

## Resolution of Failure

7.46 One factor impeding the credit flow into industry has been the mechanisms used when a borrowing firm fails. The likelihood of poor credit recovery, in such an event, has led to symptoms like high interest rates and “credit rationing”. This has adversely affected entrepreneurship and investment.

7.47 As per RBI data, at the end of March, 2002, there were 1,77,336 SSI units identified by banks as “sick” having outstanding dues of Rs. 4,818.95 crore. Of these, 1,67,574 were non-viable units with outstanding bank credit of Rs. 4,146.74 crores which accounted for 94.5 per cent and 86.1 per cent of the total sick SSI units and their outstanding bank credit, respectively.

7.48 According to the Department of Public Enterprises (DPE), as on March 31, 2004, there were 227 Central Public Sector Undertakings (CPSUs), operating in the country, out of which, 68 sick industrial CPSUs have been registered with the BIFR.

7.49 In recent years, there has been a sustained effort on evolving better institutional mechanisms and legal framework, to improve credit recoveries, and thus spur the credit flow into industry. These efforts include the Debt Recovery Tribunals (DRT), the Corporate Debt Restructuring (CDR) and the Securitisation, Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI), Act, 2002.

7.50 With globalization of trade and opening up of the economy, the Central Government had decided to re-model the laws relating to winding up of companies in tune with the international practices in this field.

7.51 The winding up process is slow and the experience with BIFR for speedy revival of company has not been encouraging. Hence the Government has enacted the Companies (Second Amendment) Act 2002, which provides for the establishment of a National Company Law Tribunal (NCLT) with benches in several states to decide the question of rehabilitation and winding up of sick companies. It places in position a modern, efficient and time bound insolvency law to provide for both rehabilitation and winding up of sick companies, within a period of two to three years, at the maximum.

7.52 National Company Law Tribunal (NCLT), as and when set up, will be vested with the powers currently exercised by the (a) Company Law Board (CLB); (b) High courts regarding winding up of companies and amalgamation scheme and (c) BIFR/AAIFR under the Sick Industrial Companies (Special Provisions) Act, 1985.

7.53 Since its inception in May, 1987 and till the end of March, 2004, the Board for Industrial and Financial Reconstruction has received 6,349 references under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The status of the cases referred to BIFR as on March 31, 2004 are given in the Table 7.20.

**Table 7.20 : Board for Industrial and Financial Reconstruction****Details of references received as on 31.3.2004**

S. No.		Total	Pvt.	Central	State	Total
1	References Received	6349	6064	102	183	285
2	Registration Declined	1400	1319	17	64	81
3	Under Scrutiny	25	24	0	1	1
<b>A</b>	4 References Registered	<b>4924</b>	<b>4721</b>	<b>85</b>	<b>118</b>	<b>203</b>
	DISPOSALS					
5	Dismissed as N.M.	1336	1296	9	31	40
6	Rehabilitation Schemes approved/sanctioned*					
	(i) By BIFR	606	561	24	21	45
	(ii) By AAIFR/SC	21	20	1	0	1
7	Declared no longer sick out of S.No.6.	359	343	6	10	16
8	Winding up Recommended to the concerned H.C.	1246	1180	27	39	66
9	Dropped NW+	58	54	3	1	4
<b>B</b>	TOTAL (5+6+8+9)	<b>3267</b>	<b>3111</b>	<b>64</b>	<b>92</b>	<b>156</b>
<b>C</b>	PENDING					
10	Draft Schemes Circulated	65	63	2	0	2
11	Winding Up Notice Issued	125	117	5	3	8
12	Under Inquiry	1356	1330	10	16	26
13	Schemes failed and reopened	32	29	1	2	3
14	Pending Cases Remanded by AAIFR	44	38	3	3	6
15	Stayed ordered by Courts	35	33	0	2	2
	<b>A-B=C</b>	<b>1657</b>	<b>1610</b>	<b>21</b>	<b>26</b>	<b>47</b>

\*91 Merger cases (87 Private Sector + 3 Central PSUs + 1 State PSU). Source : BIFR, DEA, Ministry of Finance