

Editor's Note: SICA is been seen as an unsuccessful attempt at combating corporate sickness. Thus, after advent of IBC, the death of SICA was imminent. Interestingly, the law to repeal SICA was enacted way back in the year 2003, when revival and rehabilitation processes for sick companies were incorporated in the Companies Act, 1956, by way of an amendment in 2002. However, the concerned provisions in the Companies Act were never enforced, and thus, the SICA repeal law too, remained dormant. The SICA repeal law was finally enforced after coming of IBC, in the year 2016. This piece tracks the history of repeal of SICA and provides a historical backdrop to the IBC regime¹.

The Ministry of Finance, vide Notifications S.O.3568(E) and S.O. 3569(E), both dated November 25, 2016 has notified December 1, 2016 as the date on which the SICA Repeal Act shall come into force and on and from which any reference or inquiry pending before BIFR and any appeal pending before the AAIFR shall stand abated.



Figure 3: Identification of a Sick Company

Below we have tried to discuss in brief the long journey of SICA and the end thereof.

Enactment of SICA

In 1985, the Government of India enacted SICA on the recommendation of the T. Tiwari Committee. SICA was enacted with a view to—

- securing the timely detection of sick and potentially sick companies owning industrial undertakings;

¹Contributed in November, 2016.

- 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 expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

Failure of SICA

SICA lacked in many aspects – the Act was made applicable only to industrial undertakings, section 22 of the SICA which dealt with moratorium was misused to defer action by creditors. The institutional machinery was not being able to serve the expected purpose. The [Goswami Committee Report](#) provides critical analysis of the legislation and its effectiveness in meeting the ends SICA was made for. Later, it was decided to shift the provisions relating to revival and rehabilitation of sick companies to the Companies Act, 1956 vide the Companies (Second Amendment) Act, 2002.

The Companies (Second Amendment) Act, 2002

Part VIA (sections 424A to 424L) was introduced in the Companies Act, 1956 to provide for revival and rehabilitation of sick companies. NCLT and NCLAT were to replace BIFR and AAIFR respectively through the said amendment. However, the provisions were not notified and thus never enforced.

The SICA Repeal Act, 2003

Subsequently, the SICA Repeal Act was enacted. Section 3 of the SICA Repeal Act provides for –

1. Repeal of SICA; and
2. Dissolution of Appellate Authority and Board.



Figure 4: Determination of a company as Potentially Sick

However, due to delay in constitution of NCLT, the SICA Repeal Act was never notified. Section 4 (b) prior to amendment provided as follows:

“(b) any appeal preferred to the Appellate Authority or any reference made to the Board or any inquiry pending before the Board or any other authority or any proceeding of whatever nature pending before the Appellate Authority or the Board immediately before the commencement of this Act shall stand abated:

Provided that a company:—

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(i) in respect of which such appeal or reference or inquiry stand abated under this clause may make a reference under PART VIA of the Companies Act, 1956 (1 of 1956) within one hundred and eighty days from the commencement of this Act in accordance with the provisions of the Companies Act, 1956;

(ii) which had become a sick industrial company as defined in clause (46AA) of section 2 of the Companies Act, 1956 (1 of 1956), before the commencement of the Companies (Second Amendment) Act, 2002 (11 of 2003) may make a reference under PART VIA of the Companies Act, 1956 within one hundred and eighty days from the commencement of the Companies (Second Amendment) Act, 2002 or within sixty days of final adoption of accounts after such commencement, whichever is earlier,

and reference so made shall be dealt with in accordance with the provisions of the Companies Act, 1956 (1 of 1956):

Provided further that no fee shall be payable for making such reference under PART VIA of the Companies Act, 1956 (1 of 1956) by a company whose appeal or reference or inquiry stand abated under this clause:

Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the repealed enactment shall be deemed to be a scheme sanctioned or under implementation under section 424D of the Companies Act, 1956 (1 of 1956) and shall be dealt with in accordance with the provisions contained in PART VIA of that Act.”

The Companies Act, 2013

Chapter XIX (sections 253 to 269) of the Companies Act, 2013, i.e. the successor legislation of the Companies Act, 1956 deals with revival and rehabilitation of sick companies. Section 255 of the Code read with 11th schedule provides for amendments in the Companies Act, 2013 and has been notified vide notification dated November 15, 2016. Para 8 of 11th schedule provides for deletion of sections 253 to 269.

