----------------------|
| 1. | Shri P.D.T. Achary | - | Additional Secretary |
| 2. | Shri R.K. Jain | - | Deputy Secretary |
| 3. | Shri S.B. Arora | - | Under Secretary |

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up for consideration the draft report on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001. The Members after deliberations, desired that the post evidence written replies received from the Chairman, BIFR should be circulated for their perusal/use before the draft report could be considered for adoption.

The Committee then adjourned to meet again on 07 November, 2002.

MINUTES OF THE TWENTY FIRST SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Friday, 08 November, 2002 from 1500 hours to 1625 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Rattan Lal Kataria
3. Shri Kirit Somaiya
4. Shri Kharabela Swain
5. Shri Raj Narain Passi
6. Shri Ramesh Chennithala
7. Shri Pravin Rashtrapal
8. Shri Sudarsana E.M. Natchiappan
9. Shri Rupchand Pal
10. Shri Varkala Radhakrishnan
11. Shri Chada Suresh Reddy
12. Shri T.M.Selvaganapathi
13. Shri Trilochan Kanungo
14. Shri Abdul Rashid Shaheen
15. Capt. Jai Narain Prasad Nishad
16. Shri Prabodh Panda
17. Smt. Renuka Chowdhury

RAJYA SABHA

18. Shri Dina Nath Mishra
19. Shri Parmeshwar Kumar Agarwalla
20. Prof. M. Sankaralingam
21. Shri Palden Tsering Gyamtso
22. Shri Prithviraj D. Chavan
23. Shri Praful Patel

SECRETARIAT

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|----|------------------------|---|----------------------|
| 1. | Shri P.D.T. Achary | - | Additional Secretary |
| 2. | Dr. (Smt.) P.K. Sandhu | - | Joint Secretary |
| 3. | Shri R.K. Jain | - | Deputy Secretary |

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up for consideration the draft report on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001. The Members after deliberations, decided to take further evidence of the Ministry of Finance and Company Affairs (Deptt. of Company Affairs) on the provisions/features

of National Company Law Tribunal (NCLT) proposed to be constituted under Companies (Amendment) Bill, 2001 in the light of deposition of the Chairman, BIFR before the Committee.

The Committee then adjourned.

MINUTES OF THE TWENTY SECOND SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Friday, 04 December, 2002 from 1500 hours to 1650 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Rattan Lal Kataria
3. Shri Kirit Somaiya
4. Shri Raj Narain Passi
5. Shri Ramesh Chennithala
6. Shri Sudarsana E.M. Natchiappan
7. Shri Rupchand Pal
8. Shri Varkala Radhakrishnan
9. Dr. Daggubati Ramanaidu
10. Shri Prabodh Panda
11. Shri M.V.V.S. Murthy

RAJYA SABHA

12. Shri Dina Nath Mishra
13. Dr. Biplab Dasgupta
14. Shri Raj Kumar Dhoot
15. Shri Palden Tsering Gyamtso
16. Shri Prithviraj Dajisaheb Chavan
17. Dr. T. Subbarami Reddy

SECRETARIAT

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|----|--------------------|---|----------------------|
| 1. | Shri P.D.T. Achary | - | Additional Secretary |
| 2. | Shri R.K. Jain | - | Deputy Secretary |
| 3. | Shri S.B. Arora | - | Under Secretary |

2. At the outset, the Chairman welcomed the representatives of the Ministry of Finance and Company Affairs (Deptt. of Company Affairs) to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 (I) of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives of the Ministry of Finance and Company Affairs (Deptt. of Company Affairs) on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001. In the end, the Chairman asked them to furnish information on certain issues on which clarifications were sought by the Members during the sitting of the Committee.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TWENTY THIRD SITTING OF STANDING COMMITTEE ON FINANCE

The Committee sat on Tuesday, 17 December, 2002 from 1500 hours to 1600 hours.

PRESENT

Shri. N. Janardhana Reddy – Chairman

MEMBERS

LOK SABHA

2. Shri Ramsinh Rathwa
3. Shri Rattan Lal Kataria
4. Shri Pravin Rashtrapal
5. Shri Sudarsana E.M. Natchiappan
6. Shri Rupchand Pal
7. Dr. Daggubati Ramanaidu
8. Shri Abdul Rashid Shaheen
9. Capt. Jai Narain Prasad Nishad
10. Shri Prabodh Panda
11. Smt. Renuka Chowdhury

RAJYA SABHA

12. Dr. Manmohan Singh
13. Shri Dina Nath Mishra
14. Shri Parmeshwar Kumar Agarwalla
15. Prof. M. Sankaralingam
16. Shri Raj Kumar Dhoot
17. Shri Palden Tsering Gyamtso
18. Shri Prithviraj Dajisaheb Chavan
19. Shri Murli Deora
20. Dr. T. Subbarami Reddy

SECRETARIAT

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|----|------------------------|---|----------------------|
| 1. | Shri P.D.T. Achary | - | Additional Secretary |
| 2. | Dr. (Smt.) P.K. Sandhu | - | Joint Secretary |
| 3. | Shri R.K. Jain | - | Deputy Secretary |
| 4. | Shri S.B. Arora | - | Under Secretary |

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee and informed them that the Hon'ble Minister of Finance and Company Affairs in his communication / letter to the Committee has stated that considerable time has elapsed since the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2000, the Financial Companies Regulation Bill, 2000 and the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 were referred to the Committee and has requested that the submission of the reports of the Committee on the said Bills may be expedited so that they could be taken up for consideration and passage in the current session

or during the budget session of Parliament. Thereafter the Chairman informed the Committee that the Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2002 has also been referred to the Committee for examination and report thereon by the Hon'ble Speaker, Lok Sabha.

3. The Committee then took up for consideration the draft revised report on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001. The Committee, after deliberations adopted the draft report with modifications/amendments as shown in the **Annexure**.

4. As some Members did not agree to some of the observations/recommendations contained in the revised draft report, they desired to submit notes of dissent. The Chairman informed them that they could send their notes of dissent by 1200 hours on 18 December, 2002.

5. The Committee, thereafter, took up the following draft action taken reports for consideration and adopted the same without any modification / amendment :-

(i)	XX	XX	XX	XX
(ii)	XX	XX	XX	XX
(iii)	XX	XX	XX	XX
(iv)	XX	XX	XX	XX
(v)	XX	XX	XX	XX

6. The Committee then authorised the Chairman to finalise the Reports in the light of the amendments suggested and also to make verbal and other consequential changes and present the reports to both the Houses of Parliament.

The Committee then adjourned.

[Modifications/Amendments made by Standing Committee on Finance in their draft Report on the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 at their sitting held on 17 December, 2002]

Page 27, Para 39, Line 4

<i>For</i>	“complete unanimity.”
<i>Substitute</i>	“broad consensus”

<i>For</i>	“miserably”
<i>Substitute</i>	“to a large extent”

Para 39, Line 6

<i>For</i>	“are not much enthused by”
<i>Substitute</i>	“do not think that”

Para 39, Lines 8 and 9

<i>For</i>	“which has already been passed by Lok Sabha.
<i>Substitute</i>	“can appropriately address the issue of revival and rehabilitation of the sick industries.”

Page 27, Para 41, Lines 3 and 4

<i>For</i>	“that since the Bill to set-up NCLT has already been passed by Lok Sabha, SICA may be repealed and hence approve the present Bill.”
<i>Substitute</i>	“that the SICA may be repealed and hence approve the present Bill.”