

Indian Shaving Products Ltd. v. Board of Industrial and Financial Reconstructions & Another

Civil Appeal No. 5638 of 1994

[1996] 1 SCR 31 | 1996-01-03

Whether BIFR, having sanctioned Sharp Edge's amalgamation with Indian Shaving Products under section 18 SICA, could withhold the declaration attracting the historical section 72A tax treatment.

72A

2-judge bench; single opinion | S.P. Bharucha, J. | S. Saghir Ahmed, J.

Assessment years: See the source-scope notes; no year inferred.

IMPORTANT: HISTORICAL SICA/SECTION 72A REGIME; NO AUTOMATIC PRESENT-DAY TAX ENTITLEMENT

This judgment requires a section 72A declaration under the SICA framework then before the Court. It does not determine every tax computation or every later amalgamation. Section 72A was subsequently substituted, and the official departmental SICA page identifies that Act as repealed. The exact applicable statutory version, transition and savings must be checked before relying on the result. The Court's order directs BIFR to make a declaration; it is not proof that the declaration was later issued or a quantified set-off allowed. Comprehensive later treatment, current-law applicability and Income-tax Act 2025 mapping remain NOT VERIFIED.

01 FACTS OF THE CASE

Indian Shaving Products challenged the Appellate Authority for Industrial and Financial Reconstruction's order of 20 December 1993 in Appeal 51/1992, which upheld BIFR's refusal to extend section 72A benefits upon Sharp Edge Ltd.'s amalgamation with the appellant. The Supreme Court appeal was Civil Appeal 5638/1994 by special leave. CBDT was served with notice but did not enter appearance (physical pages 2-3/SCR 32 G-33 D).

Sharp Edge, incorporated in 1956, manufactured carbon-steel blades. Indian Shaving acquired its shareholding from August 1986. Its accumulated loss at 31 March 1989 was Rs 298 lakhs against paid-up capital of Rs 212 lakhs. The report records a SICA reference and BIFR's consideration on 9 July 1991, followed by its finding that Sharp Edge could not make its net worth positive unaided and appointment of ICICI as operating agency under section 17(3) to examine viability and prepare rehabilitation measures (page 6/SCR 36 B-E). The printed sentence says amalgamation was "dismissed" on 9 July; the note does not silently change that word to "discussed" or invent a separate final dismissal.

On 13 November 1991 BIFR recorded improved performance and positive net worth, mainly attributable to the appellant's management and financial support. It thought the financially strong parent could rehabilitate its closely held subsidiary without further concessions, accepted the proposed merger, but denied section 72A benefits and called for a revised draft rehabilitation-cum-merger scheme. The appellant requested reconsideration on 2 April 1992. On 23 April 1992 BIFR recorded that no objections to the notified scheme remained and all consents and approvals had been obtained, sanctioned it with immediate effect, and continued the refusal. The scheme treated amalgamation as effective from 1 April 1991 (pages 6-7/SCR 36 E-37 C).

The five refusal reasons were the subsidiary's closely held character, liabilities mainly owed to its parent, cash profits for three years, subsequently positive net worth, and the parent's financial strength. AAIFR largely accepted their relevance, although it acknowledged that net worth had not become positive as at 1 April 1991. It reasoned that the scheme would succeed without the tax benefit and granting it would unnecessarily burden the exchequer. Those are the lower authority's rejected reasons, including its quoted dismissal of the appeal, not the Supreme Court's holding (pages 7-8/SCR 37 D-38 E).

Source: [reported judgment / paragraphs Appellate recital; unnumbered judicial factual chronology and lower-authority quotations / PDF pages 2, 3, 6, 7, 8 / Judicial text unless expressly identified as editorial/appellate recital](#)

02 DISCUSSION BY THE HON'BLE COURT

Bharucha J.'s single opinion construed the historical section 72A alongside the SICA machinery. The quoted tax provision contemplated Central Government satisfaction, on the specified authority's recommendation, that the amalgamating industrial undertaking was financially non-viable immediately before amalgamation, that the amalgamation was in the public interest, and that any notified conditions were fulfilled. A declaration then treated its accumulated loss and unabsorbed depreciation as those of the amalgamated company for the relevant previous year, with the Act's set-off and carry-forward provisions applying accordingly (pages 3-4/SCR 33 D-34 A).

