LOK SABHA

SIXTEENTH LOK SABHA

VERBATIM RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

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LOK SABHA SECRETARIAT
NEW DELHI

July, 2016/*Ashadha*, 1938 (*Saka*)

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Laid in Lok Sabha on 22 *July*, 2016

Laid in Rajya Sabha on 22 *July*, 2016

सत्यमेव जयते

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NEW DELHI

July, 2016/*Ashadha*, 1938 (*Saka*)

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PROCEEDINGS OF THE FIRST SITTING OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016 HELD ON THURSDAY, THE 2ND JUNE, 2016

The Committee sat from 1130 hrs. to 1410 hrs. in Committee Room "074", Parliament Library Building, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

MEMBERS

Lok Sabha

2. Shri P.P. Chaudhary
3. Shri Gopal Chinayya Shetty
4. Shri Nishikant Dubey
5. Shri Shivkumar C. Udasi
6. Shri Anil Shirole
7. Dr. Sanjay Jaiswal
8. Shri Jagdambika Pal
9. Shri Jayadev Galla
10. Shri Chandrakant Khaire
11. Shri Chirag Paswan
12. Shri K.C. Venugopal
13. Ms. Sushmita Dev
14. Dr. P. Venugopal
15. Shri Bhartruhari Mahtab
16. Shri B. Vinod Kumar
17. Shri Jitendra Chaudhury

Rajya Sabha

18. Shri Ajay Sancheti
19. Shri Naresh Gujral
20. Shri Ravi Prakash Verma
21. Shri Sukhendu Sekhar Roy
22. Shri Satish Chandra Misra

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1. Smt. Sudesh Luthra — *Joint Secretary*
2. Shri J.V.G. Reddy — *Director*

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2. Shri Rajesh Aggarwal — Joint Secretary
3. Shri Mohammad Mustafa — Joint Secretary
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LEGISLATIVE DEPARTMENT

1. Dr. Mukulita Vijayawargiya — Additional Secretary
2. Dr. Sanjeev Kumar Srivastava — Assistant Legislative Counsel

JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

Verbatim Proceedings

Date : 2nd June, 2016

Time : 1130 hours

**Venue : Committee Room No. 074,
Parliament Library Building,
New Delhi.**

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Bhartruhari Mahtab — Member

WITNESSES EXAMINED

1. Shrimati Anjuly Chib Duggal
   Secy., Deptt. of Financial Services, Ministry of Finance
2. Shri Rajesh Aggarwal
   Joint Secretary, Deptt. of Financial Services, Ministry of Finance

HON. CHAIRPERSON: I welcome the representatives of the Department of Financial Services and Legislative Department to the sitting of the Committee. As you are aware, the Joint Committee of the Houses has been constituted to examine 'The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016', and to make a Report to the Parliament by the last day of the first week of the next Session, that is, the Monsoon Session, 2016.

The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 seeks to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Recovery of Debts due to Banks and Financial Institutions Act, 1993 administered by the Department of Financial Services. As per the Statement of Objects and Reasons of the Bill, the amendments are proposed with the objective to improve ease of doing business and facilitate investment leading to higher economic growth and development. From the Background Note submitted by the Department, it is noted that there are approximately 70,000 court cases pending in Debt Recovery Tribunals involving more than Rs. 5 lakh crore. It has also been mentioned in the Statement of Objects and Reasons of the Bill that though the Recovery of Debts due to Banks and Financial Institutions Act provides for a period of 180 days for disposal of recovery applications, the cases are pending for many years due to various adjournments and prolonged hearings. In this background, the Committee would like to understand as to how the proposed amendments would streamline recovery mechanism of Banks thereby addressing the issue of NPAs. The representatives of the Legislative Department may assist the Committee during the course of deliberations.

Now, I request the Secretary, Department of Financial Services to make a presentation on the various aspects related to the legislation. Members may be raising certain queries during the course of deliberations which you may kindly respond.

As you are aware, whatever deliberations we have at the sitting of the Committee are to be treated as confidential. Before you start the presentation, I request you to kindly introduce yourself and your colleagues to the Committee.

(INTRODUCTION OF WITNESSES)

SHRIMATI ANJULY CHIB DUGGAL: Sir, we are very grateful for this opportunity to make a presentation to you to revisit a number of

provisions of the SARFAESI and the DRT Acts which you are already familiar with. There is a larger context at this point of time before the country in terms of the need to support the economic growth to improve ease of doing business as you yourself have mentioned and the context that is provided by the banks and the financial institutions working hard to resolve very high non-performing assets at this point of time. The salient features of the Recovery of Debts due to banks and financial institutions Act, we intend to take you through the very broad points about these Acts and then give a brief introduction to the kind of amendments that we are proposing and the reasons for proposing those amendments.

(SLIDE PRESENTATION)

श्री निशिकान्त दुबे: मैं यह कह रहा हूं कि जहां-जहां आपने सिक्योर्ड क्रेडिटर लिखा है, वहां आपने वर्कमैन को क्यों नहीं जोड़ा है? इससे तो कन्फ्यूजन होता है। बैंकरप्सी और इनसॉल्वेंसी एक्ट के साथ जोड़कर हम चेंज अमेंडमेंट की बात कर रहे हैं।

SHRIMATI ANJULY CHIB DUGGAL: Sir, there are two things out here. When we are talking about the SARFAESI Act, there are actually three kinds of transactions that one can expect to undertake under that. One is, one of securitisation where debt obligations can be purchased by a securitisation company and into which long-term investor can then make its investment and you can churn the funds around. There is no need for any loan to be a bad loan or an anticipated bad loan as far as the securitisation aspect is concerned. The asset reconstruction companies pick up bad assets or doubtful assets and then turn those assets around. The third is enforcement of security interest and enforcement of security interest is basically when there is a secured charge which has been created on a particular asset. A bank or a lending financial institution is permitted or is enabled by this Act to enforce that security interest. Workmen dues come into the picture when a company is being wound up. This is something which is nothing to do with winding up. It is about enforcement of security interest, for instance, a loan has been given against a specific collateral, let us say a vehicle, the loan is not repaid, this Act permits the lender to enforce the security interest by taking possession of that vehicle.

(SLIDE PRESENTATION)

श्री निशिकान्त दुबे: हमने देखा है, लेकिन आप बताइए, चूंकि आप इस पर बहुत इनसिस्ट कर रहे हैं कि वर्ष 1990 में 15 लाख केसेज थे, 304 एफआईआई इनवाल्वड थे और 6 हजार करोड़ की रिकवरी थी। उसके आधार पर डीआरटी बनाने का फैसला किया। उस वक्त आपने इसी तरह की बातें कहीं और आज आप खुद ही अपने प्रेजेंटेशन में दे रहे हैं कि 70 हजार केस हो गए और पांच लाख करोड़ की रिकवरी हो गई।

श्रीमती अंजलि चिब दुग्गल: सर, जैसे हम आगे प्रेजेंटेशन में जाएंगे तो उसमें यह नजर आएगा। जो प्रोसेस उसमें परमिट किया होगा अंडर दि एक्ट, it is a well-meant process. But the process has permitted various people to abuse the process of law.

(SLIDE PRESENTATION)

HON. CHAIRPERSON: There is a request to all. Let us first finish that presentation. Then, I will allow every Member to raise his questions. First, let them finish their presentation.

(SLIDE PRESENTATION)

HON. CHAIRPERSON: Thank you very much for your presentation. You have given a complete outline of the Bill. Now, I request the hon. Members to seek their clarifications. I also request them to give their suggestions regarding who we should call in this meeting as evidence, what procedure we should adopt and other things. Let us start one by one.

श्री जगदम्बिका पाल: एक महत्वपूर्ण अमेंडमेंट हमारे समक्ष है, हमने उस दौरान भी कुछ क्लेरिफिकेशन की मांग की थी। जैसा कहा गया कि बारोअर्स के फुल एसेट्स होंगे, उसे डिक्लेयर करना होगा। इसका क्या प्रोसीजर होगा? बैंक्स की नॉलेज में है, तो क्या उसके लिए एफिडेविट देना होगा या क्या तरीका होगा क्योंकि आप बारोअर्स पर प्रतिबंध लगा रहे हैं।

आपने एनपीए के संबंध में जो चीज दिखाई है, डीआरटी का जो रोल रहा है, सरफेसी का रोल रहा है, आप कहते हैं कि सरफेसी से ही ज्यादा डेट्स की रिकवरी की है। डीआरटी बनाया है, आपने कहा कि 180 दिन की गाईडलाइन थी और कहा कि प्रोलांग हियरिंग्स हुई। ऐसा क्या कारण था, डीआरटी का जो परपज़ था, 70,000 केसिस बढ़ गए और लगभग पांच लाख करोड़ डेट्ट बढ़ गया। इतनी देर बाद समझ में आया कि अब डीआरटी में फिर से अमेंडमेंट करें। जब से डीआरटी का गठन किया गया था, क्या उस समय अमेंडमेंट की कोई बात हुई थी? अब डीआरटी में अमेंडमेंट कर रहे हैं, क्या गारंटी होगी कि फिर डेट्स की रिकवरी की प्रक्रिया को आसान बना देंगे?

एग्रीड पर्सन डीआरटी में जाता है, एग्रीड पर्सन्स की जेनुअन प्राब्लम्स होती हैं। आज कल के हालात में जिस तरह से लोग बारोअर्स लेते हैं, जिस तरह की परिस्थितियां निर्मित होती हैं, हो सकता है उनकी इन्टेंशन क्लियर हो। वे नहीं चाहते कि खाता एनपीए हो जाए, लेकिन हालात ऐसे हैं कि अपने एनपीए को एवाइड नहीं कर पा रहा है, उन हालात में बारोअर्स के लिए क्या कुछ हो सकता है? दो तरह की चीजें होती हैं, एक होता है कि इन्टेंशनली कोई करता है, ऐसे बहुत लोग हैं, लेकिन जो लोग इनोसेंट हैं, Those are the very right citizens, they have taken loans. But, by any circumstance, if they are not able to pay, उनके लिए क्या इस अमेंडमेंट में कुछ हो सकता है ताकि उनको कुछ मदद मिल सके।

आपने कहा कि बैंक्स को फैसिलिटी प्रोवाइड करेंगे मतलब कि बारोअर्स को नहीं होगी। आखिर, जो भी बैंक्स को डेट्स के लिए कुछ अधिकार देने जा रहे हैं, जिस तरह से एनपीए बढ़ता जा रहा है, इस संबंध में केवल हम उस रिकवरी के लिए बारोअर्स की कंडीशन को नहीं देखेंगे और जो चीजें हों, चाहे सरफेसी के माध्यम से हो या डीआरटी में अमेंडमेंट करने जा रहे हैं, सब चीजों को रिकवर करने की कोशिश करेंगे। आप सिक्योर्ड क्रेडिटर्स के राइट्स को कैसे रिकोग्नाइज करेंगे? आप इसे क्लेरिफाई कर दें क्योंकि आपने कहा है कि सिक्योर्ड क्रेडिटर्स के राइट्स को देखेंगे।

SHRIMATI ANJULY CHIB DUGGAL: We are taking two Acts for amendment. One is the SARFAESI Act which relates to enforcement of secured assets rights. There are two other aspects which I had talked about earlier. But, right now, we are talking about the enforcement of secured interest. DRT Act relates to both secured and unsecured loans. बड़ा वाला इश्यू यह है कि किसी भी इकोनमी में अगर कहीं पर काम रुक जाता है, किसी वजह से आगे नहीं चल सकता है तो एक रिजोल्यूशन मेकेनिज्म लगाकर उस पैसे को रिकवर करके किसी और काम में लगा दिया जाए, यहां उस पैसे का प्रोडक्टिव यूज हो सके। Therefore, while providing for this, loans can be recovered when there is reluctance to repay or the money is not coming back at the right time etc. The interests of the borrowers have been kept in mind by ensuring that there is an opportunity of being heard and an opportunity of presenting their case before the DRT.

As far as the SARFAESI is concerned which is about enforcement of secured interests, when a borrower has actually pledged an article or mortgaged an article or an asset to the lending institution, where he has gone into the transaction with his eyes open, he does not pay back or he is unable to pay back etc., the lending institution then has a right to enforce the security interest. However, if that security interest is being enforced in any way which is repugnant to the provisions of the law, then the borrower has a right to go to the Court. So, his rights are protected. This is actually a current existent legal provision with the SARFAESI Act. What we are really trying to do with the SARFAESI Act is actually to ensure that the asset reconstruction companies are well regulated. Looking at the current economic realities, we are trying to ensure that people who are putting their money into asset reconstruction companies are permitted to put in substantial amounts of money because there is now a kind of investment opportunity that is being seen by many asset reconstruction companies where they will buy bad loans and they will then try to turn those bad loans around. We are trying to create a 360 degree view of all the charges that have been created so that a situation does not arise where somebody who has created an interest on an asset, realises later on that actually

there was an existing interest. We are actually trying to ensure that there is a full disclosure again. Overall, what we are trying to do with this amendment is to improve the disclosure, to tighten the court processes, to ensure that people or companies are incentivised to come and from the larger viewpoint of the economic growth, bad assets are taken up, resolved or sold and then fresh activity can take place. In doing all of this, the interests of borrowers are being kept in mind because they have the right to go to the Court as well as the rights of the lenders to ensure that the money that has been lent out, comes back and applied to economic activity.

Largely, I think, I have answered the question. But there is one larger question of the rights of secured creditors whether they take precedence over other rights etc. As we are aware, the Insolvency and Bankruptcy Code which has received Presidential assent is about to be notified any day now. One of the challenges before all of us is going to be as to how to reconcile the provisions of different Acts. That is something, I presume, we would be working on.

श्री जगदम्बिका पाल: सुप्रीम कोर्ट का रिसेन्टली जो जजमैंट आया है, वह क्या है?

श्रीमती अंजलि चिब दुग्गल: वह टेनेन्सी के बारे में है। There is a very specific kind of point about if somebody has been a tenant in a particular property where the bank is trying to enforce a security interest. I would be happy to come back to this Committee after looking at the points in that judgment.

श्री जगदम्बिका पाल: सभापति महोदय, आप देखते होंगे कि नोएडा, ग्रेटर नोएडा, मुंबई, लखनऊ आदि में लोग लोन लेते हैं। उन्हें जो फ्लैट्स या प्रॉपर्टी मिलती है, उसे रियल एस्टेट वाले बिल्डर्स नहीं दे रहे हैं। इस कारण उन्हें बहुत प्रॉब्लम्स हो रही है। How can they be taken to task? How can they be guilty if they have taken a loan from the bank being a law abiding citizen?

माननीय सभापति: अगर बिल्डर्स नहीं दे रहे, तो रियल एस्टेट एक्ट इसीलिए ही आया है।

SHRI JAGDAMBIKA PAL: That is alright but in spite of this they are facing crisis through out the country. वह इश्यू भी है क्योंकि यहां रिकवरी का सवाल है।

माननीय सभापति: यहां रिकवरी का सवाल है। ठीक है, यह अच्छा विषय है।

DR. SANJAY JAISWAL: For last one year we are making industry-friendly policies. Then what is the reason of this sudden surge of GNPA? In 2015-16 you say that there is a sudden surge of GNPA. What

is the reason for this sudden surge this year when things are not looking that bad?

SHRIMATI ANJULY CHIB DUGGAL: NPAs have been on the rise for some time. The reasons are to do with not just the recovery efforts or lack of them as the case may be but also to do with the larger economic situation. Now if you take a look at specific sectors like steel where China has a huge amount of capacity where it is selling lower cost steel in the international market, our steel industry there has come under stress. There are other economic reasons within the country.

DR. SANJAY JAISWAL: Even in that sector also the Government has fixed the lowest selling price.

SHRIMATI ANJULY CHIB DUGGAL: Yes, but the point is this, Sir. Any loan that is given to any company—(a) the company has to perform well, (b) the market has to be salubrious enough for the company to be able to sell its produce and get its money back so that the cash flows are there. When we talk about GNPAs, there could be very many reasons to which the rise in the GNPAs can be attributed.

SHRI JAYADEV GALLA: Madam, this trend has been going on from 2008 to 2016. It is eight years and it is still continuing. There has to be something that we should have been able to do in these last eight years to suppress this trend.

DR. SANJAY JAISWAL: There is a sudden surge also from 5.6 to 7.3.

SHRI JAYADEV GALLA: In 2003-04 also there was a major international crisis but we did not feel any impact of that according to this chart.

SHRIMATI ANJULY CHIB DUGGAL: According to this chart, Sir, please remember that SARFAESI came into being about 2002 and that is where you can actually see the curve going down.

SHRI JAYADEV GALLA: If SARFAESI was sufficient to buck the international trend in 2003-04, why was not it able to do so in 2008?

SHRIMATI ANJULY CHIB DUGGAL: We are hoping to be able to make it a little more aligned with current realities to be able to be effective again.

SHRI JAYADEV GALLA: What was working with SARFAESI from 2002 till 2008 was not working post 2008. What is it in that that made it so effective for six years and then suddenly it lost its teeth?

SHRIMATI ANJULY CHIB DUGGAL: I think it may not be a case of a single cause and effect. There are a large number of factors which are at interplay out here. And it requires a much larger discussion in terms of the global as well as the Indian economic situation.

SHRI JAYADEV GALLA: The logical follow-up question is, will the Act and steps we are taking today have the desired impact? And how do you know?

SHRIMATI ANJULY CHIB DUGGAL: What we are trying to do with these two Acts is incentivise more asset reconstruction companies to come in. We are improving disclosure norms to ensure that people are aware that charges have been created on certain assets so that as and when any lending takes place or any kind of transaction takes place, there is a better understanding of what the repercussions of that might be. Third, we are trying to bring in players like debenture trustees who had not been thought of earlier at the time of enacting these laws so that if money is being raised by issue of debentures there is a trustee which is taking charge of the interest of, in a sense, for a number of debenture holders and pursuing cases on their behalf. So, the changing economic realities are some of the things that we are looking at at the time of proposing these amendments.

श्री रवि प्रकाश वर्मा: मेरा एक सुझाव है कि कोऑपरेटिव्स बैंक्स की संस्थाओं के प्रतिनिधियों को भी यहां बुलाकर बात करनी चाहिए।

माननीय सभापति: अगर कोई पर्टिकुलर हों, तो आप सजैशन दे दीजिए। क्या कोऑपरेटिव बैंक की कोई एसोसिएशन है?

श्री रवि प्रकाश वर्मा: उनकी कोई ऐपेक्स बॉडी है।

माननीय सभापति: उनकी रिप्रैजेंटेटिव बॉडी को हम जरूर बुलायेंगे। क्या इसमें कोऑपरेटिव बैंक का स्टेक है?

श्री रवि प्रकाश वर्मा: कोऑपरेटिव ट्रांसपोर्ट और फिशरीज में भी इन्वाल्व है। कोऑपरेटिव बहुत सारी चीजों में इन्वाल्व है।

HON. CHAIRPERSON: Is there a stake for cooperative banks in this Act?

SHRI MOHAMMAD MUSTAFA: They are covered under the SARFAESI Act but not under DRT.

HON. CHAIRPERSON: Then we will call them.

श्री रवि प्रकाश वर्मा: अभी गल्ला साहब ने एक वैलिड प्वाइंट उठाया था। वर्ष 2008 से एनपीए बिल्डिंग का ट्रेंड चालू हुआ, वह पर्सिस्ट कर रहा है और अप्वर्ड ट्रेंड में है। सरकार के जो कंसीडरेशन हैं, उसे देखते हुए क्या आपको लगता है कि खाली इस कानून को बदल देने से फर्क पड़ जायेगा? Or does the Government think that there may be some other resolutions required?

श्रीमती अंजलि चिब दुग्गल: इसमें बहुत सारे पहलू हैं।

श्री रवि प्रकाश वर्मा: इसमें पहलू हैं और पर्सिस्ट कर रहे हैं। ऐसा नहीं है कि पहलू उधर चले गये हैं।

माननीय सभापति: आपका प्रश्न सही है, लेकिन हम बैंक के प्रतिनिधियों से ज्यादा अच्छे तरीके से इसका उत्तर ले सकते हैं।

SHRI P. VENUGOPAL: Mr. Chairman, under the new Bankruptcy Code all corporate insolvency resolution cases will be adjudicated upon by the National Company Law Tribunal while all individual insolvency resolution cases will be dealt with by the DRTs. All SARFAESI related cases are handled by DRTs. In view of the huge backlog of cases pending in the DRT and the additional workload which will fall upon the DRTs once the insolvency law is operational, can the Ministry comment upon the importance of shifting at least corporate recovery cases under the SARFAESI to NSLT?

SHRIMATI ANJULY CHIB DUGGAL: This is my personal opinion, Sir.

I think by the time the Insolvency and Bankruptcy Board of India is set up and an adequate number of insolvency professionals become active in that area, we are going to require our current systems to continue to work.

Over a period of time, as a country we may decide that we can amend an Act or we can merge different legislations. For the moment, we expect that there will be a continuing requirement of the SARFAESI Act as well as the DRTs. Where required, we are committed to strengthening the DRTs considering that there is going to be a fresh set of responsibilities which is going to fall on their shoulders.

HON. CHAIRPERSON: I request all the hon. Members to put their questions and give their suggestions. They will be noted down and if there are similar questions, one common reply will be given for them and the rest of the replies can be sent in writing.

SHRI K.C. VENUGOPAL: Hon. Chairperson, I would like to know the nature of the pending cases. Already, it is stated that 70,000 cases are

pending. We have two lines of approach. BOFI Act is applicable to loans of banks of Rs. 10 lakh and above. But in case of SARFAESI, it is loans of Rs. one lakh and above. Who is borrowing loans of Rs. one lakh or two lakh? It is very small people or common people. After the SARFESI has been in vogue, a lot of complaints are coming from the individuals that banks are penalizing; banks are doing this and that. My simple question is what is the nature of this law? Are we tightening the law to capture the amount from these common level people or are we giving any relief to them for payment?

Regarding the age relaxation for judges and giving them a term again, I don't agree with the views of the Madam. There are a lot of ex-judicial people. As rightly pointed by one hon. Member, at least there should be a provision whether they have been performing well before. There should be criteria. Otherwise, everybody will continue up to the age limit.

SHRI JAYDEV GALLA: Hon. Chairperson, I have already asked a number of questions regarding this trend but I am still not satisfied. Considering that the NPAs are rising at an alarming rate, there may be a number of reasons for that but we need to understand all of those reasons, rather than just saying that there are a number of reasons. That is the crux of the situation why we are here to discuss and debate about this Bill. Perhaps we do need to understand that a little bit more to see what actually led to this change in trend and how do we suppress this new trend going forward. You made suggestions as far as the law is concerned, but without understanding the underlying reasons clearly, I think we would not be in a position to judge whether these new provisions would address the situation or not properly.

You had mentioned that even after RDDB-FI Act was introduced in 1993, the number of pending cases have gone up to 70,000 involving amount of more than Rs. five lakh crore and thousands of cases are pending for a long period of time. I would give example of my own State. In Visakhapatnam, in DRT there is no regular judge, there is no appellate tribunal either in Andhra Pradesh or in Telangana. More than 2,000 cases are pending in tribunals involving more than Rs. 1300 crore. So, what efforts are we making first to appoint regular judges and to have appellate tribunal and would these changes that we are bringing into this Act, immediately solve these issues or would it take a certain amount of time before they get solved?

My last point which I brought up earlier also is regarding the increase in the age limit of judges from 65 to 67. Considering that now you are allowing them to be re-appointed, is this really required because

you would be going against the trend of lowering the age rather than increasing the age?

SHRI P.P. CHAUDHURY: I have three clarifications from the Ministry. One is that everywhere we have mentioned this time-bound adjournment and deciding the cases and all that. But all these provisions are toothless because we have seen and our experience shows that we have incorporated article 226(3) in the Constitution which says that any *ex-parte* interim order is granted by the Court, then Court should decide the application within a period of 14 days. But our experience shows that it has taken number of years to decide the cases. So, likewise, in the present Act, there is no doubt the provision is there to decide the application within the stipulated time. But in case the application is not decided, we can say that is a toothless provision. The similar thing can happen as it has been happening with respect to the Constitution of India.

Secondly, at the same time, we have mentioned that the principle of natural justice shall apply, but the provision of CPC shall not apply. The principle of natural justice says and at the same time we have also fixed the time for adjournment and all that. So, if we go by the principle of natural justice, then is it not a case for denial of reasonable opportunity? Can this provision withstand the tide of judicial scrutiny or not? So, we have to balance the harmony between the principle of natural justice and the time given for adjournment and all this.

The second question is with respect to the appointment of retired judges and retired officers. Normally, our experience shows that they are not taking interest once they are re-appointed in the Tribunal and we have to find out what is the reason for pendency of 70,000 cases in the Tribunal. Is it because of their incapacity or non-professionalism of the judges? Some of the judges before whom we appeal have not touched these types of Acts in their entire life. If they are appointed, they can't learn at this stage. Why don't we create separate services for this purpose? We should choose the professional people who are experts and have specialized in this field. Then the matters can be decided quickly without causing any delay. They can understand the complexity of the financial matters and all this.

Thirdly, we are saying at page 12 'However many borrowers are challenging the jurisdiction of the Tribunals in the High Court'. This article 226 specifically prescribes the territorial jurisdiction of the High Court. By way of this amendment or by way of these Acts, can we curtail the jurisdiction of the High Courts because still the High Courts shall be competent to exercise the jurisdiction with respect to

its territory? So, we have to amend our provision or keep our provision in consonance with article 226 of the Constitution.

HON. CHAIRPERSON: Can we make some amendment that whenever you file an application in DRT, there must be a pre-litigation settlement stage also. Don't give the answer now. Please note it down, think over it and then you can send the reply. Shri P.P. Chaudhary raised some question about strengthening and reforming the DRTs. You can give reply later also. We will put a question to the banks also. Let us see what their view is.

SHRI P.P. CHAUDHARY: They can take the study material from the advanced countries like USA. They are having a very successful mechanism in pre-litigation mediation and the study shows that 75 per cent litigation has been reduced on this account only without approaching the mechanism of the Court.

SHRI UMARJI: I want to give an immediate response. In case of loan taken from a bank, the liability to repay that loan with interest is there. So, there is really no scope for any mediation. Mediation may be reducing the rate of interest or giving some relief and concession to them. For loans up to Rs. 20 lakh, the Lok Adalats are operating. The DRT themselves are holding a session of Lok Adalats. Borrowers come forward and do settlements in that Lok Adalat. Banks also give their approval. Apart from all this, there is a scheme. Any borrower can come to the bank explain his difficulty saying why he is unable to repay the loan and then make a proposal for settlement. That is called one time settlement. In the public sector banks there is a committee set up which is headed by retired High Court judges who decide on reasonableness of a one-time settlement which is submitted to the bank. That proposal is considered by the independent Committee and based on their recommendation banks are accepting these proposals. On a regular basis, these settlements are being undertaken by the banks after making an assessment of the security available, the value of security, the extent of recovery that would be possible by taking action under DRT and if a person is coming forward to pay why not take it and close the chapter. That is the approach of the banks.

श्री चंद्रकांत खैरे: मैं यह जानना चाहता हूं कि 70 हजार केसिस का इवाल्विंग अमाउंट पांच लाख करोड़ रुपये है। वेणुगोपाल जी ने जो प्रश्न किया है, मेरा भी वही प्रश्न है कि एक लाख रुपये लेते हैं, उसमें बड़े-बड़े लोग कितने हैं। मुझे बायफर्केशन चाहिए कि एक लाख रुपये से दस लाख रुपये तक में 70 हजार कितने हैं? दस लाख रुपये से एक करोड़ रुपये तक कितने हैं, एक करोड़ से सौ करोड़ रुपये तक कितने हैं और सौ करोड़ से ज्यादा कितने हैं? इसका

मुझे बायफर्केशन चाहिए, तभी हमें मालूम पड़ेगा कि पांच लाख करोड़ रुपये कैसे हुआ? मैं यह भी जानना चाहता हूं कि 70 हजार करोड़ रुपये सामने आने से पहले भी यह चल रहा था, मैं यह जानना चाहता हूं कि अभी तक कितने मैटर्स क्लीयर हुए हैं? 70 हजार करोड़ रुपये के पहले कितने मैटर्स क्लीयर हुए हैं और कितना पैसा बैंक का वसूल हुआ है? दूसरी बात, आपने कहा कि डिस्ट्रिक्ट मैजिस्ट्रेट के पास पेंडिंग हैं। उनके पास किस प्रकार के केसिस पेंडिंग हैं? डीएम के पास इतने केस कैसे पेंडिंग हैं? क्या आपको बैंक के अधिकारियों ने यह बताया है, आपको कैसे मालूम चला? डीआरटी के 34 कोर्ट्स हैं, मैं जानना चाहता हूं कि वह कहां-कहां हैं? अभी महाराष्ट्र के बारे में चर्चा आयी कुछ डिस्ट्रिक्ट कोऑपरेटिव बैंक्स महाराष्ट्र में लोन डिफाल्ट में आ गए हैं। डिस्ट्रिक्ट कोऑपरेटिव बैंक्स की अपेक्स बैंक महाराष्ट्र स्टेट कोऑपरेटिव बैंक्स होती है, उसमें पोलीटिकल लोग होते हैं, मैं उनके बारे में कुछ नहीं बोलना चाहता हूं, लेकिन कोऑपरेटिव बैंक्स लॉस में जा रहे हैं, इसका कारण क्या है? उनको भी इसके तहत लिया जाना चाहिए, यह मेरा मानना है।

स्माल स्कैल इंडस्ट्रीज के लोगों को ही पचास लाख, एक करोड़, दो करोड़ रुपये लोन लेने में दिक्कत होती है। उनको बैंक्स भी मदद नहीं करते हैं। जब कभी एनपीए हो जाता है तो सब उनके पीछे लग जाते हैं। लेकिन जो बड़े कॉर्पोरेट घराने हैं, उनके पीछे कोई नहीं लगता है। एमएसएमई के प्रतिनिधियों को भी आपने बुलाने के लिए कहा है। एमएसएमई छोटा लोन लेते हैं और काम करते हैं, जबकि बड़े उद्योगपति बड़ा लोन लेते हैं, 50-60 करोड़ रुपये का लोन ले लेते हैं और देश छोड़कर भाग जाते हैं। इस एक्ट में हम लोगों को इन सब बातों के बारे में ध्यान देना होगा।

SHRI BHARTRUHARI MAHTAB: Taking a cue from our learned friend Shri Chaudhary, without any aspersion on the legal profession and the lawyers of our country, I would only mention that in United States it gets settled because lawyers are helpful to the clients and also to the banks to a certain extent. Whereas if the litigation is increasing in our case and Shri Chaudhary wants out of court settlement or before any litigation takes place a mechanism can be built up. My impression is perhaps the lawyers do not want their clients to have a settlement. Anyway, Lok Adalats are functioning.

This is the Chart which I would start from. There are blue and red lines. The red lines are of scheduled commercial banks. Here you will see the recovery of the scheduled commercial banks through various channels. You have mentioned three channels. In SARFAESI Act, which we want to amend, the maximum recovery has been done for scheduled commercial banks whereas the PSBs are quite low. I would like to understand the figure. How much of money the scheduled commercial banks or litigation or NPA had out of which this much amount of money has been recovered through SARFAESI Act. And, how much of money of PSBs was in NPA?

SHRI MOHAMMAD MUSTAFA: Scheduled commercial banks mean the banks which are included in the Schedule specified by the Reserve Bank of India. In this, both public sector banks and private banks are included. So, this figure is inclusive of both the banks.

SHRI BHARTRUHARI MAHTAB: We have been meeting during last 10-15 years in various capacities. My question is very particular. If SARFAESI Act needs improvement, this figure does not justify that. This is the figure which you have given us. Here SARFAESI Act is efficiently dealing with the recovery of NPAs in comparison to DRT and Lok Adalats. Matter may be very less. वर्ष 2009 से लेकर अब तक का डेटा अगर आ जाए, then it will be easier for us to understand.

Madam Secretary has very rightly mentioned as to why there is an increase after 2011-12. You may go back to the previous Graph. It is because the banks were told to invest heavily in infrastructure during that period. The Government took a decision because of the recession. The Government took a conscious decision that we have to push in more money. Because of various other factors which were not under the control of the Government, that money got stuck up in infrastructure or in different other aspects. But during that period also, after 2013 I would say, a decision of the RBI also in a way gave us a true picture of NPA.

Of course, the Madam Secretary is aware about it but she did not say all this. They took a conscious decision at that time. That is why, we have this huge figure. Earlier, the banks, in a way, were allowed to conceal their NPA but after 2013, it was decided that we should place the facts before the public in world forum so that we can address that issue. That was the challenge which the Government and the RBI had taken. That is why, we see a rising figure and why it came down in 2007-08, I think that needs to be proved how the figures were tweaked or were not tweaked. That needs to be looked into.

The initial question which Nishikantji had posed, if we can go back to the reasons for the proposed amendments, in 1990 more than 15 lakh cases filed by PSBs and 304 cases filed by financial institutions involving Rs.6013 crore which were pending in various courts. That actually initiated the Government to form Narasimham Committee or before that Tiwari Committee which suggested that we should go into a new law. That is how it all started. Those two Committee's report– Narasimham Committee – 1 and 2 subsequently when SARFAESI Act came, this RDDB and FI act came through Tiwari Committee 1981 and Narasimham Committee of 1995.

My question here is that today we have 70,000 cases involving Rs. 5 lakh crore pending in DRT. You have explained that there are certain flaws in the law which needs to be corrected. I still have my doubts but while we will be deliberating on different clauses and amendments that the Government is proposing, with the collective wisdom, of course, we will try to improve that Act. Here I would like to understand whether the situation has changed in our country that is why, this litigation has increased. A large amount of funds have been blocked in DRT or DRAT or there was actually some flaw or just to justify natural justice that the people took recourse to those loopholes, if I may say so, or advantage of that Act where this type of money got blocked. I would not say that the litigants and the lawyers were more intelligent enough to delay the process. If the process is bad, it needs correction and this leads to another question. Just because the previous JPC during deliberations thought that it is necessary also to amend this type of law, that is why, these four Acts are being amended or you had a review or a Committee which went into the correction of the Act and suggested that these are the proposals which needs to be amended. That also needs to be shared with us.

Chairman, Sir, I have not gone through Narasimham Committee 1 report and Narasimham Committee 2 report and nor Adhariyujeena Committee Report but these are the Committee reports synopsis of which is necessary. The Secretariat can share it with us because these are the suggestions on a new legislation.

HON. CHAIRPERSON: Can we have a copy of that? We will circulate it.

SHRI BHARTRUHARI MAHTAB: Earlier the banks in our country did not have the power to take possession of securities and sell them. That is the reason why these suggestions came and the SARFAESI Act came into being. I remember in 2001, when this Bill was before Parliament for consideration and passing, if one goes through even today what was discussed during the debate, one can understand it. Raviji was also a Member during that period. We should not deride that Act. It has done some work, especially, it has enabled banks and financial institutions to utilize long term assets. That is why, that categorization needs to be very clear so that if Rs.5 lakh crore is locked and 70,000 cases are there, what has been the plus point of that. It has also been able to manage the problem of liquidity which was one of the major issues before this Act came into being.

Now I come to the very essence of the second last slide of your presentation – requiring deposits for filing appeals. I would like to be

educated by Mr. Chaudhary when we talk of natural justice. The minimum amount of deposit for admission of appeal to DRAT is specified as 50 per cent of the debt and the power of waiver given to DRAT is withdrawn. This leads to a question. Even when the DRT gives decision, which the other party is aggrieved, he goes on appeal. Why can we not prescribe or provide a specified time to DRAT instead of compelling the other party to deposit 50 per cent of that amount. It is because once he is going on appeal, here what has been suggested is that are you not giving arbitrary power to DRAT to impose that provision? To entertain application for stay of recovery action if defendant agrees to repay the debt, it is proposed to stipulate minimum deposit of 25 per cent for submission of such proposal if the terms are acceptable to the applicant bank. At what level, this decision will be taken? We just now heard that the banks are not in a position to take a decision today because whenever a Branch Manager has a threshold limit and the Regional Manager has a threshold limit.

But most of them are not taking decisions today. They are all saying that you send it to the Head Office and the Head Office will decide about it. Here is a provision which will again delay the process. Our purpose is to expedite it in a quicker mode. Here are certain provisions which will again delay the process because banking structure in PSBs is such today in our country that the decision-taking authority, even if he is a Branch Manager, even if he is a Regional Director of a State, they are not taking any decisions today. It is not dealing with crores of rupees, even in lakhs they are not taking any decisions. They say as to why they should be held responsible and accountable. Let the Head Office decide and that is why until and unless someone who is known to the Head Office, little credit flow is happening now. That is one of the reasons today why even though the banks are flushed with money but they are not giving any money on loan. That is another issue which needs to be tackled. Subsequently when we will be discussing this we will be talking about it.

Lastly, when we were discussing in the previous JPC, an issue had come up and luckily since I am speaking before Shri Nishikant ji I am putting this question. This relating to DRT and DRAT. We all know that the DRTs are not functioning as per our expectations. DRATs also are in a very difficult stage. But what is the vacancy position in DRT and DRAT? You are going to open another five DRTs. Somewhere I read that some improving is going to take place in respect of the DRATs. But what is the position today? You have come up with a suggestion that the age limit will also be increased from 65 to 67 years. Is it not that attractive that Judicial Officers are intending to go to State

Administrative Tribunal or Central Administrative Tribunal instead of coming to DRT? What is actually lacking in that and what improvement needs to be done? We heard the Finance Minister speaking in the House that his intention is to improve the functioning of the DRTs. This is just a loud thinking. I would like to know whether there is any scope, when we are deliberating on this Bill we are also talking about amending the DRT, we can also suggest certain things how to improve the functioning of this Recovery Tribunal mechanism in our country.

श्री गोपाल शेट्टी: हम सिर्फ बैंकिंग के पैसे पर अटके हुए हैं, केवल उनको लाना और सरकार की तिजोरी में जमा करना, यही न होते हुए सिस्टम भी चलना चाहिए, व्यवसाय चलना चाहिए, लोगों को रोजगार मिलना चाहिए। सारे अधिकार बैंकर्स को देकर कहीं सारी व्यवस्था ठप्प न हो जाए, इसके बारे में गहराई से सोचना पड़ेगा। दूसरा, पांच लाख करोड़ रुपये जो आना है, वह नैचुरली विद इंटरेस्ट ही होगा। अगर इंटरेस्ट इसमें से माइनस करते हैं तो यह अमाउंट पचास परसेंट या साठ परसेंट तक आ सकता है। मैं यह जानना चाहता हूं कि 70 हजार केसिस हैं, जिसमें बहुत सारे केसिस एक जैसे ही होंगे। वे दो-तीन या चार स्टेजिस पर होंगे। क्या हमारे पास कोई सिस्टम है कि यदि एक केस का जजमेंट आ गया है और उसी मुद्दे पर 10-15 हजार केसिस हैं तो उसके हिसाब से क्या हम डिसीजन नहीं ले सकते हैं? ऐसा करने से बहुत सारे केसिस क्लीयर हो सकते हैं। हमारी जो वर्तमान स्थिति है, उसमें जो कोर्ट में जाता है और वहां से जो डिसीजन होता है, उसके हिसाब से ही निबटारा किया जाता है। यदि एक प्लेयर को जो न्याय मिला है, वैसा ही जजमेंट बाकी के लिए भी आना है। क्योंकि एक प्लेयर को जिस मुद्दे पर न्याय मिला है, उसी मुद्दे पर बाकियों को भी न्याय मिलना है और उस केस का आधार लेकर वकील लड़ते हैं और 5-10 साल बाद उनका भी जजमेंट आ जाता है। क्या इसके लिए कोई मकेनिज्म नहीं बनाया जा सकता है, इस बारे में सोचने की आवश्यकता है।

अपेलिट ट्रिब्यूनल में लाने के लिए आपने 45 से 30 दिन तय किए हैं। हम इस बारे में अमेंडमेंट तो देंगे, लेकिन मेरा निवेदन है कि आप इसको एक बार चैक कीजिए। सेबी ने 45 से 30 दिन किया, इसलिए हम 30 दिन करने जा रहे हैं। उनका इस बारे में क्या एक्सपीरियंस है? यदि तीस दिन में होता है तो फिर 15 दिन क्यों नहीं हो सकता है? क्योंकि हम ईज़ ऑफ डुइंग बिजनेस की ओर जा रहे हैं। यदि उनका एक्सपेरियंस अच्छा है तो हम 15 दिन कर सकते हैं। हमें 30 दिन क्यों करना चाहिए।

जजमेंट के बारे में मैं कहना चाहूंगा कि हम 180 दिन का तीस दिन इसलिए कर रहे हैं क्योंकि जजिस 180 दिन लेते हैं। जजमेंट जब दिया जाता है तब सब कुछ पता ही होता है, वकीलों के पास ऑपरेटिव ऑर्डर आ ही जाता है। तो तीस दिन क्यों रखा गया है? यदि हम तीस दिन रखेंगे तो वह 29 दिन में डिलीवर करेंगे। जबकि उसके लिए मैंटल प्रिपरेशन तो पहले ही हो चुका होता है। इस बारे में भी हम अमेंडमेंट तो देंगे, लेकिन आप भी अपना माइंड बनाइए।

रिटायर जजिस के बारे में बहुत से माननीय सदस्यों ने कहा है और मेरा भी यह मत है कि हमारा देश जवान हो रहा है और जवान लोगों को काम देने की बात की जा रही है। नये कैडर की बात करते हैं तो बूढ़े लोगों को क्यों रखा जा रहा है? अगर हम रिलैक्सैशन देते हैं तो बहुत सारे लोग आ सकते हैं। इसमें एक्ट के हिसाब से ही उनको निर्णय डिलीवर करना है, उनको अपना माइंड ज्यादा अप्लायी नहीं करान है। मुझे लगता है कि अगर आप मुझे जज बनाएंगे तो मैं भी कर सकता हूं। यदि पूरा कायदा बना हुआ है तो हम क्यों रिटायर्ड जजिस को रख रहे हैं? मैं 25 साल से जनप्रतिनिधि हूं और मेरा पहले दिन जो फ्लो था, वह आज नहीं है। I should accept that. हम 65 का 67 करने जा रहे हैं, यह देश के साथ न्याय होगा, ऐसा मुझे नहीं लगता है। जजिस की नियुक्ति के लिए आपने जो सिस्टम बनाया है, उसको रिलैक्सैशन कीजिए ताकि नए लोग भी आ पाएं। एक जमाने में बैंक के मैनेजर 50-55 साल के बाद बनते थे, लेकिन आजकल नये-नये बच्चे लोग काम कर रहे हैं और मैनेजर और जनरल मैनेजर बन रहे हैं। People are becoming managers of banks within the age of 30 years. देश जब इतना आगे जा रहा है तो हम क्यों दूसरी दिशा में जा रहे हैं? हमें इस बारे में बिलकुल नहीं सोचना चाहिए। मेरा सभापति जी से कहना है कि यदि इनकी उम्र को और कम किया जा सकता है तो किया जाना चाहिए। 60 साल की उम्र वाले को रखिए, 65 वाले को नहीं।

SHRI JITENDRA CHAUDHURY: My questions are very simple. The total NPA, I think, according to RBI figures, is to the tune of Rs. 13 to 14 lakh crore. There are around 70000 cases in the DRT. I would like to know if the back-up can be given, say, for Rs. 5 lakh or Rs. 50 lakh etc. for our understanding.

Suggestions regarding MSME and others have already been made. Beside that NPA is not only in the industrial sector but also in the primary sector, my question is why this much of NPA is happening. I think we should take the views of the workers' organizations and the peasants' organizations while we are calling people to take their views.

SHRI SHIVKUMAR UDASI: You have mentioned in your objective that, to facilitate, expedite, adjudication of recovery applications and unlock more than Rs. 5 lakh crore which is presently under litigation for proper utilization and recycling of these funds in the economy. One of the gentlemen was saying here that this is a prospective Act and not a retrospective Act. So, how can you recycle this Rs. 5 lakh crore? It cannot be unlocked. It is a locked one. So, if you are doing a prospective law, then there is no fun in having this Rs. 5 lakh crore. It is going to be another law which is prevailing in the country when the cases were going on. So, how do you think that making this enactment or a law will be productive enough to take back that Rs. 5 lakh crore? There is a basic anomaly in the objective itself where it says recovery of

application and unlock more than Rs. 5 lakh crore which cannot be done because you say that this is a prospective law.

I do not understand the basic anomaly in this and how do you address this point? You are saying that amendments are prospective. So, the litigations which are going on will be handled with prospective law or not. I am still confused. In the Insolvency and Bankruptcy Code, when I asked the Secretary as to who is going to look after the Code, they said at that point of time that they have not taken a decision yet. I want to know who has taken a decision regarding that because we have subsumed 13 Acts in that and we want to subsume these two laws also in that. I am still confused as to who is looking after this law and this law. I am not getting this point. You are telling us that it is prospective. I am not getting the point as it is a fundamental point. One of your officers said that it will be prospective. If this law is going to happen, then it will become retrospective. Still more I am getting confused. It is all right. After the Bill is passed in the Lok Sabha on the Insolvency and Bankruptcy, the entire network needs to be set up and it also applies to only prospective cases and hence, it will become retrospective as Mr. Dubey has told now. I do not know but you have to clarify it now. Should we assume that with the strict deadline proposed by law, defaulting companies cannot survive more than a year after default and having this Act implemented. It is tough going by the past records because the Act regarding recovery of debt was in 1993 which had set up the DRTs. DRTs also had 180 days time frame and ten years later, SARFAESI Act, 2003 also promised that banks will be allowed to auction and residential and commercial properties to recover loans without going to long procedure in the courts. Neither act has speeded up the recovery of loans from the defaulting promoters. Today we have pendency of nearly 40,000 and I do not know what will happen. DRT did not adhere to one deadline partly because Tribunal was not even appointed on time. Currently, if you file a case, then you start giving the documents. And after that, it will take another 180 days. How are you addressing these things in the current Act? If you could explain it, it will be interesting for us.

When it comes to economy in law, even implementing a bad law will be deterring the economy and at the same speed, if you are implementing a good law also, that also will deter economy. How do you say that by having a very good enactment, it will boost our economy? Please explain these points to us.

SHRI P.P. CHAUDHARY: In the scheme of this Bill, we are providing for possession and taking over the management and we are also giving

the power to transfer lease and so on. If you see the Transfer of Property Act, we have to see whether the ownership right will cease to exist only on account of this provision or not or will there be any conflict with that provision? If we see the Land Acquisition Act and other Acts, in case the State acquires the land like that, or in the Tenancy Act of various States, the provision is there. In case of transfer, then the property will vest and it will be free from all encumbrances. Can we introduce a word like this? It is because taking possession of the management and right to transfer without vesting that property in the body which is transferring it, will it create a conflict with the Transfer of Property Act? I want a clarification on this point. Only the right of taking the possession and management and right of transfer without vesting the property, how can the right of transfer be created? Will it not be violation of common law and many other enactments which are there? On that analogy, this point requires to be examined.

श्री अजय संचेती: सभापति महोदय, विटनेस किसे-किसे बुलाना है, जैसा आपने कहा है, हम आपको अलग से लिखकर दे देंगे। Then you can decide upon it. This is my first point.

अभी गोपाल शेट्टी जी ने एक बात कही कि regarding the age of appointment of people. I personally feel that in this competitive world, when we discuss nationalised banks and private banks and change is seen. जहां तीस साल का आदमी वही काम कर रहा है, जहां पचास साल के लोग काम कर रहे हैं। I think appointments need to be made attractive so that people willingly come here to work. If some light can be thrown on this point, I shall be happy. Something should be thought about it. It is a larger issue. I know that for a particular sector, it cannot be done. But in various sectors, this problem is occurring. This needs to be addressed now.

Coming back to the NPAs issue, मेरे मन में कभी-कभी यह आता है कि इकोनोमी को ठीक तरीके से चलाने के लिए हम लोग सब एक्ट बनाते जा रहे हैं, लेकिन कभी-कभी ऐसा लगता है कि यह इंडस्ट्रीज के लिए ज्यादा जरूरी है या बैंक्स की बैलेंस शीट्स को ठीक करने के लिए हम इस काम को कर रहे हैं। मेरे मन में यह सवाल कई बार आ जाता है। दस साल तक कुछ लोग गड़बड़ी करते हैं, ध्यान नहीं दे पाते हैं, मैं कोई दोष नहीं दे रहा हूं, मैं एक पर्टीकुलर बात बोल रहा हूं। उसे ठीक करने के लिए हम अमैन्डमैन्ट्स ले आते हैं। उसके बाद फिर कुछ समस्याएं होती हैं, दस साल बाद हम फिर अमैन्डमैन्ट लेकर आ जाते हैं। इस एक्सरसाइज से बिजनेस ग्रो हो रहा है। Are we able to arrest this issue or not. या पब्लिक सैक्टर बैंक्स के ऊपर भी कोई रिस्पांसिबिलिटी फिक्स होने वाली है या नहीं। इसलिए मेरा कहना है कि इसमें जो बैंक एसोसिएशंस हैं, वे जब हमारे सामने आएंगी, इस चीज को बहुत स्ट्रांगली उनसे पूछना है कि आप पहले अपनी रिस्पांसिबिलिटी और जो गलतियां आपसे

हुई हैं, वे भी अपने साथ यहां लेकर आइये। ऐसे नहीं होगा कि आप सजेशंस देते जाइये, जो गलतियां आपने कीं, उन पर आप कहते हैं कि हमने यह खराब किया है, अब आप इसे अमैंडमैन्ट बनाकर ठीक कर दीजिए। This is my personal suggestion. I also belong to industry. मुझे लगता है कि कभी-कभी यह हो रहा है।

दूसरी बात यह है कि जैसे एनपीएज की बात हो रही है, जो अभी इनिशियली पूछा गया था कि there is no, as Joint Secretary said, benchmark for the NPAs and all that. But in cooperative sector, there is a benchmark. दो परसैन्ट से ऊपर अगर एनपीए हो जाता है तो बैंक का ग्रेडिंग बिगड़ जाता है। I am aware of it. Maharashtra Cooperative Sector Banks are working successfully barring a few banks. But overall success is there. इसलिए नेशनलाइज और प्राइवेट बैंक्स में भी हमें इसे कहीं न कहीं पर फिक्स करना चाहिए so that the check is made in time within the system. This is one point. Secondly, one question was again asked. I would like to have the bifurcation of one aspect. I want to know, out of the amount pending, what is the principal amount and what is the interest amount. पांच लाख करोड़ या सात लाख करोड़ यदि और आ जायेगा, अब तो बढ़कर ही आयेगा, कम नहीं होना है। What is the principal and interest amounts? अभी बहुत से लोगों ने मैकेनिज्म के बारे में बात की, that is, pre-settlement. There are a lot of institutes and public sector units. There is a mechanism of Dispute Resolution Board. लेकिन डिस्प्यूट रिजोल्यूशन बोर्ड में भी दो चीजें देखी गई हैं, डिस्प्यूट रिजोल्यूशन बोर्ड में इन दिनों नॉर्मली जजेज तीन मैम्बर डीआरबी बनता है। एक एग्रीव्ड पार्टी का होता है और एक डिपार्टमैन्ट का होता है और one presiding officer again.

A senior person is appointed from the judiciary only. Normally this practice is going on. It is quite reasonably good and successful also. But what is happening? Why is it not successful? The claims or whatever orders are passed by the DRB, Departments are again squeezing the people saying that now negotiate with us and we will settle this amount if you again offer some reduction or discount to it. What is the use of DRB then? We are doubting our own system. We are creating layers after layers. This is one thing because of which BRB's sanctity is being questioned. Either the DRBs are not fully geared up or that mechanism needs to be strengthened. That is why these things are happening.

Secondly, when a decision comes in favour of a party that this money has to be given, in more than 90 per cent cases, they are challenged in the court of law. दो साल पहले ही हम एक साल डेढ़ साल इसमें खराब कर लेते हैं। आपने बहुत अच्छा किया कि उस पर टाइम फ्रेम लगा दिया। पहले तो दस साल चलता था, फिर कोर्ट चले जाते थे। आज-कल एक साल या ज्यादा से ज्यादा डेड़ साल

आपने कर दिया है। लेकिन फिर उसके बाद हम लोग कोर्ट चले जाते हैं। चेयरमैन सर, इस पर भी कोई, जैसे पीपीपी प्रोजेक्ट्स के लिए आ रहा है कि न उसको सभी पर लागू करना पड़ेगा। Once DRB is there, then the Government has to think why to go to the court of law again. मैं आज यहां पर हूं, मेरे हाथ से मैं पैसा क्लियर करने के बजाय कोर्ट में डाल दूं, the chair is rotating. This needs to be clarified and this needs to be stopped somewhere. Otherwise, the whole sanctity of the system is doubtful.

Our banks are using the ARCs as a tool. As a hair cut, whatever mistakes we have committed, give it to the ARCs. When we will discuss it, I can show it with examples also. मैंने लोन दिया, लोन देने के बाद में डिफॉल्ट हुआ, डिफॉल्ट होने के बाद में उसको सीडीआर में डाल दिया, उसको मैंने और पैसा दे दिया। वह फिर से डिफॉल्ट किया और बाद में हेयरकट ले कर एआरसी को बेच दिया। This is not less than a fraud. क्या एआरसी की भी रिस्पॉन्सिबिलिटीज़ हम कहीं इसमें फिक्स करेंगे या नहीं करेंगे, इसको भी तय रकना पड़ेगा। नहीं तो एआरसी जितनी भी हैं, मेरा तो यह कहना है कि बैंक प्रामोटिड एआरसी यदि होंगी तो उसमें बैंक का इन्वॉल्वमेंट होना ही नहीं चाहिए। उसका एक पर्सेंट स्टेक भी नहीं होना चाहिए, नहीं तो बैंक्स अपने फायदे के लिए हमेशा उसको इस्तेमाल करेंगे। As of today, I have these questions only. Thank you.