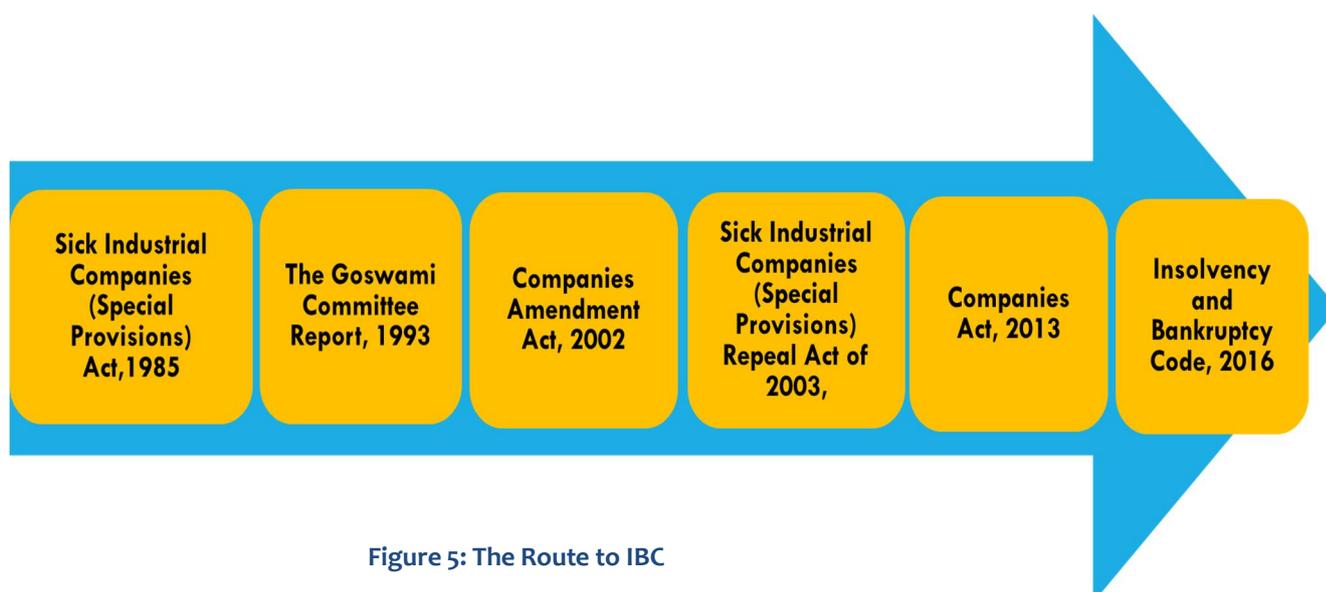


Figure 5: The Route to IBC

Insolvency and Bankruptcy Code, 2016

Section 252 of the recently enacted the Code provides for amendment of the SICA Repeal Act in the manner provided under read with the 8th schedule of section 252. 8th schedule provides for substitution in section 4 (b) of the SICA Repeal Act. The text of such substitution is as follows:

“In section 4, for sub-clause (b), the following sub-clause shall be substituted, namely—

(b) On such date as may be notified by the Central Government in this behalf, any appeal preferred to the Appellate Authority or any reference made or inquiry pending to or before the Board or any proceeding of whatever nature pending before the Appellate Authority or the Board under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016:

Provided further that no fees shall be payable for making such reference under Insolvency and Bankruptcy Code, 2016 by a company whose appeal or reference or inquiry stands abated under this clause.

The provisions of the Code dealing with amendment to the SICA Repeal Act came into force from November 1, 2016; however, the Ministry has appointed December 1, 2016 as a date on which the provisions of the SICA Repeal Act shall come into force. A question may arise as to which date shall be considered i.e. November 1, 2016 or December 1, 2016. On careful reading, one may note that clause (b) of section 4 states as follows:

*On such date **as may be notified by the Central Government in this behalf**, any appeal.
..... shall stand abated”*

The Central Government, vide notification dated November 25, 2016 has notified the provisions of the SICA Repeal Act. Therefore, any reference made to BIFR, any inquiry pending before BIFR, any appeal preferred to AAIFR, or any proceedings pending before BIFR/AAIFR shall automatically stand abated w.e.f. December 1, 2016.

Further, the proviso to clause (b) of section 4 of the SICA Repeal Act reads as follows:

“Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make reference to the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 within one hundred and eighty days from the commencement of the Insolvency and Bankruptcy Code, 2016 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016”

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The proviso provides the companies, who have made any reference made to BIFR, any inquiry pending before BIFR, any appeal preferred to AAIFR, or any proceedings pending before BIFR/AAIFR to make a reference to the NCLT under the Code within 180 days from the commencement of the provisions of the Code. The provisions of section 252 read with 8th schedule came into force from November 1, 2016. Therefore, the period of 180 days shall be calculated from November 1, 2016. Further, no fees shall be payable for making such reference.

Notifications dated 25th November, 2016

On [25th November, 2016](#), the Ministry of Finance, issued a notification notifying the provisions of the SICA Repeal Act². Notably, section 1 (2) of the SICA Repeal Act states as follows:

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint,

which implies that the entire Act shall come into force, there seems to be no possibility of piecemeal enforcement of provisions. Further, the Central Government has appointed December 1, 2016, on which the provisions shall come into force.

On the same day, the Ministry of Finance issued a separate notification notifying the provision of section 4 (b) of the SICA Repeal Act⁵. The notification, further states that such provision shall come into force from December 1, 2016. However, the same seems to be irrelevant, in light of section 1 (2) of the SICA Repeal Act.

Conclusion

The most awaited provision of the SICA Repeal Act, 2003 finally got notified and the erstwhile SICA, 1985 bids adieu. Hopefully, the objective with which SICA was enacted can be attained by the Code.

²S.O. 3568(E)