The Court set out the statutory sequence rather than treating a merger as a free-standing tax exemption. Section 15 contemplated reference; section 16 inquiry; section 17 required a decision whether recovery of net worth within a reasonable time was practicable and, otherwise, whether public-interest rehabilitation measures should be prepared. Section 18 included amalgamation with another company. The opinion also distinguished the original sickness definition from the definition substituted in 1994. Under section 32(2), for amalgamation under a SICA scheme, BIFR exercised the Central Government's section 72A power without a separate recommendation from the specified authority (pages 4-6/SCR 34 B-36 B).

The Court considered CIT v. Mahindra and Mahindra Ltd., 144 ITR 225, a pre-SICA section 72A decision. The reproduced passage explains the incentive for a sound undertaking to revive a sick unit, reducing loss of production, unemployment and wasted capital. Financial non-viability in this rehabilitation context concerns temporary adverse financial circumstances, not an undertaking incapable of revival. This is a direct reading of the passage reproduced in Indian Shaving; no new complete Mahindra review or independent reading of the Budget speech and legislative materials is claimed (pages 8-10/SCR 38 F-40 A).

The decisive reasoning was the overlap of the statutory satisfactions. For sanction of amalgamation under section 18, BIFR had to be satisfied both of the amalgamating company's financial non-viability, through section 3(o), and the public-interest necessity or expediency, through sections 17 and 18. Sanction therefore necessarily implied satisfaction of the section 72A requirements in this statutory setting. BIFR had to exercise section 32(2) power and make the declaration. Having sanctioned Sharp Edge's amalgamation, it could not decline that declaration on the grounds it had relied upon (page 10/SCR 40 B-H).

This reasoning concerns the historic statutory declaration and this sanctioned scheme. It does not determine a quantified accumulated loss, depreciation allowance, individual assessment year, or all subsequent compliance with tax provisions. The fact that the parent was financially strong and the subsidiary had improved under its support was part of the administrative refusal which the Court rejected; it is not a present-day substitute for checking the governing statutory conditions.

Source: [reported judgment / paragraphs Historical statutory scheme, reproduced Mahindra reasoning and](#)

02 DISCUSSION BY THE HON'BLE COURT

controlling analysis at SCR 40 / PDF pages 3, 4, 5, 6, 8, 9, 10 / Judicial text unless expressly identified as editorial/appellate recital

03 JUDICIAL DECISION

The Supreme Court allowed the appeal, set aside both the order under appeal and BIFR's order insofar as they declined the section 72A declaration for Sharp Edge's amalgamation, and directed BIFR to make that declaration. There was no order as to costs. The Court did not order a fresh discretionary reconsideration, calculate a tax refund, or record later compliance (physical page 11/SCR 41 A-B).

Source: reported judgment / paragraphs SCR 40 E-H; operative SCR 41 A-B / PDF pages 10, 11 / Judicial text unless expressly identified as editorial/appellate recital

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Indian Shaving Products, on the historical declaration issue

Appeal allowed; refusal orders set aside; BIFR directed to make section 72A declaration.

Final reasoned statutory entitlement holding; consequential declaration directed.

No quantified tax assessment, actual subsequent declaration, set-off computation or present-law entitlement adjudicated.

Source: reported judgment / paragraphs SCR 41 A-B / PDF pages 11 / Judicial text unless expressly identified as editorial/appellate recital

05 AKHB REVIEW POINT

For a historical SICA amalgamation, establish the sanctioning provision, the scheme's effective date, the declaration sought and the statutory version. Distinguish the entitlement to a declaration from later calculation and use of losses or depreciation. A prior finding of the very statutory conditions cannot be ignored merely because the acquiring company is strong enough to finance rehabilitation.

Do not transfer this result unchanged to a modern merger. The retained 2011 government-hosted tax compilation records substitution of section 72A by the Finance Act 1999 with effect from 1 April 2000 and later conditional provisions for asset retention, business continuation and revival. Its relevant pages 410-411/printed 1.369-1.370 were checked as historical amendment evidence only. The official departmental section 17 page expressly labels SICA repealed; the unsuccessful IndiaCode repeal-PDF retrieval provides no verified commencement or savings account. Neither this limited check nor Indian Shaving establishes how an individual saved scheme or later insolvency arrangement is treated today. AKHB REVIEW POINT is editorial analysis.