श्री निशिकान्त दुबे: सभापति महोदय, इस एक्ट में कुछ डैफिनेशन चेंज कर रहे हैं और मैंने स्पेसिफिक क्वेश्चन प्रॉपर्टी के बारे में पूछा था। जो मेरी जानकारी है कि प्रोपर्टी की डैफिनेशन अलग-अलग एक्ट में अलग है। सन् 1882 का एक्ट है, जिसके बारे में आपने कहा ट्रांस्फर ऑफ प्रॉपर्टी एक्ट। बेनामी ट्रांजैक्शन एक्ट सन् 1988, सन् 1930 का सेल ऑफ डीड्स एक्ट। इनकम टैक्स सन् 1961, जनरल एग्रीमैंट एक्ट 1885। मेरा यह कहना है कि इतने डैफिनेशन के बाद यदि एक नया डैफिनेशन आप क्रिएट कर रहे हैं, इन सारे एक्ट को, मेरा मानना है और भी तीन-चार एक्ट हैं, जिसके बारे में मैं चर्चा नहीं कर रहा हूं, सन् 1908 का जो रजिस्ट्रेशन एक्ट है, उसमें भी प्रॉपर्टी का अलग है। मूवेबल प्रॉपर्टी का अलग, इंमूवेबल प्रॉपर्टी का अलग है। एक डैफिनेशन लेकर आइए और सारी चीजों में यदि आप देंगे तो फिर एक नया आप प्रॉपर्टी का डैफिनेशन क्रिएट करने की कोशिश कर रहे हैं, यह कहीं से उचित नहीं है। मेरा मानना है कि जब लॉ बनता है, उस समय खास कर लैजिस्लेटिव डिपार्टमेंट को तो यह जानकारी होनी चाहिए कि इतने एक्ट ऑलरेडी हैं, प्रॉपर्टी का अलग-अलग डैफिनेशन ऑलरेडी हमने किया हुआ है। हम लोग तो बहुत लेमैन हैं, आप लोग तो पढ़े-लिखे हैं, तो आप लोगों को ज्यादा समझना चाहिए, तो मुझे लगता है कि इसमें सबसे पहले तो डैफिनेशन को ही ठीक करने का सवाल है। इस देश में एक कॉमन डैफिनेशन होना चाहिए, नहीं तो कानून की व्याख्या, आप जो कहते हैं कि लिटिगेशन फंसता है, लिटिगेशन इसी कारण से फंसता है। आप प्रॉपर्टी का अलग एक्ट में कर रहे हैं, वे प्रॉपर्टी का अलग एक्ट में करेंगे, तो यह एक सवाल है।

दूसरा, डी.एम. का बड़ा बार-बार जिक्र आ रहा था, राज्य के पॉवर को कम करने की बात आ रही थी, मुझे लगता है कि यहां से बैठ कर कानून बनाना बड़ा आसान है, मैं जिस

इलाके से हूं, 9वें शिड्यूल में एक एक्ट है, मैं संविधान में देख रहा था, संथाल परगना टैनेंसी एक्ट यह कहता है कि किसी जमीन की खरीद बिक्री नहीं हो सकती है। भाई-भाई को जमीन नहीं बेच सकता है। इतना स्ट्रिंजेंट लॉ है। इसके बाद यदि जमीन ले ली तो जिस पर्पज के लिए लिया, वही पर्पज आप यूज कर सकते हैं। यदि आपको बेचना है तो वह फिर डी.एम. के पास ही वह जमीन चली जाएगी। आप लोगों को इस तरह के एक्ट के बारे में जानकारी है? एक इंडस्ट्री आ गई, एक इंडस्ट्री यदि आप दूसरे एआरसी को यदि मान लीजिए आप देना चाहते हैं, आप दे ही नहीं सकते हैं। उसके लिए फिर आपको डी.एम. के पास जाना है, फिर कैबिनेट को जाना है, तो यह जो आप कह रहे हैं कि तीस दिन के अंदर उसको फैसला करना है। आप सभी लोग जो यहां बैठे हैं, उनमें से मैक्सिमम लोग डी.एम. रहे हैं, इस समस्या के बारे में आपको नहीं पता है? हमारे राज्य में दो एक्ट हैं एसपीटी एक्ट और सीएनटी एक्ट, यह इजाजत ही नहीं देता है। मान लीजिए कि यदि उस लैण्ड को आपको ट्रांस्फर करना है तो वह लैण्ड जिससे एक्वायर किया गया है, फिर से उसी को वापस चली जाएगी। यह भी उस एक्ट को कहता है। कैसे यह कानून होगा? उसके बाद शिड्यूल 5 और शिड्यूल 7 का जो एक्ट है, वह अलग है, तो यह कानून कैसे बनेगा। मुझे लगता है कि एक बार इसको रिव्यु करने की आवश्यकता है। तीसरा, आरबीआई के रूल्स, सेबी के रूल्स, एआरसी के रूल्स, सभी को पढ़ा जिसके बारे में संचेती जी काफी बोल रहे थे, अभी हमने जो कानून पास किया है बैंक्रप्सी एण्ड इंसॉल्वेंसी एक्ट, उसमें आरबीआई के रोल को मोर और लैस मुझे लगता है कि हमने बहुत ही कर्टेल कर दिया है, कंट्रोल कर दिया है। सीडीआर, जेएलएफ, एसडीआर आदि जो सारे मामले थे, वहां तक तो सिचुएशन जाएगी ही नहीं। वहां तक नहीं जाएगा कि कोई न कोई जो है, क्रेडिटर चला जाएगा कि उतना पैसा नहीं है, पेमेंट हो रहा है। जब तक कि आप सीडीआर करने के लिए जाइए, जेएलएफ करने के लिए जाइए, एसडीआर करने के लिए जाइए, एसडीआर तो बहुत बड़ा विषय है और एआरसी तो आप उससे अलग विषय कह रहे हैं। जब सब कुछ खत्म हो जाएगा, तब एआरसी होगा। यदि आपको लगता है कि वहां तक चला जाएगा, एआरसी की नौबत हमको आ जाएगी तो बैंक्रप्सी और इंसॉल्वेंसी एक्ट का क्या होगा? उसमें फिर आरबीआई का क्या रोल है? मुझे लगता है कि आप लोगों ने उस एक्ट के साथ एट पार उस कानून को नहीं बनाया है, इसको देखने का सवाल है। इसमें इतने लूपहोल्स हैं, मुझे लगता है कि यह सरसरी निगाह से ही देखने में लगता है कि फालतू बना। आप लोग जा कर, लैजिसलेटिव डिपार्टमेंट और सारे डिपार्टमेंट मिल कर इसका फैसला कीजिए।

इसके बाद जो है, जैसे मैं आपको बताऊं कि डिबेंचर ट्रस्टी की बात आप कर रहे हैं कि बॉन्ड मार्केट को बढ़ाना है, डिबेंचर ट्रस्टी, इसके बारे में बहुत डिस्कशन हुआ, यहां संयोग से लैजिस्लेटिव डिपार्टमेंट के हैं, जब उसके वॉटरफॉल मैकेनिज्म के बारे में हम डिस्कस कर रहे थे तो बॉन्ड मार्केट के बारे में कुछ सोचा ही नहीं। उस वक्त इकोनॉमिक अफेयर्स सैक्रेट्री की एक अलग सोच थी। आपको ध्यान है। श्री त्यागी और उनकी अलग सोच थी। वह सोच वहां है और बैंक्रप्सी इंसॉल्वेंसी एक्ट आ रहा है। आप जो है इसमें डिबेंचर ट्रस्टी को कह रहे हैं कि हम इसको प्रायोरिटी देंगे। मैं आपको एक छोटा सा उदाहरण देना चाहता हूं। इसके बाद जो स्टैंप ड्यूटी है, जैसे इसमें आपने कहा कि एआरसी को स्टैंप ड्यूटी 1899 का जो स्टैंप एक्ट

है, आप उसमें एग्जैंप्ट कर रहे हैं। कैसे एग्जैंप्ट कर दीजिएगा? आप अपने रैवन्यु के लिए चिंतित है, बैंक के रैवन्यु के लिए चिंतित हैं, राज्य के रैवन्यु के लिए चिंतित नहीं है। आप उस रैवन्यु से राज्य को महरूम कर देना चाहते हैं। स्टैंप ड्यूटी, तो जीएसटी जो आ रहा है, उसमें रजिस्ट्रेशन को तो ऐसे भी एग्जैंप्ट कर रखा है। जीएसटी का भी वह पार्ट नहीं है। आपके अधिकार क्षेत्र में जो बात नहीं आप उसके लिए कानून बना देना चाहते हैं। कभी राज्य के साथ डिस्कस किया है कि राज्य इस पर एग्री करता है कि नहीं करता है। मेरा यह कहना है, सरसरी निगाह से देखने के बाद यह कहना है कि मुझे लगता है कि पहले इन लोगों को आपस में बातचीत कर लेना चाहिए, उसके बाद यदि ये सजेशन ले कर आएंगे, तब मुझे लगता है कि होगा, क्योंकि मेरे पास तो सवालों का पूरा जखीरा है, जिनको मैं बाद में पूछना चाहता हूं।

SHRI NARESH GUJRAL: My colleagues have touched most of the points, so I do not want to be repetitive. But as Nishkant *ji* said, object of the Insolvent Act was to have a healthy bond for debentures market. That will really depend on how effective is your new code and the code can only be effective if the judges who are manning, whether it is DRTs and other courts, take their work seriously. So far SARFAESI Act has failed, DRT has failed. Primarily because now it is a fine art amongst lawyers how to keep taking adjournments and how to keep delaying the process. Everybody knows which lawyer to go to, which judge so that the whole process gets derailed. So, I think, we should all deliberate how to make this effective, how do we make our judges/ tribunals accountable. I feel what can be done is that why don't you bring it to the public domain, on the net you should put as to how cases went to each of the tribunals, and how cases that they decide. It was done in the Supreme Court Judges also. That will definitely make them accountable. Especially when you are giving extension, their past must be looked at very carefully because those who are masters at delaying should not get appointed again.

My second point, which Ajay *ji* also talked about, ARCs must be totally divorce from the banks. It has to be at arm's length otherwise it will all a *mili baghat* आपने एक कॉलम से दूसरी जगह डाल दिया और आप कहेंगे कि साहब हम ठीक हैं। These are the points we should all deliberate how to ensure that the accountability of the judges is there. This delay process is somehow arrested. Only then, these institutions would become effective.

KUMARI SUSHMITA DEV: The entire theme behind these amendments seems to be about ease of doing business, that is what the objectives are saying. The recent judgement in 2014 of the Supreme Court has actually given a landmark judgement under Section 14 of the SARFAESI Act by actually carving out a set of tenants who cannot come in the

way of recovery. It is a huge step in the right direction. The question is, whatever it could see in Section 14 amendments, could you reflect that in the legislation because the court has done it. We as policy makers reflect that because it is very common, one of the reasons why we cannot recover is tenancy which are created, we go to the DRT, and they exercise that right. If we could reflect that, it would be more efficient.

HON. CHAIRPERSON: Officers from the Department of Economic Affairs and Revenue also joined us.

(DIRECTION 58 WAS READ OUT)

(INTRODUCTION)

SHRI ATULESH JINDAL: As far as CBDT is concerned, there are just two proposed amendments in these two Acts about which we are concerned with. These are insertion of Section 26E in the SARFAESI Act and insertion of 31B in RDDB and FI Acts. As per these two provisions, the secured dues have got priority over the dues of the Central and State taxes. Under the IT Act, there is one anti-abuse provision – 281 of the IT Act. It provides that the creation of any charge or parting of possession of an asset by an assessee during the currency of any proceedings under the IT Act shall be void as against any claim in respect of any tax payable by the assessee under the IT Act. Apparently, as a result of insertion of these two sections, this particular provision of IT has been overridden.

श्री निशिकान्त दुबे: वह बैंकक्रप्सी एंड इन्साल्वेंसी एक्ट आपने पढ़ा है। उसमें तो यही स्थिति पैदा हो गई है, आपने तो उस वक्त कोई ऑब्जेक्शन नहीं किया और वह लॉ सबको प्रिवेल कर रहा है। वह तो आपका पावर ले लिया गया, वह तो पार्लियामेंट से पास हो गया, अब आप 281 को भूल जाइए।

SHRI P.P. CHAUDHARY: That has been left out basically. We can also say that provision is there notwithstanding anything contained.

SHRI ATULESH JINDAL: That is the position how.

श्री निशिकान्त दुबे: पोजिशन तो नए लॉ के हिसाब से आप कहिएगा। वह तो पास हो गया।

SHRI SHIVKUMAR UDASI: In that it is clearly said that your Act is going to take over any other Act. It was like that. But you have given a concurrence that to amend that – now you can't question that. it has been passed.

श्री निशिकान्त दुबे: आपने उसे सपोर्ट किया था। जो वाटरफॉल मैकेनिज्म 178 है, उसमें वह सबसे अन्तिम प्रायोरिटी है आपकी।

SHRI P.P. CHAUDHARY: Is IT Act part of that schedule along with the Insolvency Code?

SHVI V. ANADARAJAN: Our submission is with respect to the Stamp Act in this particular Bill, this Bill is to waive stamp duty on a particular set of instruments. The kind of instruments on which the Union Government has got the powers to impose stamp duty, the State Governments have got the power to impose stamp duty are provided in the Constitution itself. The kind of instruments for which it is proposed to raise stamp duty relate to transfer or mortgage rights in immovable property. Our submission is that the power to impose stamp duty on these kind of instrument lies with the State Government and the powers are derived by the State Governments from the Constitution itself. My submission is that it should be examined further.

HON. CHAIRPERSON: It is a matter of competence. Legislative Department will check Union List 1993, and State List 1963, and the Concurrent List and give a response.

श्री अजय त्यागी: महोदय, जो हमारी समझ में आए, इसमें दो-तीन इश्यूज़ हैं, एक्ट में जो 20(ए) और 20(बी) इनसर्शन किए जा रहे हैं,-Integration of registration systems in Central Registry, the way it is worded is that the Government may integrate the registration records under various other Acts, that is, Motor Vehicles Act, Shipping Act, Patents Act, etc. with the Central registry. Clause 20A(2) says that once this integration is there, from the date of such integrated records will be available, with effective from such date it shall not be necessary for any person to register security interests over properties which are already registered under any registration system referred to in Sub-Section (1) with the Central Registry.

So our interpretation of this is that. Does it mean that even information utilities which are envisaged to be created under the Bankruptcy Code, will that also be integrated with this system and once it is integrated, it may not be mandatory to file registration information with the information utilities? So we do not want the system of information utilities to be jeopardised. Clause 20A(2) actually says that once it is integrated, then it shall not be necessary for any person to register security interests over properties which are already registered under any registration system referred to in Sub-Section (1) with the Central Registry under this Act. So, once it is integrated,

even information utilities also get subsumed in it. Our only limited purpose is that the information utilities should be regulated by the regulations under the Bankruptcy Code and if this registry actually also wants to act as an information utility, then they will have to abide by the regulations to be framed under Bankruptcy Code. So, that clarificatory issue is the concern.

HON. CHAIRPERSON: You have mentioned it in your Background Note.

SHRI AJAY TYAGI: Yes. This is one. We have two or three more issues.

HON. CHAIRPERSON: Let the Legislative Department see this. Let them examine this and send us their written replies.

SHRI AJAY TYAGI: In SARFAESI Act, in Section 26(E), we are saying that when secured creditors enforce their security interest, it will be subject to Section 52 of the Insolvency and Bankruptcy Code. What we want to say is that if the same secured creditor has been part of the insolvency resolution process, the cost of insolvency will have to be shared by it.

So, these are two things in the SARFAESI Act.

श्री निशिकान्त दुबे: क्या इसमें आपका कहना है कि जो बैंकरप्टसी और इनसॉल्वेंसी एक्ट का सेक्शन-52 है, उसके एट-पार होना चाहिए?

श्री अजय त्यागी: सर, उसमें जो कॉस्ट शेयरिंग है तो बैंकरप्टसी एक्ट में यह है कि that will have to be shared by them also there. It will only be subject to that.

श्री निशिकान्त दुबे: लेकिन इसमें हमेशा सिक्योर्ड क्रेडिटर्स की बात हुई है। क्या यह भविष्य में वर्कमेन को प्रभावित नहीं करेगा? उसका कारण यह है कि उस सेक्शन को खत्म कर दिया गया।

SHRI AJAY TYAGI: SARFAESI Act is for enforcement by secured creditors only. What we have provided there is a larger bankruptcy issue and all that. This is only enforcement by the banks and other secured creditors and only in a limited way this will be enforced. What we are saying is, if they have been part of the insolvency resolution process, the cost which are mentioned there, to that proportion, they will have to share that. It is a limited point.

Sir, we also have two-three smaller points in the other Act, RDDBFI Act. In Section 19 (19), a mention has been made about the Companies

Act because at that time the Insolvency and Bankruptcy Code was not in place, instead of Section 326 of the Companies Act, Insolvency and Bankruptcy Code, should be mentioned.

SHRI P.P. CHAUDHARY: I think there is a slight grammatical mistake. You just read it.

श्री भर्तृहरि महताब: जब अमेंडमेंट आएगा उस समय इसे देखेंगे।

श्री निशिकान्त दुबे: सभापति महोदय, इन लोगों से कहिए कि ये लोग आपस में एक मीटिंग कर लें। जो सेक्रेटी, फाइनैंस हैं, उन्हें कहा जाए कि बजट की तरह आप इसे भी को-ऑर्डिनेट करें। त्यागी साहब की सोच अलग है, रेवेन्यू की सोच अलग है, इनकी अलग है।

श्री अजय त्यागी: सर, हमारा मुद्दा है, this is consequential to enactment of Insolvency and Bankrupcty Code इसमें सोच की बात नहीं है।

श्री निशिकान्त दुबे: मैं भी वही कह रहा हूं। मैं यह नहीं कह रहा हूं कि आपकी सोच अलग है। मैं यह कह रहा हूं कि इस एक्ट को बनाने के समय यदि आप बैंकरप्टसी और इनसॉल्वेंसी एक्ट को ध्यान में रख लेते तो अच्छा होता।

श्री अजय त्यागी: सर, मैं यह कहना चाह रहा हूं कि हमारा इस एक्ट में वित्तीय सेवाएं विभाग से मतभेद नहीं है। उस समय बैंकरप्टसी कोड बना नहीं था।

श्री निशिकान्त दुबे: यह तो आप जानते हैं कि वह एक्ट नहीं बना था। लेकिन, जब यह हमारी कमेटी के सामने आया तो वह एक्ट तो पास हो चुका था। वह उसके पास होने के बाद आया।

श्री अजय त्यागी: सर, जिस समय यह पार्लियामेंट में इंट्रोड्यूस हुआ तो उस समय बैंकरप्टसी कोड पार्लियामेंट से एप्रूव्ड नहीं था। इसलिए बैंकरप्टसी कोड का हवाला नहीं दे सकते थे। इन्होंने कंपनी एक्ट का हवाला दिया। अब स्थिति यह है कि बैंकरप्टसी कोड पार्लियामेंट से पास हो गया है और वे चैप्टर्स कंपनी एक्ट के रहे नहीं हैं।

SHRIMATI ANJULY CHIB DUGGAL: Mr. Chairman, Sir, with your permission, I will draw attention to this. We were aware of this particular situation. I agree with him. Therefore, what we have said is, in Section 326 of the Companies Act, 2013, or under any other law for the time being in force. So, the moment the IBC overrides that Section of the Companies Act, that is the one that prevails.

SHRI AJAY TYAGI: Sir, what we are suggesting is only consequential. Otherwise, we have no difference of opinion about this legislation which is before this Committee.

In two-three places more, we have said similar things.

HON. CHAIRPERSON: That is already on record. We will examine.

आप सभी का बहुत-बहुत धन्यवाद। जितने भी अधिकारी आए हैं, मेरी आप सभी से रिक्वेस्ट है कि आप हमारे साथ लंच के लिए ज्वायन करें।

(तत्पश्चात्, समिति की बैठक स्थगित हुई)

PROCEEDINGS OF THE SECOND SITTING OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016 HELD ON WEDNESDAY, THE 15TH JUNE, 2016

The Committee sat from 1100 hrs. to 1530 hrs. in Committee Room "074", Parliament Library Building, New Delhi.

PRESENT

Shri Bhupender Yadav —·*Chairperson*

MEMBERS

Lok Sabha

2. Shri P.P. Chaudhary
3. Shri Gopal Chinayya Shetty
4. Shri Subhash Baheria
5. Shri Shivkumar C. Udasi
6. Dr. Sanjay Jaiswal
7. Shri Jagdambika Pal
8. Shri Chandrakant Khaire`
9. Shri K.C. Venugopal
10. Ms. Sushmita Dev
11. Shri Kalyan Banerjee
12. Shri Bhartruhari Mahtab

Rajya Sabha

13. Shri Naresh Gujral
14. Shri Anand Sharma
15. Shri Bhubaneswar Kalita
16. Shri Praful Patel
17. Shri Ravi Prakash Verma
18. Shri K.C. Tyagi

SECRETARIAT

1. Smt. Sudesh Luthra — *Joint Secretary*
2. Shri J.V.G. Reddy — *Director*
3. Smt. Jagriti Tewatia — *Deputy Secretary*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

DEPARTMENT OF FINANCIAL SERVICES

1. Shri Anandrao V. Patil — Joint Secretary
2. Shri Madhukar R. Umarji — Legal Consultant, IBA

MINISTRY OF LAW AND JUSTICE

LEGISLATIVE DEPARTMENT

1. Dr. G. Narayanan Raju — Secretary
2. Dr. Mukulita Vijayawargiya — Additional Secretary
3. Dr. Sanjeev Kumar Srivastava — Assistant Legislative Counsel

Vidhi Centre for Legal Policy

Shri Debanshu Mukherjee — SRF and Lead (Corporate Law and Financial Regulation)

Centre for Law and Policy Research (CLPR)

Ms. Jayna Kothari — Executive Director

Indira Gandhi Institute of Development Research (IGIDR)

1. Ms. Susan Thomas — Assistant Professor
2. Ms. Rajeswari Sengupta — Assistant Professor

National Institute of Public Finance and Policy (NIPFP)

1. Dr. Ajay Shah — Professor
2. Ms. Bhargavi Zaveri — Consultant

Federation of Indian Micro, Small and Medium Enterprises (FISME)

Shri Anil Bhardwaj — Secretary General

Laghu Udyog Bharati

1. Shri Om Prakash Mittal (C.A.) — National President
2. Shri Varun Mittal — Executive Member

Confederation of Indian Industries (CII)

1. Shri Ramanuj Kumar — Partner, Cyril Amarchand & Mangaldas
2. Shri Bhargesh Ojha — Sr. Executive Vice President & General Counsel, Kotak Mahindra Bank Ltd.

3. Shri Raju Dodti	–	Group General Counsel, L&T Financial Holdings Ltd.
4. Ms. Anuradha Salwan	–	Director, Financial Sector
5. Shri R. Deepak Joshi	–	Deputy Director, Financial Sector
6. Shri Shreeram Lakshman	–	Consultant

Federation of Indian Chambers of Commerce and Industries (FICCI)

1. Shri Harish Chander	–	Executive Vice President, Edelweiss ARC Ltd.
2. Shri Piyush Mishra	–	Partner, Cyril Amarchand Mangaldas
3. Ms. Supriya Bagrawat	–	Joint Director, FICCI

The Associated Chambers of Commerce and Industry of India (ASSOCHAM)

1. Shri R.D. Khullar	–	Legal, Group Head Srei Infrastructure Finance Ltd.
2. Shri Suman Jyoti Khaitan	–	Chairman, ASSOCHAM National Council for Legal Affairs and Partner, Suman Khaitan & Co., Khaitan & Partners Advocates
3. Shri Deepak Jain	–	AVP Legal, Srei Infrastructure Finance Ltd.
4. Shri Chandan Kumar	–	Joint Director, Department of Banking & Financial Services ASSOCHAM Corporate office

JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

Verbatim Proceedings

Date : 15th June, 2016

Time : 1100 hours

Venue : Committee Room No. '074', Parliament Library Building, New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Shivkumar Chanabasappa Udasi — Member

WITNESSES EXAMINED

1. Shri Debanshu Mukherjee
   (BCL, University of Oxford) SRF & Lead (Corporate Law and Financial Regulation), Vidhi Centre for Legal Policy
2. Ms. Jayna Kothari
   Executive Director, Centre for Law and Policy Research

HON. CHAIRPERSON: Now I welcome the Vidhi Centre for Legal Policy, Centre for Law and Policy Research, Indira Gandhi Institute of Development Research and National Institute of Public Finance and Policy (NIPFP), the officers from the Ministry of Financial Services and also the officers from the Legal Services.

I welcome you all to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016. The Bill seeks to amend some of the provisions under four Acts, that is, SARFAESI Act, 2002, RDDB and Financial Institution Act, 1993, the Indian Stamps Act, 1899 and the Depositories Act, 1996 with the aim to improve ease of doing business and facilitate investment leading to higher economic growth and development.

The memoranda containing the written comments/suggestions as received in the Secretariat have already been circulated to the Members of the Committee. I would like to draw your attention to the Directions by the Speaker, whereby the memoranda submitted to the Committee as well as the deliberations held at the sittings of the Committee would form part of the proceedings of the Committee, and are treated as confidential and not circulated to anyone or made public in any other media till the report is presented to the House.

I request the representatives of these organizations first to introduce yourself and your colleagues to the Committee.

(INTRODUCTION OF WITNESSES)

HON. CHAIRPERSON: First, we will start one by one. We will emphasize specifically on the amendment which is suggested in the Act. But before that, I request one of my colleagues, Shri Shivkumar Udasi to give the parameters and guidelines to you. Accordingly, we will start our discussion.

SHRI SHIVKUMAR CHANABASAPPA UDASI: We are supposed to do these amendments in regard to SARFAESI and DRT Acts *vis-à-vis* the Insolvency and Bankruptcy Code which has been passed by the Parliament. So, the challenges before all of us are going to be how to reconcile the provisions of different Acts because 13 Acts have been subsumed in the Bankruptcy Code and now this Act and there are two other Acts. The Indian Stamp Act is there. How to reconcile these together and how it should be user friendly is the main objective here.

Most of the time—I have read somewhere—a poorly implemented law or for that matter a well implemented law, one can do devastating

damage to the economy. Both are the same. So, *de jure* and *de facto* are two different things. How effective are the objectives of the enactments and what we deliberate here will be implemented there are the things which have to be addressed right now. Most of the time what will happen is, in most of the developing nations, greater harm has been done on economy and developmental aspects by not enacting law or by failing to implement a law that has been enacted or by enacting and implementing a faulty law. How do you take this interpretation in the law of the land and before the court? Mr. P.P. Chaudhary always says this. Article 226(3) of the Constitution says, if a decree has happened and if it has not been taken into consideration within 14 days or if it has not been followed by the Constitution of India, then it will not be followed in the law of the land. So, the basic thrust should be given on how user friendly the enactment should be and how effectively it should be implemented. So, this is the cause of concern today.

All of you have given your suggestions. I have gone through one of them regarding the ARCs. I do not remember who has given that suggestion regarding not to regulate ARCs but the main concern about the ARC here is, most of the time the banks would be taking this position. As Mr. Gujral Saheb has said in the last meeting, the banks will give the ARC as being part of the ARCs because they will be having a stakeholder. They will be the stakeholder in the ARC, and they will give it to the ARC. Finally, they will take a haircut. So, in that regard, we want to have a holistic approach and see how well it can be done.

So, I would like to ask all of you. You have given lot of suggestions and our colleagues are also going to discuss it clause by clause. Some of you have given us good suggestions.

I want you to be very realistic and your comments and suggestions should make it user friendly. So, in the name of ease of doing business, the rights of both secured lenders and lenders and, in fact, each and every individual and corporation should be taken care of. In that regard, we have to see that the law is well interpreted. It should be a simple law. According to me, it should not be a complicated one. Many lawyers are sitting here and all of them would agree with me in this regard. If the objective of a law is to serve the nation in a good perspective, it should be understandable to a common man. If it is not, that law would be a troublesome one. So, if your suggestions are in a good way, that will be appreciated.

SHRI DEEPANSHU MUKHERJEE: Thank you so much for this opportunity. I have also submitted my written comments. My first

comment relates to the proposed amendments on the Bankruptcy Code because we have also been involved in working on that piece. So, my first comment relates to clause 17 of the proposed Bill that proposes Section 26 (e) to be introduced in the SARFAESI Act.

The clause proposes that if a security insurance is registered under the SARFAESI Act, then notwithstanding anything to the contrary contained in many laws, the proceeds of the secured creditor obtained after security interests will have to be paid before all other debts, including debts owed to the State Government and the Central Government. Now, in principle, this seems to be OK. However, they seem to be in conflict in Section 52 of the Bankruptcy Code wherein it is provided that if a company has gone through the insolvency resolution process, then notwithstanding whether that company decides to participate into the liquidation process or not, that is required to contribute to the cost of proceedings of the insolvency resolution process. By virtue of this Rule Section 26 (e), because notwithstanding anything to the contrary contained in any other law secured creditors will get their dues no matter what, they will not have to contribute to the proceedings of the insolvency resolution process. However, this is only in a case where a petition has first been filed in an insolvency resolution process under the Bankruptcy Code and it is after the liquidation order that a secured creditor decides to enforce the security interest. So, this does not apply where a secured creditor directly goes and enforces a security interest. Therefore, this is a conflict. Most importantly, because the cost of insolvency resolution process will also include rescue finance, that is, a finance that the company obtains for effective resolution of the company, this may actually vitiate the entire rescue finance piece that the Bankruptcy Code proposes. This is a direct conflict and this needs to be looked at very closely. Therefore, this new Section 26 (e) directly conflicts with Section 52 (8) of the Bankruptcy Code.

My second comment relates to the proposal to integrate the systems of registration of property that is currently available under the Indian law. Clause 15 of this Bill proposes that all systems of registration relating to security interests and property will be integrated into the Central Registry under the SARFAESI Act. Now, the Bankruptcy Code proposes that institutions known as information utilities, which are expected to capture data about the financial position of the company including information relating to security of interests – once given the fact that the Bankruptcy Code may probably get notified sooner than later, once this subsequent law comes in force – will probably get integrated into the Central Registry. I do not know whether that is the

intention but by virtue of this new proposal, the information utilities will get integrated into the Central Registry. If that is the intention, then we may probably have a system where there will be dual regulation of the same objective where we want more and more information to be reflected in the credit infrastructure. So, is that an objective that the Government has? Do we really want multiple regulations on the same issue?

Most importantly, there is a Section 26 (c) that the Bill now proposes, which says that if a secured creditor registers a secured interest under the Central Registry and subsequently, another creditor has registered a security interest in some other utility, then the claim sought by the secured creditor under the first system will prevail over the other system. This really goes against the objective of the proposed information utilities under the Bankruptcy Code.

SHRI P.P. CHAUDHARY: Can you refer to both the Sections?

SHRI DEEPANSHU MUKHERJEE: Sure, Sir.

SHRI KALYAN BANERJEE: I want to ask only one question. I have read your comments which you have submitted. I hope that you would also have read the recent Justice Rohinton Nariman judgement. Justice Kurian Joseph and Justice Rohinton Nariman have made it very clear. This Act supersedes everything. I have just asked this to clarify it. You have taken up a legal point, so you have to consider about it. Basically the SARFAESI Act is available to the financial institutions only. Apart from financial institutions, nobody will get the chance to avail this. So far as the Bankruptcy Code is concerned, this is available to all. So far as financial institutions are concerned, there is a special law. Bankruptcy Code is applicable to all in general. Therefore, when you are mentioning this, I just wanted you to consider this point as well.

Since you are in a legal firm, I hope you would consider it. It is very clear in the recent judgement of Justice Kurian Joseph and Justice Rohinton Nariman this law prevails over everything. I do not know why there is a conflict.

SHRI DEEPANSHU MUKHERJEE: I would consider it.

Hon. Member has asked me to refer to Section 52(8) from the Bankruptcy Code. I just read it out. It says:

> "The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner

provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate."

The objective is that because in the Bankruptcy Code, liquidation can only happen after a company has gone through the insolvency resolution process and enforcement of security interest can only happen after the company has gone through the resolution process, if we do not ask this person to make contribution to the cost of proceedings, he will become a free rider in that process. Therefore, this is a big conflict in that sense.

Then, it is proposed that the Central Registry, which already exists under the SARFAESI Act, will now provide for integration of existing information databases or registration systems. Given the fact that a database is proposed to be established under the Bankruptcy Code, by virtue of this, that will get integrated into this. I do not know whether that is the intention of the Government to integrate the information utilities under the Central Registry under the SARFAESI Act because that is what this new amendment proposes to do.

In that sense, I do not know whether this is a conflict. I do not know whether this is intentional. If this is intentional, then the question is: Will this cause dual regulation? Under the Bankruptcy Code, we are proposing a new regulator who will regulate these information utilities and then under the SARFAESI Act, the Central Registry will also regulate the registration systems that get integrated. So, how will this dual regulation work? Will it not increase the cost of compliance for creditors? These are my two submissions in relation to this.

Sir, you have got my written submission. Since you mentioned that I only specifically talk about the amendments, I am skipping over certain points in relation to ARCs that are made because their RJ relate to regulation making. I just thought that it will be useful to bring it to the notice of the Committee because there is a lot that needs to be done.

The relationship between the banks and ARCs is regulated by the RBI. So, I have made some submissions related to that. If time permits, I can come back to that, but it does not lead to the amendments.

My only other point in relation to the amendments is that there is an amendment proposed to section 15(4) of the SARFAESI Act in relation to take over of management. It is clause 13 of the Amendment Bill.

Under the SARFAESI Act, one of the tools that have been available to creditors for a very long time is take over of management. If somebody does not pay the debt, it gets classified as an NPA. One of the ways of enforcing the security interest is to take over the management and try to recover back your loan. Earlier the provision was that once you have made the recovery, you have to hand the management back to the original owners. Then, there was an amendment made in the year 2012 or 2013, if I am not wrong, which allowed the banks and ARCs to convert their debt into equity. This amendment proposes that where banks or ARCs have converted their debt into equity and have acquired a controlling interest in the company, in that case, if they have taken over the management, then they do not have to return it back to the original owners.

SHRI SHIVKUMAR UDASI: Just three days back, there was a Supreme Court verdict which says that you can convert the debt into equity.

SHRI DEBANSHU MUKHERJEE: Yes, Sir.

The point I am trying to make is that under the Bankruptcy Code, there is a provision that says that when somebody takes over the management and appoints professionals for conduct of business etc., anything that the person does in good faith, will be protected. That person will not be liable for any actions that are made against that company or that person. That is section 233 of the Bankruptcy Code. This provision relating to take over of management under the SARFAESI Act does not have any such protection and it did not have any such protection in the past also. That is one of the reasons why banks have been hesitant to take over the management because there were probable risks of exposing themselves to unknown liabilities that may come out of the good works. Therefore, I submit that the Committee may consider recommending the same kind of protection that is available under the Bankruptcy Code for ARCs and creditors to the extent they take over the management.

SHRI JAGDAMBIKA PAL: You are talking about secured creditors etc.

SHRI DEBANSHU MUKHERJEE: Sir, I am talking about section 15 of SARFAESI Act and clause 13 of the Bill.

Sir, the protection that we have for insolvency professionals under the Bankruptcy Code for anything done in good faith, should be available here also.

माननीय सभापति: ये दोनों एक साथ थोड़े ही चलेंगे। जैसे ही बैंकरप्टसी कोड आएगा, तो बैंकरप्टसी कोड का जो सेक्शन-14 सी में स्पेसिफिकली यह लिखा हुआ है कि सरफेसी

सस्पेंड हो जाएगा। पहले बैंकरप्टसी की प्रोसीडिंग पूरी होगी। वह 180 दिनों में पूरी हुई। उसके बाद 90 दिनों का समय लगा। अगर यह नहीं हुआ, उसके बाद तो सरफेसी आएगा ही। लेकिन जैसे ही बैंकरप्टसी शुरू हो जाएगा तो सेक्शन-14 सी में सरफेसी तो सस्पेंड हो जाएगा। ये दोनों एक साथ तो चलेंगे नहीं।

SHRI DEBANSHU MUKHERJEE: Sir, what will happen is that creditors will have the option either to initiate the bankruptcy proceedings or to file under SARFAESI Act. I am talking about the pre-filing thing.

SHRI ANAND SHARMA: The law has been passed by Parliament.

SHRI DEBANSHU MUKHERJEE: Yes, Sir.

What I am saying is that he is not under an obligation to file. He can choose either of the two forums in the beginning. After the insolvency proceedings commence, then there is no choice.

HON. CHAIRPERSON: The moment the bankruptcy proceedings start, immediately the application of SARFAESI Act will be suspended. That is the law which is passed by Parliament.

SHRI DEBANSHU MUKHERJEE: Sir, I completely agree with you, but before that, he can choose to enforce action under SARFAESI Act, until he files it.

HON. CHAIRPERSON: He started a proceeding under SARFAESI Act. In the meantime, Bankruptcy Code came into application.

श्री देवांशु मुखर्जी: सर, मैं यह कह रहा हूं कि बैंकरप्टसी के फाइल होने के पहले उसने फाइल किया है।

माननीय सभापति: उसके बाद बैंकरप्टसी लागू हो गया। उसके बाद सरफेसी सस्पेंड हो जाएगा।

श्री देवांशु मुखर्जी: सर, अगर वह लागू नहीं हुआ तो क्या होगा?

माननीय सभापति: फिर तो वह हो सकता है।

What is your suggestion?

SHRI DEBANSHU MUKHERJEE: There should be same protection which is available under IBC for anything done in good faith by ARCs and creditors.

HON. CHAIRPERSON: You give your suggestions in writing.

SHRI DEBANSHU MUKHERJEE: I have given it.

These are my broad comments on amendments. I have given some general comments in the written submission.

HON. CHAIRPERSON: The Committee may consider whatever you have given to us. You give us precisely what amendment you suggest in which section.

SHRI DEBANSHU MUKHERJEE: Yes, Sir.

SHRI KALYAN BANERJEE: Anyway, whether there is a law existing or not, or a specific law is there or not, whenever it is done in good faith, nothing happens. Why are you insisting on that? Whenever anything is done in good faith, no criminality or any other thing comes in. It is a protection like Section 197 of CrPC. The question of good faith itself is a vague thing. It is subject to assessment whether what you have done is really in good faith or not.

DR. MUKULITA VIJAYAWARGIYA: Sir, may I draw your attention to one of the provisions of the SARFAESI Act? Section 32 provides for protection of action taken in good faith. We can modify that section.

SHRI P.P. CHAUDHARY: Mr. Mukherjee, can you do one thing? You have mentioned certain things in the narrative form and you have taken the grounds, existing provisions and the proposed provisions. Everything is in one place. You have made a distinction about certain things. In some of the cases, we have received the data in specific columns such as 'existing provisions', 'proposed amendment in the Bill' and then 'your observations'. If you just give your observations with respect to that in a consolidated form, then it will be very easy to appreciate it properly.

SHRI DEBANSHU MUKHERJEE: I will do that, Sir.

MS. JAYA KOTHARI: Sir, I am from the Centre for Law and Policy Research. I have sent in our memorandum. I would like to actually limit our comments to the amendments suggested to the RDDB Act, that is, the Recovery of Debts due to the Banks and Financial Institutions Act. We chose it for different reasons. One thing is certainly there are a lot more people commenting on the SARFAESI Act amendments and I think there are lesser comments on the RDDB Act. As a forum for recovery of dues, a lot of substantive amendments are made. So, could I focus on some of our inputs?

I have basically four inputs or four main amendments suggested to the RDDB Act. The first response is that there are amendments suggested to Section 19 of the RDDB Act and that is in Clause 29 of the Amendment Bill. What Clause 29 seeks to do is that presently, under the RDDB Act, the jurisdiction is where the cause of action arises or where the defendants, that is, the borrowers are there. An amendment is made to make easier for banks and financial institutions to recover loans where the place of business of the bank or financial institution is. What we have suggested is that, if you look at the CPC because ultimately jurisdiction goes by Section 20 of the Civil Procedure Code. It has been interpreted to say that 'cause of action' is important where a claim is filed. A similar amendment was made under the Copyright Act to give the plaintiff a chance to file where the plaintiff resides. This is similar to what is proposed here that you give the jurisdiction where the bank or the applicant is based. There is a 2015 decision of the Supreme Court interpreting this provision of Section 62 of the Copyright Act because what was happening is that the claimants would file it wherever they are and the Supreme Court said that it has to be where 'cause of action' is there. So, our suggestion is that while the amendment is okay, in order to bring it in tune with the Supreme Court's latest decision of 2015 and the interpretation given, there should be a correlation that the bank or financial institution can file it where the bank is based, but where 'cause of action' has arisen.

Suppose the bank's headquarters are in Mumbai, but if they have a branch office in Kerala where the loan was given...

SHRI KALYAN BANERJEE: You have to go there because only for the benefit of the financial institution, the borrower cannot be harassed. Is there any particular provision?

MS. JAYA KOTHARI: Sir, this Section 29 of the Amendment Bill.

SHRI KALYAN BANERJEE: You are referring to Clause 29 of the Amendment Bill.

MS. JAYA KOTHARI: Yes, Sir, it is Clause 29 of the Amendment Bill. This is sub-clause 1 (a) which says, "where the branch or any office of the bank or financial institution..." This is fine, but it should be linked to 'cause of action' because that will ensure that there is no harassment or unfairness to another party and is in principle with CPC. That is the first suggestion.

DR. G. NARAYANAN RAJU: In this RRB Act, in Section 19, there is a sub-clause 'c' where it provides "that where a bank or financial

institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction the cause of action wholly or in part arises." So, the 'cause of action' is already covered by Section 19 (1) (c).

MS. JAYA KOTHARI: That is there and I take your point that the cause of action is there, but the way it reads is 'or'. It says, "Where the defendants reside or the cause of action". If we amending that it should also be at the place where the bank or financial institution is located, the interpretation given by the Supreme Court is not 'or', but 'and'. It is where the bank is located and where the cause of action is.

SHRI KALYAN BANERJEE: By this amendment, you are seeking an amendment in Section 19 (1). It is a substitution. The moment this Act comes into force, Section 19 (1) will not remain if we go by what you are interpreting. Till now, the power is there. Please read Section 19 (1) in the principal Act.

DR. G. NARAYANAN RAJU: We are inserting one more ground, Sir. My point is that the application has to be filed...

SHRI KALYAN BANERJEE: Why the makers of this statute make such a confusing statute? Why should we make it? If you want to say that the cause of action arises wholly or in part, that is fine. If this is so, why are you giving scope for two interpretations through this Clause 29 (1) (a)? Her contention is about the cause of action. Please consider this because it is a good point.

SHRI ANANDRAO V. PATIL: Sir, may I add something? We are bringing this in line with the Act. We are amending what is presently 19 (1) (a). The amendment which we are bringing will become (a) and the present (a) will become (aa).

SHRI KALYAN BANERJEE: Therefore, two provisions are there. When two provisions are there, it will give two interpretations. Why should you go for two interpretations? We make it very much clear. You have no objection so far as the existing statute is concerned, that is, the cause of action arises wholly or in part. If this is there, then why should you say that "only the branch or any officers of the bank or the financial institution functioning and maintaining an account in which debt claimed is outstanding for the time being..."? There it looks as if anyone can do it. Two powers are being given. When there is (aa), what is the interpretation of the statutes? The latter part overrides the first part. Then, the latter part will come. Why should we keep

ambiguity in the statute? If you want it to be the cause of action, then you make it so. You can insert here that it will be where the cause of action is there.

MS. JAYA KOTHARI: Sir, I have three more points.

SHRI MADHUKAR R. UMARJI: Sir, the new clause which is getting added is referring to the branch where the account is maintained. Therefore, the bank cannot file it, if the Head Office is in Mumbai and the account is in Kerala. Then, the case will have to be filed in Kerala.

SHRI KALYAN BANERJEE: How can you read only 'the branch' or 'any office of the bank'?

SHRI MADHUKAR R. UMARJI: We are referring to the branch which maintains the account.

SHRI KALYAN BANERJEE: Where has it been said?

SHRI MADHUKAR R. UMARJI: It says, "The branch which is functioning and maintaining an account."

SHRI KALYAN BANERJEE: It says, "The branch or any other office of the bank or financial institution which is functioning."

Your account is also being maintained in the Head Office. All your accounts are computerised. You are keeping your account details in your Branch, in the Regional Office, and also in the Head Office. It gives you more power. If you are keeping the software in say Mumbai, you are maintaining it.

MS. JAYNA KOTHARI: My next point is as regards Section 29. The amendment is proposed under 3A of Section 29 of the Bill. It says that once the applicant files an application, they will state the particulars of debt. If the estimated value of security is not sufficient, then it can seek an order from the Tribunal for particulars of all other properties or assets owned by the defendant. I am referring to Clause 29, sub clause (v). This is on page 16. It provides that on receipt of the application by the bank, the Tribunal shall issue summons with the following directions:- it says 'shall', not 'may' - to show cause within 30 days, to direct the defendant to disclose particulars of properties or assets other than properties and assets specified by applicant, and pass an interim *ex parte* order restraining defendant from dealing with or disposing off such assets and properties disclosed under clause C.

I want to explain this. What happens is, the bank files an application for recovery. As soon as it files application, tribunal will issue summons to the defendant and mandatorily direct the defendant to disclose all properties which are not secured, all other properties which are not mortgaged under the loan; and you have to disclose it and upon disclosing it, also at the same time shall pass an interim *ex parte* order.

SHRI KALYAN BANERJEE: Shall does not mean it is mandatory. The tribunal shall issue summons to the defendant to show cause. That means the Tribunal is given power to pass *ex parte* interim order.

MS. JAYNA KOTHARI: Even the *ex parte* interim order is not there. The current language is 'may' and this is 'shall'. I have two issues with that. One is, where you direct the borrower to immediately disclose all other assets and properties which are not secure under the loan, that provision under the current RDDB Act is provided under Section 13 where only if the tribunal is satisfied from an application that the borrower is trying to dispose off his other properties or obstruct or cause any delay or dispose off the properties, then it may pass an order. Also, Sir, the applicant has to actually, in any execution proceeding, even if we go under CPC ...

SHRI KALYAN BANERJEE: Your point is very clear that without having any satisfaction by the tribunal, without applying mind, without applying any other provisions the tribunal can pass *ex parte* interim order, to put it in other words without forming any opinion.

MS. JAYNA KOTHARI: Exactly, Sir. That is highly problematic. This is Section 19, sub clause 12, sub clause 13, and sub clause 14 of the main Act. Sub clause 12 says, 'may'. Here the language used is 'shall'.

SHRI KALYAN BANERJEE: Is 'shall' every time mandatory?

MS. JAYNA KOTHARI: Sir, if the language is changed from 'may' to 'shall', again there will be a doubt.

SHRI PRAFUL PATEL: So, what would be the right formulation?

MS. JAYNA KOTHARI: I would say it has to be 'may after hearing'.

SHRI PRAFUL PATEL: He has a point. Even though it can be interpreted both ways, it shall only be interpreted in one way.

SHRI KALYAN BANERJEE: You should have taken note of another point. I expected you to say that but you have not. This *ex parte* interim order should remain valid for a limited period only. You have not sought any amendment for that.

MS. JAYNA KOTHARI: We have taken note of that and in fact that is our next point.

SHRI P.P. CHOUDHARY: You mean to say that interim order should be passed only after hearing both the parties.

MS. JAYNA KOTHARI: If the tribunal feels that there is a need, the Act provides for 'may'. To say that there will be a mandatory *ex parte* interim order is a problem.

SHRI P.P. CHOUDHARY: You want that it should not be left for the interpretation of the court.

MS. JAYNA KOTHARI: If it is may, then the court has to give reasons. But if it is mandatory and it says 'shall', there will be a problem.

SHRI RAMESH SHARMA: Would you please explain where is the need for B and C both being there? Just read it carefully. Clause 4 says, 'Particulars of properties or assets other than properties and assets specified by the applicants under Clauses A and B'. Please read carefully all these together. You have already asked for that that if the secured assets are not adequate then to disclose. Then in the next one again you are asking to disclose. It does not make any sense to me. Once that disclosure has been asked for and the disclosure has been made, then how will a fresh disclosure be made and how it changes? It is not clear. We should make the law simple.

DR. G. NARAYANA RAJU: Sub clause 3 is relating to interim order restraining the defendant from dealing with or disposing of such assets pending the hearing and disposal of the application.

DR. MUKULITA VIJAYAWARGIYA: At page 16, there is sub-clause (v) and substitution of section 4 of section 19. I read: On receipt of the application under sub-section (1) or sub-section (2), the tribunal shall issue summons with the following directions to the defendant:

(i) to show cause within thirty days of the service of summons as to why relief prayed for should not be granted;

(ii) direct the defendant to disclose particulars of properties or assets other than properties and assets specified by the applicant under clauses (a) and (b) of sub-section (3A); and

(iii) pass an interim *ex parte* order restraining the defendant from dealing with or disposing of such assets and properties disclosed under clause (c) of sub-section (3A) pending the hearing and disposal of the application for attachment of properties.

So, these points are different in nature of directions.

SHRI P.P. CHAUDHARY: So, you want that in sub-clause (iv), instead of the word 'shall', it should be 'may'. If it is 'may', then 'may' issue the show cause notice, then again it is within the discretion of the Court. Then it is not necessary to issue the notices.

HON. CHAIRPERSON: One thing I want to say to all the persons who are here as representatives of policy organizations. You are arguing like lawyers—what may, what shall, what interim order, what final order etc. We are here as to why we want to change this policy. What is the object? The object is how to reduce the NPAs, how to strengthen our banks, how to make our recovery procedure effective and what the need of the country is. You talk in those aspects. Don't talk about technicalities. That we will discuss when clause by clause discussion comes up. You keep confine yourself to policy issues.

MS. JAYNA KOTHARI: Sir, thank you for your suggestion. The idea or the reasons why we are making these comments to the RDDB Act is to ensure that (i) there is need to make recovery by banks and financial institutions easier and to make the recovery process faster because that is the need of the statement of objects and reasons and (ii) there is also a need that it should be in term with the general policy of procedure laid down in other laws and also by the Supreme Court. If there are general principles of natural justice and granting of orders, those are some of the things we are trying to highlight.

HON. CHAIRPERSON: Is it necessary for the Parliament to follow every direction of the Supreme Court?

MS. JAYNA KOTHARI: I would strongly suggest that if the Supreme Court has laid down principles...

HON. CHAIRPERSON: We go by the Parliament. Whatever the purpose is, it is not against the fundamental rights of a person, it is not against the basic structure of the Constitution. Apart from that, if any progressive thing is there, any difficulty is there, the power lies with the Parliament.

MS. JAYNA KOTHARI: You said that it should not go against the basic principles of the Constitution and basic principles of rule of law.

HON. CHAIRPERSON: Parliament has the power to correct the Supreme Court also.

SHRI KALYAN BANERJEE: The Supreme Court has the power to correct the Parliament.

HON. CHAIRPERSON: It is not a debate. It is my request to our hon. Members to put their clarifications with the witnesses, not make any other comments.

SHRI ANAND SHARMA: Could you please tell us what is your concern?

MS. JAYNA KOTHARI: My concern with this section on the *ex parte* order is that the general principle followed in legislation is that *ex parte* orders can be granted but usually the legislations mandate that the Court, when satisfied, will grant an *ex parte* order. There is never a mandatory provision of granting an *ex parte* order and there should not be. It should not be 'shall' but it should be 'may' because the Court will have the burden of giving reasons.

SHRI PRAFUL PATEL: Even the *ex parte* order is an interim measure.

SHRI KALYAN BANERJEE: An *ex parte* interim order cannot be an unlimited one; it is limited.

SHRI P.P. CHAUDHARY: Madam, to my mind, you are reading 'shall' with sub-clause (iii). You can't read it because, 'shall' issue summons, and then the use of 'shall' is over. Then the (iii) is independent. Just read out the language.

SHRI BHARTRUHARI MAHTAB: It seems our lawyer friend on this side wants to convince them on certain things. That is not our job. Let us hear her; what points she has to make. Subsequently, we will be interacting with the Government. I don't think what she is saying is not understood by all of us.

MS. JAYNA KOTHARI: There are certain time limits that are imposed under the RDDB Act. It is at page 16 Para 30 (vii) (5) where time limits are imposed. The defendant shall within a period of 30 days from the date of service of summons present a written statement. That is fine. But it goes on to say that in addition to the written statement, affidavit of statements of witnesses will also be filed. What our concern is, while strict time limits are imposed on defendants to file within a certain time, there is no corresponding time limits on the applicants or the banks to give responses because if our concern is that the whole proceedings should be speeded up, there should be a time limits on the banks also to file a rejoinder.

On page 17, in sub-section (x) for the words 'as may be fixed by the Tribunal' the words 'as may be prescribed' are substituted. That refers to the original Act where the applicant will be at liberty to file

the written statement within such period fixed by the Tribunal. So, the amendment is made only to the time period fixed by the Tribunal for the defendant to file written statement within 30 days, but not to the applicant or the bank to file the rejoinder. So, my suggestion on that is that let there be parity and if the real intention is to speed up, it should be on both ends. The time limit should be fixed. If we are putting 30 days, the same period of 30 days can be put for the banks as well.

The burden is only on the borrower.

SHRI KALYAN BANERJEE: That is in the case of an affidavit in reply. You are talking about the reply affidavit. What about the counter-claim?

MS. JAYNA KOTHARI: The applicant will have to file a written statement to answer to the counter-claim of the defendant. There is no time limit prescribed. These are some of our comments on the RDDB Act.

HON. CHAIRPERSON: Now, the Indira Gandhi Institute of Development Research and National Institute of Public Finance and Policy.

MS. SUSAN THOMAS: We are an economics policy institution. We will work according to what the Chairperson asked and stick to the themes. We have made submission which is a joint submission between our two organisations. It is structured as some broad themes that we understand as the issues to be addressed when we read the new Amendment Bill as well as detailed clause by clause break-up where we go over every clause applying the principles that we have identified and seeing how the clauses should be modified. So, there is a clause in the Amendment Bill and then the modified clause and then our rationale, which has been presented. That is the submission that you have with you.

First up, I would like to thank this Committee for inviting us to speak. This is the second time we are here and it is a great honour. Last time we were here when the Insolvency and Bankruptcy Code was yet a Bill. It is a tremendous effort on your part as the Joint Committee to have pushed through the hard work under a very strict timeline. Today, we actually have a new law for collection action, that is, the Insolvency and Bankruptcy Code. So, thank you very much for all the hard work.

We recognise that this is only a beginning. As Shri Udasi said, it is the case that implementation of the Bill is critical. More than that, in all matters as the Chairperson just alluded to, we must keep focus on what is the ultimate outcome of all this hard work. It is to get a better resolution of recovery and speedier resolution when there is default or distress in the enterprise. So, implementation is really critical.

Coming to your point, Shri Banerjee, when we were discussing the Insolvency and Bankruptcy Code, it is one kind of a resolution process where a distress happens and all the creditors collectively get together and come up to figure out how to solve the problem, whether to keep the firm as a going concern or not. But side by side we need to have the other law which is asking what the individual secured creditors' rights are. As my colleague Shri Devanshu just pointed out very often it is not optimal to run to the court to assess the viability of a company at the first sign of distress. It might be a very small collateral or a very small loan. It might be optimal for the secured creditor to say, 'I can take my collateral out without destroying the company'; and perhaps that is the optimal decision to get quick recovery when there is impending sign of distress.

We think it is very critical to think about both the SARFESI, RDDBFI set of amendments because they speak about individual creditors' rights and how to strengthen that; the Insolvency and Bankruptcy Code is for the collective action. It is only one part of the story that we solved by passing the Insolvency and Bankruptcy Code. One critical element of the insolvency resolution procedure under the Law is that everybody collects together and try to figure out where are the losses, who to sell the bad parts of the company to; if such a resolution plan or restructuring can be done, then it is okay.