Source: See the proposition-specific paragraph and PDF-page references below.

DETAILED DISPOSITION AND CONNECTED GROUPS

Costs: No order as to costs.

Proceeding outcomes

1.

Case number: Civil Appeal No. 5638 of 1994

Parties: Indian Shaving Products Ltd. v. BIFR & Another

Appellant role: Amalgamated company

Outcome: Allowed; AAIFR refusal and BIFR refusal set aside; mandatory declaration directed

Underlying proceeding: AAIFR Appeal 51/1992, order 20 December 1993; BIFR scheme order 23 April 1992

Pinpoint: Physical pages 2-3 and 11/SCR 32 G-33 B and 41 A-B

SEPARATE JUDICIAL OPINIONS AND READING BOUNDARIES

1.

Author: S.P. Bharucha, J.

Formal position: Single opinion of the Court

Separate opinions: False

Read scope: Full bounded judicial opinion and all reported source pages; no dissent or concurrence present

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

SICA 1985 sections 3(o),15(1),16,17(1)-(3),18,32(2); Historical section 72A(1)(a)-(c); section 72 printed once at SCR 40 B is a source anomaly, not a second holding

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S.P. Bharucha, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

SPECIFIED LATER TREATMENT CHECKS AND THEIR LIMITS

1.

Source: 2011 statutory compilation; official departmental SICA HTML

Result: Historical section 72A substitution and express repealed label require version/transition caution

Status: bounded only

Citator status: not verified

DATED OFFICIAL STATUTORY HTML COMPARISONS AND READING LIMITS

1.

Kind: official departmental statutory html bounded

Title: Sick Industrial Companies (Special Provisions) Act, 1985 (Repealed), section 17

Url: [Open cited source](#)

Source format: HTML via official departmental web page

Accessed at utc: 2026-10-05T22:10:53Z

Read bounds: Displayed Act identity/repealed status and section 17(1)-(4), web lines 38-65. Reliance restricted to historical section identity and expressly displayed repealed status.

Full document read: False

Physical image pages read:

Provenance: Official web-extracted HTML only. No raw HTML integrity hash, Gazette original, repeal commencement date, savings or transitional-law verification claimed. The separate IndiaCode Repeal Act PDF web open timed out and one raw read timed out; zero bytes retained, no retry.

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 11 PDF pages; SHA-256

c2e5e3426101b5d4b542b2243ca2ce2681bd43850ddf1ed1fde9b1b2e772a7f8. Original bytes preserved.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: True; material primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; all listed proceedings accounted for: True; all authored opinions separately accounted for: True; material later treatment limits prominent: True; comprehensive later treatment verified: False; current law verified: False; mapping 2025 verified: False; independent QA complete: True; parent full prose approval: True

SCR report citation, date, bench, docket and operative disposition verified from source images. Catalogue 1996INSC11 remains metadata only, not authenticated as a neutral citation.

No assessment year or completed tax assessment is identified. Financial position on 31 March 1989 and amalgamation effective 1 April 1991 are not converted into an inferred assessment year.

STATUTORY SCOPE

No Income-tax Act 1961 to Income-tax Act 2025 equivalence, commencement, transition, savings or automatic precedent carryover certified. Bounded later statutory/judicial checks remain separate.

LATER TREATMENT

Source checked 2026-10-05. No later judicial affirmation/reversal is certified. Bounded statutory evidence shows significant version change and SICA repeal; broad later treatment remains not_verified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 11](#)

SHA-256: c2e5e3426101b5d4b542b2243ca2ce2681bd43850ddf1ed1fde9b1b2e772a7f8

[official government hosted statutory compilation bounded - PDF pages: 1251](#)

SHA-256: 1ec6e4c38dc1d524d1d40b1fd35d13ac1336c8fc549cef2af1bf723a999c822b

[Sick Industrial Companies \(Special Provisions\) Act, 1985 \(Repealed\), section 17](#)

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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