When we look at the timelines of writing the Amendment Bill and the Code, it was running parallel. So, to a certain extent, the Amendment Bill may not have seen all the provisions in the law as it has been passed. So, when we read the Amendment Bill we find that several provisions are not in sync with the kind of provisions that are implied in the Code. We have identified that in the submissions we have made to you. For example, there is a sick company that has got ten units, it is optimal for the company to take eight of them and carry forward as a going concern; two of them have to be sold. Our challenge is how to decide who is to take these two units and go forward. If you look at the secured creditor who has got ownership across all the ten units, they will optimally under the Code invite all kinds of participants to come, and say, 'Will you take these two sick

units off my hands for a particular price?' But when these sick units go away, the business decision of the person who takes those sick units is how much he is going to get out of it. So, the person who buys those sick units now becomes the new secured creditor.

One of the problems that we are visualising when we see the SARFAESI and RDDBI as asynchronous with the provisions of the Code is that if we do not include all manner of secured creditors other than merely financial institutions, if we go globally and ask which are the entities taking charge of these distressed assets and doing recovery, we find there are all manner of entities. That is what we are seeing in the Amendment Bill as it is proposed today. They are still stuck on banks and certain sets of financial institutions. So, we see that as one element where the Code and the proposed amendments are not aligned. As you said, since these two proposals were going parallel, perhaps that is almost inevitable. I suspect that it would be great if we all get together and figure out how to get them into alignment.

There are other examples. For instance, in the RDDBFI that we typically call the DRT Act or the SARFAESI any action is taken in the Tibunal. However, under the Code, all these matters of resolution come to the NCLT. That has not been aligned. It is a very simple thing we have missed. The entire frame-work is different because of the way it has now become law. There are many such elements.

If we want to work hard on ensuring that the implementation of the law is to deliver the kind of outcomes we want like faster resolution and greater recovery, the suspicion we have from the work we did in examining this Amendment Bill is that we need to revisit all these provisions in the light of the new law, from this perspective.

These are the big issues we are worried about – in terms of alignment we have seen very small changes. My colleague from CIPR also mentioned something that we have identified in our note. We have 3.2.4 which talks about *ex-parte* order. It is bang on track that we must worry about now natural justice is being implemented in this law and that we should be aligning it better. What we wish is that businesspeople should do business. Most of the time, it is a genuine problem which we must resolve in a just and fair manner.

I once again thank you all for the hard work. If you find that these suggestions we have made in the clause by clause are of any use, we would be very happy to work with the Secretariat in ways that you think we can more speedily come up with resolution.

DR. AJAY SHAH: Sir, we have 33 pages of details on clause by clause.

I just want to spend a few minutes on a more strategic picture. India has struggled with the bankruptcy question from 1991. We tried many things. As one of the people who has worked on these things many years ago, pretty much all those things have not worked. I was co-author of the first ARC document in the Ministry of Finance; we have to say that today the ARCs have not delivered. When you go into that landscape may be there is a total of Rs. 10,000 crore with the ARCs; and NPA problem is Rs. 10 lakh crore. So, the old systems have not delivered.

The Insolvency and Bankruptcy Code is really a historic milestone. For the first time in India, we have a full conceptual frame-work on how to think about bankruptcy. That really should be our intellectual construct. It is the creation of the Joint Committee. It should be our main construct; and now the older laws have to fall into line with the concepts, strategy and frame-work of the Code.

We fear that these amendments are not aligned. We think that there are many-many elements of these amendments which are actually going on as if the Insolvency and Bankruptcy Code has not happened. We are seeing this Amendment Bill as being conventional, incremental modifications upon the old law but not really fully taking into cognizance the major development, the major achievement which is the Insolvency and Bankruptcy Code. Let me take one or two examples which will illustrate this idea.

At the heart of the Insolvency and Bankruptcy Code is the concept, as you were saying, it is a general frame-work. It covers all kinds of creditors. It does not pre-judge as to who is the creditor. A creditor can be mutual fund, he can be an insurance company, corporation or a person. We have built one single frame-work saying that this is the way we will approach the problem of insolvency. But the version in SARFAESI was far more limited. It is only banks and ARCs. It is not financial institutions. Mutual funds, insurance companies are not counted and so on. It is a very narrow thing.

SHRI KALYAN BANERJEE: I think financial institutions are covered.

DR. AJAY SHAH: The Ministry of Finance has powers to notify what kind of institutions are eligible but as of now it is only banks and ARCs. That is a very different approach. Do you want to create one specialised kind of business called ARC so that if anybody in the country has a bad

asset problem, he is forced to come to the ARC. That is not the vision of the Insolvency and Bankruptcy Code. The vision of the Insolvency and Bankruptcy Code is that there are many-many kinds of business transactions in the country. There are corporations, mutual funds or might be any kind of financial firm but I have the rights, power and procedure and I think that is the important vision. It is these laws that have to now fall into.

Similarly, I have concerns about what has been done here about ARCs. What is an ARC? ARC is a private equity fund to invest in distress debt. It is just a few very rich investors. There are no small investors there. There are very rich people who are putting up large sums of money and there are some private equity managers who are putting in money. We do not need too much regulation for an ARC. We do not do regulation for private equity fund. Private Equity fund takes money from very rich people. If they lose money it is their problem. We do not need to use the scarce resources of Government to protect their interest. Private Equity fund industry works very well. All of us are hearing, experiencing that private equity is a manager who looks and makes a decision and there are no small investors involved. The power, the work, the responsibility of regulation should be focused on protecting small investors. There are no small investors in private equity fund. So, we do not need to think about this highly regulated concept that RBI will have the authority to appoint the Board of Directors or to put officials to have oversight of ARCs. In fact, these are the sorts of reasons why ARCs did not work. We have to look back. In 2002 ARC was sought to be achieved by SARFAESI. They have not delivered and our solution should not be to put more regulation but to take three steps back and say where did we go wrong.

SHRI KALYAN BANERJEE: Are you opposing ARC. The object of the Act itself is to achieve the object through the ARC. A completely independent, statutory body is being created. I cannot follow you. What do you want? Are you opposing ARC?

DR. AJAY SHAH: I am disagreeing with two concepts. ARCs have existed in SARFAESI.

SHRI KALYAN BANERJEE: Forget about that. ARC has been constituted under the Act and its definition has been given.

HON. CHAIRPERSON: Suppose he wants to hold that view, it is his view. Finally, we have to take our decision.

DR. AJAY SHAH: Just to clarify, in the Insolvency and Bankruptcy Code we have not limited the powers to banks and ARCs. We have said the creditor and creditor can be all manner of entities. So, our situation

would be that now SARFAESI has to be amended to fall in line with the Insolvency and Bankruptcy Code. The rights of secured creditors should be not limited to banks and ARCs, whoever I the secured creditor. We do not need to narrow it down.

In the Insolvency and Bankruptcy Code there is a vision that there will be computer data bases which are information utilities. There will be many information utilities. There is no attempt at creating a *sarkari* monopoly. The idea is there can be many-many information utilities but there should be a statutory concept of an information utility and these are regulated persons who will be able to hold information and speedily bring information into the process. The vision in the amendment is actually going in the other direction. It is saying that there will only be one CERSAI. That is not consistent. In the Insolvency and Bankruptcy Code which we got through Parliament only last month, the vision is there can be many-many private bodies who will be information utilities. There can be NHDL, CDSL, we do not have to create a Government monopoly of data because data is something that requires a lot of operational efficiency and it is good to have competition between multiple private people so if one person does not do it well the customers will go to another person. It is healthier to have competition in an IT industry whereas what has been proposed here is to go in the other direction.

HON. CHAIRPERSON: You are referring to which clause?

MS. RAJESWARI SENGUPTA: This is Clause 17 of the Bill. We have the summary of the Clause which basically provides a new chapter. Clause 17 proposes addition of a new chapter to SARFAESI Act by which all secured creditors will have to file particulars of transactions involving creation, modification or satisfaction of security interest with the Central registry and any person having a claim against a borrower obtains an order for attachment of property must file particulars of such order with the Central registry. So, the main idea of creation of the Chapter is basically conferring the rights to CERSAI to record all kinds of securitisation information with one Central Registry.

DR. AJAY SHAH: I would like to stop here. My one line summary is that the Insolvency and Bankruptcy Code is our historic achievement. The other laws now have to align to that vision. This is not happening here.

KUMARI SUSHMITA DEV: I have spoken on the Code and I had raised a counter point. I am not saying I am right or you are wrong. It is that consistency is also important. You have the ROC. I am sure there are

a lot of bodies which can be floated to do the same jobs that the ROC does apart from registration and recognition of companies. What may happen, I am just thinking aloud, is that if you do not have one body there is also a fear of wrong information. It is a free flowing thing. You get market forces decide.

DR. AJAY SHAH: If I may respond, for an example of how this is working let us look at the stock depositories. We have NHDL and CDS. They are competing. The law obliges inter-operatability and the whole procedure is working on the ground. So, as any user of the depository system we are guaranteed perfect operation. For a counter point, as all of you would be aware there are huge problems with the working of the MCA 21 system where there is an IT system, which is a single system run by the Government, and it experiences more problem. I think the Insolvency and Bankruptcy Code has the exactly correct formulation. It says that there will be multiple private utilities but it obliges upon them to achieve inter-operatability and there will be a regulator who will that do that oversight. I think that is the right approach and it has been enacted by Parliament. It will be doubly awkward if we pass one Bill which says that the information industry surrounding the bankruptcy process will be an inter-operable competitive private industry and then we come out with an amendment which says that no, it will be a statutory monopoly. I think there is a lack of coherence there. In my humble opinion the Insolvency and Bankruptcy Code was the right strategy.

श्री गोपाल शेट्टी: सभापति जी, आपने सही कहा है, हम यह कानून देश के लिए बना रहे हैं, देश चलाने के लिए बना रहे हैं, यह कानून किसी व्यक्ति को कटघरे में खड़ा करने के लिए नहीं बना रहे हैं।

मुझे एक बात समझ में नहीं आ रही है कि बैंक यदि किसी व्यक्ति को लोन देता है तो उसके सारे क्वालिटल को देखकर देता है। लेकिन जब वह बैंकरप्ट होता है तो हम उनको यह कहते हैं कि और आपके क्या क्या एसैट्स हैं, उनको डिसक्लोज करिए। ऐसा क्यों है? अगर वह है और उसके बाद और कोई प्रोपर्टीज उसकी हैं और वह उनको डिसक्लोज करता है तो उसको फिर से रीस्ट्रक्चरिंग का मौका भी देना चाहिए। वह भी प्रोविजन में है। इसलिए मुझे लगता है कि हम कहीं बैंक को ज्यादा we are not doing all this process to run the banks. We are doing it for the country. इसलिए इस बारे में मैं आप लोगों से थोड़ा सा खुलासा चाहूंगा।

MS. SUSAN THOMAS: We do have some comments on the provisions which we have listed out as seeking the particulars of the properties of the defendant and let us look at the provision that has been presented

in the Amendment Bill and we have suggested a change in the clause. So, it is 3.22, 3.2.2, 3.2.3 all the way upto 3.2.5 where we do raise concerns with the provisions and the amount of information that we are asking from the defendant and how we are seeking to put a stay on their ability to take unencumbered assets to sell so that they can actually repay some of these debts. We have concerns of how the provisions in the current amendment has been done and we have also presented our suggested changes which the JPC can consider.

SHRI KALYAN BANERJEE: You have appreciated the bankruptcy code. This Bill in reality is effectively consequential because of the 2016 code. It is a consequential effect by way of an amendment. It is a consequential effect and nothing more than that and it is for giving an implementation of the code itself. You have appreciated the code. Now, are you opposing it? Earlier, there was a problem regarding the reconstruction, evaluation of assets, etc. by some persons appointed and ultimately, when it was going to BIFR, the BIFR was appointing other agencies, etc. So, it was a time consuming matter. To shorten the time, the Bill has been brought up. It is to make it more faster than the earlier procedure. ARC which has been created is a statutory body under the control of the RBI. Why are you so much against the ARC? This is my question. ARC is an independent body. It is not the body of the bank, it is not the body of the Government or the borrower. It is an independent body and a statutory body. They will make the assessment. Earlier, BIFR used to appoint some agency and it was a time consuming matter. It used to take two or three years. ARC has been brought to make the process faster. This is the consequential effect of the 2016 code.

SHRI PRAFUL PATEL: Before you answer him, I will just continue what he has said so that you can reply together.

You just mentioned about ARCs having about 10,000 crores of assets against 10 lakh crores of bad loans. ARC is a concept which needs to actually take off in India. You give an example ten units of a company and two are bad which are pulling down the whole company and those two have to be sold off or a solution has to be found. There are many bad assets besides such examples where actually the exit is a big issue. You do not find promoters or individuals who are happy to buy some asset. So, asset reconstruction company certainly has certainly band width and it is like a basket. Sometimes, they also see it as ten *versus* two who may be bad. The net issue is, if you really want an exit – it is not just for the borrowers but for the banks also – a good exit can only be found if there is an ARC available in the country which has

a band width to take over these kinds of assets and they in turn do whatever they want to do. They may split the asset or find a promoter or strategic sales or something like that. So, conceptually, I have not been able to understand your comment about the ARC. I am not saying that primarily ARC should be the beginning and the end of all the problems. I agree with you but to say that ARC should not be promoted is not correct. From the macro-economic picture and the business environment of the country, but for the ARCs, I do not see even exit for the banks. How are you going to find an exit for all these assets? You really need exit. Whatever the borrower may take or the institution may take is an secondary issue. There are prescribed ways to take over that issue. RBI has its own regulations and other regulations are in place. But again an exit has to be found. So, conceptually, if you talk of clearing a problem but do not have an end solution to it, what is the use? You do not have the end solution. One of the major ways of finding a solution is to the ARC route. It will cut down litigation and it will cut down time and it will find an exit. I think I need a clarity on this point. You may give it in writing if not orally.

MS. SUSAN THOMAS: Firstly, I do not think that we have the stand that we should not have the Asset Reconstruction Company industry. The way that we read the provisions of the Amendment Bill, it would appear that only Asset Reconstruction Companies are being given benefits and powers to do recovery and that is the problem that we foresee. For instance, in the amendment of the Indian Stamp Act, all transactions very specifically between bank and asset reconstruction company will not have to pay stamp duty. Now, that biases any transaction from a bank even if there is another bank that is able to deal with doing recovery better as compared with the first bank, then the first bank should be able to sell it to the second bank. However, under the amended SARFAESI Act, that transaction will have to pay stamp duty because as of right now, it is only the bank to ARC transaction is not going to have stamp duty. So, it makes it a more expensive transaction. The costs go up. Secondly, it actually recoups all other entities who are capable of doing good recovery out of this loop. Sir, one example for this is private equity industry. If you go to the US and see the vast amount there, you will realise it.

SHRI PRAFUL PATEL: Let the private equity buy it from the ARC.

MS. SUSAN THOMAS: That transaction will be charged higher. So, the cost of the transaction becomes much higher.

SHRI PRAFUL PATEL: What stops private equity from negotiating with any bank?

MS. SUSAN THOMAS: There is none except by the law, it is permitted. However, you will have seen in the newspapers recently after this Amendment Bill was put out for public view, several of the existing stressed asset management private equity funds have rushed to say that we need now to have licences.

SHRI PRAFUL PATEL: I will give you one example. I am not saying that I have 100 per cent information but there was a meeting where one largest public sector bank – you may know obviously what I am talking about – mentioned that there are 1600 such cases which they have and where are they going to find 1600 promoters to be able to take over those assets. And that is a fact. Today, you may just think that simply by taking over somebody's assets, you are going to recover the money. There is another side to it also. These are also assets of the country. At the end of the day, they are created within the country and for the country. They create economic activity; they create employment. To that extent, you need an exit which is workable rather than an exit which is only on paper and illusion.

MS. SUSAN THOMAS: The question which arises in the provisions of the amendment is why do we take a position where we need so many people to come in and buy these stressed assets and why are we giving special benefits to only those entities which are called Asset Reconstruction Companies?

SHRI PRAFUL PATEL: Because by definition, they have been created with a certain provision. They are specialised and they have also been created by an Act of law.

MS. SUSAN THOMAS: Fair enough. We visualize that it should be any type of secured creditor. So, it should not just be asset reconstruction companies. They exist. They have been created under the SARFAESI. They continue to be one type of secured creditor. But if there is a private equity firm which wants to come in and just do business for four very large firms who want to bring equity into managing stressed assets, they should be allowed.

SHRI PRAFUL PATEL: That is any way permitted. You are only trying to give it the umbrella of this.

MS. SUSAN THOMAS: That is correct.

SHRI PRAFUL PATEL: See, an ARC certain regulatory mechanism. How will a private equity have a regulatory mechanism *vis-à-vis* dealing with the provision of this Act?

MS. SUSAN THOMAS: May I make one statement in connection with what Shri Banerjee mentioned that this is in consequence of the 2016 law? ARCs have been in existence from 2003.

SHRI KALYAN BANERJEE: Now, they have been given teeth. Earlier this teeth was not there. The concept of ARC of 2003 and the concept of ARC of 2016 is totally different. If you appreciate that Code of 2016 is good, as he has said, which has been passed this is really worthy. This is nothing but, excepting one or two places, consequential of that.

MS. RAJESHWARI SENGUPTA: We all agree that with the fact that we do need to develop a stressed assets market in the country now, not just for the secured creditors but also for the purpose of IDC. ARCs definitely fill that role to some extent as all of you are pointing out. But it is also a question about excessive regulation of an industry that we are trying to develop. There is always a balance to be struck between developing a new industry and regulating it. Currently, ARCs are regulated by the RBI. Some of the amendments of this Bill have increased the regulation of the ARCs even further at a time when we know that ARCs have not been able to operate. So, our fear and concern is that if you are overregulating an industry that has not even taken off that might choke the development of these private entities. I will give you an example. When you say ARCs are being more teeth, while that is perhaps true, some of it is also being taken away. If you look at clause 5 (iii) of the Bill, it says that Bill is proposing to amend Section 3, sub-section 6 of the SARFAESI Act to provide that ARC will require prior approval of the RBI for the following matters. One is appointment of any Director on the Board of an ARC, change in the Managing Director of an ARC, change in the Chief Executive Officer of an ARC. If you think of a private entity which will operate in a stressed asset market, that is hardly developed in the country ...

SHRI PRAFUL PATEL: Any provision of the Companies Act also provides that you cannot change the Director unless you call for a Board meeting, etc. How do we presume that the RBI is not going to give permission for change of Managing Director or Director on the Board of ARC? To presume that it is going to be so restrictive, I think, is also a little bit of a misnomer.

MS. BHARGAVI ZAVERI: May I just compare this to how any other fund in India is regulated? Today if you have a private equity fund, it is regulated by the SEBI under the Alternative Investment Fund Regulations. Those regulations merely say that persons on the Board of

Private Equity Fund have to be fit and proper persons. Unless there is a change in control of a private equity fund, you do not have to run to the regulator and ask for approval every time you are changing your Managing Director or every time you are changing your CEO, etc.

SHRI PRAFUL PATEL: Do you presume that the RBI is over regulating? Are we talking about Managing Director being changed every day? Even if he is or she is being changed, it is only an information which is being given to the RBI and the RBI will okay that.

MS. BHARGAVI ZAVERI: May I give some other examples? For example, under this current Bill, there is a proposal that even the expenses that an ARC can incur in managing the financial asset that it has taken over already from the bank can be regulated. The fees that it can charge, we do not have retail consumers here, there are no deposit taking activities happening here.

SHRI PRAFUL PATEL: You can suggest these types of changes. Do not talk about the Director, etc.

MS. BHARGAVI ZAVERI: We have submitted clause by clause analysis. It is not a consequential amendment of the Code. It is, in fact, increasing how much regulation can be done.

SHRI PRAFUL PATEL: So, fair enough. You can propose these things. Make it simple. Do not completely say that there should be no regulation. But make it simple.

SHRI NARESH GUJRAL: Can I just add one sentence here? I can understand what you are saying that it should not be overregulated. But perhaps the spirit behind this could be, because I remember in the early seventies what companies like Slater Walker were doing in England. There were assets tripping causing a lot of unemployment and they were becoming very rich and people were losing their jobs. So, perhaps the RBI is thinking of a scenario like this because they do not want these companies to come in only to do asset tripping.

MS. SUSAN THOMAS: Because we are seeing this amendment of the secured creditors rights, in connection with the Insolvency and Bankruptcy law, which is quite empowering, as we all agree, if it is truly the case of companies coming in and merely assets tripping, then what will happen is the collective action under the insolvency resolution procedure, there will be other people who will propose different kinds of resolutions. So, the strength is that if there is merely a company which comes in, a secured creditor like a bank will sell off these assets

to a shark company and they then just try to strip the assets. Then other creditors who are not covered under this Act or indeed even the company itself, may then go to the insolvency and bankruptcy court, call on that insolvency resolution procedure, then everybody comes to the table. All this SARFAESI, moratorium and action will be suspended so that they can find a way to keep the company as a going concern. So, they are a little relaxed about the presence of such secured creditors which is vicious to the life of a company because we believe and we hope that the implementation of the Insolvency and Bankruptcy Code will truly help the viable companies as going concerns. So, these two have to move side by side.

SHRI NARESH GUJRAL: Banks lend taking collaterals. Banks have not taken personal guarantees or corporate guarantees, but has lent against collaterals. But now we see a situation more so, Vijay Mallya is a known case, where suddenly even his family is asked to provide the details of their assets. Now, under which law is it possible? Are we going to give this total freedom? Then it is against natural justice.

MS. JAYNA KOTHARI: That is one of our submissions in our response as well that, when banks lend loans against securities, is that securities and collaterals taken which are supposed to be sufficient to cover the debt. If you give out Rs. 10 lakh, then you have to take collaterals which are certainly more than Rs. 10 lakh. What the RDB amendments actually say is that they give free hand to the banks to say these are the securities and it is not sufficient to secure the debt. Now, you disclose. So, they have not done their due diligence before giving out loans. Then, you say now you disclose all your assets, so that we will come and attach them.

SHRI PRAFUL PATEL: There has to be some protection.

SHRI KALYAN BANERJEE: The poor Branch Manager gives the loans because of the instructions from above. But he has to suffer. The top man will be moving with Ministers and corporate bodies.

SHRI NARESH GUJRAL: The poor manager can record it.

SHRI KALYAN BANERJEE: The poor manager cannot record it. These instructions come over the telephone.

MS. SUSAN THOMAS: We hope that with the information utilities, every credit loan or the loan contract will be recorded electronically in an information utility. So, at least the bank manager then has a recourse to say, I did this, these are the terms and that is actually

visible to everybody if they wish to loan again or lend again to the same person. So, I think that helps a better credit culture.

SHRI PRAFUL PATEL: They have to do with due diligence. Onus and everything is on the borrower.

SHRI JAGDAMBIKA PAL: I would like to make certain observations. Section 13(5)(a) was read out. What is the issue here? The issue is the secured creditor purchase secured assets, they have to eventually to be resold within a stipulated five years by ARC, and seven years for banks; the payment of stamp duty and registration fee for registering the property is a huge burden on the secured creditors. I think you have not given any suggestion here. I think, there should be an exemption of payment on stamp duty and registration fee on property purchased by the secured creditors under the provisions of the SARFAESI and Banking Regulations Act. If you have no response to make now, you may respond in writing later.

Regarding the amendment of Section 17, paragraph 14 – read out. In my opinion, the borrower with an intention to thwart the recovery process may connive with the tenant and get relief on an unjustified ground. Are you going to give any suggestion on this amendment regarding Section 17? At least no such application shall be entertained unless the tenant under any special indictment intended to protect the rights of tenancy enacted by the concerned State Government or the documents under the tenancy rights.

MS. JAYNA KOTHARI: May we request that these questions may be sent to us so that we can evaluate it and send a decent response.

HON. CHAIRPERSON: Shri Jagdambika Pal *ji*, you kindly give the queries to the Secretariat, we can send it to them to get replies for the same.

SHRI JAGDAMBIKA PAL: Yes. Chapter III, Clause 28 – application to the Tribunal – was read out. What is your suggestion? Proposed amendment may also had the means to find out the reasons for delay and corrective actions to clear all the pendancy.

MS. JAYNA KOTHARI: Our suggestion was only on time limit. That time limit is not corresponding on the bank as well. That was our suggestion. Which provision of Section 19, which page of the Bill, you are referring to, Sir?

SHRI JAGDAMBIKA PAL: I was referring to Sub-section 3 – read out.

MS. JAYNA KOTHARI: That is fine. I have no objection to that application. To that amendment, we had made a comment to (a), the jurisdiction, the branch or any other office of the bank or financial institution is functioning or maintaining an account.

SHRI JAGDAMBIKA PAL: Suppose there is a multi-lender expose to the loan account, the original document remain with the led lenders. Therefore, other holders not holding original documents would not be able to file original application with a true copies of original.

MS. JAYNA KOTHARI: It should be original. I am glad you had pointed that out because I had specifically responded to that. I had not responded. I thank you for that. I think what you said is important that there should be an obligation to submit original copy which the bank should have. But here the emphasis is only on true copies. Usually, when you file documents on which you are basing your claim on, it should be original.

HON. CHAIRPERSON: Submitted or shown?

MS. JAYNA KOTHARI: Usually courts ask for original to be submitted at the time of evidence. Since this procedure mandates that at the time of filing the claim or written statements, you file all affidavits originals.....

SHRI P.P. CHAUDHARY: You are talking about the trial court.

MS. JAYNA KOTHARI: Yes. On defendant the obligation is to file original documents. The defendant on page 16, line 30 says original documents or true copies. But for the banks only true copies, not original.

SHRI P.P. CHAUDHARY: The option is given, either you file true copy. Who will take care of the original documents, if a person file it, and everybody files it.

MS. JAYNA KOTHARI: The courts.

SHRI GOPAL SHETTY: If I have taken a loan, you can come to know that I have taken a loan from only one bank, and my documents are submitted there. I don't understand. So, I don't understand.

DR. AJAY SHAH: In terms of information utilities, and all the documents goes away. This is one more place this amendment is not fully taking into account the concepts of insolvency and bankruptcy code.

SHRI ANAND SHARMA: That is why we want specific suggestion as to how to align.

SHRI BHARTRUHARI MAHTAB: Sir, I have only one question to put-forth. There is a joint memorandum received from IGIDR and NIPFP. In two previous memorandums, exemption from stamp duty issue has not been mentioned. So, I would request both of you to give your comments on this aspect.

I would confine myself to the question relating to the Stamp Act exemption that has been provided in this Amendment. The basic idea is to facilitate expeditious disposal of recovery applications. That is the reason why these amendments are before us for consideration.

In the Statement of Objects and Reasons, it is mentioned that the Bill also seeks to amend the Indian Stamp Act, 1899 so as to exempt assignments of loans in favour of asset reconstruction companies from Stamp Duty and Depositories Act, 1996.

IGIDR and NIPFP both have jointly given the rationale. Rather they are suggesting that you have to expand the provisions of exemptions of Stamp Act to other assignments of financial assets from stamp duty.

If the purpose is ease of doing business and expeditious disposal of recovery, is the Stamp Act creating a hindrance, is the Stamp Act multiplying the financial burden? If that is so, what is its impact on the stressed assets or on the company? In a way, is the Union Government competent to amend this Stamp Act without taking the respective State Governments' view? This JPC today is in a sticky situation because we are very much aware, when we interacted with you during the meeting on the Insolvency and Bankruptcy Code Bill, at that time, you were aware that this type of Bill is also going to come for discussion. Perhaps the Government in its wisdom was continuing deliberating of these amendments in one go. One came earlier, and this has come after that.

Perhaps this Bill was introduced in the Lok Sabha and the Finance Minister said that the same Committee will continue, and they will go into this Bill, thinking perhaps – I think the Chairman is aware about it – that whatever incongruities are there, will be corrected in the process of our deliberations.

HON. CHAIRPERSON: Yes.

SHRI BHARTRUHARI MAHTAB: So, in the Bill that is before us for consideration, I think there is scope for further improvement. That is why while you have given additional amendments, which should be added to it, we should also deliberate on those aspects.

But I am confining my question today to the exemption from the stamp duty. I want to extend it beyond the relationship between the Union Government and the States. As the stamp duty provision is the prerogative of the State Government. Legally, I have never studied law nor I have formed a company as per the Companies. I think this needs to be looked into. Of course, Jagdambika Palji runs a Trust! This is a very small aspect but I think this needs to be looked into.

We want to have your viewpoint. I am not deliberating on other issues that are put-forth before us for discussion today. Thank you.

DR. AJAY SHAH: Sir, our main proposition would be that we should not try to prejudge who is the buyer of a distressed asset; and that is the whole concept in the Insolvency and Bankruptcy Code. If a machine tool unit is in trouble, may be the right person, who gives the highest bid is another machine tool company, or may be it is a bank or may be it is a private equity company or it is an asset reconstruction company. The Government should not create licence holders who have specific rights. That artificially creates an industry whereas actually, it is in the best interest of India, if many, many people will look at a distressed asset and say: 'I can do a great job with this and quote higher bids, and in the banks, will get better realisation'. This is an example of the sort of thing we should have.

Here, you have created a special licence holder. The bank can sell to an ARC. There the stamp duty is exempted. As Ms. Susan said, the bank cannot even sell to another bank because then this exemption does not kick in. The bank cannot sell to another machine tool company because then this exemption does not kick in. So, we are artificially creating an industry, we are artificially subsidizing a special construct called ARC.

Mr. Praful Patel is not here, but if I may respond to what he said. We are the greatest advocates of a successful, competitive ARC industry. But that success should come out of their genuine capabilities, not by Government artificially giving them some special powers and special rights. That would produce an inefficient industry. So, ARC is a specialisation. If a specialised man is willing to quote a higher price and he will get the transaction, it is great. But we should not create a licence holder that only an ARC is allowed to play in these businesses.

About the question of stakes, I am not a lawyer and perhaps Ms. Bhargavi Zaveri knows the answer. But I know one precedent which I was peripherally a part of. In the Ministry of Finance, we created the

Depositories Act and its one clause asserts that dematerialised transactions are exempt from stamp duty. So, there is some due process that must have been applied. I do not know about consultations with States, but give, at least, one precedent of a Central Act, which removed stamp duty for dematerialised settlement transactions.

MS. RAJESWARI SENGUPTA: Sir, just to add to what Dr Ajay Shah, if I am not mistaken, the transaction of transfer is in the Concurrent List and agreements and documents are in the State List, which is why when you basically transfer shares from one Demat account to another, stamp duty is exempt. The Central legislation provides for that exemption. But when you execute an agreement, which provides for transfer of shares, the States dictate how much stamp duty is levied. We will have to look more into this. But I think, *prima facie*, that is how Depositories Act was done.

SHRI P.P. CHAUDHARY: If you go by Entry 91 of the Union List, the rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts are there. They were with the Union List.

Excluding these documents, Entry 63 with respect the State List states: 'the rates of stamp duty in respect of documents other than those specified in the provision of List 1.'

So, remaining all are with the States. Those, which are specified, under Entry 91 in the Union List, are with the Central Government.

So, it is not in the Concurrent List; it is with the Union and States.

MS. RAJESHWARI SENGUPTA: Yes.

SHRI SHIVKUMAR UDASI: About the ARCs, how are they operating in all the improved economies? Is there any stamp duty or any extra thing, which has not been given as a power, as level playing field.

DR. AJAY SHAH: Sir, in advanced economies, there is absolutely nothing special about the word ARC in any primary law. They are just private equity funds. That is all. They choose specialization. One private equity fund says: 'I will do strategic investments in healthcare; another private equity fund says: I will do distressed debt.' Occasionally, the healthcare guy will buy a distressed hospital.

So, there is absolutely no enshrining of ARCs in the primary law in any advance country and we in India have gone on a wrong direction.

SHRI P.P. CHAUDHARY: On policy point you are very well but now you suggest us the remedies.

SHRI SHIVKUMAR UDASI: You just tell us the background on which you have formulated the ARCs. Now, as my Chaudhary said, what are the remedies and how can you correct these things *vis-à-vis* IBC, SARFAESI and DRT.

DR. AJAY SHAH: The concept was that there would be a specialized private organization which would bid money not security receipts to buy a NPA from the bank and bank would immediately have to recognize. So, there is a Rs. 100 asset of the bank. He may put it up for auction. Five ARCs bid. They bid for cash. Suppose, highest bidder bid Rs. 60, the bank is forced to recognize the loss of Rs. 40. It is a true sale. The assets transfer to the ARC. The ARC is typically a private organization. He will put far more energy and be more difficult in dealing with promoters and trying to do recoveries. That was the concept.

SHRI P.P. CHAUDHARY: I would like to know whether it is prevalent in any part of the world.

DR. AJAY SHAH: Sir, all over the work, distress debt funds have no legal or statutory or regulatory privileges.

SHRI P.P. CHAUDHARY: No, I would like to know whether it is prevalent in any part of the world or in any developed country.

DR. AJAY SHAH: Yes, Sir. In all developed countries, there are distressed asset funds but they are merely private organizations. The Government does not say that you are distressed asset. It is a choice of business of a private person that he wants to deal in distressed debt. The Government does not enshrine it anywhere. Insolvency Law gives general powers to all private persons that you have rights when a bankruptcy takes place.

MS. JAYNA KOTHARI: I just wanted to add on that saying that ARCs where one concept which, I think, not the large developed economies tried where there was a banking crisis of 1998. They were called asset management companies. When we took it on, we said that we do not a single AMC like China, China chose one single AMC, and they put Government money into funding that AMC. When Ajay and his wisdom wrote that note about the ARCs, they said: "We do not want Government to put money into one single monolithic entity because that does not typically work in India. Instead, let us have an industry full of asset reconstruction companies".

HON. CHAIRPERSON: Thank you very much to all of you. I request you to join us for lunch. The Committee will again meet at 2 o'clock for further discussion.

(AFTER LUNCH BREAK)

WITNESSES EXAMINED

1. Shri Anil Bhardwaj
   Secretary General, Federation of Indian Micro, Small and Medium Enterprises;

2. Shri Om Parkash Mittal
   (C.A.), National President, Laghu Udyog Bharati.

HON. CHAIRPERSON: I welcome you to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016. The aforesaid Bill seeks to amend some of the provisions under four Acts, namely, SARFAESI Act, 2002; RDDB and FI Act, 1993; the Indian Stamps Act, 1899; and the Depositories Act, 1996 with the aim to improve ease of doing business and facilitate investment leading to higher economic growth and development.

Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy and contributes enormously to the socio-economic development of the country. Laghu Udyog Bharati in the memorandum submitted to the Committee has raised the issue of second generation entrepreneurs deserting the family business. MSMEs being one of the important stakeholders, the Committee would like to hear from you how far the provisions made in the aforesaid Bill would facilitate investment in MSMEs and encourage entrepreneurship. You may be free and frank while giving your suggestions on various issues related to the legislation.

The memoranda containing the written comments/suggestions as received in the Secretariat from you have already been circulated to the Members of the Committee. I would like to draw your attention to the Directions by the Speaker, whereby the memoranda submitted to the Committee as well as the deliberations held at the sittings of the Committee would form part of the proceedings of the Committee and are treated as 'Confidential' and not circulated to anyone or made public in any other media till the report is presented to the House.

Before you start the presentation, I would request you to kindly introduce yourself and your colleagues to the Committee.

(INTRODUCTION OF WITNESSES)

HON. CHAIRPERSON: We have already received one representation from Laghu Udyog Bharati, and we hope that you will also be submitting a memorandum to the Committee. I would request Shri Gopal Shetty to state what the outline is in the context of this Bill and also in the context of MSMEs. He will briefly state that in two or three minutes. After that, you can present your views before the Committee.

श्री गोपाल शेट्टी: सभापति महोदय, बिल इंट्रोड्यूस करना और अमैन्डमैन्ट देना यह हम लोगों की जवाबदारी और जिम्मेदारी है, जो हम करते हैं। लेकिन मुझे लगता है कि हम लोगों को ब्रोडर इंटरैस्ट ऑफ दि नेशन आने वाले दिनों में इस बात को भी समझना होगा कि देश चलना चाहिए, इंडस्ट्रीज भी चलनी चाहिए, लोगों को काम-काज मिलना चाहिए, इस बात को भी हमें दिमाग में रखना होगा। मुझे ऐसा लगता है कि इनसोलवेंसी बैंक्रप्सी बिल आने के बाद आने वाले दिनों में बहुत सारे बदलाव हमें देखने को मिलेंगे, क्योंकि जो विलफुल डिफाल्टर्स होते हैं, वे इसमें बाहर निकल जायेंगे।

देश में हर व्यक्ति के जीवन में और देश के जीवन में भी दस-बीस साल इस प्रकार के आते हैं, जब इस प्रकार की बातें होती रहती हैं और फिर बाद में उसमें चेंज भी आता है। मुझे लगता है कि हम अभी चेंज के मोड में आए हैं। ऐसे समय पर यह बिल जब आया है तो फिर एक बार मैं कहूंगा कि बहुत सारे विलफुल डिफॉल्टर जो होते हैं, जिनको पहले लगता था कि मैं करूंगा तो यह चलेगा क्योंकि अभी इसका अल्टर्नेट आने की वजह से वह खुद चला भी पाएगा, यह भी इसमें एक बहुत बड़ी बात है। ऐसा मैं मानता हूं। मुझे एक बात यह भी कहनी पड़ेगी कि इज ऑफ बिजनस को जब हमने मान लिया तो इस बात को सरकार के ध्यान में भी आ गया कि बैंकों ने सही समय पर पैसा नहीं दिया, इसलिए समय पर वह इंडस्ट्री चली नहीं। ब्युरोक्रेसी से समय पर अनुमति नहीं मिली तो वह काम टेक अप कर नहीं पाए, इसलिए भी बहुत सारी इंडस्ट्रीज बैकफुट पर गए। इन सारी बातों को देखकर ईज ऑफ डूइंग बिजनस की बात जब हम कर रहे हैं, तो आने वाले दिनों में बिजनेस चले इसके बारे में भी हमें सोचना पड़ेगा। हमने देखा कि चाइना जैसे देश ने स्टील इंडस्ट्री का इतना बड़ा गेम किया, जिसकी वजह से शायद सभी स्टील इंडस्ट्री बंद पड़ जाती। लेकिन सरकार ने सही समय पर कदम उठाने के बाद में यह इंडस्ट्री सैट अप हो गई। समझो यह अगर नहीं होता तो हमारे देश की इतनी सारी इंडस्ट्री बर्बाद हो जाती। इसमें इंडस्ट्री चलाने वाले का क्या दोष है। इसको भी हमें आने वाले दिनों में समझना पड़ेगा। मैं एक बात यह भी कहूंगा कि हम सभी चीजों के बारे में बातें करते-करते आने वाले दिनों में कामगारों के बारे में हमें सोचना पड़ेगा उनकी सारी आवश्यकताएं हमें पूरी करनी चाहिए। लेकिन कभी-कभी अनवांटेड स्ट्राइक्स की वजह से भी बहुत सारी इंडस्ट्री बंद पड़ी हैं। उदाहरण के लिए कोई फैक्ट्री डाल देता है, बैंक से उसको लोन मिल जाता है,

सारा हो जाता है, उत्पादन कर लेता है, लेकिन हड़ताल होने की वजह से जो ऑर्डर वह समय पर दे नहीं पाया तो कॉलेप्स हो जाता है तो यह भी हमें आने वाले दिनों में देखना पड़ेगा।

सभापति जी, सवेरे के सैशन में मुझे एक बात का जवाब नहीं मिला, मैं फिर से उसको कहना चाहूंगा क्योंकि बैंक में जब हम लोन देते हैं तो सारा उसका जो भी रिपोर्ट उसने सब्मिट किया है, उसको देख कर देते हैं। हम उसका कोलैट्रल लेते हैं। सारा देखने के बाद हम उसको बैंक का लोन देते हैं। लेकिन जब वह बैंक्रप्सी होता है तो हम उसको वापस कहते हैं कि अदर एसेट, हिडन एसेट आप अकाउंट करो। इसका मतलब यह है कि हमारे देश का जो सिस्टम है, उस पर हमें भरोसा नहीं है। आपके बैंक में से पैसा लेने के बाद में, उसमें से कुछ पैसे निकाल कर, उसने कुछ एसेट लिया भी होगा तो, it is in the book तो उसको ढूंढने की आवश्यकता नहीं पड़ती है। इस क्लॉज के ऊपर मैं ज्यादा जोर इसलिए भी देता हूं कि समझो बैंक्रप्सी हो गया और फिर हम उनको कहेंगे कि आप और हिडन एसेट डिक्लेयर करो। वह नहीं करता है तो उसमें समय जाता है। कोई मेरा शत्रु होगा, वह आपको चार चिट्ठी लिख देगा कि इसका यहां पर है, उसको चैक करने में हमारा समय जाएगा। मुझे लगता है कि यह एक नया सिस्टम या ट्रेंड बैंकिंग में आया है कि आप अदर एसेट्स डिक्लेयर करो। इसके बारे में गंभीरता से सोचना पड़ेगा। इन सारी बातों के ऊपर सकारात्मक दृष्टि से हमें देश चलाना है। हमें सिर्फ फाइनेंशियल इंस्टिट्युशंस या बैंक ही नहीं चलाने हैं। That is a part of our system; that should also run. लेकिन हमारा मेन मकसद यह है कि देश चलना चाहिए। देश के लोगों को काम मिलना चाहिए। काम मिलेगा तो उत्पादन होगा, टैक्स के माध्यम से पैसे आएंगे। इस बात को भी हमें आने वाले दिनों में और ज्यादा अहमियत देकर सोचना पड़ेगा।

SHRI ANIL BHARDWAJ: Hon. Chairman, Sir, and hon. Members of the Committee, first of all I begin by thanking you all for giving FISME an opportunity to share our views before you.

Federation of Indian Micro & Small and Medium Enterprises (FISME) was established in 1967. It is an association of associations. Over 700 associations of small and medium enterprises spread all over are members of FISME including State level bodies. In UP you might be aware, Indian Industries Association is a member of FISME; similarly in Karnataka, Tamil Nadu and other places.

The problem of NPAs is huge. Everybody is aware of this issue. Current estimates are that the figure may be around anywhere between three to four lakh crores. What has been more worrying is that the banks have not been able to take possession of the assets and also recover their dues due to the host of regulatory and other institutional lacunas. In this context, the proposed Bill aims to fill up very critical gaps and would surely strengthen the process of speedy recovery of the dues. In the proposed Bill, particularly two amendments that they have proposed are pretty noteworthy that I would like to mention.

One is about national registry of assets. As we have seen, one person would place one asset with one bank and the same copies it would give to other banks and take loan on the same asset. With this registry, this problem would be particularly resolved. We are thankful that IFC and World Bank have been in consultation with FISME. We together worked on this issue and proposed its structure. Secondly, empowering RBI on the asset reconstruction companies; on these two issues this Bill I think paves way for strengthening the process of recovery.

On particularly NPA, I would like to draw your attention to the fact that if you take public sector banks, 40 per cent of the lending they have to do to priority sector and rest is to non-priority sector. It could be the corporate sector; largely it is corporate sector. In priority sector, which are the sectors? It is agriculture; 12 per cent out of 40 per cent is for agriculture. Then, 18 per cent is for small scale industries, people from weaker sections of the society, educational loans, smaller housing loans etc. The current status is that NPAs from the MSME sector are insignificant. So, when we are dealing or talking about MSME sector, we need to appreciate that MSME sector has proved to be very resilient sector and NPAs in the context of the larger NPAs that are there for the corporate sector, its quantum is pretty less.

Secondly, although we have not received any clause by clause specific suggestions with regard to the Bill, but I want to share one specific comment or you can say a request from FISME. This is with regard to CGTMSE. I will come to that. You are aware that MSME sector is the single largest employer in the country. What is not widely known is that 50 per cent of MSME units are owned by Scheduled Castes, Scheduled Tribes, OBCs and other disadvantaged sections of the society. Similarly, what is also not widely known is that almost 50 per cent of the people employed in the MSME sector are also from these segments. In the last decade, the corporate sector has not added to employment. Almost entirely in the last decade, the new employment has only occurred in the MSME sector and informal sector.

HON. CHAIRPERSON: What is its relation with this Bill?

SHRI ANIL BHARDWAJ: I am coming to that, Sir. When we are discussing about MSME sector, their biggest problem is access to finance. In their problem of access to finance, the issue is that they do not have collateral security. In order to address this issue, in the year 2000, the Government came out with a scheme called Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE). What this Trust does is that if you take a loan from the bank and you take the guarantee

of CGTMSE, you have to pay $1^1/_2$ per cent to this insurance company. It is kind of an insurance trust. But then you do not have to give the collateral security and you do not have to give the third party guarantee. That was the reason that this CGTMSE was launched. But what is happening is that in most of the recovery proceedings, including in this particular Act, they do not take into account of the fact that it is insurance and they should only limit it to the extent of the business assets. So the issue is, what we are requesting to you is that in all cases that are covered under CGTMSE, recovery should be restricted only to business assets without invoking the guarantee of promoters. If you have already taken insurance from me that in case of failure, the insurance company will pay, then why should you go after the assets of the promoter?

SHRI BHARTRUHARI MAHTAB: You have the Bill before you. We have understood what you are trying to mention. I think this Committee would be having full sympathy. But specify, as the Chairman had asked you, where you want certain amendments or corrections to be made.

SHRI ANIL BHARDWAJ: This particular clause could be added. Of course lawyers would be the best people to suggest as to where to put this.

SHRI JAGDAMBIKA PAL: What are the practical problems you are facing?

SHRI ANIL BHARDWAJ: I have identified the practical problems.

SHRI JAGDAMBIKA PAL: You can propose some amendments also. You have gone through the proposed Bill clause by clause. अगर आप कुछ सैक्शंस में चाहते हैं कि यहां पर अमेंडमेंट्स हों तो आप वह अमेंडमेंट्स भी बताइए। जैसा आपने कहा कि एनपीए होता है, जो आपने एक प्रॉब्लम कही है एमएसएमई के लिए तो उसमें दो बातें हैं। इसमें कैसे इसको ऐड्रेस किया जा सकता है कि अगर मान लिया किसी ने लोन लिया, किसी बैंक ने लोन दे दिया और उनका लोन काफी डिस्बर्स हो गया और काम उनका ठीक हो रहा है। अब उन्हें ऑर्डर मिल गया, वे अपनी इंडस्ट्री को और बढ़ाना चाहते हैं, ओडी भी उनका हो और फिर बैंक अगर ओडी नहीं दे रहा है, एक तरफ ऑर्डर भी हो और उसके बाद फिर उस कम्पनी के सामने, उस इंडस्ट्री के सामने एक प्रॉब्लम आ जाती है, फिर एनपीए हो जाता है तो एनपीए में फिर ईएमआई देने में उनको कठिनाई होती है। उनका जो बेस रेट है बैंक के इंट्रेस्ट का, उस बेस रेट को कम किया जाए। इस संबंध में भी अगर आप कुछ कह सकते हैं तो बताइए।

SHRI KALYAN BANNERJEE: When the promoter comes before the bank he is trying to give an impression that he is behind the gentleman

who is taking the money from the bank after being satisfied on the credentials of the person concerned and also the promoter who is the guarantor. Ultimately nobody has asked the promoter to come and become a guarantor. If he becomes a guarantor, he has to take the responsibility for the liability. Why should he not? He cannot come only to show his face to the bank and say that I am the guarantor and you give the loan. Bank grants a loan after making an evaluation of the loan applicant and also the guarantor. In that case, why cannot the promoter be held liable?

श्री अनिल भारद्वाजः महोदय, मैं एक्सप्लेन कर देता हूं कि इश्यू क्या है? इश्यू यह है कि क्रेडिट गारंटी का जो ट्रस्ट बना था, क्रेडिट गारंटी का जब कारपोरेशन बना, उसमें दो चीजें उन्होंने कहीं कि जब आप लोन देंगे तो न तो आप कोलेट्रल सिक्युरिटी देंगे और न बैंक थर्ड पार्टी गारंटी लेगा। ये दोनों चीजें नहीं होंगी तो हम इंश्योरेंस देंगे।, इंश्योरेंस कवर देंगे। यही तो इश्यू था। जब इंश्योरेंस कवर आपको ऑलरेडी गारंटी कर रहा है कि in case of failure, I will pay the money to the bank अभी ये क्या कर रहे हैं कि इनडायरेक्ट तरीके से उसकी गारंटी लेते हैं, क्योंकि थर्ड पार्टी गारंटी के केस में क्या है, जैसे 97 परसेंट स्मॉल इंडस्ट्रीज जो हैं वह प्रॉपराइटरशिप पार्टनरशिप है और कम्पनी जो है, थर्ड पार्टी का केस आता है, जब आप कम्पनी होते हैं। इनडिविजुअल और कम्पनी दो अलग-अलग पर्सन की तरह से ट्रीट किए जाते हैं, लेकिन पार्टनरशिप प्रॉपराइटरशिप में ये दोनों एक ही चीज हैं। हमारा इश्यू यह है, हम इसमें यह कह रहे हैं कि जब आपने ऑलरेडी गारंटी कवर ले लिया, जब उसका प्रीमियम भी उसने दे दिया तो फिर उसके जो पर्सनल ऐसेट्स हैं, उन्हें आप टच नहीं करेगें, क्योंकि प्रीमियम तो ऑलरेडी दे चुके हैं इंश्योरेंस का। हमारा सिर्फ इतना ही कहना है।

SHRI KALYAN BANERJEE: So, it is recovered from the insurance company.

श्री अनिल भारद्वाजः जी-जी।.इसलिए बाकी के उसके ऐसेट्स को तो मत छेड़िए। मैं यह कह रहा हूं कि एक पर्टिकुलर क्लॉज इसमें ऐड किया जा सकता है।

SHRI P.P. CHOUDHARY: This is very essential to encourage the MSME.

श्री अनिल भारद्वाजः वह ठीक है ताकि नए एंटरप्राइजेज लगा सकें।

SHRI P.P. CHOUDHARY: So, you want some incorporation for that. Can you suggest what incorporation should be made?

श्री अनिल भारद्वाजः सर, इसमें एक क्लॉज हम यह सजेस्ट कर दें, लेकिन यह कहां पर लगे, यह तो लॉ मिनिस्ट्री के लोग ज्यादा बेहतर जानते हैं। जो क्लॉज का मसौदा है, वह मैं पढ़कर सुना सकता हूं। मैं यह कह रहा हूं कि "In all cases that are covered by CGTMSE, recovery should be restricted only to business assets without

invoking the guarantee of promoters and without attaching personal assets as the promoter has sought insurance cover and had paid the cost of the same."

SHRI KALYAN BANERJEE: So, there is my question. When it is being insured, what is the use of promoter coming to give another guarantee? Insurance covers the entire thing. Then why should the promoter come and say that he is with the loanee? Then the promoter also need not come. There need be no guarantee from the promoter. That clause should be included. Now the banks see the promoter's capability and credibility but thereafter the promoter will not be touched. If he does not come to the bank, what is the problem? Say no promoter will also come to be a guarantor.

श्री अनिल भारद्वाजः सर, करेन्ट स्थिति यह है कि कोई भी यंग जनरेशन में स्मॉल इंडस्ट्री लगाना नहीं चाहता है। हम अपने आसपास यह सवाल पूछकर देख सकते हैं कि कितने लोग एमएसएमई लगाना चाहते हैं।

HON. CHAIRPERSON: Be specific on the amendment suggested in this Bill.

श्री अनिल भारद्वाजः महोदय, वह मैंने सजेस्ट किया है कि यह क्लॉज यदि इसमें कहीं ऐड हो जाती है तो बहुत सारे एंटरप्राइजेज, जिन्होंने सीजीटीएमएसई का कवर लिया है, उन्हें यह दिक्कत नहीं होगी।

श्री भर्तृहरि महताबः महोदय, क्या इन्होंने कुछ लिखकर दिया है।

माननीय सभापतिः नहीं, लिखकर नहीं दिया है।

श्री भर्तृहरि महताबः आप यह लिखकर दे दीजिए।

माननीय सभापतिः आप इसे लिखित में कमेटी को भिजवा दीजिए।

SHRI P.P. CHAUDHARY: You give it in writing so that we can make an exception here. You give us in writing that where there is insurance cover you want that there should not be any collateral guarantee or personal guarantee or whatever it may be. Exception should be made in the provision. Some provision should be introduced. This is a good idea. We understand it.

श्री गोपाल शेट्टीः इंश्योरेंस वाला भी कब आता है, जब वह गारंटी देता है तब आता है ना।

श्री पी.पी. चौधरीः जब लोन लेते हैं तब ही इंश्योरेंस कवर कर रहा है ना।

श्री अनिल भारद्वाज: बिल्कुल सर, तभी लोन मिलता है। पहले इंश्योरेंस कवर करते हैं, तभी लोन मिलता है।

SHRI P.P. CHAUDHARY: And who will pay the premium?

SHRI OM PRAKASH MITTAL: I will explain all the things which have come in. During Vajpayee Government on the demand of Laghu Udyog Bharati, the loan up to Rs. 1 crore is allowed to be given by the banks without collateral security and the insurance was covered by the Government. Credit Guarantee Trust Fund has been created by the SIDBI with the help of the Central Government. All the banks have given the guarantee to the Trust Fund premium. They are charging the premium from the loanees. But guarantee has been given by the Central Government up to loans of Rs. 1 crore. Any MSME industry which has taken loan from the banks is given guarantee up to Rs. 1 crore. But no bank is following these rules particularly. When we talk about ease of doing business, I attended 11th February meeting of RBI with banks. I have found out from various nationalised banks' CMDs also that no bank is following this. कोई भी बैंक इसको फॉलो नहीं कर रहा है। प्रैक्टिकली यह हो रहा है। क्रेडिट गारंटी ट्रस्ट फंड के तहत लोन देने की जो स्कीम्स हैं, उसके अन्दर बैंक फॉलो नहीं कर रही हैं।

HON. CHAIRPERSON: Mittalji, we are talking about the amendments suggested in this Bill.

SHRI OM PRAKASH MITTAL: I am coming to that. As far as the Amendment Bill is concerned, we have received it at very short notice and we will send you the proposed amendment.

HON. CHAIRPERSON: We are discussing here only the amendment.

श्री ओम प्रकाश मित्तल: महोदय, मैं संक्षेप में दो-तीन प्वाइंट रखना चाहता हूं।

श्री भर्तृहरि महताब: आपने आठ प्वाइंट लिखकर दे रखे हैं।

श्री ओम प्रकाश मित्तल: वे आठ प्वाइंट तो दिए हैं, लेकिन उनके अलावा भी इस विषय के संबंध में मेरे पास बहुत से प्वाइंट हैं।

HON. CHAIRPERSON: This Committee is only for the purpose of amendment of SARFAESI Act and DRT Act and not for any other thing.

श्री ओम प्रकाश मित्तल: सभापति जी, मैं समझ गया आपके कहने के बाद। जो मैंने कहा कि उसके बारे में particular to the amendment, what are the guidelines and what should be the amendments यह तो हम आपको डीटेल में भेज देंगे।

इसमें मैं दो-तीन प्वाइंट जरूर रखना चाहूंगा। कोलेट्रल सिक्यूरिटी का प्वाइंट तो इसमें आ गया है। अभी तक मुझे जो सूचना मिली, आपने संबोधन करते हुए लिखा स्टील इंडस्ट्रीज के बारे में। वास्तव में स्टील इंडस्ट्रीज को जो सैटबैक मिला, बैंकों में जो लार्ज स्केल और कॉर्पोरेट सैक्टर्स का एनपीएज हुआ, सिचुएशन माइक्रो, स्माल के लिए और भी ज्यादा वर्स हुई। Because of heavy NPAs and debts by the banks, banks are not giving loans but refusing loans to the micro and small enterprises. So, it should be very consciously checked otherwise the funding of the micro and small enterprises which is the backbone of the Indian economy will be crushed.

श्री भर्तृहरि महताब: वे कह रहे हैं कि करके देंगे।

SHRI P.P. CHAUDHARY: How are requesting the Law Ministry how this policy can be shaped in the legal framework. Because they are not in a position to suggest, can you suggest some provision that can be made in the present Bill that so far as the insurance part is there, then it will not touch them. So, we can make a certain provisions. You just frame it, because they are not in a position to do it. They can only suggest the policy.

SHRI KALYAN BANERJEE: Here, the laws are not for the purpose of giving loans. What would be the modalities, what the Central Government thinks, what should be the law—that is a different thing. We are discussing it in respect of the recovery of debt. Why the loans has not been given is not our concern.

SHRI OM PRAKASH MITTAL: This is with regard to the question of ease of doing business. Now, I am coming to restructuring the loan of the corporate sector.

HON. CHAIRPERSON: That also is not the subject-matter of this Committee. The subject matter and the mandate of this Committee is very specific and that is about the amendment of DRT Act and SARFAESI Act.

SHRI SHIVKUMAR UDASI (Haveri): You just tell us those sections where you want some amendments.

श्री वरुण मित्तल: सभापति जी, डैट रिकवरी लॉ के बारे में मैं कुछ कहना चाहूंगा। क्योंकि अमेंडमेंट हो रहा है, इस बिल के द्वारा कई सारे प्रावधानों को अमेंड किया जा रहा है, तो एक प्वाइंट मैं आपके सामने लाना चाहूंगा। यदि आप उसको किसी रूप में ऐड कर सकते हैं, तो उस पर विचार कीजिए।

एमएसएमई जब बड़ी कंपनी के साथ काम करता है और ऑर्गनाइज्ड सेक्टर के साथ काम करता है चाहे वह प्राइवेट हो, पब्लिक हो या गवर्नमेंट हो, तो उसको सिक्यूरिटी डिपॉजिट देनी

पड़ती है। सिक्यूरिटी डिपॉजिट को रीफंड कराने का सिस्टम डाक्यूमेंटेड है, मगर उसको ढंग से फॉलो नहीं किया जाता। मेरा प्रपोजल यह है कि जो पर्चेजर है, प्राइवेट, पब्लिक या गवर्नमेंट, अगर वह लेट करता है रिटर्न को तो उसको एमएसएमई को रिटर्न पे हो। दूसरा प्वाइंट यह कि अगर प्राइवेट, पब्लिक या गवर्नमेंट सेक्टर की पेमेन्ट का उन्होंने लिख रखा है पर्चेज आर्डर के अंदर कि पेमेन्ट 60 दिनों में हो जाएगी और वह छह महीने तक भी नहीं होती है, not because of the vendor but because of the purchaser तो उसमें भी कोई प्रोविजन होना चाहिए कि एमएसएमई सफर न करे। जहां सात दिन में पेमेन्ट आनी थी, छह महीने में आ रही है तो एमएसएमई बरबाद हो जाएगा। कोई प्रोविजन लाना चाहिए कि एट लीस्ट जो पब्लिक प्राइवेट गवर्नमेंट सेक्टर की कंपनीज हैं, वह पेमेन्ट एमएसएमई की एट लीस्ट जो है, उससे ज्यादा लेट न करें।

आगे एक इनोवेटिव प्वाइंट है अगर इसको कोई ध्यान से देखे। एमएसएमई जब मार्केट में काम करने जाता है तो उसको सबसे पहले उधार देना पड़ता है। अब छोटी-छोटी कंपनियों को उधार देना पड़ता है। अगर गवर्नमेंट ऐसा स्टैप उठाए कि रीयल टाइम डेटा छोटी कंपनीज का एक वेबसाइट पर अवेलेबल हो जो किसी उद्योग, आधार नंबर या पैन नंबर के थ्रू असैसेबल हो किसी को भी, जिसमें यह दिख जाए कि जो कंपनी का काम करने आप जा रहे हो, उसकी क्या वर्थ है, वह इनकमटैक्स में रजिस्टर है या नहीं, वह बैंक के लोन्स का डीफॉल्टर तो नहीं है। इससे जो एमएसएमई जिस कंपनी को उधार देने जा रहा है, वह थोड़ा सचेत हो जाएगा।

HON. CHAIRPERSON: Thank you very much. I hope you will read the Bankruptcy and Insolvency Law also in depth. The insolvency utility service is also there. You must go through that and after reading that, if you feel you have any suggestion, they are welcome in writing within five days from today. Thank you.

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

3. Shri Raja Dodti
   Group General Counsel, L&T Financial Holdings Ltd., CII

4. Shri R.D. Khullar
   Legal-Group Head, Srei Infrastructure Finance Ltd., ASSOCHAM

HON. CHAIRPERSON: I welcome you, the representatives of CII, FICCI and ASSOCHAM to the sitting of this Joint Committee. As you are aware, the Joint Committee is examining the Enforcement of Security Interest and Recovery of Debt Law and Miscellaneous Provision (Amendment) Bill, 2016. Your organizations representing the industry, the Committee have decided to hear your views on the provisions contained in the Amendment Bill.

I would like to draw your attention to the direction by the Speaker whereby the Memoranda submitted by the Committee as well as the deliberations held at the sitting of the Committee would form part of the sitting of the Committee and are treated as confidential and not circulated to anyone or made public in any other media till the report is presented to the House.

I request the representatives of these organizations to present their views before the Committee one by one. The Members may be raising certain queries during the course of deliberations which you may kindly respond to. Before you start your presentation I request you kindly to introduce yourself and your colleagues to the Committee.

(INTRODUCTION OF WITNESSES)

SHRI RAMANUJ KUMAR: Good afternoon, hon. Chairperson and Members of the Committee.

On behalf of CII, we would like to present our suggestions on the Amendment Bill in a very brief manner. So, our first suggestion is to broaden the definition of 'financial institution' in the Amendment Bill so as to include and 'alternative investment fund' defined under section 2(d) of the SEBI Alternative Investment Fund Regulations, 2012 and registered with the SEBI.

Our suggestion on the definition of 'financial institution' is also to include entities which are recognised lenders but excluding foreign direct or indirect shareholders which are eligible to provide external commercial borrowings to eligible Indian borrowers under the Foreign Exchange Management Act, 1999; then also include foreign institutional investors, foreign portfolio investors and other institutional investors which are permitted by the RBI to invest in or subscribe to debt securities of Indian borrowers; then any subsidiary branch or branch office of an Indian bank incorporated outside India or conducting business outside India permitted under section 5 of the Banking Regulation Act; also include non-banking finance companies as defined in section 45 (1) (f) of the RBI Act, 1934; and the residual clause being 'any other entity' or 'class of entities' which the Central Government may by notification specify as a financial institution for the purposes of the Act. One more suggestion is that we should also specifically include debenture trustees as financial institutions because usually in the case of debt securities it is the trustee which initiates and is the debt holder and is able to initiate action. As a result of these proposed amendments to the definition of 'financial institutions', since the same definition is used in the Recovery of Debt Due to Banks and Financial

Institutions Act, 1993, similar definitional changes need to be carried out in the RDDB Act as well.

SHRI JAGDAMBIKA PAL: Can you also include those which are defined in sub-section 72 along with what you are proposing?

SHRI RAJU DODTI: That is actually for public financial institutions as defined in sub-section 72 which is already there in the existing Act. The new entities which are proposed to be included in the definition are the ones which he mentioned. For the ease of reference of hon. Members, we have repeated the old definition.

SHRI RAMANUJ KUMAR: We also propose insertion of a new section as a definition of 'financial assistance' in the principal Act.

HON. CHAIRPERSON: The scope of the Select Committee is the amendment proposed in the Bill, not the main Act. You address the amendments proposed in the Act. If you want to say something apart from that, you may send in writing.

SHRI RAMANUJ KUMAR: The next thing we would like to highlight is the definition of 'debt securities' as has been proposed in the Amendment Bill. The Amendment Bill essentially proposed that 'debt securities which are listed in accordance with SEBI regulations'. Our suggestion is that this definition limits it only to listed securities. It should be broadened to include both listed and unlisted debt securities which are issued in accordance with SEBI regulations. So, that is SEBI regulated and monitored but includes both listed and unlisted securities.

The next one is some amendments to the definition of 'default'. 'Default', in the proposed amendment, is referenced and limited to the debts which are classified as 'non-performing assets' in the books of the secured creditors. There is a second category, where default occurs upon serving of notice by the lender. We propose to essentially simplify this in two categories: one, where there is a non-payment and the secured creditor makes it a 'non-performing asset' in his books; and the second, where there is no regulation or guideline governing the declaration of debt as a non-performing asset. In that situation, if the non-payment has continued for a period of 90 days, it should automatically be governed by the definition of default without the necessity of the lender having to send a notice to the borrower.

Another suggestion is in relation to section 3 of the Amendment Bill. This is clause 5 (3) (b) of the Bill regarding insertion of explanation to sub-section 6. I am talking about the explanation in the proposed

Bill regarding substantial change in management of the asset reconstruction company. Our suggestion is that this definition may be clarified so that 'substantial change in management' means a change in management by transfer of shares comprising 26 per cent or more of the share capital of an asset reconstruction company on a fully diluted basis, or amalgamation or transfer of the company. The reason why we say this is otherwise if we do not stipulate a level of shareholding change even a change of five per cent or ten per cent which may not result in a change in management of the asset reconstruction company would also require RBI approval. So, the threshold should be stipulated.

I would like to refer to clause 8 (2) of the Bill.

This deals with Section 9 of the principal Act. This is regarding conversion of debt into equity. It says: "In the principal Act for Section 9 the following Sections shall be substituted, namely...". And then, it deals with Section 9. The marginal note says the 'measures for asset reconstruction'.

Here, our suggestion is to insert a second proviso, there is already a proviso, at the end of this Section. We propose that a second proviso be inserted so that essentially in the situation of a conversion of a debt into equity there are certain other compliance requirements, like compliance from the Companies Act perspective, approval of the share holders, approval of the Board of Directors. In a situation where there is a financial investor in the company, they may have affirmative rights, veto rights in terms of issue of new shares upon conversion of the debt. So, what we are proposing is that all those provisions, whether in the Companies Act, Articles of Association or in any other agreement or instrument of any other law by which the borrower may be buying, should be overridden by this provision so that the lender's right to convert debt into equity is facilitated and overridden by this provision and it becomes simpler because we have seen situations where lenders have found difficult even to implement SDRs because there is a financial investor with an agreement with the borrower and they cannot issue new shares without the approval of the financial investor. That is our suggestion in relation to this.

SHRI SHIVKUMAR UDASI: Even the Companies Act is being amended right now. That has to be taken into consideration otherwise once again there will be a lacuna.

SHRI BHARGESH OJHA: Absolutely fair point. Whatever the changes, this as a special Act should be given the powers to override and not necessary to go back to those provisions whatever they may be.

SHRI RAMANUJ KUMAR: Our next suggestion is in relation to Clause 12 of the Bill, specifically in relation to Clause 12(2) which seeks insertion of Section 2a in principal Act in Section 14.

We feel that this insertion of Section 2a is not required. So long as there is even a part of debt which has not been converted into equity, the part of debt holder would continue to be the secured creditor. As long as the entity remains the secured creditor he will continue to have the right to make an application under Section 14 for possession of the secured assets. Our apprehension is this insertion of 2a may actually be by judicial interpretation in certain cases may be read as only these people can make an application and others may not. So, we just want to avoid that confusion.

One last point is in relation to the amendment of stamp laws. This is about Clause 30 of the Bill which seeks to insert Section 8f into the principal Act. Our only minor suggestion here is two-fold. One, it seeks to exempt stamp duty payable in case of transfer of a loan from a bank or financial institution to an asset reconstruction company. Our suggestion is that it should not only be transferred to an asset reconstruction company but also transferred to any other bank or financial institution or other creditor. The idea being the loan transfer should be facilitated without having the burden of stamp duty so that the banks' balance sheets can be feed up for further lending. Second point here is exemption should be available not only just the Indian Stamp Act but also stamp duty may be payable under any other local because there are certain States which have amended or have imposed additional levies in addition to stamp duty prescribed under Indian Stamp Act through local legislation. So, that should also be avoided.

SHRI P.P. CHAUDHARY: You say that there should not be any stamp duty at the level of ARC and subsequently.

SHRI RAMANUJ KUMAR: Transfer to the ARC or any other creditor.

SHRI BHARGESH OJHA: We have also mentioned so long as the principal instrument by which has been duly stamped at the time of making the loan.

SHRI PIYUSH MISHRA: Our first is purely clarificatory. Right now the Act makes a reference to Companies Act, 2013. We just have to make a reference to the Companies Act, 1956 as well.

Secondly, in terms of the scheme of the Act, we are looking at additional bonds probably with an idea to deepen the bond market.

However, at the same time the concern is there is a difference in how the Act functions; financial institutions, banks and the bond holders. Part of our concern is the bond-holders could be under-graded entities because you could have FDIs. If you borrow more you could have unlisted bonds, you could have institutions which are not really regulated who have invested as opposed to banks and financial institutions because specially the securitisation Act started in the context of NPAs and that is where its entire constitutionality was examined by courts. Part of our worry is by adding bond holders, you could also re-open the entire constitutional debate surrounding the extra judicial remedies to this class of investors. Technically speaking you do not have to go to the courts to prove your case. You do not have to prove a debt. You can take possession of the asset without interference of the court. It is extra judicial in that sense. These are the remedies. To broaden that definition and to add in more investors banks, financial institutions, the constitutionality has already been upheld. It is yet to see if we broaden that clause how does it impact.

SHRI KALYAN BANERJEE: How does the word extra judicial fits in here? You should know what extra judicial means.

SHRI PIYUSH MISHRA: I appreciate it and stand corrected. It means without involvement of court.

Secondly, if we were to add enlisted bond holders to the whole class of investors, it is advisable then to re-look at the entire NPA provisioning norms that are there for the banks and financial institutions in the context of the Act because the Act for banks and financial institutions still says it has to be declared an NPA. NPA norms according to the recent Securitisation Act amendment are different for different regulators. Therefore, theoretically speaking some financial institutions or NHB regulated entities etc. would have their NPAs kick in after six months. On the other hand bond holders have a period of 90 days straight after the default without going into the idea of provisioning norms etc. So, given that, there is a disparity between how the two class of investors are being treated under the amendment Act. We can probably remedy it by way of making it uniform for both the classes. In which case, the idea of having NPA norms for banks, which is merely a matter of time, can be done away with and we should have a uniform post payment default period for all.

Our next submission is in terms of the assignment agreement that the ARC enters into with banks. We welcome the idea that the stamp duty has been exempted on that but in certain States there is an issue

of registration fee as well and there is a debate whether these agreements should be registered or not. We would like to get it clarified in the amendment Act also to say that registration fee insofar as transfer to ARC is concerned should be exempt and the assignment agreement that they are entering into is optionally registrable rather than being compulsorily registrable because some registrars are taking a different view.

And in some States the duty is *ad valorem*. So, the net benefit of stamp duty still gets diluted by the registration fee requirement. Others are probably more clarificatory changes. I will quickly run through that. In terms of clarifications, one of them is whether that shares can be acquired by pledge invocation of non promoters as well. Right now in the sections we are more making a reference to when ARCs invoke the pledge it should be through promoter share holding. That wording can probably change to just any new invocation of pledge. Two, at some places we are making a reference to purely conversional because again it can be by way of invocation of pledge rather than conversional securities. That should also be permitted. We think probably in the Insolvency Act because the NCLT has been made the forum for the purposes of IRP it may be helpful even for the purposes of SARFAESI for corporate borrowers to have the NCLT as a forum rather than DRT as the forum. Thank you.

SHRI HARISH CHANDER: There are two additional points. One is with regard to 9 (c) of the Amendment Bill. The RBI is taken to assume powers to stipulate the management fee, expenses, etc. to be charged by the ARCs when they acquire the loans from the banks. So, basically this is a commercial transaction, commercial understanding which we feel should be left to the banks and financial institutions selling it to ARCs. It should be decided between the two of them and the RBI should not assume this power. Second suggestion is, on clause 11 (i) of the Amendment Bill, which basically talks about the bond holders who has invoked the pledges and for enforcement provision is made. Similarly, now, under the Amendment Bill ARCs are allowed to purchase non-NPA accounts from the banks. But for them the enforcement provision has not come. So, this is an oversight only. So, that clarification needs to come in this amendment itself.

Two additional suggestions which we have, which are not there in the Amendment Bill, one is the biggest problem which both banks and ARCs are facing, which is of the debt aggregation because loans are given by consortium of banks and banks sell as per their own policy and as per their own requirement. So, unless an ARC is able to acquire

75 per cent or 80 per cent, it is also not able to find a solution. So, the suggestion is wherever the ARC has acquired 60 per cent of the secured debt from the banks, then the balance 40 per cent should be offered to that ARC and thereafter, they can sell it to anybody else. So, that is one suggestion. Second suggestion is about the fund raising capability of the ARCs. Today, ARCs suffer from the capital point of view. Now, under the amending Bill, it has been allowed that sponsor of the ARC can bring 100 per cent capital. But that capital alone cannot solve the problem because he would need to raise funds from the stock market, etc. So, those avenues also need to be opened if the entire NPA problem needs to be solved. So, these are the two additional suggestions.

SHRI P.P. CHAUDHARY: I think you have used the expression 'extra judicial' on the basis of the judgement given by the Supreme Court. I think it should be *'quasi judicial'*.

SHRI SUMAN JYOTI KHAITAN: Thank you. Being an advocate and officer of court, we never meant 'extra judicial' in that sense. It was just a lose term.

It is a good thing. Today as far as recovery is concerned, first we have the normal civil courts. We also have the summary suits. People somehow have not realized the value of the summary suit. I was in Calcutta Court. We used to file summary suits. Then, we have the Companies Act for winding up, then we have the BIFR, then we have the Debt Recovery, then we have the Securitisation Act, now you have the Insolvency Code plus amendment of the Companies Act. In old British Presidency towns, we have the Presidency Insolvency Act; in provincial towns we have the Provincial Insolvency Act, then we have the Moneylenders Act which applies to individuals. So, I just brought it to your attention whether you would feel to have everything is consolidated in one single Code so that everything becomes clear. Otherwise, some times you go to DRT. Now, Company Law Board you have changed it to Company Law Tribunal. Then, you have Appellate Tribunal.

I am aware. We also aware ours is a federal structure. There are a lot of State subjects also.

SHRI P.P. CHAUDHARY: After the coming into force of the Constitution in 1950, now the subject of insolvency is in the Union List.

SHRI SUMAN JYOTI KHAITAN: That is a matter which the Supreme Court will ultimately decide. You are quite aware that a lot of these

legislations end up in courts. You know the number of judgements in every statute. I have just brought it to your attention. I am not going to enlarge upon it.

Number one, it is a very good move. As you are aware, equitable mortgage is recognized under the Transfer of Property Act, which does not required to be registered. But in a way you have said that unless you register it with me I will not recognize you for the purpose of this. Now, this is covered under section 23 and clause 26 (b). If you will kindly see Section 23, if you think it is wide enough to include equitable mortgage, then my point is covered. Otherwise, I would say that equitable mortgage should also be expressly mentioned so that unless you also file it, you should not be able to enforce it. That is my point number one.

Now, the point on NBFC my friends have mentioned it. Points three and four are more a question of administration that even in existing cases, you have to do it in 180 days. We are not able to do it, it is running into several years. So, whether you will have a review mechanism. Therefore, my suggestion is which follows in my 2 (5) which is that everything should become electronic. We have proposed in clause 30. But I would say, like the Companies Act, like the LLP Act put everything electronic and you should have a red flag. If you do not dispose of within 180 days or whatever the time limit you think fit to impose, there should be a red flag and a monitoring. Otherwise, even in DRT, 180 days has not been followed. So, that is the reason I gave the introduction that we have many statutes. I can only go to court and pray. But the orders are given by the courts. I am on the point of infrastructure and the administration which is not part of the clause. It is not part of the clause. Even if you put it in the clause, even if you put a time limit, it is not being adhered to.

So, my simple observation as a layman or a lawyer with some experience is that how do you ensure that the intent of the Act is actually administered. That is all. That is the point. Nothing more.

SHRI P.P. CHAUDHARY: You are saying that ARC is required to be registered. It is a company. Do you think that it is not a registered company under the Companies Act, 2013?

SHRI SUMAN JYOTI KHAITAN: It is a minor clarificatory issue. The drafting says, 'a company incorporated under the Companies Act, 2013'. So, there are two ways to address it from a drafting perspective. Either we say a company within the meaning of the Companies Act, 2013 because ARCs are under 1956 Act. So, under 1956 Act those ARCs will carry over under 2013 Act.

SHRI P.P. CHAUDHARY: It is there. If you want more clarification, we will see it. But ARC is a company registered under the Companies Act 2013. 1956 Act is not applicable now.

SHRI SUMAN JYOTI KHAITAN: So, the way to address it, 'either say companies' because the ARCs were registered under the 1956 Act, either we say ARCs means companies registered under the 1956 Act or 2013 Act.

SHRI P.P. CHAUDHARY: After the coming into force of 2013 Act they automatically were repealed and all companies which were earlier registered under the 1956 Act shall deem to be registered under the new Act.

SHRI SHIVKUMAR UDASI: My issue is about the ECBs. Cross border insolvency has not been incorporated in the Code. I think it will be the next stage. That is my understanding.

SHRI RAJU DODTI: The intention of including the ECB lenders within the definition of financial institution is basically to ensure that the enforcement of security amongst all the banks happen to be on a coordinated basis. Today, we have all infrastructure projects as well as the large corporate funding that happen through consortium of banks which include both domestic private sector banks, public sector banks as well as foreign banks. So, that was the main intention behind that.

SHRI JAGDAMBIKA PAL: You have suggested deletions of some provisions. Why these provisions should be deleted?

SHRI PIYUSH MISHRA: Essentially the reason why we have said these provisions should be deleted is because in our view effectively we are drawing a distinction between, listed bonds you could have potentially FPIs as part of it. So, legally we can take either of the course. Either we say banks, financial institutions only are entitled to securitization remedy or NBFC because these are all regulated by the RBI in India or we can take a view that we should completely liberalise it, the view the CII has taken in this case that we should add an alternative investment fund, we should add an ECB holders because right now the way the provisions are working it is in effect a scenario where, for example ECB lenders like the USEXIM which is obviously a very regulated entity does not have the benefit of Securitisation Act remedy, but FPIs which could be comparatively very unregulated entities have the benefit of Securitisation Act remedy. So, right now it hangs in the middle in that sense. Our view is it should go back to the position where we have banks, financial institutions, and NBFCs as the

main secured creditors entitled to Securitisation Act remedy. The CII's view is that it should be a broader set where we add in alternative investment funds, ECBs, etc. But either of the two.

SHRI JAGDAMBIKA PAL: You have suggested a written notice of 90 days.

SHRI PIYUSH MISHRA: What we meant by that was to have a uniformity. If our original suggestion of not having bond holders as secured creditors was not to be accepted by the hon. Committee, our suggestion was to bring all creditors on par. Because Securitisation Act was in the context of the NPA, the current provisions relating to NPAs have been reflected even in the amendments who are banks and financial institutions. But when adding in bond holders that context is missing and it says 90 days notice because presumably it is going by the RBI NPA requirement of 90 days. But RBI can stipulate different days, plus in the 2004 amendment Act, recently upheld by the Supreme Court, now NPA norms are per regulator. There are many regulators that govern NPA requirements. So, for financial institutions like the PFC the period is about six months for declaring the NPA. So, we end up in a scenario where the same borrower has committed default. The bond holders will get the right to enforce their security before a PFC or an REC. I am not sure if that is the position we want to end up with. Many a times in actual enforcement, we see a scenario where bond holders and Indian lenders have been taking different stand points in a lot of restructuring that often happens. Now, if we add them into the list we do end up in a scenario where they will have enforcement rights which the Indian lenders just do not have. As of now, the moment you add bond holders to the list, the bond holders go to DRT under the Securitisation Act within 90 days of default. But a PFC lending for the same entity where again a default is taking place will not be able to go to DRT under the Securitisation Act and say, 'Okay, I can do nothing about it.' They will have to wait out for three more months because they have a requirement that for enforcement under Section 13 that it should be declared as the NPA by these financial institutions. So, we are saying either we take bond holders, put NPA provisioning for all because NBFCs would again have similar requirements or we go the other way and say, okay if you are going to add in bond holders, still let us put a uniform period of 90 days. Let us just take away the context of NPA. There is no requirement of NPA. There is no need to make those provisions. Right now, there is that discrepancy between the two sets of NPA.

SHRI B. MAHTAB: Nothing much to ask. Has at any point of time the Government consulted you relating to these amendments that has been put forth before us? Was there any consultation informally also

with the industry bodies suggesting or asking your suggestions which can be incorporated? From your side, seeing how DRT has been functioning, how SARFAESI Act has been functioning, has at any point of time you had drawn the attention of the Government to bring in certain amendments because our Committee called you, you are ventilating your views that you need definition of financial assistance, definition of other things, did you at your level approach the Government? If you have done that can you share with us? We could have asked this to the Government? But you are asking you because taking advantage of your presence today just to understand how the process the Government and the industry bodies actually do in framing our position? On various other things also, you have been interacting with the Government or Government has been interacting with you. Two or three days, we had come across all these three bodies relating to the Companies amendment. That is the reason why rather provoked to ask this question to understand how often do you interact with the Government when the law is in the making.

SHRI BHARGESH OJHA: The suggestions we have made not necessarily in the form because here is a statute which we are seeking to amend and give definitions but we can certainly share our earlier interactions which we had shared with IBA and RBI as to what was the difficulties or areas that could be looked and improved upon. We can send them. The hon. Chairperson has said that we should confine it to the amendment, we had in our presentation made certain suggestions, we can send our suggestions to the Committee.

SHRI B. MAHTAB: Unless and until the Government comes out with the amendment, then only we come with certain suggestions for further amendment and further clarification or the initiation is done by the affected parties and then the Government takes up those issues. Or it is ventilated in the House, then only it is taken up by the Government. I just want to understand how the system functions because it is such a maze it is difficult to understand who initiates it and when wisdom dawns on us.

SHRI HARISH CHANDER: We have been interacting with the Government on the functioning of the DRTS and two legislations, that the Debt Recovery Act and the SARFAESI Act. We have made several suggestions and there have been ongoing discussions, consultative process is there. Mr. Omar ji, from Government side has been interacting with the Association. These amendments which have come up before the Committee....

HON. CHAIRPERSON: What Mehtab ji is saying has a point. आपका भी जो रिटिन स्टेटमेंट आया है, उसमें दो कॉलम हैं। एक है लीगल टीम के व्यू और दूसरा है बिजनेस टीम के व्यू। कोइंसीडेंस है कि जो आपका बिजनेस एडवायजरी व्यू है, वह बिलकुल ब्लैंक है। मतलब उसमें एक भी सजैशन नहीं है। So what is the suggestion? आप खुद ही अपना रिटिन देखिए, it's a complete blank. What we have received from the ASSOCHAM. आप लोगों ने प्रिपरेशन की है, उस बारे में हमारा कहना है कि जो महताब साहब कह रहे हैं कि अल्टीमेटली जो हमारी पॉलिसी बनती है, जो हमारे एक्ट बनते हैं, वे कोर्ट में केवल केस लड़ने के लिए नहीं हैं। We are going towards a litigant society; हम चाहते हैं- लिटीगेशन फ्री सोसायटी। इसलिए जो पॉलिसी इनीसिएशन है, वे जो एसोसिएशन्स हैं, उनके जो अपने इनपुट हैं, सिस्टम को फेस करते हुए, उनकी जो व्यावहारिक दिक्कतें हैं, नेशनल गोल को एचीव करने के लिए जो लक्ष्य हैं, उसे व्यापक रूप से लेकर एसोसिएशन्स को इनीशिएसन लेने के लिए किसी स्तर पर सरकार के साथ बातचीत है क्या, किसी स्तर पर ऐसा इनीशिएशन है क्या या इस बिल में भी हम इनपुट दे रहे हैं, तो हम ज्यादा लीगल केस कितनी अच्छी तरह से लड़ा जाएगा, हम उसके इनपुट दे रहे हैं। हम सुबह से पॉलिसी मेकर्स के, एसोसिएशन्स के विचार सुन रहे हैं। एसोसिएशन्स से हमारी एक्सपैक्टेशन्स दूसरी हैं। इनहैरेंट तरीके से वे सिस्टम में क्या डिफॉल्ट पकड़ते हैं, उसे इजी कैसे बनाते हैं, उसके फ्यूचरिस्टिक एप्रोच क्या होने चाहिए, पॉलिसी एप्रोच क्या होनी चाहिए, उसी के लिए कमेटी बैठकर इतनी एक्सरसाइज कर रही है। इस कमेटी ने पहले बैंकरप्सी और इनसॉल्वेंसी की भी एक्सरसाइज की थी। उस समय आपके यहां से दूसरे लॉयर्स आए थे। इसलिए उसकी आउटलाइन क्या है, एक बार उसे भी आपको स्टडी करनी चाहिए, क्योंकि हम कई कमेटीज में ऐसा देख रहे हैं।

महताब साहब, आपकी भावना यही थी?

श्री भर्तृहरि महताब: आपने अच्छी तरह समझा दिया है।

SHRI P.P. CHAUDHARY: You have suggested, no doubt, this is very important but I just want to know the implication and consequence of those suggestions. You have suggested that non-banking financial companies and alternative investment funds incorporated under the SEBI recognised lenders, off shore branches, and subsidiaries of Indian banks, all lenders, creditors and borrowers. So, they should be included under the definition of institutions. You have suggested it, it is okay. But have you realised the impact of it. Once we include in the definition, the other parts of the Bill, have you studied it? What is the implication, what is the consequential effect of it once we include it? What is the recourse? Are remedies available in the civil court? Then, you want to include it. Too much burden will be there on the DRT. If the very purpose of enacting this Bill is frustrated, I don't think any implication has been studied by you. Just you have suggested it for incorporation in the definition of the financial institutions but the implication and effect has not been mentioned in it.

SHRI RAJU DODTI: As regards non-banking finance companies are concerned, they are certainly in the mainstream of the lending community and at the same pedestal as the banks are. Might as well we would have considered non-banking finance companies as loosely regulated in the past. But if you have seen in the last two to three years of regulations which have been regulated by RBI, they are almost at the same level as banks and non-banking finance companies especially the ones who are defined as systematically important where the net worth happens to be beyond the threshold of Rs.100 or Rs.500 crore where the regulations and the prudential norms and the exposure norms are almost similar to that of banks.

Secondly, non-banking finance companies It happen to be from a non-banking finance company, therefore, I might be seen as conflicted but I am giving a very honest view. They are actually borrowing from banks and financial institutions and therefore, actually accessing public funds in order to on lend. What happens is, they also participate in multiple and consortium banking arrangements and lend to borrowers. On the one hand, we have banks and financial institutions who were proceeding under the SARFAESI in respect of the same security package which is actually given on a *pari pasu* basis, to also non banking finance companies. NBFCs do not have the access to the SARFAESI therefore they either go to civil court or they invoke the arbitration. In the process 180 days which has been seen as the holistic approach in order to enforce the security, never happens because there are different sets of lenders, there is a dichotomy, they are approaching different forums.

That is the reason why four to five years delay happens.

Taking a very strong view from what you have been suggesting, I think, we may have a differentiation of non-banking finance companies. Instead of including all NBFCs, we can probably provide for a threshold, where the non-banking finance companies exposure or the loan assets happen to be beyond a particular limit, they can, at least, be brought at the same level as that of banks.

As far as the Alternative Investment Funds (AIFs) are concerned, if you see the foreign inflow, the inflow coming in the form of equity has been waning. What has been happening is that the money is coming in the form of debt now. So, SEBI has provided for debt fund. So, AIFs in the form of debt fund can be got.

HON. CHAIRPERSON: Please send us a detailed note in this regard within five days to the Committee.

SHRI RAJU DODTI: Sure, Sir.

SHRI P.P. CHAUDHAY: We would request you one thing more. On account of inclusion in the definition, what are the consequential effects with respect to the various provisions of the Bill? Send us this information also so that we may consider them.

SHRI RAJU DODTI: Sure, Sir.

SHRI P.P. CHAUDHARY: If we include it in the definition and we do not know the effect of that inclusion on various provisions of the Bill, it would be very difficult.

HON. CHAIRPERSON: So, please send us a detailed note within five days from today, to the Committee.

SHRI RAJU DODTI: Yes, Sir.

SHRI SUMAN JYOTI KHAITAN: Sir, since you raised a vital point, that is how I started. What is happening now is that there is no formal system. When we practice in court, we notice a lot of procedural defects. There is no formal system by which you can raise your grievance. It is registered and then it is addressed.

Big persons would individually go and lobby and small people would not be heard.

HON. CHAIRPERSON: You have already come before this Committee, I hope.

SHRI SUMAN JYOTI KHAITAN: Yes, Sir.

Now, the point is that we have so many law, but there is no administration of them. Sir, you heard the Chief Justice of India that we need 10 times more Judges, more competent Judges.

Sir, I fully agree with your point that this is going to lead into more and more cases, may be 10s of thousands of cases more; and there is no infrastructure to handle it.

SHRI P.P. CHAUDHARY: There would be lakhs of cases because 70,000 cases are already pending.

SHRI SUMAN JYOTI KHAITAN: May be.

SHRI BHARTRUHARI MAHTAB: English is a very funny language. What you have said just now, means, after enactment of this Bill, more cases will be there. Is it so?

SHRI SUMAN JYOTI KHAITAN: Definitely.

SHRI BHARTRUHARI MAHTAB: So, it is a bonanza for Mr. P.P. Chaudhary!

SHRI SUMAN JYOTI KHAITAN: No major economy in the world suffers from so less number of Judges as India has.

SHRI ANAND SHARMA: That is a much larger question.

SHRI SUMAN JYOTI KHAITAN: Yes, Sir.

माननीय सभापतिः आपको हमने कहा था कि इस बिल के बारे में एक रिटेन मेमोरेंडम भेजिए, उसके बाद उसके संबंध में यहां बात कीजिए। आपकी तरफ से मेमोरेंडम आया नहीं है। आप बजाय हमारा मार्गदर्शन करने के, कमेटी ने जो काम दिया है, जिसके लिए आप यहां आए हैं, आप एक बहुत बड़े औद्योगिक संगठन का प्रतिनिधित्व करते हैं, उस काम को पांच दिनों में पूरा करें, इसके बारे में अपना मेमोरेंडम समिति को भेजें, यही हमारी आप सभी से अपेक्षा है। धन्यवाद।

(THE COMMITTEE THEN ADJOURNED)

PROCEEDINGS OF THE THIRD SITTING OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016 HELD ON THURSDAY, THE 16TH JUNE, 2016

The Committee sat from 1100 hrs. to 1430 hrs. in Committee Room "074", Parliament Library Building, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

MEMBERS

Lok Sabha

2. Shri P.P. Chaudhary
3. Shri Gopal Chinayya Shetty
4. Shri Subhash Baheria
5. Shri Shivkumar C. Udasi
6. Shri Anil Shirole
7. Shri Gajendra Singh Shekhawat
8. Dr. Sanjay Jaiswal
9. Shri Jagdambika Pal
10. Shri Chandrakant Khaire
11. Shri Bhartruhari Mahtab
12. Shri B. Vinod Kumar
13. Shri Jitendra Chaudhury

Rajya Sabha

14. Shri Ajay Sancheti
15. Shri Naresh Gujral
16. Shri Anand Sharma
17. Shri Bhubaneswar Kalita
18. Shri Ravi Prakash Verma

SECRETARIAT

1. Smt. Sudesh Luthra	—	*Joint Secretary*
2. Shri J.V.G. Reddy	—	*Director*
3. Smt. Jagriti Tewatia	—	*Deputy Secretary*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

DEPARTMENT OF FINANCIAL SERVICES

1.	Shri Anandrao Vishnu Patil	—	Joint Secretary
2.	Shri Madhukar R. Umarji	—	Legal Consultant, IBA
3.	Ms. Sadhana Varma	—	GM, RBI, DBR, Central Office Mumbai

MINISTRY OF LAW AND JUSTICE

LEGISLATIVE DEPARTMENT

1.	Dr. Mukulita Vijayawargiya	—	Additional Secretary
2.	Dr. Sanjeev Kumar Srivastava	—	Assistant Legislative Counsel

Punjab National Bank

1.	Shri J.K. Gupta	—	GM
2.	Shri V.K. Goyal	—	DGM

Andhra Bank

1.	Shri T. Venkaiah	—	GM (Legal)
2.	Shri B. Rajendra Prasad	—	DGM

UCO Bank

1.	Shri D.P. Panda	—	GC (Law & Recovery)

Syndicate Bank

1.	Shri Arun Shrivastava	—	MD & CEO
2.	Shri Vinayak M. Bhat	—	GM, NPA Management and Legal Department

Indian Overseas Bank

1.	Shri A.V. Pathmaragam	—	GM, Delhi Zone
2.	Shri S.K. Pradhan	—	Asst. General Manager, Delhi Zone

Industrial Finance Corporation of India (IFCI)

1.	Shri Malay Mukherjee	—	CEO & MD
2.	Shri V.S.V. Rao	—	Chief General Manager

Small Industrial Development Bank of India (SIDBI)

1.	Shri Shailendra Mahalwar	—	Chief General Manager/ CH (Legal/Board)
2.	Shri Mukesh Chand	—	General Manager (Legal)

Assets Care & Reconstruction Enterprises Ltd. (ACRE)

1. Shri R.P. Singh — MD & CEO
2. Mohd. Shariq Malik — Vice President

Alchemist Asset Reconstruction Company Ltd.

1. Shri Alok Dhir — Director
2. Shri S.V. Venkatakrishnan — CFO & COO

Pridhvi Asset Reconstruction and Securitisation Company Ltd. (PARAS)

1. Shri D. Nanha Ram — Chief Executive Officer
2. Shri K. Balakoteswara Rao — Vice President

UV Asset Reconstruction Company Ltd.

1. Shri Ashwani Kumar Chadha — Chief Executive Officer
2. Ms. Gurpreet Kaur — Associate Vice President and Company Secretary

Meliora Asset Reconstruction Company Ltd. (MARC)

1. Shri A. Sisir Kumar
2. Shri K. Ravi Kumar

DRT Bar Association, Delhi

1. Shri Vivek Kumar Singh — Advocate, President DRT Bar Association
2. Shri Ashish Kumar Sharma — Advocate

DRT Bar Association, Chandigarh

1. Shri Amit Rishi, Advocate — President

DRT Bar Association, Jaipur

1. Shri Roshan Sethi — President
2. Shri Kirti Kapoor — General Secretary

JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELANEOUS PROVISIONS

Verbatim Proceedings

Date : 16th June, 2016

Time : 1100 hours

Venue : Committee Room No. '074', Parliament Library Building, New Delhi

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Bhartruhari Mahtab — Member

WITNESSES EXAMINED

1. Dr. Ram S. Sangapure
   ED, Punjab National Bank
2. Shri T. Venkaiah
   GM Legal, Andhra Bank
3. Shri D.P. Panda
   GM, (Law and Recovery), UCO Bank
4. Shri Arun Shrivastava
   MD and CEO, Syndicate Bank

HON. CHAIRPERSON: I welcome the representatives of Punjab National Bank, Andhra Bank, UCO Bank, Syndicate Bank, Indian Overseas Bank, SIDBI and IFCI, I welcome you all to the sitting of the Joint Committee. As you are aware the Joint Committee is examining the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016. The Bill seems to amend some of the provisions under four Acts, that is, SAFRAESI Act, 2002, RDDB and Financial Institution Act, 1993, the Indian Stanps Act, 1899 and the Depositories Act, 1996 with the aim to improve ease of doing business and facilitate investment leading to higher economic growth and development.

As per the Statement of Objects and Reasons of the amending Bill, it aims to improve ease of doing business and facilitate investment leading to higher economic growth and development. In this context, the Committee would like to understand from you the scenario of NPAs, the recovery position, efficacy of SAFRAESI and DRT mechanisms as well as your views with regard to suggested amendments made in the Bill particularly how far the proposed provisions would help in recovery of loans. You may be free and frank while enumerating the difficulties faced in dealing with the stressed assets and loan recovery.

The memoranda containing the written comments/suggestions as received in the Secretariat have already been circulated to the Members of the Committee.

I would like to draw your attention to the Directions by the Speaker whereby the memoranda submitted to the Committee as well as the deliberations held at the sitting of the would form part of the proceedings of the Committee and are treated as 'Confidential' and not circulated to anyone or made public in any other media till the report is presented to the House.

I request representatives of these organisations to present their views before the Committee one by one but before that two of our Members briefly point out the main points of consideration to the Committee. Your written submission is already there. So, in short you may highlight the policy point, difficulties or practical points that may be helpful for making a policy.

I would request you kindly to introduce yourself and your colleagues to the Committee. Then I would request our two Members to make their points and then you will make your submission.

(INTRODUCTION OF WITNESSES)

SHRI P.P. CHAUDHARY: Thank you very much for affording me an opportunity. Sir, earlier we had enacted the Bankruptcy and Insolvency Code, 2016 wherein 13 Acts were taken into consideration and an answer under one roof was provided. You all have given valuable inputs on the basis of which the Committee was in a position to give its recommendations. I thank the Chairman for arriving at the unanimity and all the recommendations given by the Committee were accepted by the Government as a result 2016 Code was enacted.

Now, with respect to the Enforcement of Security Interest and Recovery of Debts some consequential amendments in view of the Bankruptcy and Insolvency Code are required. With that view this Committee has been constituted. This amendment is required in conformity with the Code 2016. Whatever suggestions or inputs you will give you should keep in mine that this Act should be in conformity with that. It should not be contradictory to the Code. In case of any contradiction there will be problems. We have to visualise that suggestions should be such which can withstand the judicial scrutiny. Basically the purpose is to augment ease of doing business. For that purpose integration of the systems under different laws and expeditious adjudication before the court are required. Keeping in view all these facts we need your valuable suggestions, inputs. You may be asked to suggest whether the amendment which we are introducing is or is not in consonance with the Code of 2016; whether some deletion or addition is required. So, I would request you to kindly feel free to give your valuable suggestions.

SHRI BHUBANESWAR KALITA: Thank you Mr. Chairman. We are working on a legislation which is important to solve some of the main economic problems of this country. This Act, after enactment, has been amended thrice but even after that when we go to the people and interact with the banks and other authorities we come across some general problems.

Now while interacting with some of the stakeholders we find that although DRTs and DRITs are formed and the SARFAESI Act is in operation, but in implementation of the directions of the DRTs, there are some discrepancies. This is my general observation which I find. The auctions conducted by DRTs are being stayed due to the claims made by third parties, the Government Departments which is hindering the recovery action.

There is delay in handling the possession of a property even after the sale is done by the DRT and due to this the bidders are hesitant to participate in the auction conducted by DRTs.

Then the DRTs are adjourning cases and giving long dates which is a hindrance for the banks and other stakeholders. This is delaying the disposal of cases. There is considerable delay in DRT in passing final orders and issuance of recovery certificates causing delay in recovery of dues. Once the stay is given by the DRT, the case is continuing indefinitely without disposal due to which the bank is unable to recover the dues. The present legislation which has been enacted, the Bankruptcy Law gives additional powers to DRTs to adjudicate the insolvency of the individual borrowers. I think the same will further increase the burden of the DRTs.

Now going to the particular sections of the Act, I want to raise a very few points. Section 21 of the RDDBFI Act says that an appellant who prefers an appeal before DRIT against the orders of DRT has to deposit 75 per cent of the debt so due as determined by the DRT. We have to look into this. It is also stipulated in the aforesaid provision that the DRIT may reduce or waive such a deposit on case to case basis. This is giving scope for vexatious appeals before DRIT. Section 21 of the RDDBFI Act may be suitable amended restricting the power of the DRIT to reduce the deposit amount by a maximum of 25 per cent. This was the suggestion made in our interaction with some of the stakeholders.

The DRTs are over-burdened and there is a need to increase DRTs. The Government has recently increased five DRTs and I think that will solve some of the problems.

Section 17(v) of the SARFAESI Act should be strictly followed so that the applications filed under section 17 should be disposed of by the DRT within the stipulated period of 60 days which is there in the Act. While preparing our report, we should look into this also so that the Act gets more teeth. Rule 94 wherein confirmation of sale by secured creditor is required maximum time of seven days may be prescribed for confirmation of bid. If the confirmation is not given within seven days, it shall be presumed that the sale is confirmed.

These are some of the suggestions which we got during our interaction with the stakeholders. Then section 13 read with rule 4 may be amended to minimise the condition of possession notice for reduction of cost format under appendix 4 as rule 8(1) may be changed.

Then amendment under section 13(4) may be made to include e-auctions also under sale. I think this is under consideration in the present Act. These are some of my observations. While going through clause by clause amendment, we will consider all these points.

I am happy that all the banks are present but I am very unhappy that some of the heads of the banks like Chairman and CEOs are absent. I think in further discussion, I think they should make it a point that the heads of the banks are present in such meetings because this is a very important meeting. This is a very important legislation which is going to be amended.

HON. CHAIRPERSON: Earlier, there were two sessions – one for the banks and one for the financial institutions.

Now we will start with Punjab National Bank.

SHRI JAGDAMBIKA PAL: Sir, it is not a general meeting. The CMDs and CEOs must be present here. This is a mini-parliament and if you have invited CMDs and CEOs, they should be present here or they should take a prior permission from you.

HON. CHAIRPERSON: They have taken prior permission from me but I have not informed you. They have already sent an application to me. I have given them permission but definitely the concern raised by the Members is genuine. This is meeting for the basic amendment for the need of the financial institutions and if you are absent in this meeting, it is not acceptable. At least, banks should take care of that. They are facing so many NPAs. We need positive contribution from heads of the banks. On the day I received the letter, I gave permission. But I think you would convey this concern to your other colleagues also. I acknowledge the concern of the Members.

DR. RAM S. SANGAPURE: Good morning Mr. Chairman and all the other hon. Members of the Committee. I would like to highlight only one or two points in this meeting. In the Act, the possession is not exclusively defined. Most of the times, the banks go for a symbolic possession. There are two types of possessions. One is a symbolic possession of property and another is a physical possession of the property.

SHRI JAGDAMBIKA PAL: Sir, when the Chairman of the Syndicate Bank is here, I think he should get first opportunity to start.

HON. CHAIRPERSON: He has already started, Jagdambikaji. Yes, you may continue.

DR. RAM S. SANGAPURE: Sir, I am sorry. I am the Executive Director of the Punjab National Bank and my MD is attending a meeting in Mumbai.

SHRI JAGDAMBIKA PAL: This is not a justification that she is attending a meeting in Mumbai. Are you justifying her absence?

DR. RAM S. SANGAPURE: Sir, I am not justifying. I am just introducing myself.

SHRI BHARTRUHARI MAHTAB: I have a request to make. The meeting is conducted by the Chairman of the Joint Parliamentary Committee. Once he has allowed them to participate in the meeting and once we have already ventilated our concern, I think, that should be the end of it. Let the Chairman and the Secretariat take it up.

In Punjab National Bank, you are not the only ED.

DR. RAM S. SANGAPURE: Yes, there are two EDs.

SHRI BHARTRUHARI MAHTAB: Already that concern has been made. You convey it.

DR. RAM S. SANGAPURE: Sure Sir.

The major point that I wanted to highlight in this meeting was that there are two kinds of possession which are allowed under the SARFAESI Act. One is the symbolic possession of the property and the other is the physical possession of the party. When we go for an auction, the Calcutta High Court gave a verdict saying that if it is a symbolic possession of the property, banks cannot go for auction of that property. I would request the Committee in the amendment if you can specify possession of the property means symbolic possession of the property that would help the banks to carry out their duties more efficiently instead of getting themselves involved in to litigations. That is my request. According to hon. High Court, Calcutta if it is only under physical possession then only we can go for auction.

SHRI BHARTRUHARI MAHTAB: In which clause you are mentioning that this should be defined?

DR. RAM S. SANGAPURE: I will give it to you. So, this is the first suggestion.

SHRI P.P. CHAUDHARY: Insofar as definition of possession is concerned, it is nowhere there in the SARFAESI Act. You want definition should be given.

DR. RAM S. SANGAPURE: Absolutely.

SHRI P.P. CHAUDHARY: So that while sitting in the office, you can, on paper take the possession of the property and go for auction.

DR. RAM S. SANGAPURE: Symbolic possession does not mean that we have not gone. In symbolic possession we actually paste the notice on the property and if we take the possession for the banks, actually there are some incurring expenses on that.

SHRI P.P. CHAUDHARY: But if it is not a physical possession then you cannot draw a line where you will end it. Large chunks of land is being acquired. While sitting at one place you can say that I have taken the possession of the land. But the question is, if you do not take the physical possession, then numerous complications will arise while auctioning the land. How will you handover the possession to that person?

DR. RAM S. SANGAPURE: In some cases, when we go for auction, even if we do not take the physical possession, the party is willing to hand over the possession also peacefully.

SHRI P.P. CHAUDHARY: Recently, in the Land Acquisition, instead of the word possession, they have used the word physical. Now, the physical possession is very important. Realising after so many decisions by the courts, if physical possession is not there numerous complications can arise.

DR. RAM S. SANGAPURE: While taking the physical possession, banking industry has certain concerns. One is, for taking physical possession we have to approach the District Magistrate. There are numerous cases pending in the District Magistrate's office. We have already applied but they are not able to take a decision quickly because of a very long list of possessions that they have to decide. This is the first reason.

HON. CHAIRPERSON: We have got your memorandum. It is very casual. Only three lines are there. First is physical possession. Secondly you say if there is any typographical error, 1956 Act is mentioned. Third you are talking about insolvency Act. Nothing is there. There is no hard work. You are coming before the Joint Parliamentary Committee. That is why rightly Shri Mahtab raised the question whether it is mentioned in the Act, whether you want to new insertion. This type of memorandum you are giving to the Committee.

DR. RAM S. SANGAPURE: Most of the points which you have discussed and sent a draft to us, we agree with that. Only two or three points we wanted to mention.

HON. CHAIRPERSON: You take the memoranda of other banks also and you go through it and see what is your preparation. Please do not come without preparation. We will not allow this casualness.

SHRI JAGDAMBIKA PAL: Shri Mahtab asked you where we have to incorporate it, in which clause.

DR. RAM S. SANGAPURE: I said Sir. I clarified that in the definition portion it is to be defined. Hon. Member also understood and he said we have to change it in the definition.

SHRI P.P. CHAUDHARY: We will define it.

HON. CHAIRPERSON: We are not satisfied with your memorandum.

DR. RAM S. SANGAPURE: Next time we will take care of it.

HON. CHAIRPERSON: Not next time. We are coming to Mumbai on 29th and 30th. Ask your Chairman to appear before the Committee with full preparations.

SHRI P.P. CHAUDHARY: we are working to strengthen the financial institutions. You are the first stakeholder. Your inputs are very valuable. The response that came from the Indian Overseas Bank and your bank is very casual.

HON. CHAIRPERSON: Send a fresh memorandum. This is not satisfactory to the Committee at all.

SHRI AJAY SANCHETI: I have no hesitation is saying that NPA is the one reason why all the MDs and the CEOs have not attended this meeting because they have to answer why NPAs are there.

HON. CHAIRPERSON: Let the Punjab National Bank make a fresh memorandum.

SHRI ARUN SHRIVASTAVA: Thank you Chairman and the hon. Members. In the Memorandum that we have submitted the section in the amendment Bill, Sections 12, 15, 17 and 21 are more enabling for the bankers in case of recovery under the SARFAESI Act. My small submission under Section 14 which says about the modifying the earlier section 17 (1) (b), that SARFAESI Act to deal with tenancy issues raised by any person, in one of the judgements of the court of Vishal vs. Bank of India it has been held that the dispute to tenancy is to be dealt as per the Rent Control Act prevailing in the respective States. This is one of the issues. If it is modified or amended with additional provision that

amendment may be made in the transfer of Property Act, under Section 65 (a) giving priority to any mortgage created over the subsequent lease. This is our small submission because this Tenancy Act differs from State to State. As far as other provisions are concerned, we are very happy that they are more enabling to the bankers.

SHRI P.P. CHAUDHARY: We want to understand about the equity.

SHRI ARUN SHRIVASTAVA: I have not mentioned about physical possession.

SHRI JAGDAMBIKA PAL: That is only related with the Punjab National Bank.

SHRI ARUN SHRIVASTAVA: Sir, it is first symbolic and then actual.

SHRI P.P. CHAUDHARY: You have used the word 'physical possession with respect to equity'. So, we want to understand physical possession with respect to equity.

SHRI ARUN SHRIVASTAVA: Which page are you referring, Sir.

SHRI P.P. CHAUDHARY: It is page 58.

SHRI ARUN SHRIVASTAVA: It is an enabling clause. If the secured creditors have converted the debts borrower company into share equity and thus it is equity shareholding in the said company is more than 50 per cent, then the said creditors can approach seeking physical possession even they had converted their debt into equity. Now, there is a clause by the RBI that part of the debt, you can convert as equity within the company as well.

So, if part of the debt is converted into equity, that should stand at par with the debt because it is only a conversion from debt to equity; it is not that the bank has written off that amount.

SHRI P.P. CHAUDHARY: We are not well equipped in financial matters, frankly speaking. This is physical possession of equity.

SHRI ARUN SHRIVASTAVA: No, Sir. It is not physical possession of equity.

SHRI P.P. CHAUDHARY: You read it out.

SHRI ARUN SHRIVASTAVA: It can approach seeking physical possession even after they had converted their debt into equity. So, it is seeking physical possession.

It is like that. Sorry, Sir, I could not get your point well.

Then, Sir, coming to amendments to the Recovery of Debts due to Banks and Financial Institutions Act, 1993, Clause 29 is about amending the Section, provision of the existing Act 3. It is at page No. 53.

Sir, one small submission that we have suggested is that the present amendment puts a restriction on the bank not to attach uncharged asset in case mortgage assets are sufficient to cover the debts. This is the Act.

There may be situations where though the security available is sufficiently in value, which is charged to us but there may be reasons by which the bank is not able to get that charged assets recovered or auction or sale, whatever may be the process, to sell the property. In such cases, the bank will have no option to proceed against the uncharged assets as well.

SHRI BHARTRUHARI MAHTAB: Sub-Section (b) that Amendment says that 'if the estimated value of securities is not sufficient to satisfy the debt claimed, state particulars of any other properties or assets owned by any of the defendants, if any, then this can be applicable'.

Does it not satisfy you?

SHRI ARUN SHRIVASTAVA: Sir, the value may be there but the bank may not be able to exercise and get the security realised because of some other reasons as well.

SHRI SHIVKUMAR UDASI: The other reasons should be 'the Recovery Officers and the Presiding Officers will be lenient while imposing cost on borrowers.' How can that be enacted in the Act?

If there are some other reasons, what are those reasons? You specify them so that the Act can be amended accordingly.

SHRI ARUN SHRIVASTAVA: Sir, by tomorrow, I will send them to the Secretariats.

SHRI SHIVKUMAR UDASI: That should be fine.

SHRI BHARTRUHARI MAHTAB: In this clause, in the Amendment, you have also suggested. In the amendment that has been proposed. It is at page 54, towards the end. It is written as 'pass an interim *ex parte* order restraining the defendant from dealing with or disposing of such assets or/either.'

Are you satisfied with that?

SHRI ARUN SHRIVASTAVA: Yes, Sir.

SHRI BHARTRUHARI MAHTAB: You have mentioned another word 'chronic defaulters' in your explanation? If it is from the medical point of view, we can understand it!

SHRI ARUN SHRIVASTAVA: Sir, I may be pardoned, if it is not suitable.

SHRI BHARTRUHARI MAHTAB: What do you want to express by saying 'chronic defaulters'.

SHRI P.P. CHAUDHARY: It is a medical term.

SHRI SHIVKUMAR UDASI: It is not wilful, but skilful defaulter!

SHRI BHARTRUHARI MAHTAB: But my question is, how do you identify a chronic defaulter, who goes on and on and tries to manoeuvre the system for his manipulation?

SHRI ARUN SHRIVASTAVA: Yes, when we have a system today, it will eliminate these kinds of people because timelines have been put now. The number of adjournments etc. will be in place.

Sir, we have proposed one thing in Section 30 of this Act.

SHRI JAGDAMBIKA PAL: If that is not sufficient to cover the loans, then there is prayer for seeking disclosure of other properties or assets owned by borrowers. At the time when anybody is taking loan from your bank, you should ensure this whatever property he is going to mortgage. Why are you proposing it now that if the value of the property is not sufficient, then he has to disclose his other properties also?

SHRI ARUN SHRIVASTAVA: I agree with you, Sir. If we give a loan for, say, a factory, we mortgage the factory land and building in the plant and machinery in the normal course. It may happen that subsequently the borrower purchases a property which is of some value or at the time when we sanctioned the loan, we would have not taken it as security. There can be situations like that. In that eventuality it will be coming, if we are not able to realise. About factory, if he is likely to sell it, there may be workers, there may be agitations or there can be something that the machinery has gone down its value and it is not worthwhile to sell, in that case, this uncharged assets can be taken. This is our submission.

It happens in most of the times that we would not have taken all the properties into our security at the time of sanction of the loan. We have come across cases like that.

SHRI NARESH GUJRAL: I have a question for you. Do you accept that a limited company is a separate entity and a promoter is separate from a limited company, in the sense that if a limited company has borrowed from you, then you cannot go and ask the promoter to disclose his assets also? The moment you do that, it is contravention of the Companies Act also and against natural justice. I say this because there was sheer negligence on the part of the bankers when they were giving loans to the Kingfisher. But now, you are saying that Mr. Malya must disclose his wife's assets, his children' assets and all that. The loan was given to a limited company. I am sure there are so many other cases also where you would be doing this.

Why should you be allowed to cover for your negligence? Either you should have taken personal guarantees and corporate guarantees then you had basis to do so. But where you have failed to do so then where is the logic that the Act should support you?

SHRI ARUN SHRIVASTAVA: Sir, definitely company is a separate legal entity. There is no doubt about it and has to be treated distinguishly from the promoters and the directors because there may be professional directors or promoter directors or independent directors. But only in those cases where those directors have given their personal guarantee as well in that case personal guarantee was taken.

SHRI NARESH GUJRAL: What I am told or what is in the public domain that Mr. Malya gave personal guarantees to the tune of say Rs. 1500 crore. Now, that much the banks have recovered. If that is so, then why did you approach the DRT that he must disclose his other assets and wife's assets and his children's assets. I am sure there are hundred of such other people who are suffering primarily because your people either negligent or the borrowers are skilful people.

SHRI BHUBANESWAR KALITA: I would like to supplement what Mr. Gujral has said. You allow the borrower to value his own assets. Now, the borrower, like in this particular case, has valued his brand Rs. 4000 crore. When it is auction, nobody is prepared to buy the brand. So, to taking the brand as an asset and then make it to be valued by the borrower is not correct. How do you explain this situation?

SHRI ARUN SHRIVASTAVA: Sir, fortunately or unfortunately, we are not lenders to the Kingfisher. I respect your concern, Sir, but my only

submission as regards your question is that at times when the concern was going on, it had a value. There is no doubt about it. As permissible in some of guidelines that which would have been charged by the banks and kept it, how the valuation was done, I am not privy to those documents whether they relied on some independent valuers to value the brand banks accepted the valuation by the borrower declared himself or some kind of survey made by the bankers. But having the airlines failed and not into existence, the brand will not be in existence. Today, Air India is a brand so long the airlines are there. Surf is a brand so long as the Lever continues to make that detergent powder.

SHRI BHUBANESWAR KALITA: But do not you think that the creditors would have assessed the value of the brand?

SHRI ARUN SHRIVASTAVA: It should have been assessed. I cannot cast any kind of judgmental remark whether they assessed it or not.

SHRI GOPAL SHETTY: What is the personal guarantee or my undisclosed assets will also fall into that? How can you define that?

SHRI ARUN SHRIVASTAVA: Sir, undisclosed assets also come. In case, a proprietor or a partner or the director or a company has given a personal guarantee, the proprietor or a partner automatically comes under the personal liability. If the dues from the concern for which the business was established and business was running or the securities are not enough to realise the money then the personal assets of the partners are to be charged. For that the consideration has to be there. That somebody has given a guarantee to that amount of the loan that if it is not paid. Company is a borrower but the director has given a guarantee or a commitment in his personal capacity that if you are not able to realise that money from the company or the assets of the company then I will supplement to you. Once we obtain the personal guarantee, we have a fair assessment of his worth.

SHRI GOPAL SHETTY: If it is noted from day one then why are you asking him again to disclose his assets?

SHRI ARUN SHRIVASTAVA: Sir, in the course of event, if he has acquired and if it comes to know through public domain, so under the law it is asked.

HON. CHAIRPERSON: In the initial remark, you are talking about the Supreme Court Judgment.

SHRI ARUN SHRIVASTAVA: Sir, I will send it in writing in two days time.

HON. CHAIRPERSON: Okay.

SHRI D.P. PANDA: Good morning hon. Members. We welcome most of the amendments.

SHRI JAGDAMBIKA PAL: What steps have you taken to reduce your NPA, at least, by two or three per cent?

SHRI D.P. PANDA: Our NPA is very high because of slippage of this year particularly in the sector of steel, iron and infrastructure. We have already taken steps. Invariably, wherever we are filling DRT suit, we are making an application for the attachment of personal assets of the borrower and guarantor, impounding of their passport after disclosure of their assets.

SHRI JAGDAMBIKA PAL: Do you not have any interest in the revival of those who have taken your loan? Or are you only interested to attach their property?

SHRI D.P. PANDA: No.

SHRI JAGDAMBIKA PAL: There are so many cases where the company's performance is up to the mark.

HON. CHAIRPERSON: Jagdambikaji, let everyone to speak then I will give you ample time to ask.

Mr. Panda, would you like to say anything?

SHRI D.P. PANDA: Sir, as per the Act, Section 31, any security interest created in agricultural land is not within the purview of this Act. Banks cannot proceed against the agricultural property taken as a security. But the question is this. What is agricultural land, that is not defined in the Act. So it creates confusion while proceeding under SARFAESI Act. Different High Courts are giving different verdicts. So, we propose that agricultural land should be defined.

SHRI BHARTRUHARI MAHTAB: Different High Courts are giving different verdicts. Such as? For example?

SHRI D.P. PANDA: For example, Sir, recently Andhra Pradesh High Court has given even if it is recorded as agricultural land in a revenue record, if it is not used for agriculture, then it cannot be treated as an agricultural land.

HON. CHAIRPERSON: But, Mr. Panda, what you are saying, is that mentioned in your written memorandum?

SHRI D.P. PANDA: No, Sir, that we have not mentioned.

HON. CHAIRPERSON: What you have written, you are not talking about it. What you have written, what is your submission, that means you are not ready with your memoranda. What you are talking with us, this is not mentioned in your written memoranda.

SHRI BHARTRUHARI MAHTAB: You mentioned that agricultural land should be treated as financial asset. You treat it as financial asset, but you have to justify it today before the Committee that why it should be? That is why I asked 'for example'. So, these examples could have been also included.

SHRI D.P. PANDA: That I will furnish you, Sir.

SHRI BHARTRUHARI MAHTAB: Chairman, Sir, whatever points the UCO Bank has narrated, this agricultural property on which they have actually wanted certain more definition to be expanded and to be included; otherwise invariably in a cursory glance I could find that invariably they have accepted whatever amendments have been proposed.

HON. CHAIRPERSON: Suggestions must be there in concrete form.

SHRI BHUBANESWAR KALITA: The basic thing is the agricultural land has not been defined in SARFAESI Act. It is one of the main reasons. Then, the agricultural land includes the tea gardens and the rubber plantations. Those are also regarded as agricultural lands. So, agriculture land has to be defined in SARFAESI Act. That is the point.

SHRI SHIVKUMAR UDASI: But that is a State subject. Once again, I will tell you, in Karnataka, the tea gardens and the coffee estates are not agricultural lands. According to the revenue Act there, you can buy an agricultural land if it a coffee plantation or a tea plantation, if it is more than 100 or 1000 acres. But, whereas, for agricultural land, it is stipulated to be only 54 acres. According to the revenue Act of Karnataka, you can only purchase agricultural land to the tune of 54 acres. Once again, it is a State subject. It will be very difficult to define it.

HON. CHAIRPERSON: Is there any other suggestion?

SHRI D.P. PANDA: In clause 12(1), 30 days time has been given to the CMM and DM to take possession of the property and handover to the secured creditor. If it is not done, there is no provision of appeal.

Provision of appeal is not there. So, there must be some provision of appeal if it is not done within 30 days.

HON. CHAIRPERSON: What is your amendment in Section 14 for that?

SHRI MADHUKAR R. UMARJI: Sir, there is a time limit prescribed for the purpose of passing an order taking possession.

SHRI D.P. PANDA: If it is not done within 30 days, preferably an appeal should be there.

SHRI MADHUKAR R. UMARJI: There could be various reasons. The District Magistrate is supposed to give the order for taking possession. Our idea is, it is not a judicial order. He has to record reasons why he has not given possession within 30 days.

HON. CHAIRPERSON: In the new amendment, they are enforcing within 30 days.

SHRI D.P. PANDA: That is all my submission, Sir.

SHRI P.P. CHAUDHARY: In so many pages, you have given your presentation. But the entire crux of the matter is only with respect to assistance granted to non-agriculturists against the security of an agricultural property. You want that that agricultural property to be treated as financial asset. If assistance is given to non-agriculturist against the agricultural property, how do you describe it? Is it not the financial asset? Will it not be included in it? It is because, you are not extending loan to an agriculturist; you are extending it to a non-agriculturist.

SHRI D.P. PANDA: My submission is that Section 31 says any security interest created in agricultural land will not be covered under the Act.

HON. CHAIRPERSON: That is in the Securitisation Act, Section 31(i).

श्री नरेश गुजराल: आजकल कंपनीज बहुत सारी लैण्ड ले लेती हैं, बाद में उसका लैण्ड यूज चेंज करने के लिए अप्लाई करती हैं। So, they escape this way and it is very valuable land. They have a point there.

SHRI D.P. PANDA: Sir, builders also possess huge land. It is recorded as agricultural land in revenue record.

HON. CHAIRPERSON: But you send your specific suggestions as to what is your language.

SHRI D.P. PANDA: Okay, Sir.

SHRI BHARTRUHARI MAHTAB: What do the banks want to do with all agricultural land?

SHRI D.P. PANDA: Sir, actually they are not utilising it exactly for agriculture. If it is utilised for agriculture, we do not have any problem. In Kolkata Municipality, in Mumbai Municipality, so many lands are lying vacant there. It is recorded as agricultural land in revenue record but it is not used for agriculture.

SHRI NARESH GUJRAL: Has it come to the notice of the bankers now? It is because, after all, if that is so, then why do you give loans to agricultural lands?

SHRI P.P. CHAUDHARY: Why agricultural land is to be treated as security?

HON. CHAIRPERSON: Now, Andhra Bank.

SHRI T. VENKAIAH: Sir, we have three small suggestions in this. The first suggestion is that Section 26D of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016: Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of Chapter IVA, no secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter-III unless the security interest created in its favour by the borrower has been duly filed with the Central Registry.

Sir, this Central Registry has come in existence in 2010 and subsequently, first it was prospective and then it was made retrospective also. All the security interest are to be registered with this particular Registry. Another amendment has come that movables are also to be registered with this Registry. So, it is still to be completed. Under those circumstances, we would say that if this clause is incorporated, there will be problem for the secured creditor and we request for change in this particular clause.

Coming to Section 26E of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, here also, notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Sir, here also, our request is this: Notwithstanding anything contained in any other law for the time being in force, after creation of security interest in favour of the creditors, the debts due to any secured creditor shall be paid in priority.

That is the date of mortgage which is important rather than the date of the registration with the secured interest. The third is section 19 of the enforcement of the Security interest. Here, when security certificate is issued by the company registered under the Companies Act, 2013 and such company is under liquidation, the Tribunal may be in order, direct the sale proceeds of the secured assets of such company be distributed in manner as provided in Section 326 of the Companies Act, 2013 or under any law of the time being in force.

The Insolvency and Bankruptcy Act, 2016 has been recently passed. The said provision may be brought into with the Insolvency and Bankruptcy Act.

SHRI P.P. CHAUDHARY: The provision of Insolvency and Bankruptcy Code, 2016 is in consonance with this provision?

SHRI T. VENKAIAH: Actually, here 53(1) distribution of assets, it says that the following debts shall rank equally between and among the following workman dues for the period of 24 months preceding the liquidation of commencement date and debts to a secured creditor in the event, such secured creditor has a relinquished security in manner set out in Section 52.

Where Company Act says in Section 326(1), notwithstanding anything contained in the ASIS, workman and debts due to the secured creditor to the extent of such debts rank under clause, the proviso to sub-section 1 section 324 *pari passu* with such dues. Here is a little change in this because of timelines.

It should be brought in consonance.

SHRI P.P. CHAUDHARY: Basically, there is no need of reference of company.

SHRI T. VENKAIAH: We have made two small suggestions with regard to this Section 14 of SARFAESI Act. Presently, the Chief Metropolitan Magistrate and District Magistrate, we requested to dispose of cases fast.

Section 31 of the SARFAESI Act, in line with the Judgements of courts, the exemption may be extended to agriculture land where agriculture activity is actually carried out.

HON. CHAIRPERSON: Which judgement is this?

SHRI T. VENKAIAH: I will give you Sir.

HON. CHAIRPERSON: When you are coming before the Committee and when you are giving in writing in line of the judgement, you should bring the copy of that judgements.

SHRI T. VENKAIAH: Sir, give me some time, I will procure.

SHRI P.P. CHAUDHARY: You read that judgement carefully. The agriculture land is agriculture land. It may be an activity. It makes no difference. You cannot further classify. No judgement can be of this nature.

SHRI NARESH GUJRAL: If a corporate gets a 50 acres of very valuable land and they want to save their land, all they have to do is to do some plantation there and they get exempt. So, whatever you are suggesting does not make sense at all.

SHRI BHARTRUHARI MAHTAB: Andhra Bank has just now suggested in their solution number three suggesting some changes to be effected INBC. We would like to understand from all of you. Once the Company Law (Amendment) Bill is still under consideration of the Parliament, can we move on to suggest certain amendments in Insolvency and Bankruptcy Code now? We will be discussing amongst ourselves. You can give us more suggestion to make it more applicable in the Company Law because you have mentioned and registered under Company Act. That can be explored.

SHRI P.P. CHAUDHARY: One thing, your suggestion with respect to amendment in Section 14 is very good suggestion. I think you have skipped it. Your suggestion that Chief Metropolitan Magistrate and the word Chief Judicial Magistrate should also be included because in this, only in few places, the Metropolitan Magistrate is there, otherwise, in all other places, the Chief Judicial Magistrate is there. So the proposed amendment is Chief Metropolitan Magistrate or District Magistrate. You are suggesting that the word Chief Judicial Magistrate should also be there. In Metropolitan City, Metropolitan Magistrate is there. Other than Metropolitan city, this Judicial Magistrate is there.

HON. CHAIRPERSON: You come with preparation. Everything must be with record. Every paper and every word is very important. You are working in Bank. You are assisted by legal officers, legal teams and you are here for the purpose to assist for the law making. You come with

preparation. Everything must be with record. Every paper and every word is very important. You are working in Bank. You are assisted by legal officers, legal teams and you are here for the purpose to assist for the law making.

SHRI SHIVKUMAR UDASI: Whether you want this prospective or retrospective?

SHRI A.V. PATHMARAGAM: Sir, our suggestion is with regard to the Section 26C of 2 where security interest or attachment order upon any property in favour of the secured creditor or any other creditor for the purpose of registration under the provisions of Chapter 4 and Chapter 4A, the claim of such creditor or other creditor shall have priority over any subsequent security interest created upon such property or any sale, transfer, lease or license of such property or attachment order, subsequent to such registration shall be subject to such claim. Here, we would like to have a small clarification. There is ambiguity as to whether whose mortgage will be rank first. There are two secured creditor on the same property having mortgage on prior date, say for example 1st April and its registration with the Central Registry, another secured creditor whose mortgage date is on 10th April, and its registration with the registry is 20th April. In the above clarification, who will have the priority, whether the registry or the mortgage? Similarly when we go to 26E also, if an attachment order is passed by the tax authority or any other court on asset which is security for the advance by the bank, how the priority will be decided between the attachment order and the banks security interest, whether it is based on the date of registration with the Central Registry or date of mortgage over the attachment order. We request to have a suitable insertion in this particular thing. By and large, we feel, I would like to use the word blessing, many amendments are definitely helping us.

I come to my eighth and ninth points. Under rule 6(3) and rule 8(8) of the SARFAESI Act, the existing provisions, sale by any method other than public auction or public tender shall be on such terms as may be settled between the parties in writing. A provision clarifying as to who are the parties involved in this may be made. There is an ambiguity whether the word 'parties' means bank and the borrower or bank and the purchaser. Similarly, rule 9(4) of the SARFAESI Act requires clarification. The rule states that the balance purchase price shall be paid by the purchaser or bank on or before the 15th day of confirmation of sale of the property or such extended period as may be agreed upon in writing between the parties. Here also the words 'between the parties' may be substituted by the words, 'bank and the purchaser'.

SHRI P.P. CHAUDHARY: Here the word 'parties' can be with reference to the context. The parties can be creditor and the borrower in the first place in Section 8, and in Section 9, it is between the purchaser and the financial institution. So, we cannot read the expression, 'parties' with respect to context. Or, do you want that some clarification should be there?

SHRI A.V. PATHMARAGAM: If it is clarified in the Act, I think it will be more than sufficient.

SHRI P.P. CHAUDHARY: So far as Section 8 is concerned, if we read, it is between the financial institution and borrower. It is with reference to the context. Then, with reference to Section 9, then the context is, financial institution and purchaser. We can construe that but if you want a clear definition of this, it can be provided in the Section itself.

SHRI A.V. PATHMARAGAM: Sir, you can admit that we had this discussion at Srinagar also.

SHRI P.P. CHAUDHARY: Were you there?

SHRI A.V. PATHMARAGAM: Yes, Sir.

SHRI MUKESH CHAND: Firstly, my apologies because our Chairman is not here, and also we have not given a very detailed memorandum.

Some Members and my colleagues here have mentioned about the agricultural property. We have also given the judgement. The courts have held that where the property, although it may be recorded as agricultural land, is not being used for agriculture purpose actually, then it will fall within the provisions of SARFAESI. So, a general exemption under 31(i) is not a correct proposition like the hon. Member, Mr. Gujral mentioned that if a business house is having a big property and they have mortgaged that property in consideration of that loan given to the non-agriculture purpose, the bank should have all the right to enforce that mortgage even though it is agricultural property.

In some States, the State laws bar that mortgaging the property for non-agriculture. So, there the mortgage will not be created in any case. In some States, it is permissible. So, in those States where it is permissible and the property is mortgaged to the institution, the institution should not be debarred from enforcing that because for that purpose we go to DRT and enforce that mortgage through the DRT, and for rest of the things we enforce under SARFAESI. So, that is our suggestion.

Then, the main problem today is that if you go to issue notice, people just rush to the DRT and get some stay. So, some embargo should be placed like ground of stay, non-compliance of the provisions of the Act or pre-condition of some deposit. And, especially now that the RBI has very categorically come out with a policy of declaring the borrowers as willful defaulters, there is a process which goes to the highest office of the bank to declare a person as willful defaulter. If such people are not given a stay in the routine things, then if those provisions are incorporated, I think it will greatly help.

Then, like my colleague mentioned about the priority of charges. The provisions under Section 26A (2) are not very clear as to who will have the priority whether the charges are in terms of time because the banks have the inter-se agreement, sharing of the properties on the basis of the priority. So, that is subject to the agreement between the banks and the institutions. The priority is decided first on time.

SHRI P.P. CHAUDHARY: Why the agricultural property has been kept out of security interest?

SHRI MADHUKAR R. UMARJI: Agricultural property is a State subject.

SHRI P.P. CHAUDHARY: Transfer of property can be considered.

HON. CHAIRPERSON: There are two judgements. One is related with the property of Mundka. Second one is related with Andhra Pradesh. मुंडका वाले जजमेंट में दिल्ली हाई कोर्ट ने कहा है कि अगर सैक्शन 17, 18 या 14 में कोई आर्डर पास किया है तो वह अपने आप नल एंड वाइड है क्योंकि वह उसकी ज्यूरिसडिक्शन से बाहर है। कोर्ट ने यह नहीं कहा है कि एग्रीकल्चर लैंड में इंटरफेयर कर सकते हैं। आपने दूसरा जजमेंट जो आंध्र प्रदेश का दिया है, उसमें उस जमीन पर फैक्टरी आलरेडी थी इसलिए उस जमीन को एग्रीकल्चर नहीं माना है। अगर वहां फैक्टरी है तो स्वाभाविक है कि बिजली इत्यादि सब कमर्शियल लिया है। मुझे लगता है कि सिडबी को इन दोनों जजमेंट्स को रिकंसिडर करके फ्रेश आपीनियन देनी चाहिए।

SHRI P.P. CHAUDHARY: I think some of the States have also enacted the tenancy law. It will be very difficult in case the agricultural land belongs to the Scheduled Caste. Then the security interest created on that land cannot be transferred to somebody else other than the SC.

SHRI BHARTRUHARI MAHTAB: The Chairman has asked a question. Let them respond. Then, we can proceed.

माननीय सभापतिः इस बारे में स्पष्टीकरण जरूर चाहिए।

SHRI JAGDAMBIKA PAL: If you see your memorandum, there is a reference to one such case where the sale of a five start hotel is talked about. It was sold under the SARFAESI Act, and the sale was set aside by the High Court only on the ground that a fraction of the land was held to be agricultural by the court. That is your case. If a small portion belongs to the agriculture land, then it cannot be.

HON. CHAIRPERSON: This judgement has also relied upon one Supreme Court judgement, Krishna judgement. Have you gone through that judgement?

SHRI MUKESH CHAND: We will submit it.

SHRI MALAY MUKHERJEE: Hon. Chairperson and all hon. Members, the first important point which my colleagues have raised partly which I have told also in my submission is regarding the definition of agricultural land as per section 31 of the Act. It has not been clearly defined. As far as the case is concerned, we had a case of Blue Coast Hotel. This hotel was running as a Goa Park Hyatt. So, while the loan was sanctioned, out of the entire land of 45 acres, five acres of land was in the process of getting converted. The application was filed and it continued. When they defaulted, auction took place and the purchaser was ITC. The Bombay High Court stayed this on various grounds. This is the prime reason saying that this entire land is agricultural land whereas a five start hotel is running. Just five acres of land was used for the purpose of garden and some marriage party. It was not purposely converted at that time. The application was filed but it was not converted. On this basis, Rs. 515 crore, the biggest SARFAESI cash recovery by IFCI, happened.

SHRI ANAND SHARMA: Could you also tell us what was the loan amount and what was the auction?

SHRI MALAY MUKHERJEE: It is a consortium of IFCI and the State Bank of Mysore. Together, it was around Rs. 500 crore.

SHRI ANAND SHARMA: What amount have you reached to?

SHRI MALAY MUKHERJEE: We reached to about Rs. 550 crore.

SHRI ANAND SHARMA: That is, Rs. 50 crore more.

SHRI MALAY MUKHERJEE: We have got cash recovery of Rs. 550 crore from ITC. It was as per the valuation that we could get it from ITC. But now the High Court has set aside it. We have gone, of course, to the Supreme Court.

HON. CHAIRPERSON: By whom was it financed?

SHRI MALAY MUKHERJEE: It was financed by IFCI.

HON. CHAIRPERSON: Before financing it, did your legal department not study the SARFAESI Act?

SHRI MALAY MUKHERJEE: It was done.

HON. CHAIRPERSON: Then?

SHRI MALAY MUKHERJEE: Sir, out of 45 acres, only 5 acre of land was under agriculture and an application in this regard had already been moved for further process.

HON. CHAIRPERSON: You provided commercial loan to him after knowing it well that it was barred under Section 31 (i) of the SARFAESI Act. How did you do that?

SHRI MALAY MUKHERJEE: We asked them to leave that five acre of land.

HON. CHAIRPERSON: Leave what did you ask, how could you finance that?

SHRI MALAY MUKHERJEE: Sir, this is a thing of the past history. It happened around 10-12 years ago. Of 45 acres of land, only 5 per cent was for agriculture.

HON. CHAIRPERSON: We want to know the system. You know that there is a complete bar on it.

SHRI JAGDAMBIKA PAL: What is the further progress?

SHRI MALAY MUKHERJEE: We have gone to the Supreme Court. सुप्रीम कोर्ट ने हाई कोर्ट के जजमेंट को स्टे किया है और नेक्स्ट डेट अगस्त के महीने में दिया गया है। लेकिन यह सरफेसी ऐक्ट के लिए एक बहुत बड़ा सेट-बैक है। यह जजमेंट बहुत सारे अखबारों में हाइलाइट हुआ था कि इतना बड़ा सेट-असाइड हो गया। It was done only for a part of the land. You could treat that part of the land as agriculture land. But how the whole sale can be set aside for it?

SHRI P.P. CHAUDHARY: It can be separated because the part of the land can be exempted.

श्री अजय संचेती: सभापति जी, यह एक प्रैक्टिस हो गयी है। मुझे यह कहते हुए दुख है कि अभी तक तथ्य वही हैं, जिसमें एक अथॉरिटी को एक चिट्ठी दे दी जाती है कि हमारे

पास 50 एकड़ की जमीन है, 40 एकड़ रिवेन्यू लैंड है, जिसके लिए सारे परमिशंस हैं, उससे सटे 10 एकड़ लैंड के साथ एग्रीकल्चरल लैंड है, हमने अथॉरिटी को लेटर दिया है, उस पर एक्नॉलेज होता है कि रिसिव्ड द लेटर, लेकिन क्या डिपार्टमेंट की कोई चिट्ठी है ताकि पता चले कि यह प्रोसेस होने वाला है? मैं नहीं समझता हूं कि वह चिट्ठी किसी के पास होगी।

श्री मलय मुखर्जी: यह है सर।

श्री अजय संचेती: अथॉरिटी यह कहती है कि हम इसका कंवर्जन कर रहे हैं। Their reply is that they have received the letter and it is under process. That does not mean that they have accepted it and they are doing it. This is a common practice used by business people.

इससे संबंधित मैं दूसरा उदाहरण बताता हूं। कई केसेज में 10 एकड़ लैंड, जो प्रोसेस में है, उस पर बिल्डिंग बना दी जाती है और बचे हुए 40 एकड़ भूमि पर अलग से काम हो जाता है, उससे जिन्दगी में कोई पैसा वसूल नहीं कर सकते हैं। आप क्या करेंगे? उसके अंदर में वह लैंड ही नहीं है।

I have only one question on it. Is the agricultural land is acceptable to banks as collateral security, third party security or any other kind of a security? Are you able to give loan for any non-agriculture purpose on a collateral security which is an agricultural land? The answer will be 'no'. All learned officials from the banks are sitting here. लोन नहीं दिया जा सकता है। उसके बावजूद लोन दिया जाता है और आज भी यह प्लीड किया जाता है कि उसको इसलिए ट्रीट किया जाए क्योंकि लोन देने में हमने गलती की है। ये सारे अमेंडमेंट एक्ट इसीलिए आये हैं कि पूरा का पूरा एनपीए का मामला बना हुआ है।

Chairman, Sir, I am not accusing anybody. All these people, who are sitting today, suggest only the law part to the banks. Except one to two officials, no decision maker is here. निश्चित् रूप से ये लोग हमें सजेस्ट कर रहे हैं, लेकिन किया किसी ने है और उसे निपटाने की जिनकी आवश्यकता है, ये उस बात का जवाब भी नहीं दे पाएंगे। इसीलिए यह एक बड़ा सवाल है कि इसे कहां तक आगे ले जाया जा सकता है?

HON. CHAIRPERSON: Do you, Mr. Mukherjee want to add anything more also?

SHRI MALAY MUKHERJEE: Sir, I have a few points to add. Apart from Section 31, I want to mention amendment to Section 5: Exemption of Stamp duty given to Assets Reconstruction companies at the time of acquisition of assets may also be extended to banks/FIs/NBFCs when an *inter-se* assignment transaction takes place between them.

Then, I am talking about amendment to Section 17: It is felt that instead of different DRTs dealing with multiple applications filed both under the SARFAESI act, 2002 and RDDBFI Act, 1993, one DRT can get all the applications transferred and deal with the cases against the Borrower.

Then, further the aim in the amendment to Section 17 is, the present amendment does not prescribe timelines for the disposal of Securitisation applications/Interim applications filed by the borrowers and the other parties. It is suggested that similar timelines as proposed in the RDDBFI Act, 1993 be applied to the matters under SARFAESI Act, 2002.

I have a few suggestions regarding RDDBFI Act, 1993. One is, amendment to Section 21: It is felt that instead of reducing the fee to be deposited from 75 per cent to 50 per cent at the time of filing appeals before the DRT the existing provision of 75 per cent may be retained.

SHRI JAGDAMBIKA PAL: Why?

SHRI MALAY MUKHERJEE: Sir, we feel that 75 per cent is a deterrent. Everybody will not go to DRT. Further, the power given here is that it can be exempted totally. So, our suggestion is, if at all we give a power, it should be capped. If we reduce it from 75 per cent, there should be some capping. There are cases where in DRT total fee is waived.

SHRI JAGDAMBIKA PAL: In case, it is done 50 per cent!

SHRI SHIVKUMAR UDASI: It should have been done on the basis of natural justice.

SHRI MALAY MUKHERJEE: It is OK. But, then you please cap it and do not give power further because there are cases where even with zero fee the DRT application goes.

SHRI SUBHASH CHANDRA BAHERIA: Let it be done to 25 per cent.

SHRI MALAY MUKHERJEE: That may be decided by the hon. Committee.

श्री गजेन्द्र सिंह शेखावत: डीआरएटी को डिसाइड करने की अथॉरिटी है। डीआरएटी के जजमेंट पर अपील करने का जो टाइम लिमिट है, वह 30 दिनों की है। लेकिन 180 दिनों से भी ज्यादा होने पर भी डीआरएटी उसे एडमिट कर लेती है। मैं एक प्रैक्टिकल केस बताता हूं।

सरफेसी एक्ट में बैंक से एक असेट परचेज किया गया। डीआरएटी से डिसीजन हो गया था, 180 दिन बीत चुके थे, अपील नहीं हो सकती थी। लेकिन असेट रि-कंस्ट्रक्शन कंपनी ने जब वह असेट बैंक से लिया, तो उसके लेने के 15 दिन बाद बौरोअर डीआरएटी में अपील करता है और वह अपील मेनटेनेबल है या नहीं इस पर ढाई साल तक जजमेंट का काम चलता रहता है।

इसलिए सरफेसी एक्ट में आप कुछ भी अमेंडमेंट कर लें, उससे क्या फर्क पड़ने वाला है। डीआरएटी ने दो-तीन हाई कोर्ट्स के जजमेंट को कोट किया कि टाइम लिमिट को सप्रेस किया जा सकता है।

SHRI MALAY MUKHERJEE: My next suggestion is regarding amendment to Section 19. Multiplicity of various DRTs dealing with recovery applications against the same borrower may be avoided and instead one DRT can deal with all such applications.

My final suggestion is regarding the Indian Stamp Act, 1899 in Section 8F. It is, exemption of Stamp Duty given to Asset Reconstruction companies at the time of acquisition of assets may also be extended to Banks/FIs/NBFCs when an *inter-se* assignment transaction takes place between them.

So, these have been my suggestions. Otherwise, all the amendments which have been done are extremely good and going to help us in a big way. Thank you, Sir.

श्री रवि प्रकाश वर्मा: एनपीएज तो बहुत हैं, लेकिन बैंकों का जो प्रायोरिटी सेक्टर का एनपीएज है, वर्तमान नियमों के अनुसार आज उनकी क्या स्थिति है?

श्री अरूण श्रीवास्तव: मैं सिंडिकेट बैंक की ओर से बताना चाहूंगा कि इंडस्ट्री सेक्टर की तुलना में एग्रीकल्चर सेक्टर में निश्चित रूप से एनपीए कम हैं।

SHRI SHIVKUMAR UDASI: My question once again pertains to the same thing, that is, whether this Act should be prospective or retrospective. This is what I wanted to know from all of you. What is your opinion about the ARC? एआरसी के बारे में आप क्या बदलाव चाहते हैं, वह भी हमें लिखकर दे दीजिएगा।

SHRI BHARTRUHARI MAHTAB: Sir, it is general in nature because my impression is that this amendment has come because of the banks. As has been very forcefully and spiritedly mentioned by Shri Sancheti Ji, it is because of their fault or there is some flaw in the law that the banks are put to difficulty and a large number of subjective decisions have to be taken at the branch level क्या इसलिए एनपीए बढ़ा है? Looking at

the health of respective banks, today my impression has been that as if agricultural land is the main culprit. Nobody has told us anything that the corporate sector financing has led to a large number of NPAs. That has actually disheartened me to a very great extent. That is why the question that was put forth is what will be the percentage of loan that is not being realised relates to agricultural land and how many cases are actually pending in different courts or DRTs relating to this provisioning of or not providing the loan.

We are actually dealing with the amendment of four Acts today. While dealing with these four Acts, SARFAESI Act, of course when it was enacted, the general impression, and the whole country was very much enthused, was that this would bring down the number of litigations, but it has not yielded the result. That is why, while dealing with the Insolvency and Bankruptcy Code, it was decided that we should also amend certain provisions of the SARFAESI Act and also three provisions in other Acts.

I would like to understand from all of you, especially the bankers, with these amendments that will be coming into force — of course, implementation has to play a greater role and not the enactment alone — do you think that it strengthens the hands for recovery in a time-bound manner because that is the major issue which we are insisting upon or which is what this Bill intends to do, that is, it should be easier and swifter to recover loans? Of course, none of you has said today that you need a little more time to respond to the queries that our Secretariat has put forth. If you need some more time, the Chairman may be willing to give you that. But do you still feel that there is a need to further improve the Bill that is before us, other than the suggestions that you have given?

Lastly, it just struck me because today we have five Public Sector Banks and two financial corporations. Have you not talked to each other before coming to this Committee? Did you do your homework individually? Did you individually try to put forth what you thought is fit for you? Of course, it is quite natural because you have your own varied experiences. As this Bill is in the interest of the bankers at large, have you not discussed amongst yourselves and come out coherently? We are also going to meet some other bankers in Mumbai. Do you not think it is necessary?

SHRI P.P. CHAUDHARY: This is a policy matter. Almost 60 per cent people are having agricultural land. If those people want to go for a loan for non-agricultural purposes, they can only put the agricultural

land which they are having as collateral security, that is, if they do not have any other property but only this agricultural property. However, this Act says that no security shall ever be created on agricultural land. So, I want to know from the Ministry whether it is an impediment for those people who want to take up other avocations and who, for the purposes of collateral security, have only agricultural land. Is there any rationale behind saying that no security shall be created on agricultural land? What is the rationale behind that?

SHRI MADHUKAR R. UMARJI: The SARFAESI Act is only giving power to the banks and financial institutions to enforce security which is given in their favour. Creation of security over agricultural land is a matter which is the State's subject. The power to make a law relating to agricultural land and transfer of agricultural land is with the States. Therefore, it is excluded. What is excluded is only a right to enforce, that is, taking possession and selling it yourself without going to the courts. You can always file a civil suit or a case in DRT for the purpose of enforcing your rights as a mortgagee.

SHRI P.P. CHAUDHARY: Once you say that it is under the State List, the Centre cannot legislate on this issue. This is the rationale. Otherwise, there is no other reason. This is the reason for keeping it out. The Parliament cannot create security interest on it. What you mean is that transfer of agricultural property can only be done by the States.

SHRI MADHUKAR R. UMARJI: There are some States who have put restrictions on that transfer saying that they have to transfer it only in favour of an agriculturist.

SHRI P.P. CHAUDHARY: You can transfer it in favour of the Scheduled Castes. Though security interest is created in favour of the banks, even then you cannot transfer it.

SHRI MADHUKAR R. UMARJI: So, it will be governed by the State law.

SHRI JITENDRA CHAUDHURY: I do not want any clarification from the bankers. My only point is that before we go for the next meeting in Mumbai, a bank-wise statement showing the details of total NPAs against each of the banks should be supplied to us.

श्री गोपाल शेट्टी: महोदय, सिम्बोलिक पजेशन और फिजिकल पजेशन की जो बात आयी है, सिम्बोलिक पजेशन के लिए बैंक वाले सभी प्रोसेस पूरा किए बिना जाते हैं, जिससे बाद में कोर्ट से स्टे आ जाता है। सिम्बोलिक पजेशन के बारे में हमें विचार करना चाहिए। दूसरा

मेरा मुद्दा यह है कि सुप्रीम कोर्ट का जजमेंट आने के बाद यदि हम अमेंडमेंट के बारे में सोचें तो सही रहेगा, अन्यथा हाई कोर्ट्स के तो अलग-अलग राज्यों में अलग-अलग तरह के जजमेंट आएंगे, जिसके बाद अमेंडमेंट होना उचित नहीं होगा। एग्रीकल्चर लैण्ड की बात आयी है। एक तो हम अपना सिस्टम पूरा नहीं करते हैं। हम वहां बोर्ड लगाने के लिए इनसिस्ट नहीं करते हैं। आप रेवेन्यु डिपार्टमेंट को लेटर भेज दें कि हमने एग्रीकल्चर लैण्ड को दिया है, कॉर्पोरेशन को लेटर इश्यू कर दें कि हमने एग्रीकल्चर लैण्ड के लिए दिया है, इसलिए वहां का प्लान वगैरह पास न करें। जिससे इस प्रकार की समस्याएं खड़ी नहीं होंगी। Since we are not doing our duty properly, problems are being created. हम लोग ढंग से काम नहीं करेंगे और उसकी बजाय नये-नये कानून बनाने की बात करेंगे, तो मुझे लगता है कि यह ठीक नहीं है।

सभापति जी, मैं अमैंडमैन्ट्स को छोड़कर कुछ बातें रखना चाहूंगा। मैं चाहता हूं कि जो बैंकर्स आए हैं, are they private entities or are they under Government of India? यह मैं जानना चाहूंगा, क्योंकि आज जो माहौल हमने यहां देखा है, उससे लगता है कि इनकी एक प्राइवेट एंटिटी है, ऐसा ये समझते हैं। मेरे पास एक व्यक्ति आया, उसने कहा कि मेरी फैक्टरी बंद हो रही है, आप मुझे रिजर्व बैंक के रूल्स के हिसाब से लोन नहीं दे रहे हो, तो उसे यह कहा गया कि रिजर्व बैंक खाली गाइडलाइंस बनाता है। It is not compulsory that we should follow that. उसने यह कहा कि मेरी फैक्टरी में तीन सौ लोग बेकार हो जायेंगे। प्राइम मिनिस्टर लोगों को जॉब देने की बात करते हैं तो बैंक का मैनेजर यह कहता है कि प्राइम मिनिस्टर ने भाषण दिया है तो वह प्राइम मिनिस्टर का आउटलुक है, it is not our duty to give you loan. इस प्रकार की बातें आजकल होती हैं। रिजर्व बैंक के अधिकारी यहां बैठे हैं तो मैं चाहूंगा कि वह इन बातों पर ध्यान दें और उसका एक क्लेरिफिकेशन नोट आ जायेगा और इस कमेटी के सदस्यों को सर्कुलेट हो जायेगा तो मुझे लगता है कि इस कमेटी की जो गरिमा है, वह आने वाले समय में बरकरार रहेगी, अन्यथा सबको लगता है कि we are the bosses of our institution, no one in this country is to ask us. आजकल इस तरह का माहौल बन रहा है। इसलिए मुझे लगता है कि इस बारे में हमें गंभीरता से सोचने की आवश्यकता है। धन्यवाद।

SHRI NARESH GUJRAL: Sir, before we meet them at the end of the month, we should have an idea of NPAs bank-wise and sector-wise, and also according to the internal assessment of the banks, what is recoverable and what they think is totally gone. Then we will have some kind of a ballpark figure in front of us to understand how we proceed further.

HON. CHAIRPERSON: There are two, three things which I want to mention. First, MD Punjab National Bank will send elaborate replies early and he will appear before the Committee in Mumbai. Secondly, there will be a detailed note on the line of judgment on Andhra Bank.

SIDBI also will send a detailed note. Regarding agricultural land, Mr. Panda will send a detailed note.

We have not received any comments on the functioning of the DRT, strengthening of the DRT, DRT as an institution to solve this mechanism in an effective way. We have not received any suggestion or any input. What is your view, how do we make DRT as an institution effective for that purpose? You send your suggestions in that respect also. This is needed for the purpose of the Committee.

Thank you all very much.

(THE WITNESSES THEN WITHDREW.)

WITNESSES EXAMINED

5. Shri Alok Dhir
   Director, Alchemist Asset Reconstruction Company Ltd.

6. Shri Vivek Kumar Singh
   President, Bar Association, Debt Recovery Tribunal, Delhi

HON. CHAIRPERSON: I welcome the representatives of Asset Reconstruction Companies and different Bar Associations. I welcome you to sitting of this Joint Committee. As you are aware, the Joint Committee is examining the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provision (Amendment) Bill 2016. The aforesaid Bill seeks to amend some of the provisions under SARFAESI Act 2002 besides amendments proposed under the three Acts that is RDDB and FI Act 1993, the Indian Stamp Act 1899 and Depositories Act 1996.

As per the Statement of Object of the Reason of the Bill, the amendments that the Bill seeks to make in the SARFAESI Act are proposed to change in credit landscape and ease of doing business which *inter alia* includes integration of registration system and different norms relating to the property right with the central registry enabling non-institutional investors to invest in the security, receipt debenture trustee and secured creditor and priority to the secured creditor in the repayment of debt.

We are hearing the Bar Associations also for the practical purpose of this DRT institution. Now, one thing which is very much clear about the Committee is that I would like to draw your attention that the direction by the Speaker whereby the Memoranda submitted to the Committee as well as the deliberations held at the sitting of the

Committee would form part of the proceedings of the Committee and are treated as 'Confidential' and not to be circulated any one or made public in any other media till the report is presented to the House. I request the representatives of the organizations to present their views before the Committee one by one. But before you start your presentation, I request you to introduce yourself and your colleagues to the Committee.

(INTRODUCTION OF WITNESSES)

HON. CHAIRPERSON: Now the hon. Members may ask their questions.

श्री रवि प्रकाश वर्मा: सर, एनपीए बहुत बढ़ा हुआ है और उसके लिए कानून बदले जा रहे हैं। एआरसी का जो मैकेनिज्म है, जो बीच में लॉन्च किया गया है, लकिन उसके बावजूद भी जो हम लोगों ने देखा था कि जो ट्रेंड है, एनपीए बिल्डिंग का है, वह कम नहीं हुआ है। मैं यह जानना चाह रहा था कि अभी कुल कितने एआरसी काम कर रहे हैं। उनकी फंग्शनिंग कैसे है। उनका इवैल्युएशन कैसे कराते हैं। एप्रॉक्सिमेटली कितने रिक्वेस्ट के केसिस हर साल आ रहे हैं? कैसे और कितना उनका डिस्पोजल है। उनका जो एडवांस एकॉनमीज है, उसमें जो एआरसीज हैं, उनसे क्या कंपैरिजन है? हिन्दुस्तान में स्ट्रैस्ड एसेट मार्किट डिवेल्प हो रहा है, उसकी क्या स्थिति है, उसमें क्या-क्या हर्डल्स हैं? स्पेशली जो एमएसएमई केसिज आ रहे हैं, उसके बाबत आप लोगों का क्या ऑपिनियन है? क्या उसमें और कोई सैपरेट मैकेनिज्म लाने की जरूरत है। ये सभी मोटी-मोटी हम जानना चाह रहे थे।

DR. SANJAY JAISWAL: On behalf of our Committee, I welcome the Members of Bar Associations as well as ARCs. As you all know, the whole objective of this amendment Bill is not only to safeguard the interests of the secured creditors but also to strengthen the asset reconstruction companies so that the long term interest of industries and employees could be saved. This can only be achieved if the laws are simple and transparent so that they are understandable to common citizens also. On this side also, we have got many top lawyers and many a time we have seen that the discussion of witnesses is limited to certain words as to what should be included or not included. So, I would request all of you to be brief and limit yourselves to what should be the ideal policies or amendments which should be included in this Bill.

SHRI ALOK DHIR: We appreciate the opportunity given to us to come here and express our observations with respect to the Bill, give suggestions as well as answer some of the queries which have been raised relating to the functioning of ARCs in India.

At the first instance, before I go into the specifics I would like to answer queries raised by Shri Ravi Prakash Verma and Dr. Sanjay Jaiswal.

We have 15 ARCs licensed by the RBI. We have commenced operations in 2002-03. Over the years, we have been facing some problems in being able to aggregate mass and build a strong ARC structure in a way which will help prevent the non-performing assets and help in the resolution of distress.

One of the issues is that the present mechanism in the banks is not being sorted out. The expectation of the banks with regard to pricing are exceedingly high, based on their own valuation which was made at the time of grant of loan. Things have changed; for some of the older facilities which are granted, particularly in 2007-08 the value was exceedingly high. The valuation has come down considerably.

The other problem is that when we try to resolve by selling assets, the auction price is much lower than the market price of the assets, particularly because the buyer has to factor the risk on account of judicial interference and stay which could be granted on the purchase. So, the exit price is much lower. This is something the banks have also seen. They are finding that the pricing and valuation that they are expecting are not matching.

Currently, ARCs are expected to put 15 per cent of the acquisition price in cash. The ARC expectation is that we should be getting a healthy return. But the cost of capital is much higher than the capital cost for a bank. We get money at commercial rate of interests. Therefore, the expectation of returns are of getting a spread of at least five to six per cent on the interest cost or cost of capital. This is not possible because when the banks are auctioning the assets at a higher price, we do not get the margin or the price differential within which our own spread could be built. For example, if the asset is sold at Rs. 100, unless I am able to resolve that asset at Rs. 150, I cannot get any return. The price that banks are giving with respect to the sale is actually what is called the guideline price, the value I can expect to get from resolution. If there is a particular non-performing asset and I realise I can recover Rs. 100, unless I am able to buy that at Rs. 60, if I work over resolving it for three or four gears and get my management fees and incentive of recovery over and above the acquisition price, my return on investment does not work out. So, this pricing difficulty has become very serious.

The second aspect is that even though the enactment provides that judicial interference will not be there in reality the higher courts in the country are often granting interim stay and they go on for a long time which destroys the value inasmuch as the internal rate of return

as determined on the money that I can recover and the period in which I recover the money. If the recovery period is longer the IRR comes down. So, on a commercial basis, we are not able to operate viably.

Another issue is that it is said we do not have adequate capital. This is actually a myth. Capital always chases returns. If I can prepare a business model and get returns, there is no dearth of capital available in this country. As the Committee is aware a very large fund called KKR has taken a significant interest in International ARC. Another significant fund called SSG has taken a significant interest in ACRE whose Managing Director is here. There are a lot of other foreign funds which are chasing and are very keen to put capital but they are not able to structure their transactions with respect to bringing money into India.

Another issue is that the RBI has mandated that no ARC should have any discussion with the operator before making an investment in purchasing the asset. That condition is completely impractical. Nobody buys any asset without actually doing a proper due diligence. If somebody wants to buy a house or flat, they go and do the due diligence. They visit the property, see whether it is worth, talk to ten people, and then only make a purchase. If the RBI says that we have to purchase an asset blindly without visiting the asset and not talking to the person who is operating it, how can an ARC put in money blindly into an asset without having any understanding of the worth of the asset, whether we can recover it or not, whether the exiting promoter is capable of reviving it or not, and how difficult or easy is it to throw him out.

SHRI ANAND SHARMA: How is the information given to you about an asset where you can make an investment?

SHRI ALOK DHIR: They create what is called a data room but what they put out is only the loan documentation and any steps they have taken to recover, which may be the legal steps. There would be no information or no details about the existence of the asset. Let us assume, on that asset there is an encumbrance or there is a squatter. From the data made available, we would have no idea about that.

SHRI ANAND SHARMA: If you take over an asset, how do you pay the bank? Do you pay the bank or create an imprest?

SHRI ALOK DHIR: When we purchase an asset, we pay 15 per cent in cash. When we resolve an asset the money is given back to the bank

in the ratio, 15:85. At this stage, when we are going to enforce our rights, we have to fight with the borrower who wants to retain the control of the asset.

HON. CHAIRPERSON: As far as the SARFAESI Act is concerned there is a registration of ARC, cancellation and other thing related to rules and practical problems. You have made a good presentation. What is your concrete suggestion as far as the present amendment is concerned?

SHRI ALOK DHIR: I was just answering some queries. I will answer that when we talk in further times. I will just refer to three or four issues. This Bill is to a certain extent mitigating the problems ARCs are facing. This is for the benefit of the ARCs and I am grateful to the Government.

HON. CHAIRPERSON: It is for the benefit of the country, not the ARC!

SHRI ALOK DHIR: Yes, Sir. It is for the benefit of all the stakeholders.

SHRI P.P. CHAUDHARY: Have you given your response on the amendments?

SHRI ALOK DHIR: I have three or four issues. The first is section 3, which is a very important amendment. It has been amended to say the criteria is, 'fit and proper'. Earlier, section 3 used the word, 'no sponsor will have a controlling interest'. That has been modified because the hon. Finance Minister in the Budget Speech said that about 100 per cent investment in an ARC.

The criteria has been now shifted to 'fit and proper' and such criteria would be laid down by the RBI. Our suggestion is that this should not be kept vague as 'fit and proper' for the criteria to be established by the RBI. Some details should be given. Otherwise, it is completely open and is subject to interpretation and the achievement of the desired objective of allowing promoters, particularly foreign investors to become hundred per cent owners of the ARC will not be fulfilled. So, my suggestion is that it should not be left open as criteria to be fixed by the RBI but some specific guidelines or some tenants at least must be provided in the enactment that these are the issues on which 'fit and proper' will be evaluated.

SHRI P.P. CHAUDHARY: Is there any provision under the SARFAESI Act for the restraint to have due diligence with respect to the property?

SHRI ALOK DHIR: No, there is nothing like that.

SHRI P.P. CHAUDHARY: On what basis you are then saying this?

SHRI ALOK DHIR: The RBI has given what is called a master circular and that lays down the conditions.

SHRI P.P. CHAUDHARY: Can the circular overreach the mandate of the law? We do not find any such provision. We cannot expect the Parliament to pass that you cannot have due diligence with property.

SHRI ALOK DHIR: I am saying in reality what has happened. This is the enactment. The objective of the enactment is not being met by the regulation. So, some amendment is required to ensure that the regulations are in line with the objectives.

The second issue I want to say is in Section 5(1)(a) there has been an amendment which says exempting the ARCs from stamp duty. But we are also facing one more issue. In addition to stamp duty there are registration charges. In Delhi, for example not only stamp duty is levied, one per cent of the acquisition price is levied as registration charge also. In many States earlier there used to be caps. Now caps are being removed. Not only do we suffer the stamp duty but we also suffer registration charges. If an amendment is made to the stamp duty enactment, simultaneous amendment to the Registration Act should also be made so that the registration charges are also exempted.

The third issue I want to raise is with regard to Section 9. RBI has been given the mandate to lay down the directions for regulation of management and business but additionally it has also been said that they will determine the fees to be charged. This is something that should not be in the enactment. The RBI should not be determining the amount of fees which can be charged in these cases. The fees which is to be charged is something which should be commercially determined between the seller bank and the ARC. If you see sub-section 2, "Reserve Bank for the purpose of sub-section will determine the policy, issue necessary directions, including the direction for regulation of management of the borrower and fees to be charged'. We have no hesitation if they tell us how to manage the business but insofar as the fee is concerned, it should be left to commercial decision making.

SHRI NARESH GUJRAL: There could be a cap.

SHRI ALOK DHIR: It is not really necessary because the fee that is being given is in various manners. Management fee is one. Recovery incentive is the third and the carry is the fourth. These are the three

elements which determine what money the ARC can make. If there is a cap which is put on this it will immediately reflect on pricing. The lower cap that is put on the management fee the lower the pricing that the banks will be able to get in the market. So, this is something which should be left for the commercial decision between the banks and the ARCs.

SHRI BHARTRUHARI MAHTAB: What prompted you to take RBI out of it?

SHRI ALOK DHIR: We are only saying that the RBI should be there, they are our regulator, but they should not have the power under the Act to fix up a fee. This is directly impacting the commercial relationship between the bank and the ARC. Let me say for example, currently the management fee ranges between 1.5 per cent and 2 per cent. If the management fee is fixed by the RBI, let us say they say that 1.5 per cent is the cap and we will not allow you to charge more than this, it immediately affects the commercial sense of an ARC in bidding for an asset because now we know that to bid for this asset we have to put 15 per cent money on the table. Only 1.5 per cent management fee is available. That management fee is spent on our cost. So, our return is not there and thus we cannot bid for the asset.

The third issue is, in Section 12(2)(c), again there is a fixation of the fee. It says in the principal Act the following clause will be inserted. "The fee and other charges which may be charged or incurred for management of financial assets will be fixed by the RBI". Section 12 gives the rights to the RBI to determine the manner in which the business is conducted. A new provision in the form of sub section (c) is being added which says that the fees and other charges which may be charged or incurred for management of financial assets will be fixed by the RBI. Again, I am here saying that the commercial decision should be between the banks and the ARCs and the RBI should not have a role in fixing this price.

The other aspect here is (d) which is also very crucial. It says transfer of security receipts issued to qualified institutional buyers. Answering a particular issue, a question was raised that how is the stressed asset market developing in the country. If you are having a stipulation that the RBI will determine between one QIB to the other QIB who will transfer, at what price you will transfer then there is no stressed market, debt market which will emerge in this country. This right cannot be there with the RBI because this is a completely commercial decision. If I am a QIB, I want to sell it to somebody at

a particular price, if the RBI says that I cannot sell it at a notified or regulated price then there is no stressed asset, debt market which will come up in the country at all.

SHRI NARESH GUJRAL: When we are in Mumbai, the RBI should be asked to comment on this. What is the spirit behind it?

HON. CHAIRPERSON: They will come with preparation in Mumbai and that is the reason they are here.

SHRI ALOK DHIR: The next issue is Section 2(b)(3). It is giving powers to the RBI for inspection of the ARCs. On inspection if they find that the business is being run detrimental to public interest or interest of the investors in the ARC, which is including SR holders, they have a right to remove the Chairman, Directors or appoint additional Directors. Our only request is that this should be subject to a proper hearing being granted so that the provisions of natural justice are met.

SHRI ANAND SHARMA: We should leave it to the RBI. I am reading it from your submission that you have given to us. It says: "Where an audit or inspection or otherwise, the Reserve Bank is satisfied that the business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interest of investors" so, it is upon satisfaction.

SHRI ALOK DHIR: Satisfaction would be internal to RBI. All that I am saying is the process should be such that natural justice is granted to us. That is the only request here. Of course, if it is detrimental to public interest action must be taken.

There are two issues that I want to say. Section 12(c)(1) provides penalty. Again, natural justice should be met.

The last issue I would like to raise it induction of Chapter 4A. That Chapter has been inducted which actually is very important for all stakeholders because it gives priority to the secured creditors, other creditors particularly the Government dues.

SHRI ANAND SHARMA: Section 12(c)(1) is very clear that if it fails to comply with any direction issued by the RBI, then only the penalty is levied. There is no law where if you do not comply, there will not be a penalty.

SHRI ALOK DHIR: Sir, I am with you.

SHRI ANAND SHARMA: Please do not expect laws to give you windows to defy or to violate. I think you have to convince us. You can send it in writing to the Committee. You have to convince us as to what are the apprehensions and what should be the safeguards.

SHRI ALOK DHIR: Sir, I would like to say that the apprehensions are very simple.

HON. CHAIRPERSON: You send it in writing within five days from today.

SHRI ALOK DHIR: We will do that.

The last issue I want to make is regarding Chapter 4A which has been added which actually meets with the long standing requirement. In this, there is only one concern that we have and it is with respect to priority which is being given with respect to the time line within which the registration of the charges is being done. In this regard, I would just draw your attention to Section 26 C(1). The problem that we have is two fold. One is the usage of the words 'shall have priority over subsequent security interest' is useful insofar as the dues of any other creditor or any other statutory authority or any other establishment is concerned. To that extent, it fulfils our requirement but qua *inter se* between lenders the issue is of a first charge holder, a second charge holder or a *pari pasu* charge. So, it is possible when a loan is contracted, the first charge is created with respect to one bank and second charge is created with respect to the other bank. But if the second charge holder registers his charge prior to the date on which the first charge holder has registered his charge, under this the second charge holder will have priority over any subsequent security interest. Both of us have security interest but he is a second charge holder and I am first charge holder. But if on the question of time line, he registers his charge, one hour before I have registered my charge, even though he is a second charge holder, he will have priority over me. So, that anomaly is arising in this particular provision.

SHRI NARESH GUJRAL: What is your suggestion?

SHRI ALOK DHIR: My suggestion is that the protection of the charges *inter se* between the lenders should be maintained. I think this anomaly is coming because under the Companies Act also, first charge and second charge is not there. It is only a question of when you register your charge. But in practice when banks write loans to borrowers, they create first charge with respect to assets and second charge or subsequent charges or sometimes they create *pari pasu* charges. So, this issue is *inter se* secured creditors only.

SHRI BHARTRUHARI MAHTAB: The short answer is that the priority should be there.

SHRI ALOK DHIR: Sir, priority should be there but it should be secured creditors on the basis of charges in their favour. When we use the words 'claim of secured creditors', it should be subject to the charge in their favour. If a secured creditor has a first charge, his priority should be higher even if his registration has happened one minute later than the second charge holder. So, you have to protect the priority of time.

SHRI P.P. CHAUDHARY: You find out some other solution because this not a proper solution. The registration cannot be the basis for first or second charge.

SHRI ALOK DHIR: Under this section it has become the priority.

SHRI P.P. CHAUDHARY: What is your opinion on this?

OFFICIAL: The validity of the security interest will be decided with reference to the concerned law. It may be Registration Act or Transfer of Property Act.

SHRI P.P. CHAUDHARY: Can we not provide it here?

SHRI ANAND SHARMA: After the Insolvency Act has been passed, the moment they initiate it, the SARFAESI Act will be suspended for 180 days plus 90 days.

SHRI ALOK DHIR: After that we are back in.

SHRI ANAND SHARMA: It is not that simple. They are expected to give some results also. The law is not an ornamental law.

SHRI ALOK DHIR: Sir, what I am saying is that even under the Insolvency and Bankruptcy Act, the word used is 'secured creditor'. Their also the first and second charge are not being differentiated. Here also it is not being differentiated and *inter se* between the bankers, there is a lot of disputes will arise with respect to date and timing in which I have registered my charge which will give us a priority which is contrary to our loan documentation.

SHRI ANAND SHARMA: Should that be in the main body of the law or in the rules?

SHRI ALOK DHIR: Sir, if the law says that they will have the priority over subsequent security, no rule can change this because the rule

cannot change this language. If the rule cannot change this words 'the priority over subsequent charges', then *inter se*, there is going to be a big dispute between the bankers.

SHRI P.P. CHAUDHARY: You have rightly pointed out the problem but you are not suggesting any solution.

HON. CHAIRPERSON: You send it in writing.

SHRI D. NANHA RAM: Hon. Chairman, Sir, and hon. Members, I have already sent my comments which are very critical and majority of them are impediments in quick recovery of loans. The first amendment is amendment of Section 2 where security interest has been defined. I propose that security interest should also include the attendant licences, approvals which have significant value because when we strip of the assets and sell the physical assets, the value suffers because the attendant licence is unable to transfer. There would be optimum realisation if I am also transferring the licence. So, I have requested that IRC should be vested with the power to automatically transfer the licences, etc.

Secondly, amendment to section 17, this is with regard to one of the recent judgements where the tenancy rights have been upheld overriding the SARFAESI Act. So, I am proposing that tenancy wherever it is, it should have been registered. If security interest is created by a secured creditor in favour of a security creator, after the tenancy has commenced, then the secured creditor should be willing to wait. Otherwise, the borrowers' connive with the tenants and create tenancy rights. So, this is very important impediment which should be addressed in this amendment.

Then in Section 13(v)(a), there is one important provision which works as a deterrent for tough borrowers like banks, ARCs are also empowered to buy secured assets and take them into their balance sheet if in case one public sale fails. Very rarely we resort to this and when we are taking such an asset in our books, mandatorily within five years, we have to dispose of this. So, this talk is held only for re-sale. So unnecessarily we are incurring huge cost on registration. This registration is done like a general registration. There is heavy cost of 8 per cent *ad velorem* duty which unnecessarily adds up to the value which I have to ultimately recover. So I am requesting that in such cases the stamp duty may be waived.

Section 13(9)(a) is very important in the light of one recent judgement. In respect of consortium accounts, where one secured

creditor does not have the required 60 per cent there is a mandate taken from other secured creditors. A notice called under 13(2) is issued. So, the court observed that this mandate only works from 13(4) onwards. So, it does not apply to 13(2). So, on that ground the SARFAESI Act itself has been set aside. So, I am requesting that this should be suitably amended because individually several secured creditors cannot issue because 13(2) says that if you default to pay my claim amount I am going to sell your property. So, individually nobody has the right to sell the property because he does not have the right to sell the property. This automatically should be amended to include 13(2).

Then, let me come to section 14(1)(a)(8). This is where we are required to take physical possession of secured asset for the purposes of sale. We have to necessarily approach the CMM when the borrower is not cooperative and CMM is mandated to give us physical possession. There in the affidavit the secured creditor is required to give an affirmation that the borrower has not made any repayment of financial assistance. This is an anomaly. Assuming that borrower has paid a part amount, say even Rs. 1,000 then I cannot make a false statement. So, it should be amended to say that the borrower has not made payment of balance dues in full. On this ground the borrower is challenging that he has made a payment, and the application for possession should not be accepted.

There is one important section 17 which provides right of appeal to the borrower. Now, section 14 is only with reference to CMM giving an order for taking over possession. Section 14 clearly says that no act of the CMM or the District Magistrate done in pursuance of this section shall be called upon in question in any court or before any authority. But the courts have interpreted that this cannot supercede his right to appeal. So, the right to appeal says that any person including borrower aggrieved by any of the measures. So, he says 'any measures' means section 14 is also a measure. So, I request you to kindly explore the possibility of making a suitable amendment to say that 14(3) should override section 17. This is what I want.

SHRI ANAND SHARMA: No law can be equitable if the right to appeal is taken away.

SHRI D. NANHA RAM: My humble submission is that section 14(3) has already provided that saying that this act of CMM cannot be called into question in any court or before any authority. It is already there.

SHRI NARESH GUJRAL: It is already there. That is why the courts have overruled it. Of course, they will.

SHRI D. NANHA RAM: So, the spirit of the provision is lost.

श्री विवेक कुमार सिंह: माननीय सभापति जी एवं समिति के माननीय सदस्यगण, जो प्रोपोज्ड अमेंडमेंट होने जा रहा है, उसमें सीरियल नं. 6, सब सेक्शन-1(बी), जो यह है-an Asset Reconstruction Company may acquire the financial assets of any bank or financial institution for the purposes of asset reconstruction where a borrower has failed to pay the secured debt or any installment thereof on due date whether or not the account of such a borrower is classified as non performing asset. उसके अंदर क्या दे दिया? इसमें यह हो गया कि उसके एकाउंट के नॉन परफॉर्मिंग होने से पहले ही उसे भेज दिया जाएगा। इसके पीछे रिजनिंग यह था it is against the principles of natural justice. It amounts to putting unnecessary pressure on the borrower. If the above amendment is allowed it will be detrimental to the market sentiment and against the business community of this country. Therefore, the above proposed amendment may be rejected at this stage itself. Now, see provision of section (1) of section 5 of SARFAESI Act. It provides that the bank or financial institution shall first give an opportunity to the borrower to redeem his property at the same value at which the secured asset is offered to any securitisation company or asset reconstruction company through assignment.

सर, होता यह है कि एक रुपए की चीज चालीस पैसे में दे दी गयी, जिसका 15% पहले ले लिया गया। जबकि प्रॉपर्टी दो सालों बाद, तीन सालों के बाद बिक रही है। उसके बाद बाकी की पेमेंट आ रही है। बौरोअर एक रुपए में 90 पैसे ले जा रहा है। उसको डिनाई कर दिया जाता है कि हम आपके साथ सेटलमेंट नहीं करेंगे। पहले उसे मौका देना चाहिए कि तुम्हारा असेट्स हम इतने रुपए में दे रहे हैं। अगर उस नोटिस के बाद वह उस असेट्स को नहीं लेता है, तो इसमें पारदर्शिता होनी चाहिए। उसे ई-ऑक्शन या किसी के माध्यम से ऑक्शन करना चाहिए।

माननीय सभापति: विवेक जी, आपका यह कहना है कि 'फर्स्ट राइट ऑफ रिफ्यूजल' बैरोअर को होना चाहिए।

श्री विवेक कुमार सिंह: सर, प्रैक्टिकल हमें देखना होता है। जिस समय हम सेक्शन-17 को डील कर रहे होते हैं उस समय असाइनमेंट मांग-मांग कर थक जाता है और पी.ओ. के अंदर हिम्मत नहीं कि वे वहां पर असाइनमेंट मंगा कर दिखा दें। हमें यह नहीं पता होता है कि बौरोअर के डेट्स को कितने में परचेज कर लिया गया है।

श्री आनन्द शर्मा: डेट तो बौरोअर को रि-पे करना होगा न? इस प्रॉपर्टी परचेजिंग में तो 'राइट टू फर्स्ट रिफ्यूजल' आ जाता है। अगर प्रॉपर्टी या असेट्स का ट्रांसफर हो रहा है तो क्या होगा?

श्री विवेक कुमार सिंह: सर, इसमें डेट का ट्रांसफर हो रहा है।

श्री आनन्द शर्मा: अगर डेट का ट्रांसफर हो रहा है तो जो बौरोअर है, उसके लिए तो बेस्ट कोर्स है डेट को रि-पे करना।

श्री नरेश गुजराल: इनका कहना है कि जो बौरोअर है, जो हेयरकट है, उसको तो ऑफर नहीं कर रहे और दूसरे को कर रहे हैं।

SHRI ANAND SHARMA: You are saying instead of him getting that hair cut you should be given that.

SHRI AJAY SANCHETI: If this happens then the very purpose of setting up of ARC is in question. ए.आर.सी. की जरूरत क्या है? अगर आपको सेटलमेंट 40%, 25%, 20% पर करना है तो फिर वह तो बैंक ही कर लेंगे। फिर इनकी जरूरत क्या है?

श्री विवेक कुमार सिंह: आज अगर हम कंट्री की इकानामी के बारे में सोच रहे हैं, कंट्री के बेनेफिट के बारे में सोच रहे हैं तो हमें यह देखना होगा कि कंट्री को किस तरीके से बेनेफिट होगा।

माननीय सभापति: आपका प्वाइंट रजिस्टर्ड हो गया, अब आप आगे चलिए।

SHRI VIVEK KUMAR SINGH: In the principle Act, SARFAESI Act, in Section 14, wherever the word 'the Chief Metropolitan Magistrate or the District Magistrate' happen, the word 'the Recovery Officer, Debt Recovery Tribunal' shall be inserted after the words, 'the Chief Metropolitan Magistrate or the District Magistrate'.

बीच में देखा गया, क्योंकि मैं प्रैक्टिकल सैक्शन 14 कई बैंकों के बिहाफ पर हजार एप्लीकेशन फाइल कर चुका हूं। जहां पर एप्रोच आ गई, दो साल के लिए सैक्शन 14 में आर्डर नहीं हुआ, चाहे लॉ ने प्रोवाइड कर रखा है कि टाइम बाउंड पीरियड में आर्डर सैक्शन 14 में होना चाहिए। एप्रोच कहीं से आ गई आर्डर होने के बाद वहीं के वहीं स्टे मिल गया। सैक्शन 17 में आदमी जाता है तो कोई न कोई कंडीशन डीआरटी की तरफ से रखी जाती है कि आप इतना पैसा डिपाजिट करिए, तब आपको स्टे मिलेगा। लॉ के एकार्डिंग बैंक ने स्टेप लिया या नहीं लिए, उसको कोई नहीं देखता है। वहां यह देखा जाता है कि आप इतना मिनिमम पैसा जमा करिए। सैक्शन 14 में सीएमएम, अपना आर्डर पास करना है, नहीं करना है, 17 की अपील खुद ही डिसाइड करने लग जाता है, कई एग्जाम्पल्स हैं, कमेटी का टाइम वेस्ट होगा, वह मैं नहीं करना चाहूंगा। मैंने ये एग्जांपल प्रैक्टिकल देखे हुए हैं कि किस तरह से वहां स्टे होता है। बड़े-बड़े लोन एकाउंट में 300, 400, 500 करोड़ के एकाउंट में होता है, क्योंकि बैंक 20 लाख या 50 लाख के घर वाले के पास जल्दी से जल्दी चला जाता है लेकिन इन लोगन एकाउंट की रकम इनसे आज तक वसूल नहीं किए जा रहे हैं।

श्री जगदम्बिका पाल: जो सीएमएम आर्डर पास करता है, वह किसी पैरामीटर में या अपने आप ही करता है?

श्री विवेक कुमार सिंह: सर, उसको सैक्शन 14 में एडमिनिस्ट्रेटिव पॉवर है। There is only the administrative power.

SHRI JAGDAMBIKA PAL: He has not suggested any ground.

SHRI T. VENKAIAH: When the bank gives the notice of Section 30(2), after 60 days have been completed, he has to right to pass this order.

माननीय सभापति: इसमें सजेशन क्या है?

श्री विवेक कुमार सिंह: सर, मैं सजेशन दे रहा हूं।

यूपी में आज भी सरकार है, एक प्लॉट लिया गया एक करोड़ रुपए की लीज में, क्योंकि सरकार उनकी थी, मैं खुद उसका साक्षी हूं, खुद उस केस को मैंने लिया है। तीन साल डीएम से आर्डर नहीं होने दिए गए। बैंक ने परेशान होकर कि ऊपर से प्रेशर पड़ गया, पॉलिटिकल प्रेशर आ गया, उस एकाउंट को कोटक महिन्द्रा में सेल आउट कर दिया गया, 45 करोड़ रुपए का एकाउंट सेल आउट कर दिया। जो विजया बैंक ले सकता था 45 के 70-80 लाख में, सवा सौ करोड़ रुपए एस एकाउंट में ले लिया, क्योंकि सुप्रीम कोर्ट की इंटरफेयरेंस हुई, हाईकोर्ट की इंटरफेयरेंस हुई। वहां से यूपी गवर्नमेंट से यह भी कहा गया कि इसकी लीज, जो सेल आउट की गई है उसका ट्रांसफर न हो, लेकिन सुप्रीम कोर्ट के आर्डर से लीज भी उसमें ट्रांसफर की गई।

मेरी रीजनिंग है इसमें कि अगर डीआरटी में इस चीज की पॉवर आती है, इमीडिएटली सैक्शन 14 के आर्डर होंगे, इमीडिएटली उसके अंदर बैंक की रिकवरी होगी। जहां डिस्ट्रिक्ट के अंदर डीआरटीज नहीं है, वहां डीएम को पॉवर रहनी चाहिए। मैं यह नहीं कह रहा कि डीएम की पॉवर खत्म कर दी जानी चाहिए। रीजनिंग मैं यह देता हूं कि इसके अंडर में रिकवरी ऑफिसर क्यों आने चाहिए?

First, the recovery official is a judicial officer having power of arrest and detention under Rule 73, 82 and 83 of Second Schedule of Income Tax Act, 1961 read with Section 25 of RDBI Act. Rule 82, Second Schedule of Income Tax Act, clearly specifies that the Recovery Officer in the discharge of his functions be deemed to be acting judicially within the meaning of Judicial Officer Protection Act, 1850. For all purposes, the proceedings of Recovery Officer are equivalent to the proceedings of execution proceedings. Therefore, the Recovery Officer is equivalent to a Senior Civil Judge of the Execution Court, who conducts similar proceedings under CPC. The Recovery Officers

are well conversant with the provisions of the SARFAESI Act, RDBI Act read with Second Schedule of the Income Tax Act and Transfer of Property Act. Inclusion of Recovery Officer under Section 14 of the SARFAESI Act will facilitate expeditious recovery of public money, which is main object of both the Acts and also the object of the present amendment being sought to be incorporated in those Acts.

इससे यह है कि इस सैक्शन 14 में बैंक आया वहां पर, बैंक ने सैक्शन 14 लगाई, उसका आर्डर हुआ। विद इन थ्री मंथ्स रिकवरी प्रोसीजर के रिजल्ट आने लग जाएंगे। जो नीचे डिले हो रही है, वह डिले मिनिमम होते चले जाएंगे, एनपीए भी कम होता चला जाएगा। जब 17 की अपील प्रिसाइडिंग आफिसर सुन रहा है, 14 अगर नीचे दे दी जाती है एक ही के नीचे जाकर तो कम से कम रिकवरी इफेक्टिव होगी।

इस पर मेरे कुछ वकील भाइयों से मतभेद हैं, लेकिन फिर भी मैं इस बात को रखना चाहूंगा। हालांकि वे नहीं चाह रहे थे कि यह हो।

In the principle Act, RDBI Act, Section 19, after the proposed amendment, clause 3 of Sub-Section 5, following clause 4 shall be inserted. In case the defendant at the OA stage or at the recovery proceedings stage, as the case may be, files an affidavit, which is found to be false at any stage, thereafter the Presiding Officer, may, either on his own or on a reference received by him, initiate contempt proceeding under Section 350 of CrPC against defendant or debtor or banker. अगर आप कोर्ट के अंदर जाकर फाल्स एफीडेविट प्रोवाइड कर रहे हैं किसी चीज का, तो मेरे एकार्डिंग क्योंकि देखा गया है कि बोरोअर आता है, रिकवरी ऑफिसर उससे मांगता है कि एफीडेविट ऑफ एसेट्स दे दीजिए। वह कहता है ही नहीं साहब मेरे पास तो। इसमें क्या है? दूसरा पैन कार्ड बनाओ, लोन दूसरे से ले रखा है, पैन कार्ड दूसरा शो कर दिया है। मैं तो ऐसे एग्जाम्पल दे सकता हूं जिनमें नाम भी चेंज कर रखे हैं। आप अगर इंक्वायरी करा दें तो मैं बैंक का नाम भी डिसक्लोज कर दूं।

एक फेमिली अमेरिका में रहती है। पैरेंट्स की डेथ हो गई। दस करोड़ का लोन विद दि कनाइवेंस ऑफ ऑफिसर उठा लिया गया थर्ड पार्टी के नाम पर, जिसमें से ढाई करोड़ रुपए डिसबर्स हो चुके हैं, इसी महीने के अंदर साढ़े सात करोड़ रुपए डिसबर्स होने जा रहे हैं और प्रापर्टी के डीडीए से मिलकर फोर्ज्ड डॉक्यूमेंट भी उसके तैयार कर लिए गए। सिबिल में न आ जाए, जो महीने के अंदर में आता है डाटा, उससे पहले दूसरे बैंक से पांच करोड़ रुपए लेने की भी तैयारी इस प्रापर्टी के ऊपर कर ली गई है। क्या प्रोविजन होना चाहिए, जब तक हम प्रैक्टिकल नहीं देखेंगे, तब तक एनपीए नहीं रूकेगा। मेरा सजेशन यह है कि जब तक एक हार्ड स्टेप अगर डीआरटी को नहीं दिया जाता कि इनको भी प्रोसीड करने की पॉवर है, तब तक इनसे कोई नहीं डरेगा। मैं इस समय कंट्री की सोच पर बैठा हुआ हूं। मुझे किसी चीज का इसमें इंट्रेस्ट नहीं लेना है। जो कमियां हम डील करते हैं, बीइंग ए डीआरटी मेंबर, जो हम कमियां

देख रहे हैं, हम भी केस लड़ते हैं, बहुत सी ऐसी जगह हैं जहां हमारे भी हाथ कट रहे हैं। जैसे कि आप एक बहुत अच्छी अमेंडमेंट लेकर आ रहे हैं। टेनेंसी के ऊपर एक जजमेंट दे दी। मैं नहीं था उस केस के अंदर सुप्रीम कोर्ट में, मैं भी एक केस में गया हुआ था, क्योंकि मेरी प्रापर्टी को ताला लगाया गया, 24 घंटे में खोल दिया हाई कोर्ट ने। उसमें सब सिर्फ इस बात पर गए कि थर्ड पार्टी बैठी है, क्योंकि एक्ट की कमी की वजह से जजमेंट पास हुई टेनेंसी की कि जो रेस्टोरेशन होगा, पजेशन, वह किसको होगा? इसके अंदर आप जो भी अब लेकर आ रहे हैं, टेनेंसी के राइट भी होंगे वहां पर।

सर, एक तीन सौ करोड़ का लोन था। बॉरोअर मेरे पास आया, वह बोला कि मेरी अपील फाइल कर दीजिए। मैंने कहा पागल हो गया है, तो यहीं पर 25 परसेंट डीआरटी का खा लेगी। मैंने कहा कि कहां की प्रापर्टी है? वह बोला कि हिसार की। मैंने कहा कि 10 रुपए के स्टैंप पेपर पर एफिडेविट ले जा और लगा दें डीएम के पास में और इसको स्टे करा ले। वह तीन साल से स्टे अब तक चल रहा है।

SHRI BHARTRUHARI MAHTAB: You are speaking very fast. I am unable to follow. आप थोड़ा धीरे-धीरे बोलिए।

श्री विवेक कुमार सिंह: सर, आप लोगों के बीच में बैठकर ही सीखा हूं। सर, यह हिसार की प्रापर्टी है।

श्री गजेन्द्र सिंह शेखावत: आपको एप्रीशिएट करना होगा कि वकील बिना फीस के भी इतना अच्छा काम कर रहे हैं।

SHRI P.P. CHAUDHARY: He has already appreciated me long back.

SHRI BHARTRUHARI MAHTAB: He is educating us.

श्री विवेक कुमार सिंह: इसके अंदर स्टे भी मैंने कराया था, क्योंकि ऐज ए प्रोफेशनल मुझे करना था, स्टे भी मैंने कराया।

श्री भर्तृहरि महताब: फिर क्या हुआ, उसका ताला खुला या नहीं?

श्री विवेक कुमार सिंह: सर, उसका तो अबी तक ताला ही नहीं लगा है।

आप जो लेकर आ रहे हैं सैक्शन 17 मे अमेंडमेंट कि टेनेंसी का राइट दे दिया, अब तक उसकी प्रापर्टी सेल आउट हो गई होती, बैंक का पैसा रिकवरी हो गया होता। सैक्शन 17 और अमरीश जैन की जजमैंट कि जहां प्रॉपर्टी सिचुएटेड होगी वहीं फाइल होगा। उससे भी बैंकर को बहुत नुकसान हो रहा था। जहां कॉज ऑफ एक्शन होगा, क्योंकि देखा गया है कि दिल्ली में बड़ी-बड़ी लोनिंग ब्राचं बैठी हैं और प्रॉपर्टी दिल्ली से बाहर की मॉर्गटिज रखी है। जिसका ओरिजनल पेपर पड़ा है, बैंक का एक मैनेजर आ रहा है, किसी ने गाड़ी में थप्पड़ मारा और उसका कागज छीनकर ले गया तो कौन जिम्मेदार होगा। लेकिन एक्ट में अब जो अमैंडमैंट किया गया है, इससे रिकवरी पर फर्क पड़ेगा और डीआरटी में पावर आने से बैंक के पैसे भी जल्दी रिकवर होंगे।

Now, for reasoning for 350 is that most of the defendants or certificate debtors file vague and frivolous affidavit and do not file correct affidavit and suppress the material facts.

SHRI JAGDAMBIKA PAL: Please try to give us suggestions.

श्री विवेक कुमार सिंह: मैंने सैक्शन 14 की सारी रीजनिंग दे दी है।

SHRI JAGDAMBIKA PAL: You have said that DRTs should be strengthened. But we would like to know about your suggestions in this regard.

श्री भर्तृहरि महताब: सैक्शन 19, सब-सैक्शन 22 के बारे में बताइए।

SHRI VIVEK KUMAR SINGH: Now, explanation to Sub-Section (22) of Section 19 of the principal Act (RDDB&FI Act) shall be inserted as under:-

> "Explanation: Once recovery certificate has been issued, the Recovery Officer shall exclusively deal with the mortgaged and or hypothecated assets of CDs as specified in the recovery certificate."

The reasoning for that is in a catena of judgements of various hon. High Courts and hon. Supreme Court of India, it has been held that once a recovery certificate has been issued under Section 19(22) of RDDB&FI Act, the Recovery Officer is the custodian *legis qua* the properties mentioned in the said recovery certificate. Therefore, if the certificate holder proceeds against the assets mentioned in the recovery certificate under SARFAESI Act, it is against the decisions of hon. High Courts and hon. Supreme Court of India. Moreover, the ratio of Transcore Judgment is limited to the OA stage only under RDDB&FI Act.

इसमें मेरा सजैशन है कि एक बार आरसी कटने के बाद रिकवरी ऑफिसर कस्टोडियन हो जाता है। उसे फिर सरफेसी में बैंक सेल आउट न करके आरसी में ही प्रोसीड किया जाए।

श्री जगदम्बिका पाल: इसका क्या कारण है?

श्री विवेक कुमार सिंह: कस्टोडियन हो जाता है, प्रॉपर्टी उसकी कस्टडी में रहती है। माननीय सुप्रीम कोर्ट, हाई कोर्ट के कई जजमैंट आए हैं कि अगर एक बार आरसी कट गई तो प्रॉपर्टी को आरसी में सेल आउट किया जाएगा। इसमें कस्टोडियन रिकवरी ऑफिसर हो जाता है। उसके पास ऐग्जीक्यूशन प्रोसिडिंग चलती है। जब वह ऐग्जीक्यूशन प्रोसिडिंग करेगा तो दो जगह के स्टैंप चलेंगे, फिर रिकवरी पर अफैक्ट होगा। वे कहेंगे कि हमने नोटिस निकाल दिया, आप इसे रोक लीजिए। दो एजैंसी अलग-अलग काम करेंगी। बैंक कहेगा अभी रुक जाइए, हम सरफेसी में सेल आउट करेंगे।

HON. CHAIRPERSON: Please move on to the next point.

SHRI VIVEK KUMAR SINGH: Sir, the next point is regarding explanation to Section 25 of the Principal Act (RDDB&FI Act) shall be inserted as under:-

"Explanation: Where the immovable property of the defendant is leasehold, the land owning agency shall not claim unearned increase from the sale proceeds of such leasehold immovable property."

यह देखा गया है कि जब प्रॉपर्टी को आरओ सेल आउट करता है तो उसके ऊपर जब डीडीए, हूडा बैठी होती हैं, वे कहते हैं कि अनइनक्रीज्ड मनी जितनी है, इसे हमें पे करके जाइए। मान लीजिए प्रॉपर्टी की वैल्यू एक करोड़ रुपये है और उन्हीं के चार्जेस दो करोड़ रुपये हुए तो उस प्रॉपर्टी को कौन खरीदने आएगा।

The reason for that is most of the immovable assets are leasehold properties. Land owning agencies like DDA, HUDA, PUDA, etc., claim unearned increase from the sale proceeds of such leasehold properties as per their terms of lease. It is very difficult to attract genuine buyers for such leasehold properties because of the claim of unearned increase which is mostly on the higher side. Moreover, some land owning agencies like DDA have come up with the scheme of conversion from leasehold to freehold. Besides, Noida and Greater Noida allow transfer of immovable assets for the remaining lease period after charging nominal transfer charges. In addition to this, the immovable assets are not sold by the owners but by the Tribunal for the recovery of huge public money. Therefore, it will be in the larger public interest if this explanation is inserted in the proposed amendments.

उसमें प्रॉपर्टी सेल में भी दिक्कत नहीं आएगी। उदाहरण के लिए जैसे बॉरोअर की आरसी कट गई, ओए में डिफैंडैंट होकर वह आ रहा है। वह कहता है कि मेरी प्रॉपर्टी आरओ बेच नहीं पाएगा। फ्री होल्ड नहीं है और फ्री होल्ड कराने जाऊंगा तो मुझे नॉमिनल चार्ज देने पड़ेंगे और ये बेचेगा तो कोई लेने वाला नहीं होगा, उसे डबल चार्ज देने पड़ेंगे। वह बाहर के बाहर परचेजर से करता है।

श्री नरेश गुजरालः यह स्टेट गवर्नमैंट का अधिकार है, हम कैसे कर सकते हैं।

श्री विवेक कुमार सिंहः डीडीए सैंटर में आता है। ग्रेटर नोएडा फ्री है, उसमें नहीं है। वहां नॉमिनल चार्जेस हैं।

Next is the proposed amendment at serial no. 37, it is written as under:—

According to 30(a) wherein appeal is preferred against any order of Recovery Officer under Section 30 by any person from whom the

amount of debt is due to the bank or financial institution or consortium or bank or financial institution, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal 50 per cent of the amount of debt as determined by the Tribunal.

श्री रोशन सेठी: आरओ की अपील में 50 प्रतिशत जमा कराएंगे तो फिर कोई अपील ही नहीं हुई।

SHRI AMIT RISHI: Sir, it will deprive the borrower or the debtor to even point out the irregularities or the process which has not been adopted by the recovery officer for recovering the amount. There can be minor negligence or mistakes which can be occurred while publication or other things but by giving this power the debtors are totally being deprived of.

श्री विवेक कुमार सिंह: सिंगल रेजिडेंशियल यूनिट हो। 60 सीसी में उसे अटैच नहीं किया जा सकता।

श्री भर्तृहरि महताब: आप दिल्ली बार एसोसिएशन की तरफ से बोल रहे हैं। वह हमारे पास नहीं है।

श्री विवेक कुमार सिंह: जैसे अगर सिंगल रेजिडेंशियल यूनिट है, उसे 60 सीसी में अटैच नहीं किया जा सकता। उदाहरण के लिए मैं कल की बात बता रहा हूं। एक आरओ ने उसे अटैच करके प्रॉपर्टी सेल आउट पर लगा दी। लॉ कहता है कि सिंगल रेजिडेंशियल है और इस पर कोई प्रॉपर्टी नहीं है तो ऐग्जैम्टेड है, इसे अटैच नहीं किया जाए। अगर मैं उसके अगेन्स्ट अपील में जाता हूं तो मुझे अननेसेसरी 50 प्रतिशत पैसे देने पड़ेंगे। इसके बाद बाय चांस अगर आरओ के यहां से मेरे वारंट कट जाते हैं और आरओ वारंट कैंसिल नहीं करता, अगर मैं सेक्शन 30 में वारंट कैंसिल कराने जाता हूं तो मुझे फिर 50 प्रतिशत जमा करने पड़ेंगे। मेरे वारंट ही कैंसिल नहीं होंगे। ओए में आरसी कट जाती है और किसी थर्ड पार्टी की प्रॉपर्टी मॉर्टगेज हो जाती है, उस पर सेल नोटिस जाता है या प्रोक्लेमेशन ऑफ सेल जाता है, वह आरओ की कोर्ट में आता है। वह कहता है कि यह मॉर्टगेज प्रॉपर्टी है, मैंने डिसाइड कर दिया, प्रॉपर्टी सेल होगी। अगर मैं अपील करता हूं तो मुझे 50 प्रतिशत देने पड़ेंगे। मैं क्यों दूं। मैं न बैंक का बॉरोअर हूं, न मॉर्टगेज़र, मैं थर्ट पार्टी हूं।

HON. CHAIRPERSON: Now, the hon. Members put clarifications. Other Bar Associations are also here along with asset reconstruction companies. Preferably first they will give their replies and then if you think anything is left, you can send it in writing.

SHRI AJAY SANCHETI: Sir, my questions are mostly to ARCs and answer is expected from the RBI also. You have mentioned that there are total 15 ARCs in the country. उसमें से कितनी एआरसीज़ ऐसी हैं जिसमें बैंक्स

का स्टेक है। How many ARCs are there where either promoter is a bank or stakeholder is a bank directly or indirectly? I would like to have this in writing. It is not needed immediately. रिज़र्व बैंक के गाइडलाइन में प्रोविजन हैं कि जो डेट या असेसट एआरसीज़ लेती हैं, उनकी खुद की प्रोमोट की हुई एआरसीज़ है क्या वह उसी को दी जाती है। This is one question. जब भी बैंक डेट या असेसट एआरसीज़ को देते हैं। What is the procedure adopted to select ARC? Is it through a competitive bidding or any other means? As you said, 15 per cent upfront money is to be deposited with the banks and balance money is to be paid. Why is funding these ARCs? Is it again these banks or any money is coming to the bank? I would like to know all these details especially what are the guidelines by the RBI also in this context. Thank you.

SHRI A. SISIR KUMAR: Respected Chairman and respected Members of Parliament, Good Afternoon to all of you. Sir, there are 15 ARCs. In response to the question of the number of banks that have stakes in these ARCs, coming to our ARC, only 2 per cent is held by Canara Bank. Initially when the Act came, the private players were not coming; so banks were interested. In this, there is a clause called sponsors. If any person is holding more than 10 per cent of the paid up equity of the ARC, they are called sponsors. Now your question will be more appropriate if how many sponsored banks ARCs are there.

SHRI AJAY SANCHETI: I would just like to again put my question straight. You may call sponsor; you may call stakeholder or anything. मेरा सवाल बड़ा सीधा है, आपकी एआरसीज़ है उसमें प्वाइंट वन परसेंट है या दस परसेंट है उससे मेरा कोई इंट्रेस्ट नहीं है। आपके एआरसीज़ में किसी भी बैंक का स्टेक है? मैं आपसे कोई इंडिव्जुअल क्वेश्चन नहीं पूछ रहा हूं। मेरा सवाल है कितनी एआरसीज़ हैं और हर बैंक में कितना एआरसीज़ है। मुझे बाद में चेक कराना है कि आपने जो असेट खरीदा है वह अपने ही बैंक का लोन नहीं चुका पा रहे थे इसलिए उसी एआरसीज़ ने तो नहीं खरीद लिया है। It is because, this haircut business, according to me is not a clean business. I can vouch with the examples later on.

SHRI A. SISIR KUMAR: Sir, there is some participation in all the 15 ARCs at the moment existing in India.

SHRI AJAY SANCHETI: Chairman, Sir, the appropriate answer what I am expecting, I would like it to come from the RBI and not from the individual ARCs. Then it will be a collective answer.

SHRI JAGDAMBIKA PAL: Who is representing from DRT Bar Association, Allahabad? I think they have not come today. They have submitted memorandum. In the Principal Act, in Section 3, they have

proposed some changes. One is that it is not less than 50 crore rupees or such other amount as the Reserve Bank of India may by notification specify. The transfer of assets by the banks in favour of the asset reconstruction company does not fetch liquid cash immediately. The reason being that no liquid cash is given by the asset reconstruction company on receiving the assets by the banks and at the same time some credibility should be attached to Securitisation company. I would like to know on what ground they have proposed this. जयपुर का कोई मेमोरेन्डम नहीं है। इलाहाबाद के लोग आए नहीं हैं। आप चाहे तो एक बार फिर से बुला लें।

SHRI RAVI PRAKASH VERMA: The lawyers from DRT have raised a few questions which relate to the practical performance of the system. I would like to ask RBI whether you have taken this into consideration. You know, you have been regulating the ARCs. Have you considered all these things? I would like to know whether you had a sitting with them and you have gone through all the problems and tried to settle them.

माननीय सभापति: आरबीआई के बारे में भी कहा गया है उसको नोट कर लीजिए, जब अगली मीटिंग मुंबई में होगी आरबीआई इसका स्पेसिफिक जवाब देगी।

SHRI JAGDAMBIKA PAL: It should be made clear whether the RBI guidelines are mandatory for the bankers or they are only advisory for the bankers.

HON. CHAIRPERSON: Our Secretariat will send you the questionnaire. You will send reply in advance. So, we all will come with that reply.

SHRI BHARTRUHARI MAHTAB: Perhaps, today's sitting is a bit confrontationist. We have the DRT Bar Associations before us and also the ARCs. I would like to pose a question to three Bar Associations that are before us today because the concern that was raised while this amendment Bill was proposed and subsequently what was told to us by the Finance Minister in the House and during the deliberation, the first deliberation that we had in the concerned Ministry or Department that when DRT came into existence, it was only to lessen the load of cases in different courts so specific or focused litigation will be confined to these courts/tribunals. As this Committee is also deliberating, the functioning of DRTs and DRATs, what we find is in 1990, more than 15 lakh cases filed by PSBs and 304 by financial institutions. It was involving around Rs. 6000 and odd crores, was pending in different courts. When this Bill, I think, it must have increased by now. When this Bill was introduced last month, there were 70000 cases pending in DRTs involving more than five point some odd lakh crores. So, just as I can borrow Jagdambika Ji's usage 'common sense', one can understand that has DRTs and DRATs improved the situation? This is a

question which I think the Bar Association has to tell us frankly and you have given us certain suggestions how to improve the functioning of these tribunals and here is a scope before all of us. The Government has come out with certain amendments. You are also suggesting certain amendments and you want some more time also to give certain suggestions to this Committee. But the basic question that is before us today is that within last so many years with the functioning of tribunals, with the strengthening of the system through legal procedure, where have we erred? These cases went on mounting and in common sense, one says if the law is perfect, litigation will be less. If law is cumbersome, litigation will mount. Are we making the present amendment more simple or are we making it more cumbersome? This will be a general statement but while going through different clauses of the amendment, our endeavour is to make it more simple. Ultimately, you will find ways how to help the litigations. That is a different story altogether. But my suggestion would be to understand from the Bar Association how to minimize the litigation and recover the money? I am thankful to Mr. Vivek because he was going so fast, it was difficult to absorb what you are saying. It was very revealing. It is very interesting to interact with a lawyer.

श्री गोपाल शेट्टी: सभापति जी, इन सब बातों को सुनने के बाद, मेरे दिमाग में एक बात आई है और मैं आर.बी.आई. के अधिकारियों से चाहूंगा वे इसके ऊपर विचार करें और बताएं कि इस बारे में क्या हो सकता है। लिक्विडेशन में जाने के बाद एआरसीज़ आ जाती हैं और 15 परसेंट के हिसाब से उन्हें पैसा जमा करना पड़ता है और बाकी दो साल का पीरियड है, तो क्यों न हम यह चांस जो ऑनगोइंग है, उसे ही दें। एआरसीज़ भी अपना 15 टका पैसा बैंक में रख दें, ताकि उसे इंटरेस्ट मिले और यदि दो साल में फेल हो जाता है, तो एआरसी कैन इंटरव्यू। यह मैं इसलिए कह रहा हूं कि ऑनगोइंग जो लोग हैं उनकी बात बैंक के पास 50 एप्लीकेशन देने के बाद भी नहीं सुनी जाती है। यदि ऐसा हो जाता है, तो बैंक के ऊपर भी एक दबाव रहेगा कि लिक्विडेशन में जाने के बाद भी he can also be a player in this ARC इससे बहुत बड़ा लाभ होगा, ऐसा मुझे लगता है। इसलिए मैं कमेंट्स चाहूंगा। On going should be given the same charge. जब हम एआरसी को दे रहे हैं, तो why should they not be given a chance? इसलिए बैंक के जो काम करने के तरीके हैं, उनमें बहुत बड़ा बदलाव आएगा। बैंक में कोई सुनता ही नहीं, भले ही कितने ही रिक्वेस्ट लेटर दे दो और बड़े लोगों से भी बातचीत कराओ, तो भी कोई नहीं सुनता है। उनकी मर्जी से ही काम चलता है। इसलिए मैं समझता हूं कि इस बारे में हमें कुछ सोचना चाहिए।

HON. CHAIRPERSON: Some witnesses are here. We are not giving the opportunities. So, I will give an opportunity to each person.

SHRI AMIT RISHI: I have one thing with regard to the Agricultural Land. Precisely, the agricultural land has not been described or mentioned anywhere.

SHRI ASHWANI KUMAR CHADHA: As per the latest amendment, it is proposed that any substantial change in its management of ARC, any director of asset reconstruction company, the RBI prior approval is required. My submission is that there are some cases. Some directors are nominated by Banks and FIs where absolutely ARC has no say whatsoever. Normally, it is linked to their seats say GM(Recovery), GM(Treasury). Whenever there is a change in that seat, we have per force go to RBI where ARC, the change of the Director absolutely has no role. So, we can consider that. In the bracket, we can say, other than directors nominated by banks or FIs or any regulatory body. That will save the burden on RBI.

In the case of Section 14, my humble submission is that my friends have also mentioned and it should be very clearly mentioned that he will be exercising only executive powers and not judiciary powers. The reason being lease deed, recently, there is a supreme court judgement but now, since we have inserted section 17(3) where the basic reason of the Apex Court was that DRT was not having any power to restore back the possession if it has been taken wrongly from the lessee. Now, since that has been inserted, if it is added in that, they will be exercising only executive power which is basic intention of the Act itself.

HON. CHAIRPERSON: We do not take a subject in that context. What Supreme Court says, that is not relevant for us. That is definitely a principle of law which is defined by the Supreme Court.

SHRI ASHWANI KUMAR CHADHA: Only the thing Section 17(3) has been amended. We can merely mention that they will be exercising only. That is the intention of the Act itself.

Another thing is a very small thing. Any word which he has mentioned should either be deleted or should be substituted by the word 'demanded'. That will solve the purpose.

In Rule 9, there appears to be small mistake. It says 'fails to obtain a price higher than the reserve price' whereas my submission is the intention was fails to obtain a price equal to reserve price or higher than reserve price. Reserve price cannot be set aside.

SHRI A. SISIR KUMAR: Mr. Mahtab has rightly hit the nail on the head raising the point whether the DRT is functioning. The SARFAESI Act has come subsequent to the DRT Act because of piling of cases. So, I submit that whenever we are talking about 41(c), CMM permission, I think we should empower him more to ensure that he delivers poison

instead of again the power going to the DRT, which will only delay because there are already pendency of cases and this also could delay. So, our suggestion is that within 30 days compulsorily he has to take action. There should not be any choice given to the CMM for deliberation. That should be the intention. He should act within that power.

Second, even if he passes an order to take possession, police help is required. So, his order, if it is given service from the jurisdiction, from the police station to which the property belongs, really gets implemented. Otherwise, it will be a mere order and nobody will be able to realistically do. This is a very practical thing which is required. Taking possession is the biggest challenge in recovery.

Coming to shortage of hands, in various places we find the CMM office might not have enough people, then, they might authorize advocates as Advocate Commissioners to do the job on their behalf. May be, the MRO is not there or the Tehsildar is not there or the revenue officers are not there. In their place, the advocates of respectable standing can be engaged as Advocate Commissioners to take the possession and hand it over to the secured person. This is one submission. So, instead of going back to the DRT, here itself we can strengthen. This is one.

Coming to the Supreme Court standing, it is a concurrent proceeding. Only the Recovery Officers should enforce it. The Supreme Court has already said that it is a concurrent opportunity. It is not only that the DRT should do or the SARFAESI should do. By chance, the DRT is overcrowded, they are not able to execute which is the case we are facing, then we should have the right to proceed under SARFAESI as well. So, it is only concurrent. The objective of both DRT and SARFAESI is to resolve the case or recover the money for the institution. So, it should not be prevented. It is only Recovery Officer and not SARFAESI. The SARFAESI should be concurrent. Already, the Supreme Court judgement is there.

One final sentence is that we are talking about ground's rate superseding the secured lender's debt. I am very thankful that the Government has brought this amendment. However, it can be mostly prospective. There could be some ambiguity in implementation saying that from this day onwards they might say.

HON. CHAIRPERSON: It is not retrospective effect. It should be from the date of notification.

SHRI A. SISIR KUMAR: Yes, Sir. Then, what will happen is, wherever money is recovered by the Government agencies it should not be recovered but wherever it is pending, they can act.

SHRI K. RAVI KUMAR: Good afternoon respected Chairman and Members of Parliament, with regard to the point raised by him about mounting accounts in DRTs and all that, when we see the number of DRTs, DRATs and the number of accounts *vis-à-vis* number of officers, there is a mismatch. So, we request that some more DRTs and DRATs to be formed and each PO managing two DRTs or three DRATs should be avoided. This is one suggestion.

With regard to agricultural land, many times very big borrowers mortgage agricultural lands. So, that should not be treated as agricultural lands. Only some small farmers can be given exemption. So, the amount can be fixed as a ceiling. There are also situations where the agricultural land can get converted into non-agricultural land. Then also it should be allowed to enforce. The agricultural land, which is given as a security, is subsequently converted into non-agricultural land.

HON. CHAIRPERSON: Now we conclude. Thank you very much. I thank all of you for giving your valuable inputs. As we have requested you, you would send your written submissions also within five days from today.

(THE COMMITTEE THEN ADJOURNED)

PROCEEDINGS OF THE FOURTH SITTING OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016 HELD ON TUESDAY, THE 12TH JULY, 2016

The Committee sat from 1100 hrs. to 1315 hrs. in Committee Room "074", Parliament Library Building, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Gopal Chinayya Shetty
3. Shri Subhash Baheria
4. Shri Nishikant Dubey
5. Shri Abhishek Singh
6. Shri Jagdambika Pal
7. Shri Chirag Paswan
8. Ms. Sushmita Dev
9. Dr. P. Venugopal
10. Shri B. Vinod Kumar
11. Shri Jitendra Chaudhury

Rajya Sabha

12. Shri Naresh Gujral
13. Shri Anand Sharma
14. Shri Bhubaneswar Kalita
15. Shri Ravi Prakash Verma

SECRETARIAT

1. Smt. Sudesh Luthra	—	*Joint Secretary*
2. Shri J.V.G. Reddy	—	*Director*
3. Smt. Jagriti Tewatia	—	*Deputy Secretary*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

DEPARTMENT OF FINANCIAL SERVICES

1. Smt. Anjuly Chib Duggal	—	Secretary
2. Shri Girish Chandra Murmu	—	Additional Secretary
3. Shri Mohammad Mustafa	—	Joint Secretary
4. Shri Anandrao Vishnu Patil	—	Joint Secretary
5. Shri Madhukar R. Umarji	—	Legal Consultant, IBA

DEPARTMENT OF ECONOMIC AFFAIRS

1. Shri Ajay Tyagi	—	Additional Secretary
2. Shri Shashank Saxena	—	Advisor (CM)

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE

DEPARTMENT OF LEGAL AFFAIRS

1. Shri Inder Kumar	—	Additional Secretary
2. Shri Mahendra Khandelwal	—	Additional Legal Advisor

LEGISLATIVE DEPARTMENT

1. Dr. Mukulita Vijayawargiya	—	Additional Secretary
2. Mrs. Veena Kothavale	—	Additional Legislative Counsel
3. Dr. Sanjeev Kumar Srivastava	—	Assistant Legislative Counsel

JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBT LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016

Verbatim Proceedings

Date : 12th July, 2016

Time : 1100 hours

Venue : Committee Room No. 074, Parliament Library Building, New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Km. Sushmita Dev — Member

WITNESSES EXAMINED

1. Shrimati Anjuly Chib Duggal
   Secretary, Department of Financial Services
2. Shri Anandrao Vishnu Patil
   Joint Secretary, Department of Financial Services

HON. CHAIRPERSON: Hon. Members, I welcome you all to the sitting of the Joint Committee. As you are aware, the Committee is examining, 'Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Bill, 2016'. Subsequent to presentation made by the nodal Department, that is, the Department of Financial Services, the Committee has heard the views of 24 stakeholders at the sitting held in Delhi and another 43 stakeholders at Mumbai, that is, total 67 stakeholders from various fields. In response to the advertisement issued through DAVP and at the Lok Sabha website, 11 written memoranda related to the subject have been received from various stakeholders. The writer replies related to the issues raised by the Members during the course of deliberations have been received from Department of Financial Services, Legislative Department, and Department of Economic Affairs. All these documents have already been circulated to the Members of the Committee by the Secretariat.

Today, the Committee would be taking evidence of the representatives of the Department of Financial Services, Legislative Department, Department of Legal Affairs, and Department of Economic Affairs. The next stage for examination of the Bill would be inviting Notices of Amendments from the Members of the Joint Committee followed by clause-by-clause consideration of the Bill and the consideration and adoption of the Report. If you all agree, after completing evidences today, clause-by-clause consideration may be taken up at the sitting of the Committee scheduled to be held on 16 July, 2016 so as to enable the Committee to finalise and present the Report by 22 July, 2016 as per the mandate given by the House.

Let us now call the representatives of various Ministries/ Departments.

माननीय सभापतिः आज की मीटिंग में डिपार्टमेंट ऑफ फाइनेंशियल सर्विस, लेजिस्लेटिव डिपार्टमेंट, डिपार्टमेंट ऑफ लेजिस्लेटिव अफेयर्स और डिपार्टमेंट ऑफ इकॉनामिक अफेयर्स के सभी अधिकारियों का स्वागत है। अभी तक इस सारे एक्ट की समीक्षा करते हुए टोटल 67 स्टेक होल्डर्स का हम लोगों ने एग्जामिनेशन किया है। पिछली जो कमेटी की मीटिंग्स हुईं थीं, उनमें जो क्वैश्चंस हम लोगों के सामने आए थे और विभिन्न स्टेक होल्डर्स की तरफ से जो ईश्यूज आए थे, वे सारे ईश्यूज भी हम लोगों ने भेजे हैं। जो आपका जवाब हमें प्राप्त हुआ है, वह हमने कमेटी के सदस्यों को सर्कुलेट कर दिया है। आज चारों डिपार्टमेंट के हमारे अधिकारीगण उपस्थित हैं। सारे स्टेक होल्डर्स के जो व्यूज आए हैं, उनके आने के बाद एक कंप्लीट विषय डिपार्टमेंट ऑफ फाइनेंशियल सर्विस से पहले रखा जाएगा, फिर बाकी डिपार्टमेंट्स को भी उसमें कुछ ऐड करना होगा, तो ऐड कर सकेंगे। उसके बाद हमारी समिति के जो भी माननीय सदस्य हैं, वे आपसे क्लेरिफिकेशन पूछेंगे, तो फिर आप उसका उत्तर दीजिएगा। आज हम एवीडेंस को क्लोज करेंगे, ताकि 16 तारीख को हम क्लॉज बाई क्लॉज कंसीड्रेशन के लिए जाएंगे। अब आप प्रारंभ कर सकते हैं।

एक औपचारिक सूचना हमेशा रहती है कि समिति की जो विषय-वस्तु है, वह हमारे माननीय स्पीकर के आदेशानुसार गोपनीयता के प्रावधान में आती है।

श्रीमती अंजलि चिब दुग्गल: सर, सबसे पहले मैं आपका और आपके माध्यम से कमेटी के सारे ऑनरेबल मेंबर्स का धन्यवाद करना चाहती हूं। इसमें क्वालिटी डिस्कशन हुई है, इतना टाइम लगाकर और थोड़े अर्से में हम इतना आगे पहुंच चुके हैं। जितने कमेंट्स आए हैं, जितने व्यूज आए हैं, उनके साथ हमारी अपनी एजुकेशन बहुत बड़ी है और उसकी बेसिस के ऊपर हम कुछ चेंजेज आपके सामने एक्सेप्ट करने के बारे में और बाकी डिस्कशन करने के लिए आपके सामने रख रहे हैं, एक छोटी सी प्रेजेंटेशन है, आपकी इजाजत हो तो इसको शुरू करूं।

(SLIDE PRESENTATION)

श्री निशिकान्त दुबे: इसका क्या मतलब हुआ? इनमें क्या फर्क है।

श्रीमती अंजलि चिब दुग्गल: सर, 1956 का कंपनीज़ एक्ट चल रहा था और 2013 में जाकर एक नया कंपनीज़ एक्ट बन गया। इनकारपोरेटेड का मतलब जो कंपनी रजिस्टर्ड हुई है, इसमें यह माना गया कि अगर हम कहते हैं कि इनकारपोरेटेड अंडर दि 2013 एक्ट, तो इसका यह मतलब होता है कि जो 1956 एक्ट के नीचे इनकारपोरेट हुई थी, वह कवर नहीं होगी। उसमें सिर्फ थोड़ी सी जो डेफिनिशनल ...

श्री निशिकान्त दुबे: 2013 का जो एक्ट बना, उसकी पूरी प्रोसीडिंग का मैं खुद पार्ट रहा, शुरू से लेकर अंत तक, आप भी रही हैं। उसमें साफ था कि 1956 के एक्ट में जो चीजें आई हैं, वे सब 2013 में मर्ज हो जाएंगी। उसमें कोई डेफिनिशन का या इन चीजों का कोई फर्क नहीं है।

श्री नरेश गुजराल: जब भी आपने कंपनी बनाई, आपने एक सर्टिफिकेट ऑफ इनकारपोरेशन दिया।

श्रीमती अंजलि चिब दुग्गल: सर, यह टेक्निकल प्वाइंट, अगर मुझे ठीक से याद है तो आरबीआई की तरफ से आया है।

श्री निशिकान्त दुबे: यह लॉ डिपार्टमेंट वाले बताएंगे।

SHRIMATI MUKULITA VIJAYAWARGIYA: I think, the best course to address this issue would be along with the definition where it says, " 'Asset reconstruction company' means a company under the Companies Act, 2013 to be registered with Reserve Bank under section 3 of this Act for the purpose of carrying on the function of asset reconstruction or securitization", further we can define, " 'Company' means a company as defined in under the Companies Act". So, we can add another definition of 'Company' to clarify the issue.

श्री निशिकान्त दुबे: ठीक है।

श्रीमती अंजलि चिब दुग्गलः सर, दूसरा इसमें एक प्वाइंट था आगे जाकर, जहां हमने पहले एंड लिखा हुआ था, एसेट रीकंस्ट्रक्शन एंड सिक्योरिटाइजेशन, उसमें हम ऑर करना चाहते हैं। आपको याद होगा कि हम पहले वाले एक्ट में एसेट सिक्योरिटाइजेशन कंपनीज़ एंड एसेट रीकंस्ट्रक्शन कंपनीज़ को अलग-अलग करते थे, पर ये दोनों काम कर सकती हैं, पर उसको रजिस्टर होना पड़ेगा आरबीआई के साथ या तो सिक्योरिटाइजेशन के लिए या एसेट रीकंस्ट्रक्शन के लिए, तो यहां पर हम क्लेरिटी लाने के लिए ऑर लिखना चाह रहे हैं।

श्री निशिकान्त दुबेः यदि दोनों में कोई रजिस्टर्ड है तो।

श्रीमती अंजलि चिब दुग्गलः सर, यह उस परपज के लिए रजिस्टर्ड होगी या दूसरे परपज के लिए रजिस्टर्ड होगी या दोनों परपजेज के लिए रजिस्टर्ड होगी। ऑर का जो मतलब है, वह दोनों को कवर कर लेगा।

श्री निशिकान्त दुबेः एंड ऑब्लिक ऑर कर दीजिए न।

श्रीमती अंजलि चिब दुग्गलः सर, इसमें काफी डिस्कशन हुई। लीगल एक्सपर्ट्स के द्वारा मुझे बताया गया कि अगर आप ऑर लिख दें तो उसका मतलब एंड भी हो जाता है।

श्री निशिकान्त दुबेः क्या ऐसा आपको लगता है? एंड ऑब्लिक ऑर क्यों न हम डाल दें?

श्री नरेश अग्रवालः अगर ऑर एंड हो जाता है तो एंड भी ऑर हो जाएगा।

श्रीमती अंजलि चिब दुग्गलः सर, ऑर इंक्लूड एंड।

SHRIMATI MUKULITA VIJAYAWARGIYA: Or both.

श्री निशिकान्त दुबेः बोथ, यह ठीक है।

श्रीमती अंजलि चिब दुग्गलः सर, इसके बाद मैं आपका ध्यान पेज तीन के क्लॉज चार पर डिबेंचर ट्रस्टी के बारे में आकर्षित करती हूं। सैबी की सिफारिश पर हमने डिबेंचर ट्रस्टी को सरफेसी एक्ट के तहत एक्शन लेने के लिए प्रोपोज किया हुआ है। इसमें सिर्फ एक प्वाइंट आया है कि सिक्योरड डेब्ट सिक्योरिटी को रखा जाए क्योंकि सरफेसी एक्ट है वह सिक्योरिटी एंट्रेस्ट को इन्फोरस करने के लिए है इसलिए ज्यादा क्लियरिटी के लिए सिक्योरड कहा गया है।

श्री निशिकान्त दुबेः इसमें सेबी जो कह रही है उसे आपने देख लिया, सेबी ने हम लोगों के पास जो डॉक्यूमेंट भेजा है वह कह रहा है "The requirement for appointment of debenture trustee is only provided in case of public issue of debenture securities which are regulated by SEBI. The purpose of the proposed amendment is to empower the appointed debenture trustee to enforce the security on behalf of all creditors, debenture holders as provided in regulation 15 (1)(d) of the SEBI Debenture Trustee Regulation 1993.

In case of unlisted debentures there will be no debenture trustee and hence such issues are not proposed to be covered under the Bill."

SHRIMATI ANJULY CHIB DUGGAL: Sir, that difference is between the listed and unlisted and here it relates to secured and unsecured. सरफेसी एक्ट इन्फोर्समेंट ऑफ सिक्युरिटी इंट्रेस्ट के बारे मैं है for greater clarity, the suggestion has come और क्लेयरिटी के लिए इसे हम डेब्ट सिक्युरिटी लिख दें।

श्री निशिकान्त दुबे: मेरा कहना है कि सेबी एक्ट, 1993 का उल्लंघन तो नहीं है क्योंकि डिबेंचर सेबी में ही लिस्टेड है, डिबेंचर का पूरा मालिकाना हक सेबी के पास है। सेबी एक्ट 1993 के फर्क को देख लीजिए। गुजराल साहब कह रहे हैं कि सिक्योरड का लिख दीजिए लेकिन जो अनलिस्टेड डिबेंचर हैं उसका क्या होगा?

SHRIMATI ANJULY CHIB DUGGAL: All secured would be covered. अगर सिक्युरिटी इंट्रेस्ट क्रिएट हुआ है तो उसको इनफोर्स करने के लिए सरफेसी एक्ट को एकसेस कर सकता है।

SHRI NARESH GUJRAL: We need a clarification there.

DR. MUKULITA VIJAYAWARGIYA: Sir, we will examine it in light of the provisions of the SEBI Act.

श्रीमती अंजलि चिब दुग्गल: सर, सरफेसी एक्ट में सेक्शन 31 में हमारा एक्जेम्शन दिया हुआ है जैसे एग्रीकल्चरल लैंड है उसमें बिना कोर्ट गए हुए सिक्योरिटी इन्टरस्ट इनफोरस नहीं कर सकते हैं। उसमें कई एक्सक्लूजन भी हैं उसी के साथ दो एक जेडएफ में, इस अमेंडमेंट में टांजिबल और इनटांजिबल असेट के साथ प्रोपोजड है उनके बारे में क्लेयरिटी के साथ क्लॉज जेडएफ में लिखा है इसके साथ ही यह भी बता रहे हैं कि कोई भी सिक्युरिटी इन्फोरस नहीं हो सकती है जो ऑलरेडी सेक्शन 31 में एक्सक्लूडेड है।

श्री गोपाल शेट्टी: एग्रीकल्चरल लैंड का एक कॉस्ट होता है। डेवलपमेंट प्लॉन में जो लैंड आता है उसका भी कॉस्ट होता है।

SHRIMATI ANJULY CHIB DUGGAL: Provision of SARFAESI Act not to apply in certain cases. So, there are several categories out here जिसमें से हमने हायर परचेज को रिमूव कर दिया है क्योंकि उसको हम कवर करना चाह रहे हैं। टांजिबल और इनटांजिबल के बारे में हम डिफाइन कर रहे हैं 31 सेक्शन में जो एक्सक्लूजन हैं वह बरकरार रहेंगे।

श्री निशिकान्त दुबे: हमारा परपस क्या है? हमारा पैसा क्रेडिटर को पैसा दिलाना है। आप कह सकते हैं कि जो एनसेस्ट्रल प्रोपर्टी है उसको ऑफ एक्सक्लूड कर सकते हैं लेकिन यदि इसी कंपनी के बाद उन्होंने एग्रीकल्चरल लैंड ले लिया तो उसके ऊपर यह क्यों नहीं अप्लाई होगा।

श्रीमती अंजलि चिब दुग्गल: सर, मेरा यह मानना है कि एग्रीकल्चरल लैंड सिर्फ कंपनी ही नहीं कोई फार्मर भी हाइपोथिकेट कर सकता है। सरफेसी एक्ट इन्फोर्समेंट ऑफ सिक्योरिटी इंट्रेस्ट आउटसाइड दि कोर्ट है। कोई फार्मर लेंडर के साथ जूझने की क्षमता न रखता हो उसके ऊपर क्षति आ सकती है। एग्रीकल्चरल लैंड के ऊपर यह एक्ट एप्लाई नहीं करेगा और अगर कहीं हापोथिकेशन है तो सिविल कोर्ट के रास्ते से जाकर आगे कार्रवाई की जा सकती है।

श्री निशिकान्त दुबे: हमारा टारगेट क्या है, बैंकरप्सी और इन्सोल्वेंसी एक्ट पास करने का टारगेट है कि हमें जल्दी से जल्दी करना है। सिविल मैटर इस देश में सौ सालों में भी नहीं निपटते हैं।

श्री नरेश गुजराल: हमारे सामने एक केस आया था किसी होटल कंपनी ने लैंड को रखा, 95 प्रतिशत लैंड होटल के लिए हैं, चेंज ऑफ लैंड यूज भी हो गया है, पांच परसेंट का एप्लीकेशन डाल दिया, फॉलो-अप नहीं किया और बाद में कोर्ट में होल्ड किया क्योंकि वायलेशन है, So, they could not enforce it.

HON. CHAIRPERSON: That is the Goa case.

श्री नरेश गुजराल: निशिकान्त जी कह रहे हैं कि अगर आप सिविल में होगा तो वह चलता जाएगा।

SHRIMATI ANJULY CHIB DUGGAL: Civil or Debt Recovery Tribunal. Agriculture is in the State List.

DR. MUKULITA VIJAYAWARGIYA: In light of the provision of clause (e) of Section 31 this has been modified.

SHRI ANAND SHARMA: In fact, there is a Supreme Court order day before yesterday, not in this context, that if the agriculture land is in possession of a farmer, is on lease and the lease has expired still the farmer will not be dispossessed. This is day before yesterday's Division Bench verdict of the Supreme Court. Kindly have it examined.

SHRIMATI ANJULY CHIB DUGGAL: So any higher amount which RBI may specify with a minimum of Rs. 2 crore.

श्री निशिकान्त दुबे: इसमें 2 करोड़ का ही क्यों रखा गया है, इसमें लॉजिक क्या है?

श्रीमती अंजलि चिब दुग्गल: सर, यह जिस समय बनाया था, तो उस समय एक्ट में यह सोचा गया कि किसी भी ऐसेट रीकंस्ट्रक्शन कंपनी में, यह नहीं हो कि सिक्योरिटी रिसीट्स इश्यू कर के पैसे रेज करके किसी और के पैसे लोन की रीकंस्ट्रक्शन में लगा दें।

DR. MUKULITA VIJAYAWARGIYA: A fund of not less than Rs. 2 crore or such other higher amount as the Reserve Bank may notify. Sir, here

we require some cap over the powers of the Reserve Bank to so to what extent it can notify because it is a delegated power.

HON. CHAIRPERSON: If you are not putting a cap, is it contrary to law?

SHRIMATI ANJULY CHIB DUGGAL: Sir, it is not and it is something which is an emerging area with ARCs coming in.

HON. CHAIRPERSON: Why do you want to curtail its powers? What is the reason behind it?

DR. MUKULITA VIJAYAWARGIYA: Sir, this has been the trend in all the other Acts where minimum is provided as also not exceeding the amount is also provided. That cap is always provided.

माननीय सभापति: ईविन आईएमवी में मिनिमम लिखा था वन थाउजेंड एंड वन लाख?

SHRIMATI ANJULY CHIB DUGGAL: Sir, there is an issue out there. We are talking about net owned fund of an ARC. By placing a cap, effectively we will be sending out a message to say that larger ARCs cannot work and that will be negative move.

SHRI ANAND SHARMA: I do not think that will be a positive move. We cannot cap it because if they have to take over assets where the value is well beyond the cap, what will happen. We will render them dysfunctional completely.

DR. MUKULITA VIJAYAWARGIYA: Sir, my point is cap regarding minimum amount.

SHRI ANAND SHARMA: Minimum is fine.

श्री निशिकान्त दुबे: चेयरमैन साहब, मेरा कहना है कि हम इसे 5 करोड़ क्यों नहीं कर सकते? सर, एआरसी 50-50 परसेंट कट दे रहा है। एआरसी के माध्यम से जो बैक टू बैक चीजें चल रही हैं, जब वे चीजें आएंगी, तो पता लगेगा। चूंकि अभी इस पर डिसकशन नहीं हो रहा है, इसलिए इस पर चर्चा करने का सवाल नहीं है कि बैक टू बैक क्या हो रहा है और चीजें क्या हो रही हैं। मेरा यह कहना है कि एआरसी का जो रोल है, इस पर ही एक बड़ा क्वैश्चन मार्क है, जब से यह एनपीए हुआ है। तब से ही क्वैश्चन की एक बाढ़ सी आ गई है। इसलिए मेरा कहना है कि जो जैन्यूइन एआरसी है, उसे मिनिमम 5 करोड़ कर दीजिए। मैं यह नहीं कहता कि और ज्यादा डालिए, लेकिन 2 करोड़ तो बहुत कम है।

श्रीमती अंजलि चिब दुग्गल: सर, इसमें हमने कई बातें सोचीं। इस सैटअप ऑफ अमेंडमेंट में जो हम प्रपोज कर रहे हैं उसमें हम इनटेंजीबल एसेट्स की रिजोल्यूशन भी कर रहे हैं और

टेंजीबल एसेट्स की भी कर रहे हैं। इसलिए कभी-कभी ऐसा भी हो सकता है कि कोई एआरसी हो, जिसकी स्पेशियलाइजेशन हो, let us say ट्रेड मार्क्स में काम करने की, जिसमें बहुत ज्यादा पैसा लगाने की शायद जरूरत न हो। अगर कोई छोटा एआरसी काम कर रहा है, उसमें स्पेश्यलाइजेशन है, एक्सपर्टीज है in a particular area और उनके लिए जो फ्लोर सूटेबल बनती है, its OK to let it be.

श्री निशिकान्त दुबे: सर, मुझे लगता है कि हमें इस कैप को बढ़ाना चाहिए?

माननीय सभापति: गवर्नमेंट को इस बारे में कुछ सजैस्ट करना चाहिए?

SHRIMATI ANJULY CHIB DUGGAL: Sir, my point here is that we are actually looking at an emerging area. We are proposing amendments which cover tangible as well as intangible assets. What I said to the hon. Member was this that if there is an ARC which is not very big but which has the expertise to handle certain intangibles like brand value or trade mark, etc. and they want to work in that particular area, then a higher floor may be of deterrence. So that is the only limited point otherwise, we will work with net owned funds.

श्री नरेश गुजराल: नेट की जगह नेट पेडअप शेयर केपीटल कर दीजिए।

SHRIMATI ANJULY CHIB DUGGAL: Sir, net owned will take into account reserves and whatever money is available.

SHRI NARESH GUJRAL: Let that be separate because those figures are sometimes can be window dressed. If you just say that net paid up share capital, it will be fine.

SHRIMATI ANJULY CHIB DUGGAL: Sir, we can work with that.

HON. CHAIRPERSON: Let us come to next point.

श्रीमती अंजलि चिब दुग्गल: सर, अगले बिन्दु पर जाने से पहले मैं यहां दो मिनट लेना चाहती हूं और इसकी परिभाषा के लिए मैं आपसी पेशेंस चाहती हूं। सर, इस एक्ट में जैसे मैंने पहले प्रेजेंटेशन की थी, तो आपसे बात कही थी कि इसके तीन एलीमेंट्स हैं। एक सिक्योरिटाइजेशन, दूसरा एसेट रीकंस्ट्रक्शन और तीसरा एनफोर्समेंट ऑफ सिक्योरिटी इंटरेस्ट्स। जब हम सिक्योरिटाइजेशन की बात करते हैं, तो हम बैड लोन्स की बात नहीं कर रहे हैं नैसेसरिली। हम बात कर हैं उस तरह के लोन की जिसमें there are receivables by the lending institution और उस रिसीवेबल्स के अगेंस्ट सिक्योरिटीज इश्यू कर के from another institution or another lender, the bank takes money and creates liquidity for itself. Let me give you two examples. One is this that the bank may have a credit card business. क्रेडिट काड्र्स के जो कैश रिसीवेबल्स हैं, पैसे

आने ही आने हैं। उन वाले रिसीवेबल बिल्स को अगर हम सिक्योरिटाइज करके, उसके अगेंस्ट अगर हम सिक्योरिटीज इश्यू कर दें to somebody who has a longer term investment horizon, the bank actually has a certain amount of money which it can then lend and use the money more effectively. Another example is where house loans have been given which are repayable normally over a longer period of ten years or 15 years, as the case may be. So the bank's money is locked up in long term loans. A part of these loans can be securitized to issue securities to another lender for a shorter period to tide over the asset-liability mismatch that the bank may otherwise be experiencing. So, when we are talking about securitization we are not necessarily talking about non-performing assets. For asset reconstruction we are certainly talking about non-performing assets. So the provision that we had put in earlier was to say that any loan can be securitized before it becomes a non-performing asset. Securitization is perfectly fine but if a loan is to be given for reconstruction then that period of 90 days after which it becomes a non-performing asset, must be respected because that much period a borrower may need to get his funds together to be able to pay the lender. So, this where we are asking that this provision could be deleted because this can actually work against a borrower who is trying to get his money together.

SHRI ANAND SHARMA: It is provided how it is interpreted.

SHRIMATI ANJULY CHIB DUGGAL: Yes, it can actually work against a borrower.

SHRI ANAND SHARMA: You think about it that unless and until this has been categorised, it has to go in for strategic restructuring of the debt. Taking over of the assets may complicate the matter. You should examine it from that angle. Every borrower is not a thief. Sometimes the project becomes unviable and various other factors are there as we have seen in the infrastructure projects. So, this is a real issue and how do you segregate. This will have a blanket application and how it get interpreted in reality. I think we should examine that.

SHRIMATI ANJULY CHIB DUGGAL: Sir, that is precisely the point I am making that for securitization purposes is not taking a loan over but issuing securities against a loan is perfectly all right but as far as asset reconstruction is concerned, we must ensure that the loan has become a non-performing asset before an asset reconstruction company can take it over not in the anticipation of its becoming a non-performing asset.

HON. CHAIRPERSON: That is correct.

श्री निशिकान्त दुबे: चेयरमैन साहब, यदि यह भी एक डेविएशन है। क्लॉज 6 का जो थर्ड पाइंट है, जो 3(ए) है, इसमें आपने सारे अधिकार एसेट रीकंस्ट्रक्शन के एआरसी को दिए हैं। एक तरफ यह कह रहे हैं कि इससे यह परेशानी हो रही है और दूसरी तरफ आप यदि इसे रखेंगे, तो दोनों एक दूसरे को कंट्राडिक्ट कर रहे हैं।

श्रीमती अंजलि चिब दुग्गल: सर, जो 3(ए) है, उसका परपज जरा सा अलग है और वह यह है कि बैंक ने कोई लोन दिया, उसकी एवज में प्रॉपर्टी को मॉरटगेज कर लिया।

सर, लोन अगर एनपीए हो गया और किसी एआरसी ने उसे एसेट रीकंस्ट्रक्शन के लिए टेकओवर किया, तो जो मॉरटगेज है that has to be transferred. To protect anybody else from making a mistake in buying any property which is already mortgaged, all we are saying is that the public record must reflect that a mortgage has now been transferred into the name of the Asset Reconstruction Company.

श्री निशिकान्त दुबे: नहीं, जो 2(ए) है जो 3(ए) है और यह जो डिलीशन है, ऐसा लगता है कि यह एक दूसरे को पूरा कंट्राडिक्ट कर रहा है। इस बारे में लॉ डिपार्टमेंट बताए कि इसका क्या लीगल इम्पलीकेशन होगा?

श्रीमती अंजलि चिब दुग्गल: सर, इसमें दो बातें हैं, नंबर वन हम जो डिलीशन कर रहे हैं उसमें हम यह कह रहे हैं कि कोई भी एसेट रीकंस्ट्रक्शन कंपनी लोन के एनपीए होने से पहले नहीं ले सकती।

श्री निशिकान्त दुबे: वह तो लेती भी नहीं है।

श्रीमती अंजलि चिब दुग्गल: सर, हम कह रहे थे कि because we were looking at securitisation and reconstruction.

श्री निशिकान्त दुबे: वह तो लेती भी नहीं है। आप लेंगी जब तक कि एनपीए नहीं होगा, वह एआरसी में क्यों जाएगा?

श्रीमती अंजलि चिब दुग्गल: सर, उसी को सुदृढ़ कर रहे हैं। नंबर टू, जब एआरसी नॉन परफॉरमिंग एसेट को ले ले, तो जो मॉरटगेज था in favour of the lending institution that mortgage gets taken over by the ARC and what we propose to do is that सारे रिकॉर्ड के अंदर एआरसी ने जो मॉरटगेज लिया हुआ है वह अच्छी तरह से रिफ्लैक्ट हो।

श्री निशिकान्त दुबे: पहले 2 है फिर 3 है। 2(ए) में तो आप 1(बी) का बढ़ाव कर सकते हैं। 1(बी) में जो लिखा हुआ है, उसी को 2(ए) में थोड़ा ज्यादा बढ़ाकर लिखा हुआ है। आप तो सारी लायबिलिटी, सारी चीजें जो हैं एसेट रीकंस्ट्रक्शन कंपनी के ऊपर छोड़ रही हैं। सर, इसे लॉ डिपार्टमेंट को लीगली वैट करने के लिए कहा जाए।

HON. CHAIRPERSON: At the time of clause by clause consideration we will take this up and you give your views in writing.

SHRI JAGDAMBIKA PAL: It is already there that fund of not less than Rs. 2 crore or such other amount as the RBI may notify specifically. Is it not understood? It is either Rs. 2 crore or more than that? So, why are you putting that 'higher amount'?

श्रीमती अंजलि चिब दुग्गल: सर, ये कहीं से कॉमेंट्स आए हैं कि हायर अगर नहीं कहेंगे, तो क्लैरिटी कम रहती है। It is only for the sake of greater clarity. But your point is absolutely valid.

SHRI JAGDAMBIKA PAL: I think, it is understood that it is not less than Rs. 2 crore. I think there is no need to put the word 'higher'.

माननीय सभापति: इसे क्लॉज बाई क्लॉज के टाइम पर कंसीडर करेंगे। अभी तो गवर्नमेंट का व्यू आया है।

श्रीमती अंजलि चिब दुग्गल: सर, एआरसीज की रजिस्ट्रेशन की पॉवर और उनकी केंसीलेशन ऑफ रजिस्ट्रेशन की पॉवर आरबीआई के पास एग्जिस्टिंग एक्ट में हैं। इस वक्त जब एआरसीज के लिए पाथ अनुमोदन कर रहे हैं कि they should be able to work more effectively; we are also creating a system where the regulation of RBI of ARCs becomes a little more meaningful. Apart from looking at ARCs only at the time of registration or of cancellation of registration we are providing for certain powers for regulation as well which is the powers to audit and the powers to inspect at that particular point of time. While giving those powers, drafting the Act, we found that in Sections 12(c) and 12(d) we have given powers to RBI to apply penalties in case these are required. While giving those powers while, drafting the Act, we found that in Sections 12(c) and 12(d) we have given powers to RBI to apply penalties in case upon inspection or audit something is found to be incorrect.

श्री जगदम्बिका पाल: इसमें आप से जो बात निशिकान्त दुबे जी पूछ रहे थे कि एनपीए के पहले तो आप शायद इसे लागू भी नहीं करते हैं, लेकिन आपके बिल में जो स्टेट्स 1(बी) में है, उसके अनुसार यदि उसने एक इंस्टालमेंट नहीं दिया और एनपीए न भी हुआ हो, तो फिर भी क्या आप तब भी इसे लागू करेंगे?

श्रीमती अंजलि चिब दुग्गल: नहीं, सर उसी को डिलीट कर रहे हैं। That only when there is an NPA which has been declared an NPA after the passage of time, only then the ARC can come into the picture.

श्री जगदम्बिका पाल: नहीं, जब एनपीए के बाद भी, जब तक विलफुल डिफॉल्टर नहीं है, तब I think, the borrower should be given certain time.

श्रीमती अंजलि चिब दुग्गल: सर, इसमें लम्बे दिनों का टाइम दिया हुआ है।

श्री जगदम्बिका पाल: आप देखिए कि बोरोअर पूरी कोशिश करता है कि उसका एनपीए न हो। यह हम लोगों की कांस्टीट्यूएंसी में जो लोग हैं, वे इसे बोझ समझते हैं। इसीलिए हमने मांगा था कि बड़े लोग बोरोअर्स हैं या छोटे लोग। मैं समझता हूं कि आम आदमी भी आज की परिस्थितियों में इससे प्रभावित है और कोशिश कर रहा है कि जो आधा पैसा उन्होंने जमा कर दिया है, फिर भी आज ऐसा हो रहा है कि किसी अथॉरिटी का पैसा आप पर बकाया है और आप उसकी किस्त नहीं दे पा रहे हैं by any default you do not have those resources. इसी में यदि कहीं से आपका पैसा आना है, तो क्या 90 डेज को और नहीं बढ़ाया जा सकता है? मेरा मतलब यह है कि बोरोअर की इंटेंशन रहने के बावजूद भी वह नहीं दे पा रहा है और इमीडिएटली उसके ऊपर एक्ट के मुताबिक एक्शन शुरू हो गया, तो इस प्रकार प्रेक्टिस में बाई एंड लार्ज बहुत कठिनाई आ रही है। इस बारे में हम रोज देखते हैं। इस पर आपका क्या कमेंट है?

MS. SUSHMITA DEV: Sir, I have a submission that when the Secretary is making a submission, the clarifications can be sought after she has finished her submission because I did not even get the point when something came up. I am a little new Member to this Committee. सर, समझने में वक्त लगता है। We can seek clarifications after she has finished her submissions.

माननीय सभापति: एक बार फिनिश कर लेने दीजिए, फिर आप अपने प्रश्न पूछें। गवर्नमेंट इस सजैस्शन के साथ आई है कि उन्होंने जो अपना प्रस्तुतीकरण दिया था, उसमें वह इस सजैस्शन को एड करना चाहती है। एक बार पूरा कर लीजिए। वह हम क्लॉज बाई क्लॉज कंसीडरेशन में करेंगे। अभी इन्हें पूरा कर लेने दीजिए।

श्रीमती अंजलि चिब दुग्गल: सर, जैसा मैं आपको बता रही थी कि एआरसीज की सारी कार्रवाई को रजिस्ट्रेशन के टाइम पर केंसिलेशन के टाइम पर आरबीआई देखता है। अब चूंकि एआरसीज हम ज्यादा अट्रेक्ट करने की कोशिश कर रहे हैं और जो हम अमेंडमेंट्स लेकर आ रहे हैं, अगर ये थ्रू हो गईं, तो ज्यादा एआरसीज इस एरिया में काम कर सकेंगे, तो उनका रजिस्ट्रेशन और केंसिलेशन के बीच का जो टाइम है, उसमें ओवरसाइट देने के लिए कि ऑडिट भी हो जाए, इंसपैक्शन भी हो जाए और कुछ इस तरह का काम न हो, which is imprudent or incorrect, तो आरबीआई को पॉवर्स दे रहे हैं। What we did was while doing that कि हमने सैक्शन 12(सी) और 12(डी) में आरबीआई को ये वाली पॉवर्स, रेगुलेशन की दीं और पेनल्टी की भी पॉवर्स साथ में दीं।

(SLIDE PRESENTATION)

श्री जगदम्बिका पाल: अगर ऑक्शन से एक दिन पहले पैसा जमा हो जाए तो क्या दिक्कत है क्योंकि पब्लिकेशन तो कम से कम एक महीना पहले होता होगा।

श्रीमती अंजलि चिब दुग्गलः सर, पब्लिकेशन एक महीने पहले होता है, लेकिन उसके अंदर थोड़ा बैलेंस करने की जरूरत है।

श्री जगदम्बिका पालः जब तक ऑक्शन एक्सपिडाइट न हो, तब तक डिसप्यूट कहां एराइज हुआ? Dispute arises only when an auction takes place and after that, I will be the bonafide owner of the property. हमने 25 प्रतिशत जमा किया, बाकी पैसा भी जमा किया तब डिसप्यूट के लिए एक कॉज हो गया, लेकिन अगर आज ऑक्शन होनी है और उससे एक दिन पहले तक हम पैसा जमा कर देते हैं तो उस ऑक्शन को रोकना चाहिए।

SHRIMATI ANJULY CHIB DUGGAL: There are two points in this. One is, we are trying to balance a number of people's interests. ऑक्शन में अगर कोई भाग लेने आया है, किसी ने इतने पैसे डाउन पेमेंट के लिए इकट्ठे किए हैं, कहीं से ट्रेवल करके आया है, जाकर प्रॉपर्टी को देखा है, ऑक्शन के लिए तैयारी की है, he has come prepared for the auction and then he finds that auction does not take place because payment has been made. That is one interest. Another one is, auction is one way of alienating the property. There are other ways also. यह प्राइवेट ट्रीटी से हो सकता है या the third way is to invite quotations or tenders.

SHRI JAGDAMBIKA PAL: For whose interest you are concerned for? जो बोनाफाइड ओनर है, जिसने पैसा लिया है, अगर किसी भी कारण से वह डिपॉजिट नहीं कर पाया, लेकिन वह ऑक्शन से बचने के लिए चाहे अपने रिलेटिव्स से, चाहे कोई प्रॉपर्टी डिसपोज ऑफ करके या किसी अन्य तरीके से पैसा इकट्ठा करता है और उसे डिपॉजिट करता है तो हमें उसके इंट्रेस्ट को ज्यादा प्रोटेक्ट करना चाहिए।

श्रीमती अंजलि चिब दुग्गलः सर, इसमें मंशा यह है कि कट ऑफ डेट इस तरह की हो जो एक्सप्लिसिट हो और जिसमें किसी को कन्फ्यूजन न हो।

श्री जगदम्बिका पालः लेकिन एक महीना काफी समय होता है। फिर तो बोरोअर का इंट्रेस्ट हम सिक्योर नहीं कर सकते हैं।

श्रीमती अंजलि चिब दुग्गलः सर, वह ऑक्शन की डेट भी रख सकते हैं। अगर उसमें ऑक्शन की डेट रखते हैं तो हमें उसका तरीका निकालना पड़ेगा कि डेट ऑफ इनवाइटिंग टेंडर्स के लिए भी टेंडर खोलने की डेट रखेंगे। उसमें एक बात याद रखने वाली है कि बैंक के लिए हम डिसक्रिशन छोड़ रहे हैं।

SHRI ANAND SHARMA: If the amount has been paid, then will the auction become redundant?

SHRIMATI ANJULY CHIB DUGGAL: If the amount has been paid, then the auction becomes redundant.

श्री नरेश गुजराल: जो आदमी ऑक्शन में आता है, हो सकता है कि उसके पास पैसा फिक्स्ड डिपॉजिट्स में हो, जिसे वह ऑक्शन में आने के लिए ब्रेक करता है, तो उसके साथ भी अनफेयर है। इसलिए इसे ऑक्शन डेट से दस दिन पहले या एक हफ्ता पहले कर दीजिए।

KUMARI SUSHMITA DEV: I have something to say on this. Law is about certainty. When you create a law, it has to be predictable and there has to be a sense of certainty. The day you give a publication for auction, and if you say that ten days before you can come, nobody will take seriously the inevitable effect of it till ten days before. The idea is to liquidate the asset. The more uncertainty you create, the more you undermine that process. So, it is better to be certain and say that this is your cut-off date because you will be undermining the process.

SHRIMATI ANJULY CHIB DUGGAL: Any date is okay so long it is explicit and transparent. This is our suggestion.

Sir, now Section 14 relates to taking over of assets.

(SLIDE PRESENTATION CONTD.)

SHRIMATI ANJULY CHIB DUGGAL: Sir, I am going to request our legal expert to describe it a little more effectively.

SHRI MADHUKAR UMARJI: Sir, there was actually an error in drafting 2A. The intention was when a banker or a financial institution takes over or converts the loan into shares or transfers the shares kept in pledge in its own name, it shall be entitled to take possession of the assets of the company like the offices, the factories, etc. But without making any reference to the assets of the company, the reference was made to secured assets under sub-section 1. So, the intention is, we take over the company because we have got a controlling interest in the share capital of the company. But after further consideration, it was felt that take over of the company may require compliance with other provisions of the Companies Act where change of Directors has to be done by passing a resolution in the Annual General Meeting. So, we thought that that process could be done under the general law applicable under the company law and we propose to delete this.

श्री निशिकान्त दुबे: क्या आप बैंकिंग रेगुलेशन एक्ट, 1949 के सेक्शन 19(2) की बात कर रहे हैं?

SHRI MUDHUKAR UMARJI: Under Section 19(2), the provision is, any bank which acquires shares, invest in the shares of any company cannot

hold more than 30 per cent of the capital of the company. So, the reference to the Banking Regulations Act is with reference to saying that the bank which is taking this action must be compliant with section 19(2) of the Banking Regulations Act.

SHRI JAGDAMBIKA PAL: They may jointly be holding more than 50 per cent. ऐसा इसमें दिया हुआ है।

SHRI MADHUKAR UMARJI: It is two or more banks.

श्री निशिकान्त दुबे: यह ड्राफ्ट काफी कंफ्यूजिंग है। लीगल डिपार्टमेंट को इसे देखना चाहिए।

डॉ. मुकुलीता विजयवर्गीय: इसे डिलिट कर रहे हैं।

श्री निशिकान्त दुबे: डिलिशन होने से बड़ा इम्पलिकेशन होगा।

DR. MUKULITA VIJAYAWARGIYA: We will examine it.

श्री निशिकान्त दुबे: इसके एक्सप्लानेशन और डिलिसन के रीजन में बहुत फर्क है। एक्सप्लानेशन कहता है कि सिक्योर्ड क्रेडिटर को इसका कोई फर्क नहीं पड़ता है।

SHRI MADHUKAR UMARJI: The explanation is for the balance amount.

SHRI ANAND SHARMA: It makes sense.

HON. CHAIRPERSON: The general observation of the hon. Member Shri Nishikant Dubey is that this is drafted by the Legislative Department and every Section is amended.

DR. MUKULITA VIJAYAWARGIYA: We will examine it.

श्री निशिकान्त दुबे: एडमिनिस्ट्रेटिव, मिनिस्ट्री कुछ भी करे, यह क्या है? अभी हमने बैंकक्रप्सी और इंसॉल्वेंसी एक्ट पास किया है, उसके आधार पर इसके अमेंडमेंट की आवश्यकता पड़ी। मान लीजिए, उसे पायलट मिस्टर त्यागी, इकोनॉमिक अफेयर मिनिस्ट्री कर रहा था, वह कंपनी अफेयर्स में चला गया, कंपनी अफेयर्स उसका नोडल मिनिस्ट्री है। फायनैंशियल डिपार्टमेंट इसकी एडमिनिस्ट्रेटिव मिनिस्ट्री है, फाइनैंशियल सर्विसेज है, उस वक्त भी उसके कई कलॉजेज से यह डेफर कर रहा था। यदि इसमें अपनी बातों को इम्पोज करेगा तो आपका बैंकक्रप्सी और इंसॉल्वेंसी का परपस डिफिट हो जाएगा। यह काम लॉ डिपार्टमेंट को देखना है। क्योंकि उस वक्त भी हम डिसकशन कर रहे थे तो इकोनॉमिक अफेयर्स, कंपनी अफेयर्स और फाइनैंशियल सर्विसेज, तीनों में कई जगह मेजर डिफरेंसेज थे, लेकिन उसके बाद हमने उसे पास कर दिया। जब संसद ने पास कर दिया तो ये जो चाहेंगे उस हिसाब से कानून नहीं बनेगा। हमने जो कानून पास किया है और यह जो कानून बनेगा, दोनों में लड़ाई न हो।

DR. MUKULITA VIJAYAWARGIYA: When this Bill was introduced at that time the Insolvency and Bankruptcy Code was not enacted.

श्री निशिकान्त दुबे: इसी के लिए बनाया गया है।

HON. CHAIRPERSON: But it was under consideration.

SHRIMATI ANJULY CHIB DUGGAL: Section 14 of the SARFAESI Act is basically is to petition the District Magistrate or the Chief Metropolitan Magistrate to help a secured creditor in enforcing the security interest by taking possession of the assets. Now, in good faith, the second clause which we are now seeking to delete was added that in case a company's shares are taken over, even for that Section 14 may be used. Now, a District Magistrate or a Chief Metropolitan Magistrate can work on the basis of restoring assets or taking possession of assets. But taking possession of a company is something which a DM or a CMM is not really empowered or used to working with. So, for this particular portion if there is any need, the more appropriate place would be the NCLT rather than the DM or the CMM. This is the reason that we are taking it out from the SARFAESI.

In case there has been actual take over of a company, we had said that it shall not be necessary for the secured creditor to restore the business to such borrower. The appropriate way to write it is, is to restore the management of business. So, this is only making the correction of the language.

Then, next is about the jurisdiction of the Debt Recovery Tribunal. Because the process of law can be abused we just wanted to make it absolutely clear that the jurisdiction of any DRT will depend up on the branch or any other office of the financial institution from where the loan has been given.

HON. CHAIRPERSON: This was the suggestion given by many Members also at the time of the discussion. But the Legislative Department will again examine the appropriate language for its certainty.

SHRIMATI ANJULY CHIB DUGGAL: This is something where we are actually trying to harmonise with the Insolvency and Bankruptcy Code. Wherever there are insolvency and bankruptcy proceedings are pending, there we are saying that the proceeds will be distributed in accordance with the applicable insolvency law.

श्री निशिकान्त दुबे: सेबी ने भी कहा है कि the Tribunal shall exercise on and from the appointed day—... यह वह अमेंड करने की बात कर रहे हैं। 17(i) एक्ट,

Jurisdiction power and authority of Tribunals, उसमें वह चेंज करने की बात कर रहे हैं।

सर, सेबी का जो यह मैटर आया है, उसे दोनों डिपार्टमेंट को दे देना चाहिए। सेबी और पीएनबी ने जो भेजा है।

माननीय सभापतिः सेबी के ज्यूरिसडिक्शन को एग्जामिन कर लीजिए।

SHRI AJAY TYAGI: The first proviso is with the purpose that the insolvency resolution cost is recovered as provided for under section 52(O) of the IBC. So, DFS has provided that proviso for that. I think the second proviso is with reference to taxes' priority in the waterfall mechanism. If I am right, that is how these two provisos have been provided for.

SHRIMATI ANJULY CHIB DUGGAL: On the second point, if the tax demand has been raised prior to the creation of the security interest, then that should prevail. If it has been created later, subsequently then the security interest should prevail.

SHRI ANAND SHARMA: In the Insolvency and Bankruptcy Code, there is a waterfall provision.

SHRIMATI ANJULY CHIB DUGGAL: It is different from what is provided in the Insolvency and Bankruptcy Code.

SHRI ANAND SHARMA: Then, you have the waterfall provision. Here we need absolute harmonization.

SHRI AJAY TYAGI: This was discussed within the Ministry of Finance. There will not be any conflict because in the Bankruptcy law, Section 53 – if liquidation is enforced and the secured creditors are part of that, those provisions will prevail; but if the secured creditors wish to go for enforcement under the SARFAESI Act, this provision will prevail. While liquidation under Bankruptcy law would be for entities which cannot be resolved and are bankrupt, SARFAESI Act provisions will also apply to ongoing concerns. So, there is a slightly different proposed provision in SARFAESI Amendment Bill as compared to Bankruptcy Code. This is my take on this.

SHRI ANAND SHARMA: If the demand has been raised before for the creation of security interest, that expects the precedence. That is limited.

SHRI AJAY TYAGI: Yes, Sir.

SHRIMATI ANJULY CHIB DUGGAL: This is as far as SARFAESI is concerned – recovery of debts due to banks and financial institutions. Here, we are seeking the hon. Committee's indulgence. We have continued to work with the proposals, we have been continuously educated by our interactions with you; and the Committee's interactions with a number of stakeholders. One of the points we realized we had a problem with our operational basis is that, if the Chairperson of a DRAT or the presiding officer of a DRT resigns, it takes a certain amount of time to get somebody in place again. Looking at the provisions which are already available in the Airports Economic Regulatory Authority Act, we do want to crave your indulgence to put into the proposed amendments, a provision which says that if there is under any other law a Chairperson who is qualified in the same way as the chairperson of a DRAT, he can be asked to serve on a DRAT.

HON. CHAIRPERSON: In a similar situation. Good.

SHRIMATI ANJULY CHIB DUGGAL: Yes, Sir. This is for the Presiding Officer and the Chairperson.

One other small change that we are requesting, be taken on board.

श्री निशिकान्त दुबे: सेबी में भी तो ऐसा ही है।

श्रीमती अंजलि चिब दुग्गल: सर, सेबी के बारे में मुझे पता नहीं है। Certainly in AERAA.

The other suggestion we are making is this. We had an issue with selection because a lot of people do not come to be selected for DRATs and DRTs. If there is some kind of parity in the upper age between various Tribunals, the there is a better chance of attracting good talent out here. To bring ourselves in line, and make us equally attractive as other Tribunals, we are suggesting that the age of chairpersons may be enhanced in not to 67 but to 70 years of upper age limit.

श्री निशिकान्त दुबे: अभी 65 साल है।

श्रीमती अंजलि चिब दुग्गल: सर, अभी 65 साल है। हमने 67 साल के लिए कहा था। अब हम सजेस्ट कर रहे हैं कि 70 साल तक हो जाए तो अच्छा रहेगा। It is an upper limit.

HON. CHAIRPERSON: But it is only about chairperson and not about members.

श्रीमती अंजलि चिब दुग्गल: महोदय, उनके लिए 62 साल आयु थी। Their suggestion remains that up to age 65.

माननीय सभापतिः आप देखिएगा कि दूसरी जगहों पर कितनी आयु है।

SHRIMATI ANJULY CHIB DUGGAL: At page 20, here we have put in any other mode of recovery as may be prescribed for the very simple reason that we have included intangible assets also as securities under SARFAESI. If there is a patent that has been filed somewhere, and that is being taken over, how is that to be followed up. The mode of recovery may become different. So, we are providing an enabling provision to say that in case any other mode of recovery is prescribed that should be permitted.

श्री निशिकान्त दुबेः डेफिनेशन आफ प्रोपर्टी कहां बदला गया है? इनकम टैक्स एक्ट में डेफिनेशन आफ प्रोपर्टी क्या है? हमने उस दिन भी कहा था कि सारी डेफिनेशन लॉ में एक साथ होने चाहिए। अलग-अलग एक्ट का अलग-अलग डेफिनेशन नहीं होना चाहिए। उस दिन भी प्रोपर्टी के बारे में बात हुई थी।

SHRI ANAND SHARMA: It is very important that there is alignment, which has just been said. A couple of years ago, there was an another issue which came up when it comes to definition – ownership and control. We had to align everywhere including in the FDI policy, insurance, Companies Act. That exercise was undertaken. So, we cannot have different definition under different laws. That Legislative Department should look at it. That would in itself the contradiction.

DR. MUKULITA VIJAYAWARGIYA: You are absolutely right but for definitions, we have said like that. In this Act, unless the context otherwise requires. Definitions are limited to the context...

SHRI ANAND SHARMA: In Income-Tax of course the definition would be different. We understand. This should be made clear so that there is not too much of variance.

DR. MUKULITA VIJAYAWARGIYA: We have cull out different definitions under Transfer of Property Act, Benami Transactions Act, Registration Act, IPC, etc. For the purpose of this Act, property definition has been defined as per the context.

SHRI ANAND SHARMA: Context has to be borne in mind.

माननीय सभापतिः आपको क्या इसमें कुछ और कहना है?

SHRIMATI ANJULY CHIB DUGGAL: We will recast and reformat it.

HON. CHAIRPERSON: That we will discuss at the time of clause-by-clause consideration.

श्री सुभाष बहेड़िया: जैसे पांच साल के लिए डीआरटी का आफिसर बनता है, उसके बाद नया आफिसर बनता है। अगर उस पर किसी तरह का चार्ज न हो तो उसी को दोबारा भी तो बनाया जा सकता है। 31 में जो एग्जम्पशन दी गई है, एक लाख की जगह पांच लाख रुपए करना चाहिए। अगर पांच लाख रुपए कर दें तो जिनका रिप्रेजेंटेशन आया है कि हमारा इस एक्ट में ज्यादा ह्रासमेंट होता है, क्या इसे डिलीट कर सकते हैं? इस बारे में सरकार की क्या राय है?

श्रीमती अंजलि चिब दुग्गल: महोदय, रिएपायंटमेंट के बारे में बिलकुल सही है और अमेंडमेंट बिल में है लेकिन आटोमेटिक का प्रावधान हमने नहीं रखा है। इसके लिए हमने कहा है कि पांच साल की मियाद के लिए सर्व कर चुके हैं। वे सिलेक्शन के लिए दोबारा आ सकते हैं और दोबारा सिलेक्ट हो सकते हैं। जिस सिलेक्शन प्रोसेस से सभी लोग आ रहे हैं उसी प्रोसेस से रिएपायंट हो सकते हैं।

श्री सुभाष बहेड़िया: अगर उन पर कोई चार्ज नहीं है तो ऐसा किया जाना चाहिए। ये पोस्ट्स खाली होने की वजह से काम नहीं हो पा रहा था। मान लीजिए कि रिएपायंटमेंट में एक महीना लग जाता है, दो महीना लग जाता है या साल लग जाए। इस समस्या से बचने के लिए या तो ऐसा किया जाए कि जब तक नया आफिसर नहीं आ जाता है, तब तक वही आफिसर काम करेगा।

श्रीमती अंजलि चिब दुग्गल: महोदय, इसमें हमने एक्सटेंशन की बात नहीं कही है लेकिन वेकेंसी खाली होने से दो-तीन महीने पहले काम शुरू कर दिया जाता है। इसके अलावा हमने यह प्रोविजन दिया है कि अगर किसी दूसरे ट्राइबुनल में काम कर रहे हों, वे यहां भी काम संभाल सकें।

SHRI ANAND SHARMA: All these Acts become ineffective if you do not find the right person.

SHRIMATI ANJULY CHIB DUGGAL: Through recruitment exercise, it was difficult to find the right people. Therefore, the age part is something that we are looking at a lot more consciously and actually this amendment should help us further.

श्री सुभाष बहेड़िया: दूसरा बिन्दू, जो एक लाख से पांच लाख वाला था, मेन एक्ट में, उसके बारे में आप बताएं।

माननीय सभापति: आप सरकार से एक बार सजेशन लेकर आएं, क्लॉज-बाई-क्लॉज चर्चा के समय इस पर विचार किया जाएगा। They will come with their own suggestions.

श्री रवि प्रकाश वर्मा: सर, हम लोग प्रिज्यूम कर रहे हैं कि बहुत-से एआरसीज बनेंगे और वे म्युचुअली कम्पीट भी करेंगे। एक बात यह सामने आयी है कि बहुत-से फाइनैंशियल इंस्टीट्यूशंस हैं, उनके भी स्टेक्स एआरसीज में हैं, तो उसका सिंडिकेट बनने से रोकने का कोई

प्रावधान आपके पास है। मुझे लगता है कि वे सभी डेड असेट्स पर ही स्केवेंजिंग करेंगे, तो उनमें से सिंडिकेट बन सकता है। ऐसा लगता है कि रियलाइजेशन कम हो जाएगा।

फाइनैंशियल कंपनीज एंड बैंक्स अलग-अलग हैं। एनपीए डिफाइन करने का जो प्रोसेस है, उसको थोड़ा मोडिफाई करने की जरूरत है क्योंकि बहुत-से विलफुल डिफॉल्टर्स भी हैं। ऐसा भी देखने में आया है कि लोगों ने कंपनीज खड़ी कीं, एक खबर आयी थी, फार्मास्युटिकल कंपनी के बारे में, वह डिफंक्ट हो गयी थी, उसके बावजूद भी वह बैंक के कनाइवेंस और कंपनी के कनाइवेंस से लगातार पब्लिक फंड उठाये जा रहे हैं और लोग उसमें चिट किये जा रहे हैं। तो उस प्रोविजन को चेक करने के लिए इसमें कोई प्रावधान करना चाहेंगे, इसकी जानकारी मुझे दी जाए।

श्रीमती अंजलि चिब दुग्गल: सर, आपका पहला प्वाइंट था कि अगर एआरसीज अपनी सिंडिकेशन कर लें और मार्केट अपनी तरफ ले जाएं, इसी परपस के लिए इस वक्त वे काम कर रहे हैं। But we are hoping that there will be more activity as far as ARCs are concerned and that is the reason जो पावर आरबीआई के पास एग्जिस्टिंग एक्ट में है—रजिस्ट्रेशन और डि-रजिस्ट्रेशन की, उसके साथ रेगुलेशन की पावर्स भी दी जा रही हैं ताकि किसी भी समय कोई कंपीटिशन लॉ का उल्लंघन कर रहे हों, तो it should be possible for RBI to take action.

Secondly, the regulator for banks is RBI. एनपीए घोषित करने के उनके जो नॉर्म्स हैं, वे सभी बैंकों के लिए स्टैंडर्ड हैं। उसमें यह है कि यदि 30 दिनों तक ब्याज सहित किश्त वापस नहीं आती है, तो स्पेशल मेंश्न एकाउंट बन जाता है, उसके बाद यदि राशि 60 दिनों तक वापस नहीं आती है, तो स्पेशल मेंशन एकाउंट-वन बन जाती है और वह 90 दिनों के बाद नॉन परफॉरमिंग एसेट बन जाता है। It is possible to come out of NPA category by making a payment at that particular time. It is not a branding for all times, only the loan is considered as NPA. एनपीए के डेफिनेशन के अंदर ही जो बात इंप्लीसिट है, वह यह है कि यह नहीं चल रहा है और यदि यह नहीं चल रहा है तो उसे किस डायरेक्शन में रिसॉल्व करना चाहिए?

SHRI RAVI PRAKASH VERMA: Who is a wilful defaulter?

SHRIMATI ANJULY CHIB DUGGAL: They are people who can normally pay back the loan but who are not paying, who have siphoned off the funds for purposes other than for which the loans have been taken. For that resolutions are possible, but there are other provisions also to take care of this. यह एक प्योर और सिम्पल एक्सरसाइज है, जो हम सरफेसी और आरडीडीबी एंड एफआई एक्ट में कर रहे हैं कि जो लोन नहीं चल रहा है, पैसा लेंड किया हुआ है, फैक्ट्री नहीं चल रही है, उसको रिसॉल्व करके किस तरह से प्रोडक्टिव करने की कोशिश की जाए।

SHRI ABHISHEK SINGH: In the replies given, with respect to Question No. 47, they have replied that Information Utilities are yet to be established and become operational and in another reply it was mentioned that in Central Registry, there is no provision as of now to record the defaults committed by borrowers which means we are still dealing in an era where there is no proper credit information system in place. This particular area needs proper focus because without it, again the execution and implementation of the Act will face a little problem.

Secondly, since we are also dealing with intangible assets and since the percentage of 5 per cent for ARCs considered to be not sufficient, why can we not increase the percentage and leave out the exceptions for all those intangible assets?

SHRIMATI ANJULY CHIB DUGGAL: The Information Utilities are yet to be set up because the Insolvency and Bankruptcy Code has not yet been notified. That was the limited point.

The second point is that under SARFAESI Act, there is already a Central Registry for a record of mortgages. The whole idea is that any charge that is created on account of any loan that is given is something which is registered out here so that any other lending institution is very clearly aware of the property on which there is already a charge.

Now, the Central Registry is primarily for the purpose of registering charges although KYC responsibility has been assigned to it under another law.

As far as defaults are concerned, defaults are specific to a loan. The Central Registry is actually looking at asset on which charges have been created. So, there is that difference in the relationship. But as far as large credits are concerned, RBI does have an information sharing system which works among the banks.

About 15 per cent, now the existing provision for registration of Asset Reconstruction Companies says that the clarification is that the company has to have a net owned fund of Rs. Two crore and it is to put in a sum not exceeding fifteen per cent in whichever scheme it takes up. At the time of registration, though ARC cannot tell what are the schemes they are going to take up and therefore, what is the total amount that the ARC should put into that scheme out of its own fund.

Secondly, less than 15 per cent, unnecessarily restricts the power of RBI to regulate an ARC to say that this must in this particular

venture not only depend upon money that it has raised from the public but also put its own money upto a certain percentage. By removing this, we have removed the flaws and also left the space open for a smaller percentage to be fixed in case the ARC is dealing with intangible or such other properties where such a large amount of its own fund is not required. But this is conjecture at this particular point of time and the amendment proposed is purely an enabling one.

SHRI JAGDAMBIKA PAL: Mr. Chairman, Sir, I would like to ask only two or three clarifications. In Clause 4, about debentures, trustees under the proposed amendment are to be defined as secured creditors. What are the reasons for the proposed amendment?

In Clause 2, Section 13(8)A, why is the cut-off date for payment of dues now proposed to be defined as a date of publication? Can't this date less than date of auctions?

Once a resolution plan or repayment plan is accepted under IBC Code, and during the period of implementation of such plans, whether SARFAESI Act can be made operative or would it remain inoperative? How the provisions of IBC Code are consistent with the provisions of SARFAESI Act in this regard?

I have one question regarding stamp duty. What are your comments on the implications for the State revenues regarding proposed exemption of stamp duty on transfer of financial assets to ARC?

SHRIMATI ANJULY CHIB DUGGAL: Sir, it is absolutely correct that SARFAESI is for enforcement of security interests. So, they would be secured. Here, the word used 'secured' is for greater clarity. We are introducing the concept of debenture trustees being able to access the provisions of the SARFAESI Act for the first time. The abundant clarity should ensure that at any point of time, a Presiding Officer working in a DRT is not left in any doubt about the need to ensure that the debenture trustee is coming for secured debentures etc.

SHRI JABDAMBIKA PAL: What is the comment of the Legislative Department on this particular point?

HON. CHAIRPERSON: Mr. Vijayawargiya, you may please note this down. When we discuss clause-by-clause, at that time, you may clarify this point.

SHRIMATI ANJULY CHIB DUGGAL: The provision actually says that what is covered is a debenture trustee, which has secured debt, only those are covered. The unsecured ones are not covered.

You second point was about the date of publication. The real intent is to have an explicit, transparently fixed and a well-known cut-off date. It can be any date keeping in mind that the alienation of the property may be through auction; it may be through calling of quotations or tenders; it may be through setting up a private treaty etc.

SHRI JAGDAMBIKA PAL: May be he could not succeed before the publication date, but by his sincere efforts, if he has succeeded before auction, what would happen?

SHRIMATI ANJULY CHIB DUGGAL: I have got your point. Our interest is only in ensuring that there is transparency.

There is very interesting point about the IBC and SARFAESI. Under IBC, under Section 14, all SARFAESI Act related activities are covered by a moratorium for as long as the resolution activity is taking place. Therefore, SARFAESI will not be applicable at that point of time. But in case, there is a company that is not taken for resolution purposes, then SARFAESI in alternative mechanism can be used.

SHRI JAGDAMBIKA PAL: That would be inoperative.

SHRIMATI ANJULY CHIB DUGGAL: It will be inoperative for the time the resolution process is going on.

श्री जगदम्बिका पाल: यदि बैंकरप्सी कोड में उसका रीपेमेंट का प्लान अक्सैप्ट हो जाता है तब सरफेसाई लागू नहीं होगा।

श्रीमती अंजलि चिब दुग्गल: यदि रेजोल्युशन हो गया है तो नहीं होगा। उतने पीरियड के लिए मोरोटोरियम लग जाएगा।

श्री जगदम्बिका पाल: उसके प्रोसेस ऑफ इम्पलीमेंटेशन का क्या होगा?

श्रीमती अंजलि चिब दुग्गल: उसमें दो तरह की सीचुएशन हो सकती है। एक, जिसमें किसी ने सरफेसाई के तहत एक्शन ऑलरेडी स्टार्ट किया हुआ है और उस दौरान आईबीसी में केस चला जाता है तो उस दौरान मोरोटोरियम लग जाएगा। अगर सीधा ही कोई केस आईबीसी में जाता है तो सरफेसाई उतने पीरियड के लिए नहीं लागू हो सकता है।

श्री जगदम्बिका पाल: अगर कोई आईबीसी में चला जाता है और एक्सैप्ट हो जाता है तो फिर इनइफेक्टिव हो गया। लेकिन बाद में जाता है और उसके पहले सरफेसाई शुरू हो गया।

श्रीमती अंजलि चिब दुग्गल: सरफेसाई के एक्शन पर मोरोटोरियम लग जाएगा। आईबीसी के सेक्शन 14 के तहत मोरोटोरियम का प्रावधान है। जहां तक स्टेट की स्टैंप ड्यूटी की बात है। कोई बैंक लोन देता है तो किसी प्रॉपर्टी को मॉरगेज करता है। वह लोन किसी वजह से

एनपीए बन जाता है और यह फैसला होता है कि इसको एआरसी को दे दिया जाए। एआरसी के पास सिर्फ पास-थ्रू परपज के लिए जा रहा है। एआरसी उसको रिजोल्व करके आगे बेचेगा। जो फाइनली बेचेगा, that is a real transfer. अभी तक मॉरगेज एआरसी के थ्रू निकल रहा है। उस स्टेज के ऊपर, to encourage ARCs to work, अगर हम कहेंगे कि आप इसके ऊपर भी स्टैंप ड्यूटी दें तो स्टैंप ड्यूटी एआरसी अपनी जेब से नहीं देंगे, वह बैंक से चार्ज करेंगे। So, it is charging stamp duty where it is required. लेकिन अगर उसने असेट्स को रिजोल्व करने के लिए लिया है... because it is not actually a transfer of property, at that time, we are saying that the stamp duty should not be charged.

HON. CHAIRPERSON: But it must be clarified in the language also. You may sit with the Legislative Department.

SHRIMATI ANJULY CHIB DUGGAL: We will do it, Sir.

श्री निशिकान्त दुबे: यदि एआरसी बैंक अरेंजमेंट के साथ चलती है और कम्पनी को ही चलाते रहते हैं तो क्या होगा?

SHRIMATI ANJULY CHIB DUGGAL: To run a company is not that easy. But your point is well taken. Only those assets, which are assigned for the purpose of resolution, their pass-through should be permitted.

SHRI BHUBANESWAR KALITA: Most of the clauses are already clarified. The only thing, which I would like to know is about Clause 35 in Section 25 at page 20, modes of recovery. The definition of the property has been notified. An amendment in Sub-Section D has been provided here, which says: 'Any other mode of recovery as may be prescribed.' So, as far as the tangible property is concerned, it is clarified. But as far as the intangible assets are concerned, what are the other modes of recovery, in the minds of the Ministry? Please specify it.

SHRIMATI ANJULY CHIB DUGGAL: Sir, we are actually trying to do a certain amount of crystal ball gazing on this. Technology is changing. The pace of change in technology is very fast, now. Electronic software has a value, which is conveyed through licence etc. There would be some value, which would be linked to, let us say, patents of trademarks intangibles etc.

SHRI BHUBANEWSAR KALITA: Which includes banks also.

SHRIMATI ANJULY CHIB DUGGAL: The bank could be giving a loan against such intangibles etc. Now, if their loans were to turn into an NPA, how would you extract the value, which has been attributed or assigned to a particular intangible?

Now, law is also evolving on this; financial practices are evolving on this. So, what we have done is to really put in an enabling provision that as change happens, it should become possible to specify a mode of recovery in this particular case; whether for a patent's case, it is required that you file a case in a particular kind of court or something like that. We really are crystal gazing and we are trying to create an enablement so that one does not have to keep on coming back for amendments, changing realities in the way that we do business and in the way that we assign value are taken into account.

श्री गोपाल शेट्टी: महोदय, मैं चेयरपर्सन के बारे में कुछ कहना चाहूंगा, यह 65 से 70 को लें तो 65 कुछ दिनों में पहले आ गया होगा, उसके बाद 65 के बाद 70 आयेगा, कुछ सालों के बाद 75 आएगा। मैं इससे बहुत डिफर करता हूं। ठीक है, कोई बहुत एक्सपर्ट होगा तो उसकी नॉलिज का हम लाभ ले लेंगे। आज प्राइवेट बैंकों में 45 सालों के जो मैनेजर्स होते हैं, They are doing very well. They are taking decisions fast उनके ऑफिसर्स हैं, हम सबको इस बात को मान लेना चाहिए। आजकल पोलिटिकल सर्किल में भी चेंज होता जा रहा है। So, why not in this system also?

सभापति जी, मैं 70 का भी टोटली विरोध नहीं करूंगा, लेकिन इसे कहीं 60 टू 70 करके रखिये। फिर हमें इसमें देखने का भी मौका मिलेगा कि 60 साला कितना रिजल्ट दे रहा है, 65 वाला कितना रिजल्ट दे रहा है। इसमें कम्पिटीशन होगा। अगर एक माइंड सैटअप बनकर वही काम चलता रहेगा तो ठीक नहीं होगा। क्योंकि हम कहां जा रहे हैं। We are going to the ease of doing business. मैं समझता हूं कि इसके बारे में खास ख्याल रखना चाहिए। 65 को 70 न करते हुए चलो सबकी बात को रखते हैं। किसी अच्छे ऑफिसर को कोई चांस मिलता होगा तो हमें उसमें कोई प्रॉब्लम नहीं है, लेकिन 60 टू 70 तक का रखो, उसके बीच में जो भी आएंगे तो He should be given a chance.

SHRI ANAND SHARMA: We have to bear one thing in mind that a few years ago, Parliament had raised the age of the High Court Judges. Unfortunately that remains unimplemented. When we look at the original age of superannuation, life expectancy was low, access to good healthcare was not there. If we look at the medium income countries – developed countries are different - then people, even the judges continue well above 70. Here we do not have. It is a question of experience and having the people who meet the requisite criteria, qualification and are in a position to dispense justice or disposal in a correct manner. I think we should because their areas where we need to bring in the younger people, but to keep ban, whether you keep a minimum age as 60 or whatever and the maximum at 70 depending on what we all will discuss with the Chairman, that should be brought in.

SHRIMATI ANJULY CHIB DUGGAL: I should also add, Sir, there is no minimum age that is prescribed.

HON. CHAIRPERSON: The Legislative Department will come out with their own comments on this issue.

श्री निशिकान्त दुबे: चेयरमैन साहब, लगातार हम लोगों का जो डेलिबरेशन हुआ है, उसमें बार-बार एक बात आ रही है कि जो 65ए टेनेन्सी एक्ट है, उसमें अमैन्डमैन्ट मस्ट है, That is must. स्टेट टेनेन्सी एक्ट में भी अमैंडमैन्ट मस्ट है, रेंट कंट्रोल एक्ट में भी अमैंडमैन्ट मस्ट है और 65ए जो टेनेन्सी एक्ट है, इसके बारे में आपके प्रजेन्टेशन में कोई बात नहीं कही गई है। इसके बारे में आपका क्या सोचना है, मैं अपना क्वैश्चन पूरा कर लूं, उसके बाद आप बताइये।

दूसरा जो सैक्शन 7 है कि रिव्यू परफारर्मेन्स का एआरसी का होना चाहिए। लगातार सारे बैंक्स के रिप्रजेन्टेशन आते रहे, चीजें आती रहीं। इसके बारे में आपने कुछ नहीं कहा है कि सैक्शन 7 में एआरसी के परफारमेन्स का रिव्यू की जो चीजें हैं, वे हम इसमें किस तरह से इनक्लूड कर सकते हैं या हमें क्या करना चाहिए। इसके बाद जो सैक्शन 13(3)ए है और रूल 3एसी है, ये दोनों एक-दूसरे को कंट्राडिक्ट करते हैं। सैक्शन 13ए कहता है कि जो सिक्योर्ड क्रेडिटर है, वह बोरोवर के रिप्रजेन्टेशन को विदइन 15 डेज बतायेगा और रूल 3एसी कहता है कि स्टेट्स वन वीक यह करेगा तो जो 13(3)ए है और 3एसी है, ये एक-दूसरे को कंट्राडिक्ट कर रहे हैं। इसके बारे में आपको बताना चाहिए।

श्रीमती अंजलि चिब दुग्गल: आई एम सारी, मैं आपको इंटरप्ट कर रही हूं, यह 13 एजी आपने बताया।

श्री निशिकान्त दुबे: मैंने 13(3)ए बताया। Secured creditor is required to reply the borrower's representation within 15 days. जबकि रूल 3 एसी यह कहता है कि स्टेट्स वन वीक। उसमें कहीं सिनर्जी नजर नहीं आती है। इसके बाद जो सैक्शन 14 है, सैक्शन 14 को आपने कहा है कि यह क्रेडिटर जो है चीफ मेट्रोपोलिटन मजिस्ट्रेट को या डिस्ट्रिक्ट मजिस्ट्रेट को जा सकता है। लेकिन कई जगहों पर बहुत नीचे ब्लॉक्स में हैं, चीजें हैं, आना नहीं हैं। आप भी जानते हैं कि डी.एम. के पास बहुत काम है, आप ही उस दिन बता रही थीं कि डी.एम. को इन सारी चीजों से एक्सक्लूड कर देना चाहिए। पहले दिन यह हुआ था, जब हमने आपके कहा था कि आप लोग खुद भी इन चीजों को देख चुके हैं। मेरा यह कहना है कि इसमें चीफ ज्युडिशियल मजिस्ट्रेट को या चीफ मेट्रोपोलियन मजिस्ट्रेट को या डैब्ट रिकवरी ट्रिब्युनल को इसका चार्ज दे सकते। सैक्शन 14 का यह प्रावधान है। इसके बाद जो आपका सर्फेसी एक्ट का सैक्शन 17 है, इसके बारे में मैंने आपको बताया कि सेबी वालों का यह है, उसे अपने को देखने की आवश्यकता है।

दूसरा सैक्शन 17 में सबसे बड़ा सवाल मुझे यह दिखाई देता है कि जो फेमा एक्ट है, प्रिवेंशन ऑफ मनी लांड्रिंग एक्ट का जो सैक्शन 45 है और जो सैक्शन 17 है, ये एक-दूसरे को कंट्राडिक्ट कर रहे हैं। सैक्शन 17 में जो सबसे इम्पार्टेंट है कि प्रवेंशन ऑफ मनी लांड्रिंग एक्ट 2002 का सैक्शन 45 और ये एक-दूसरे को कंट्राडिक्ट कर रहा है। क्योंकि आप एक कानून बनायेंगे तो एक तरह से बनायेंगे। उसमें फेमा एक्ट और इसके बारे में क्या है।

इसके बाद जब-जब हमने जैसे सर्फेसी एक्ट बनाया, उसमें अमैंडमेन्ट लाये तो हमने सीका एक्ट में भी अमैंडमैन्ट किया और अभी हम सीका एक्ट की बात नहीं कर रहे हैं। सीका एक्ट एकदम अलग चल रहा है और सर्फेसी एक्ट अलग चल रहा है। यदि सीका एक्ट में अमैंडमैन्ट आप नहीं लायेंगे तो फिर इसका कोई मतलब नहीं होगा। उसी तरह से जो आर.डी.डी.बी.आई.एफ. एक्ट 1992 है और जो अभी है, इसमें भी कई एक जगह अमैंडमैन्ट की आवश्यकता है, कई एक सजेशंस आए हैं। मुझे लगता है कि उसे एक बार देखने की आवश्यकता है कि सैक्शन 21 जो आर.डी.डी.बी.आई.एफ. एक्ट का है, वह और इसमें चेंज करने की आवश्यकता है, इसे देखना चाहिए। उसमें सैक्शन 21ए के अमैंडमैन्ट की बात कर रही है। सैक्शन 22(1) और डी.आर.टी. एक्ट का सैक्शन 21 है, ये सब एक-दूसरे को कंट्राडिक्ट कर रहे हैं। मेरा मानना है कि आर.डी.डी.बी.आई.एफ. एक्ट, सीका एक्ट, टेनेन्सी एक्ट और फेमा एक्ट इन सभी को लेकर यदि एक कंप्रिहेन्सिव चार्ट बनायेंगे तो हम लोगों को 16 तारीख को सुविधा हो जायेगी।

श्रीमती अंजलि चिब दुग्गल: सर, एक तो टेनेन्सी के बारे में अगर डिटेल्स चाहिए तो हमारे लीगल एक्सपर्ट बता पायेंगे, लेकिन लार्जली यह प्वाइंट है कि जो टेनेन्सी सिक्युरिटी इंटरैस्ट क्रिएट करने से पहले चल रही हो। That tenancy has to be respected. It takes priority. जो टेनेन्सी बाद में क्रिएट की गई है, many times to obfuscate or to disorient the process of law, उसका सिक्युरिटी इंटरैस्ट जो पहले क्रिएट हुआ है, that should prevail.

HON. CHAIRPERSON: But it is not mentioned in the Act.

श्री निशिकान्त दुबे: यह प्रजेंटेशन में होना चाहिए। आपने तो अभी प्रपोज टू बी ही तो कहा है। इस कमेटी को जो भी दे रहे हैं तो प्रपोज टू बी, कमेटी मानेगी, नहीं मानेगी वह कमेटी का अपना अधिकार है।

श्रीमती अंजलि चिब दुग्गल: सर, ये सभी प्रपोजल्स हैं। सेकेंड प्वाइंट यह है कि सैक्शन 14 में जो डिस्ट्रिक मजिस्ट्रेट या चीफ मेट्रोपोलिटन मजिस्ट्रेट को पावर्स दी गई हैं, वे इसलिए कि एग्जेक्टिव मजिस्ट्रेट जो हैं, वे पुलिस को साथ में जोड़कर किसी ऐसेट का पजेशन दिलवा सकते हैं। So, those provisions exists., उसमें हमने सिर्फ यह कहा है, क्योंकि कई केसेज में हमने पाया है कि बहुत देर लग जाती है, पजेशन देने में तो हमने यह कहा है कि 30 दिन में करेंगे और अगर 30 दिन में नहीं कर पाएंगे तो रीजन्स रिकॉर्ड करेंगे कि क्यों नहीं कर पाए। सेबी के सेक्शन और सेक्शन 45 ऑफ पीएमएलए हम चैक कर लेते हैं कि उसके अन्दर क्या-क्या सिमलेरिटीज आने वाली हैं। सीका के बारे में मैं आपसे जिक्र करूंगी कि यह वर्ष 2003 के करीब ऑलरेडी रिपील हो चुका है। The repeal has not been notified. The notification of the repeal is dependent upon the setting up of the NCLTs. अब जब एनसीएलटी सेटअप हो रहे हैं तो सीका की रिपील हो सकती है। There is a small amendment in SICA. जो आईबीसी में भी है, उसको भी हम पूरा रेस्पेक्ट करके आगे लेकर चल रहे हैं। आरडीडीबी की कुछ जो अमेंडमेंट्स हैं, वे इसी अमेंडमेंट बिल में हैं, क्योंकि सरफेसी और आरडीडीबीएफआई ये इकट्ठे चलते हैं। RDDBFI is the complete acronym of the DRT.

SHRI B. VINOD KUMAR: Chairman Sir, during our study tour, few bankers expressed that while taking possession of the assets, they are facing.

श्री नरेश गुजराल: क्लॉज 17 सेक्शन 26 ई एंड क्लॉज 38 सेक्शन 31बी, माई फीलिंग इज कि जो आपका आईबी के तहत ही होना चाहिए, क्योंकि आम तौर पर देखा गया है कि जब टैक्स की डिमांड रेज होती है, डिपार्टमेंट की अपनी फिगर्स कहती हैं कि बोथ इन डायरेक्ट एंड इनडायरेक्ट टैक्सेशन में, अपील्स में डिपार्टमेंट 70 परसेंट केसेज हार जाता है। जो केस जीतता भी है, वह छोटी रकम के केस जीतता है, जो बड़ी रकम के केस होते हैं, वह सब हार जाता है। इसकी वजह से इतना डिले होता है, जब तक ये सारे डिसिजन्स आते हैं, आठ-आठ, दस-दस साल लग जाते हैं तो इससे सिक्योर्ड क्रेडिटर का जो इंट्रेस्ट है, वह हार्म होता है तो यह हमें उसी की तरह रखना चाहिए।

श्री जगदम्बिका पाल: महोदय, मैं गुजराल साहब की बात में ही कुछ जोड़ना चाहता हूं। आप इसे कैसे करेंगे, मैं समझता हूं जस्टिस डिलेड, जस्टिस डिनाइड, जो अभी हमें यह सर्कुलेट हुआ है, इसमें जिस तरीके की डीआईटीज की पेन्डेंसी है, 79,542 केसेज पेन्डिंग हैं और 2,83,558 करोड़ के हैं। जो ओरिजिनल एप्लिकेशंस पर हैं और जो सरफेसाई में हैं, वे भी 45,152 करोड़ हैं। अगर आप टोटल मिलाकर देखें तो this is something very serious. ऑलरेडी सरफेसाई एक्ट पर आप इतनी कार्रवाई कर रही हैं, ऑलरेडी डीआरटी हैं, लेकिन जो इतनी बड़ी आपकी यह पेन्डेंसी है तो इसके संबंध में कैसे इसको ऐड्रेस करेंगी। How will you address?

SMT. ANJULY CHIB DUGGAL: Sir, we are actually doing fairly a big exercise on creating e-court system also. उसके एनेबलमेंट के लिए इस एक्ट में प्रावधान जो है अमेंडमेंट का, वह प्रपोज किया है।

श्री जगदम्बिका पाल: इस एक्ट के बन जाने के बाद वह हम लोग देखेंगे, आप भी रहेंगी, हम लोग भी रहेंगे।

SMT. ANJULY CHIB DUGGAL: It is actually going to create the proposed amendment. We are hoping to create a larger pool of people from which we can recruit for DRTs and DRATs. We are hoping to have a stronger a central registry. We are also hoping to get enabled to try e-court systems etc. We have started digitization. There is a portal for DRTs also where disposal and the monthly instituted information is available. These are courts. Beyond a point, the executive does not interfere in the working of the courts but certainly, for any DRT, it is possible to see what his or her disposal has been in comparison with other DRTs.

श्री जगदम्बिका पाल: एक तो डीआरटीज में वैकेंसी ज्यादा हैं और दूसरा डीआरटीज का कोई टाइमबाउंड शेड्यूल हो। इनमें भी देखिए कि जो डीआरटीज फंक्शन कर रही हैं, अभी आप

एक प्रपोज कर रही हैं कि एक डीआरटी, एक ट्रिब्यूनल दूसरे ट्रिब्यूनल को भी देख सकता है, उस तरह की वैकेंसी अगर है। उसको कैसे ऐड्रेस करेंगी?

श्रीमती अंजलि चिब दुग्गल: सर, उसी की कोशिश कर रहे हैं। जितने भी हम ये प्रपोजल्स लाए हैं, they are aimed towards greater supervision of DRTs by DRATs. They are focussed on having access to a larger pool of people who would be interested in serving as Presiding Officers or Chairpersons. They are designed towards ensuring that good people whose performance has been good are eligible for re-appointment. It is designed to ensure that in case of sudden vacancies as we had in DRAT, Chennai last year when the Chairperson suddenly resigned, it is possible to pick up somebody from another Tribunal or Appellate Tribunal to serve out there depending of course, on his consent for this matter. So, therefore, what we are trying to do is to enable ourselves to strengthen ourselves to be able to intervene in all such eventualities.

SHRI JAGDAMBIKA PAL: It is your only focus how to fill maximum vacancy. What are you thinking to resolve the cases? Are you taking any initiative to reduce the pendency of the cases?

SMT. ANJULY CHIB DUGGAL: I think that we should be able to manage things to a significant extent but I am going to draw your attention also section 15 which is an existing section of the RDDBFI Act which we are not proposing any amendment where the Presiding Officer of the DRT can after any enquiry by a High Court Judge be removed on grounds of misbehaviour or incapacity, if I remember the words correctly, they are mentioned in Section 15.

श्री जगदम्बिका पाल: बिहेवियर पर तो ठीक है, मतलब कोई उसको टारगेट भी होगा, उसके इवैल्यूशन का कोई पैरामीटर होगा।

SMT. ANJULY CHIB DUGGAL: Under Section 15 of the RDDFI Act, the powers of superintendence are given to the Chairpersons of DRATs for the DRTs which are within their jurisdiction. So, basically, linking these two sections will ensure that the supervision is effective.

माननीय सभापति: आप सभी को बहुत-बहुत धन्यवाद। मेरा सभी माननीय सदस्यों से आग्रह है कि कमेटी की अगली मीटिंग क्लॉज बाई क्लॉज कंसीडरेशन के लिए 16 जुलाई है। उस दिन शनिवार है। We have time bound schedule.

कई माननीय सदस्य: महोदय, उस दिन मत कीजिए।

श्री आनन्द शर्मा: उस दिन ऑल पार्टी मीटिंग है।

HON. CHAIRPERSON: Our next meeting for clause by clause consideration will be at 18th July, 2016.

Now, I request all the Members that I invite the notices of the amendments on the Members of the Joint Committee on the provision of the Bill for which last date and time may be fixed up to Five O'clock Thursday at 14th July, 2016. Before that, you can send notices for amendment. नोटिस पांच बजे तक दे सकते हैं।

On 18th July, 2016, we will have clause by clause consideration. आप सभी का धन्यवाद। सरकार के सभी अधिकारियों का धन्यवाद कि पूरे एक्ट के जितने भी कन्सर्न आए हैं, उनको रेज करके आपने काफी सारे विषयों को कंसीडर भी किया है और कंसीडर करके बड़े अच्छे तरीके से प्रजेंटेशन दिया है। डिपार्टमेंट ऑफ लेजिस्लेटिव अफेयर्स, डिपार्टमेंट ऑफ इकोनॉमिक अफेयर्स का भी धन्यवाद। आप सभी हमारे साथ लंच के लिए आमंत्रित हैं। सभी का बहुत-बहुत धन्यवाद।

(तत्पश्चात्, समिति की बैठक स्थगित हुई)

PROCEEDINGS OF THE FIFTH SITTING OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016 HELD ON MONDAY, THE 18TH JULY, 2016

The Committee sat from 1500 hrs. to 1715 hrs. in Committee Room "C", Parliament House Annexe, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Gopal Chinayya Shetty
3. Shri Subhash Baheria
4. Shri Nishikant Dubey
5. Shri Shivkumar C. Udasi
6. Shri Anil Shirole
7. Shri Gajendra Singh Shekhawat
8. Dr. Sanjay Jaiswal
9. Shri Jagdambika Pal
10. Ms. Sushmita Dev
11. Dr. P. Venugopal
12. Shri Bhartruhari Mahtab
13. Shri Jitendra Chaudhury

Rajya Sabha

14. Shri Naresh Gujral
15. Shri Anand Sharma
16. Shri Ravi Prakash Verma

SECRETARIAT

1. Smt. Sudesh Luthra — *Joint Secretary*
2. Shri J.V.G. Reddy — *Director*
3. Smt. Jagriti Tewatia — *Deputy Secretary*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

DEPARTMENT OF FINANCIAL SERVICES

1. Smt. Anjuly Chib Duggal	—	Secretary
2. Shri Girish Chandra Murmu	—	Additional Secretary
3. Shri Anandrao Vishnu Patil	—	Joint Secretary
4. Shri Madhukar R. Umarji	—	Legal Consultant, IBA

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE

DEPARTMENT OF LEGAL AFFAIRS

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2. Shri S.R. Mishra	—	JS & LA
3. Shri Mahendra Khandelwal	—	Additional Legal Advisor

LEGISLATIVE DEPARTMENT

1. Dr. Mukulita Vijayawargiya	—	Additional Secretary
2. Mrs. Veena Kothavale	—	Additional Legislative Counsel
3. Dr. Sanjeev Kumar Srivastava	—	Assistant Legislative Counsel

JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISION (AMENDMENT) BILL, 2016

Verbatim Proceedings

Date : 18th July, 2016

Time : 1500 hours

Venue : Committee Room 'C',
Parliament House Annexe,
New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Naresh Gujral — Member

WITNESSES EXAMINED

1. Shrimati Anjuly Chib Duggal
   Secretary (FS), Department of Financial Services (Debt Recovery Tribunal Section)
2. Dr. G. Narayanan Raju
   Secretary, Ministry of Law and Justice (Legislative Department)

HON. CHAIRPERSON: Hon. Members, Representatives of the Department of Financial Services, Legislative Department and the Department of Legal Affairs, I welcome you all to the sitting of the Joint Committee. As you are aware, the sitting of the Committee today has been convened to take up clause-by-clause consideration of the Bill.

The consolidated lists of amendments containing 24 amendments to the Bill, which contains 41 clauses, as received from the Members have already been circulated to the Members of the Committee. A consolidated statement and study tour notes containing the views of various stakeholders have also been circulated to the Members of the Committee to facilitate reference to their views.

I will now put the Bill before the Committee, clause-by-clause, as per Direction 77. Members may move their amendments to a clause, if any, followed by deliberations by the Committee. The representatives of the Ministry and the Departments present here may subsequently give their clarifications or comments on such amendment. The Committee may, thereafter, consider and take a decision on that amendment. The representatives of the Ministry and the Departments may also suggest or indicate the formulation, wherever necessary, as well as the consequential amendments that may be required pursuant to an amendment agreed upon by the Committee.

As you are aware, whatever deliberations we may have at this sitting are treated as 'Confidential' till the report on the Bill is presented to the House.

As per Rule 92, consideration of Clause I, the Enacting Formula, the Preamble and the Title of the Bill shall stand postponed until the other clauses and schedules have been disposed of. Let us now take up clause-by-clause consideration of the Bill.

Now, there is no amendment to clause 2. I put clause 2 for consideration. Do the Members want to say anything on clause 2? Has the Ministry got any suggestions on clause 2?

SHRIMATI ANJULY CHIB DUGGAL: No, Sir.

HON. CHAIRPERSON: I put clause 2 before the Committee for adoption. Clause 2 is adopted.

Now, I put clause 3 before the Committee for consideration. There is no amendment moved in clause 3.

श्री निशिकान्त दुबे: सभापति महोदय, बैंक्स और सीआईआई ने इसमें कई डेफिनिशंस के बारे में कहा था। इसमें डेफिनिशन चेंज होने की बात है। जैसे क्लॉज वन और टू का सिक्योरिटाइजेशन कंपनी और रिकंस्ट्रक्शन कंपनी के संदर्भ में बैंक्स का कहना था कि दोनों का एक ही फंक्शन है। केवल दोनों का नोमेनक्लेचर अलग-अलग है। उसका यह कहना था, इसका प्रपोजल में था कि यदि दो टर्म यूज किये जाएंगे तो कंफ्यूजन पैदा करेगा। इसलिए उनका सजेशन था कि उनमें से एक को ही रखना चाहिए।

उसी तरह सीआईआई का कहना था कि जो फाइनैंशियल इंस्टीट्यूशन है, कंपनी एक्ट में उसकी जो मिनिंग है, public financial institution sub section 72 of section II, या जो रिकवरी डेट्स में है, उसका यह कहना है कि फाइनैंशियल इंस्टीट्यूशन का जो डेफिनिशन है, उसे एमेंड करना चाहिए। इसके लिए वे कह रहे थे कि सरफेसी ऐक्ट में फाइनैंशियल इंस्टीट्यूशन अंडर सेक्शन टू (एम) ऑफ द सरफेसी ऐक्ट में जो है, वह इसमें इंक्लूड करना चाहिए। उनके ये दो सजेशंस थे। मुझे लगता है कि बैंक्स कह रहे हैं कि सिक्योरिटाइजेशन कंपनी और रिकंस्ट्रक्शन कंपनी में से एक को ही रखना चाहिए। इसे लीगल टर्म में जो भी कहा जाता हो, मुझे लगता है कि वे जेन्वीन बात कह रहे हैं। जब दोनों का एक ही रोल है, दोनों का कमोबेश एक ही मिनिंग होता है, तो दो टर्म रखने का बहुत फायदा मुझे समझ में नहीं आता है।

श्रीमती अंजलि चिब दुग्गल: सर, प्रपोजल यह है कि कंपनी सिक्योरिटाइजेशन या एसेट रिकंस्ट्रक्शन कर रही हो, उसका नाम एक ही रखा जाए, नहीं तो एसेट रिकंस्ट्रक्शन कंपनी बहुत लंबा हो जाता है। That is the proposal. They can work in tandem or they can be entirely different securitisation as well as asset reconstruction. जहां तक फाइनैंशियल इंस्टीट्यूशन की डेफिनिशन की बात है, तो एग्जिस्टिंग एक्ट के सेक्शन-II(I)(एम) में फाइनैंशियल इंस्टीट्यूशन की डेफिनिशन पहले से ही है।

श्री निशिकान्त दुबे: सीआईआई का जो प्रपोजल था, उसमें था-The definition of financial institution appearing in sub-section 2m of Section 2 of the SARFAESI Act shall be substituted with the following:

(m) Financial institution means (i) a public financial institution within the meaning of sub-section 72 of section 2 of the Companies Act, 2013. ये कह रहे हैं कि आपके डेफिनिशन में जो है और जो कंपनी एक्ट, 2013 में है, दोनों के बीच डिफरेंस नजर आ रहा है। दूसरी बात, जो वे कह रहे हैं कि any institution specified by the Central Government under sub-clause 2 of Clause H of section 2 of the Recovery of Debts due to banks and Financial Institution Act, 1993.

Third is the international finance corporation. Fourth is the non-banking financial company as defined in clause (F) of section 45(1) of the Reserve Bank of India Act, 1934. Fifth is, an alternative investment

fund defined in sub-regulation B of Regulation 2 of the SEBI Alternative Investment Funds (Regulation), 2012 and registered with the Board through its trustees where it is incorporated, is a trust.

6. All entities which are recognised lenders other than foreign direct or indirect shareholders eligible to provide external commercial borrowings to eligible Indian borrowers under the Foreign Exchange Management Act, 1999.

7. Foreign institutional investors, foreign portfolio investors and other such institutional investors which are permitted by the Reserve Bank to invest in or subscribe to debt securities.

मेरा यह कहना है कि इन्होंने जो सजैशन दिए हैं, वह भारत में जो एगजिस्टिंग कानून हैं और हम यह जो कानून बना रहे हैं, इससे ईज ऑफ डूइंग बिजनेस के तहत ज्यादा से ज्यादा इनवेस्टर को देश में ला पाएं। इसलिए मेरा मानना है कि उन्होंने जो भी सजैशन दिए हैं, उनको आपको फाइनैंशियल इंस्टीट्यूशन की डेफिनेशन के तहत रिकंसीडर करना चाहिए। पिछली बार भी यह बात आयी थी कि यदि हम अलग-अलग चीजों के लिए अलग डेफिनेशन देंगे तो उससे केओस पैदा होगा। इन लोगों ने जो सजैशन दिया है, लेकिन कम्पनीज़ एक्ट, 2013 में आपने एक अलग डेफिनेशन दी हुई है। उसके बाद रिकवरी ऑफ डेट ड्यु बैंक फाइनैंशियल एक्ट, 1993 में अलग है, रिजर्व बैंक ऑफ इंडिया एक्ट, 1934 में अलग है। मेरा यह कहना है कि इन सभी को करने से बेनीफिट होगा।

श्रीमती अंजलि चिब दुग्गल: एगजिस्टिंग एक्ट का सेक्शन 2 (1m) है, जिसको नहीं कर रहे हैं, उसमें पब्लिक फाइनैंशियल इंस्टीट्यूशन within the meaning of the Companies Act, 1956 लिखा हुआ है। वर्ष 2013 का जो कम्पनीज एक्ट है, वह इसको मान्यता देता है।

माननीय सभापति: अभी तो क्लॉज 3 है।

श्रीमती अंजलि चिब दुग्गल: क्लॉज 3 तो असैट रिकंस्ट्रक्शन के बारे में है।

श्री निशिकान्त दुबे: उसमें मैंने यह कहा था कि एक ही होना चाहिए क्योंकि रिकंस्ट्रक्शन कम्पनी और सिक्योरिटाइजेशन कम्पनी का मीनिंग एक ही है। हम से ज्यादा परेशान सभी बैंक हैं और यह सजैशन बैंक्स का है।

श्रीमती अंजलि चिब दुग्गल: फाइनैंशियल इंस्टीट्यूशन की जो चार परिभाषाएं अभी हैं, जैसा आपने कहा बिलकुल वैसा ही है। सिक्योरिटाइजेशन और असैट रिकंस्ट्रक्शन दो अलग-अलग काम हो सकते हैं। Securitisation can be done in tandem with asset reconstruction also. यहां आपने जैसा सजेस्ट किया है वैसा ही हो रहा है कि इन कम्पनीज़ को असैट रिकंस्ट्रक्शन कम्पनी कहा जा रहा है for ease of the terminology.

माननीय सभापतिः इसमें लिखा हुआ है। Whenever the words asset reconstruction company come, it shall be substituted.

क्लॉज 3 अडॉप्ट करने के लिए आपके समक्ष प्रस्तुत है। क्लॉज 3 अडॉप्ट करते हैं।

HON. CHAIRPERSON: We now take up clause 4. There is an amendment moved by Shri Bhartruhari Mahtab.

SHRI BHARTRUHARI MAHTAB: After the Companies Act, 2013, I want you to insert 'or any other law relating to companies for the time being in force'. This is on page 2, line 21, clause 4(i).

SHRIMATI ANJULY CHIB DUGGAL: We have no objection, Sir. But when you read the 2013 Companies Act, it actually harmonises all the expressions in the 1956 Act with itself.

SHRI BHARTRUHARI MAHTAB: So, you do not think it is necessary.

DR. MUKULITA VIJAYAWARGIYA: Sir, it is not necessary because there is only one company law, principal law. Others are special laws for which companies are registered for a special purpose.

SHRI BHARTRUHARI MAHTAB: Okay.

श्री निशिकान्त दुबेः क्लॉज 4 फाइनैंशियल इंस्टीट्यूशन से संबंधित है।

श्री भर्तृहरि महताबः उसके बाद मेरा 41(ए) में हैं, इसमें मैंने कहा कि एक और सब-पैरा करके एग्रीकल्चर लैंड मीन्स any land which is used to generate agriculture income as defined under Clause (1A) of the Section 2 of the Income Tax Act, 1961.

DR. MUKULITA VIJAYAWARGIYA: Recently, Supreme Court in one case has categorized agricultural land into two categories—one which is used for agricultural purposes and the other which is agricultural land which is not used for agricultural purposes. So, in this case, we have explicit provision in Section 13 regarding non-applicability of agricultural land. As far as the definition is concerned, we cannot refer to Income Tax Act because that relates only to income. But here when the land is used for industrial purposes and other purposes, then that definition may not be relevant to be referred to. In this case, it is better if we define it under the general clauses or the meaning as it is taken in the natural sense.

SHRI BHARTRUHARI MAHTAB: I fail to understand how that signifies.

माननीय सभापतिः उसका ब्रोडर आस्पैक्ट रहेगा, जैसे सुप्रीम कोर्ट ने फॉरेस्ट की डेफिनिशन डिक्शनरी मीनिंग ऑफ फॉरेस्ट कर रखी है तो लार्जर इंटरैस्ट में जो हमारे एग्रीकल्चरिस्ट्स हैं, आप उसे कंफाइन कर देंगे, वरना लार्जर इंटरैस्ट में इस देश का जो एग्रीकल्चरिस्ट है, नहीं होगा तो एक लार्जर इंटरैस्ट में उसके लिए एग्रीकल्चर लैंड पैंडिंग रहेगी, उससे कंफाइन करने से फायदा नहीं होगा।

SMT. ANJULY CHIB DUGGAL: If I may add to that, the context out here is the SARFAESI Act which permits enforcement of security interests without going to Court. Therefore, under Section 31 of SARFAESI, there are certain exclusions to which the provisions of the Act are not to apply and one of the exclusions is any security interest created in agricultural land. So, when you see it in that context, it is something that falls into place that you do not want agricultural land to be used as a security where the security interest is going to be enforced without going to Court.

SHRI BHARTRUHARI MAHTAB: I am still not convinced with this 'larger interest of agriculture'.

Actually, I have only two issues. I have given 10 amendments. These are technical in nature and some of them may be accepted. There are two issues on which there is difference of opinion. One is relating to the agricultural land. The manner in which I have interacted with people who have taken loan by pledging a part of their agricultural land, my experience has been that if it is used for agricultural purpose which was not supposed to be the part of the proceedings that are conceived in this Act, it should not have been taken over by the Bank itself. Why can't we restrict it at that level instead of providing a provision in this Act?

The second issue is relating to the rent. When we come to that clause, we will discuss that. But my submission here is that if it is necessary that some agricultural land is being used for agricultural purpose, I am unable to understand what the 'larger interest of agriculture' is.

SMT. ANJULY CHIB DUGGAL: The security interest created in agricultural land can still be enforced, but by going to Court. This is an Act which permits enforcement of security interest not necessarily by going to Court although if there is any of the parties which is aggrieved recourse to Debt Recovery Tribunal is possible.

The only point is that in case there is a financial lender dealing with the farmer with an asymmetry in the capacity to enforce or to

protect interests there, the agricultural land has been left out of the scope of this particular Act; but other laws continue to apply where enforcement of security interests is concerned.

SHRI BHARTRUHARI MAHTAB: So, will the provision we have here allow the courts to provide for that?

SHRIMATI ANJULY CHIB DUGGAL: Security interests against agricultural land cannot be enforced under this Act. As of now we have not made a proposal to make a change there.

SHRI NARESH GUJRAL: I think, the apprehension arises out of that one case of a hotel where 95 per cent was converted but five per cent was not converted and later the court held that since it was agricultural land the whole thing was exempted. So, what he is saying is that if we could say 'agricultural land or part thereof' because in this case—I would not use the word advantage—it was put across in such a way that though 95 per cent had already been converted the borrowers got the benefit by using this as a means to save their security.

SHRIMATI ANJULY CHIB DUGGAL: Sir, I submit that this Act gives powers for early resolution of bad debts by permitting the lenders to settle out of court. Now, in a situation like that, you do want to be sure that you are pitting people who are equally well informed about their legal rights; others' rights could be enforced through the court mechanism at any point of time. This is actually a sub-set of the larger resolution process which is also legal.

Here, when we are talking about enforcement of security interests outside the courts, there usually agricultural property has been kept out in the past. We have not made any proposal to change it under this Act but definitions and court processes and laws are otherwise applicable, not necessarily under this Act.

SHRI BHARTRUHARI MAHTAB: Since we are aware, this should be an all-encompassing law. When I mentioned about the Income Tax Act, the purpose was that there are a large number of small scale industries who do not have that much capital which will be given as collateral security. The only thing they have is landed property or agricultural land. So, the banks should not take advantage of a situation to penalize a defaulter and even court can interpret it in a different way. That was the main purpose. You may see if you want to make that law in that respect if it is agricultural land use. I am yet to be convinced.

SHRIMATI ANJULY CHIB DUGGAL: Let me try once again. This Act does not bar the creation of security interest over agricultural land. All section 31 does is to bar the enforcement of security interest on

that land under this Act. Under other Acts and under other legal processes, it is not barred. I should also mention that agriculture and transfer of agricultural land are State subjects.

SHRI BHARTRUHARI MAHTAB: Is the Committee convinced? Madam, I am not convinced yet.

SHRIMATI ANJULY CHIB DUGGAL: Sir, there is no bar to putting that as collateral. It is only if the loan goes bad and the lender wants to enforce the security interest, he cannot do it under this Act. Otherwise, the courts of law are open.

HON. CHAIRPERSON: The question is why we want to insert the definition here. What is the necessity?

श्री जगदम्बिका पाल: महोदय, बैंक जानते भी हैं कि जो एग्रीकल्चर लैंड है, उस पर सरफेसाई लागू नहीं होगी, लेकिन इसके बावजूद भी कोलेट्रल वे लेते हैं।

माननीय सभापति: नहीं ले सकते हैं, वे कोलेट्रल ले भी सकते हैं केवल सिक्योरिटाइजेशन एक्ट के सेक्शन 31(आई) में उनके ऊपर कार्रवाई नहीं होगी। बाकी डीआरटी में भी उसके ऊपर रिकवरी की कार्रवाई हो सकती है।

श्री जगदम्बिका पाल: इसमें क्या दिक्कत है?

श्री भर्तृहरि महताब: आपको याद होगा जब सिडबी का प्रजेंटेशन यहां हुआ था, वह पेपर आप खोलकर देख सकते हैं। What was the deliberation? वह पूरा रिकॉर्ड में है।

माननीय सभापति: जो सिडबी का प्रजेंटेशन था और जो बाकी भी एक बैंक था, उन्होंने दो केस दिए थे, एक तो गोवा का केस था ही, हैदराबाद का भी केस था, दिल्ली की एक जमीन का भी केस था। विषय बैंक्स की तरफ से यह है कि 31(आई) में जो एग्रीकल्चर लैंड को प्रोटेक्शन दे रखा है, वह प्रोटेक्शन समाप्त होना चाहिए, जबकि वह समाप्त नहीं होना चाहिए। वह प्रोटेक्शन बिल्कुल समाप्त नहीं होना चाहिए और एग्रीकल्चर लैंड को वह प्रोटेक्शन रहना चाहिए। इसमें यह परिभाषा देने की कोई आवश्यकता नहीं है।

श्री भर्तृहरि महताब: नहीं है।

माननीय सभापति: अब अगले पर आइए। श्री भर्तृहरि महताब जी।

श्री भर्तृहरि महताब: इसमें न्यूज क्लॉज हमने ऐड करने के लिए कहा था। 'Any amount claimed as due by a debenture trustee' after line 37 of that sub para 2.

DR. MUKULITA VIJAYAWARGIYA: Sir, that point has been covered under the revised definition of debt in the DRT Act in this very amendment Bill.

श्री निशिकान्त दुबे: सिक्योर्ड क्रेडिटर में डिबेंचर ट्रस्टी को इंक्लूड करने के लिए।

DR. MUKULITA VIJAYAWARGIYA: Sir, Clause 25, Page No.13 of the Bill. The definition of debt includes the liability towards debt security. So, that point has been covered under the revised definition of the expression debt.

SHRI BHARTRUHARI MAHTAB: Debt Security means any security whether listed or unlisted representing a debt issued in accordance with 'd'.

SHRIMATI ANJULY CHIB DUGGAL: We have spent a lot of time thinking about this, Sir. With listed securities the advantage is that there is regulatory oversight over how that security has been created and what is the functioning of the company which has created that debt security.

As a result we are far more comfortable at this stage when we are opening up to go along with SEBI's original suggestion about debt securities which are listed covering those under the SARFAESI Act. The Act is a powerful one. It permits enforcement of security interest outside the court and therefore if the processes by which securities have been created are well regulated, then there is a degree of comfort in letting those be covered under this Act. Unlisted securities one would not be very sure about when they were done, how it was done etc.

श्री निशिकान्त दुबे: सभापति जी, इस पूरे बिल में, आरबीआई जब हमारी समिति के सामने आई थी तो उसने कई सजैशन दिये थे। उसने पहला सजैशन दिया था कि डैफिनिशन ऑफ एसैट रीकंस्ट्रक्शन कंपनी जो है, सब-सैक्शन 2(1)(बी) ए ऑफ सर्फेसी एक्ट, इसमें उन्होंने चेंज करने के लिए कहा था कि It has been suggested that words incorporated under the Companies Act, 2013 may be replaced by words as defined under the Companies Act, 2013.

Secondly, they said, 'including applicability of cooperative banks under the SARFAESI amendment Act in Section 2 (i)(c) of SARFAESI Act'. They suggested that the definition of banks should include State, district and urban cooperative banks. RBI has also drawn attention of the Committee to a pending matter before Supreme Court regarding the issue of applicability of SARFAESI Act to cooperative banks.

Thirdly, amending definition of borrower under section 2(i)(f) of SARFAESI Act. In that they said that a suggestion has been made to modify definition of borrower so as to include a person who has been granted loan or advances by any entity other than bank, for example,

Non-Banking Financial Institutions, so as to enable banks to take action against borrowers even when loans are acquired by banks. Fourth, amending definition of qualified institution buyers – it has been suggested to substitute the expression 'qualified institution buyer' with 'qualified buyer' in view of proposed modification in definition whereby non-institutional investors are being included in the definition of QIB. Fifth, to define net owned fund; sixth, prior approval of RBI for sponsorship in the company by way of issue of transfer of shares. ये उसके सुझाव थे। मुझे लगता है कि ये सब सुझाव जरूरी हैं। इसके बारे में कुछ बताएं।

SMT. ANJULY CHIB DUGGAL: Sir, your first point was about including cooperative banks.

SHRI NISHIKANT DUBEY: The first one was about Asset Reconstruction Company as defined.

SMT. ANJULY CHIB DUGGAL: That has been done.

Secondly, I am going to draw your attention to definitions 2(i)(c)(v) it says that bank means such other bank which the Central Government may by notification specify for the purposes of this Act. So, if there is a need to add cooperative banks, it is a matter that can be examined. There is an enabling provision there.

श्री निशिकान्त दुबे: यह आप कर लीजिए क्योंकि उनका यह पैंडिंग मैटर है सुप्रीम कोर्ट में और उसमें यह समस्या आ रही है। उन्होंने जो रीजन और लॉजिक दिया है, वह सुप्रीम कोर्ट के एक केस के बारे में उन्होंने कहा है। RBI has also drawn the attention of the Committee to a pending matter before Supreme Court regarding the issue of applicability of SARFAESI Act. मतलब, इसमें उनको समस्या आ रही है इसलिए वह क्लैरिटी के लिए कह रहे हैं कि उसको कोआपरेटिव बैंक को इनक्लूड कर देना चाहिए।

SHRIMATI ANJULY CHIB DUGGAL: This can be done. There is an enabling provision under the Act under which it can be taken up.

SHRI NISHIKANT DUBEY: Then there is the issue of definition of borrower. Under Section 2(1)(f) of SARFAESI Act, a suggestion has been made to modify the definition of borrower so as to include a person who has been granted loan or advance by an entity other than bank, for example, NBFC, so as to enable bank to take action against borrowers even when loans are acquired by banks.

SHRIMATI ANJULY CHIB DUGGAL: Let me draw your attention to the existing Section 2(m)(iv) which says that a financial institution covers

also any other institution or non-banking financial company as defined in clause (f) of Section 45 or the RBI Act. So, this is already included.

SHRI NISHIKANT DUBEY: Then they suggested amending the definition of qualified institutional buyers.

SHRIMATI ANJULY CHIB DUGGAL: We have done that.

SHRI NISHIKANT DUBEY: Then net on funds comes.

SHRIMATI ANJULY CHIB DUGGAL: On net on funds, the proposed amendment covers RBI's ability to take a decision about what the net on fund of an ARC should be. It is already there. It is Rs. 2 crore or such higher amount as RBI may specify.

श्री निशिकान्त दुबे: यह हो गया कि एक तो इन्होंने चेंज कर दिया है। दूसरा, उसको इनेबल करने के लिए ये को-ऑपरेटिव बैंक्स को असेस करेंगे। इनका बोरोअर, क्वालीफाइड इंस्टीट्यूशनल बायर्स नेट ओन्ड फंड में है।

फिर उसके बाद फाइनैंशियल इंस्टीट्यूशंस के डेफिनिशन वाला था।

SHRIMATI ANJULY CHIB DUGGAL: It is covered under Section 2(m)(iv).

श्री निशिकान्त दुबे: क्या ये सारे एक्ट इनके साथ जुड़ गए हैं? जो उनका सजेशन था कि sub-section 72 of section 2 of the Companies Act, 2013 which says: "Debt due to Banks and Financial Institution Act, 1993, RBI Act, 1934, SEBI Regulation Act, 2012 or FEMA, 1999" इन सब के आधार पर ये फाइनैंशियल इंस्टीट्यूशंस को होना था। क्या यह सब हमने इन्क्लूड कर लिया है?

SHRIMATI ANJULY CHIB DUGGAL: Here, for the purpose of SARFAESI, financial institutions are those which are public financial institutions under the Companies Act, those which are specified under Section 2 of the recovery of debts due to Banks and Financial Institutions Act, the International Finance Corporation, Section 45 of the RBI Act which the Central Government may by notification specify as financial institutions for the purposes of this Act.

श्री निशिकान्त दुबे: इसमें सेबी में भी एक अल्टरनेटिव इंवेस्टमेंट फंड है। And fourth is, recognized lendors in FEMA Act, 1999. क्योंकि सबसे ज्यादा जो अभी क्वैश्चंस हो रहे हैं, वह इसी में हो रहे हैं कि फेमा वॉयलेशन, फेरा वॉयलेशन हो रहा है। पैसा कहां से आ रहा है, पैसा कहां से जा रहा है?

SHRIMATI ANJULY CHIB DUGGAL: On SEBI's suggestion, we have added debenture trustee and asset reconstruction companies not as alternative investment funds yet.

SHRI NISHIKANT DUBEY: It is needed. हम लोग कर सकते हैं।

SHRIMATI ANJULY CHIB DUGGAL: We would examine it in greater detail.

SHRI NISHIKANT DUBEY: It is said "where it is incorporated as a trust". "An alternative investment fund defined under sub-regulation (b) of regulation II of the SEBI alternative investment fund regulation, 2012 and registered with the Board to its trustee where it is incorporated as a trust.

SHRIMATI ANJULY CHIB DUGGAL: I would submit that the current definition is a very wide one. We have taken SEBI's suggestion on board and included debenture trustees. If any other kind of trusts, etc. have to be included, it does need more examination. The basic point that I am making is this. Only extremely well regulated companies which are in the business of lending should be included.

SHRI NISHIKANT DUBEY: Why can we not add in this saying, 'any other institution which the Central Government may, by notification, specify as financial institution for the purposes of this Act'. इन्होंने तो स्पेसिफिक कर दिया है तीन, मेरा यह कहना है कि स्पेसिफिक नहीं करते हुए और भी डेफिनिशंस हो सकती हैं। इसके लिए उसको वाइड ओपन करिए कि सेंट्रल गवर्नमेंट ने जो-जो डेफिनिशन डाली हैं।

SHRIMATI ANJULY CHIB DUGGAL: What I would submit again is this, that under Section 2(m)(iv) there is already an enabling provision which says, 'any other institution which the Central Government, may by notification, specify'.

HON. CHAIRPERSON: An institution must be listed in the list of Reserve Bank of India.

SHRI NISHIKANT DUBEY: In this you have written, 'any other institution or NBFC as defined in clause F, section 45 of the Reserve Bank of India Act, which the Central Government, may by notification, specify'. But here I am talking about SEBI and FEMA.

SHRIMATI ANJULY CHIB DUGGAL: Let me read this provision again to you Sir. It says, 'any other institution or NBFC as defined under the RBI Act which the Central Government, may by notification, specify'.

श्री निशिकान्त दुबे: लेकिन इसमें सेबी का एक्ट और फेमा का एक्ट आरबीआई के साथ नहीं है।

SHRIMATI ANJULY CHIB DUGGAL: I am going to say this again any other institution.

SHRI NISHIKANT DUBEY: There is no comma.

SHRIMATI ANJULY CHIB DUGGAL: 'or' is there.

'or Non Banking Financial Company which is registered under Section 45 of the RBI Act, which the Central Government, may by notification, specify as financial institution for the purpose of this Act'.

श्री निशिकान्त दुबे: ये आपके अमेंडमेंट हैं, आप दोनों ने साथ मिलकर ही अमेंडमेंट दिए हैं। यहां जुगल जोड़ी चलती है, मिस्टर मेघवाल और पी.पी. चौधरी की जोड़ी थी, तो आप दोनों ने अपनी जोड़ी बना ली है। मेघवाल साहब और पी.पी. चौधरी साहब की जोड़ी थी, अब संजय जायसवाल जी और सुभाष जी ने अपनी जोड़ी बना रखी है।

DR. SANJAY JAISWAL: In 4(i), we have suggested, 'a company defined under the Companies Act, 2013' for 'a company incorporated under the Companies Act, 2013'. In the same provision, we have suggested 'for the purpose of carrying on the business asset reconstruction or securitisation or both' instead of 'asset reconstruction and securitisation'.

Then in page 3, line 27, we have requested '(iiia) Debenture Trustee registered with the Board and appointed for secured debt securities, to be treated as Secured Creditor with rights of enforcement security' instead of '(iiia) a debenture trustee registered with the Board and appointed for debt securities'.

DR. MUKULITA VIJAYAWARGIYA: It is already covered under the definition.

DR. SANJAY JAISWAL: On page 3, 941, we want a new sub-clause should be as follows – after the words, 'of similar nature' which are declared by the RBI by notification, 'to be property rights over which security interest can be created in favour of bank and financial institutions'.

DR. MUKULITA VIJAYAWARGIYA: This has been done with modifications and we have added after the words, 'rights of similar nature, 'as may be specified by the Central Government by notification'. So, there is a facility for laying it before Parliament regarding such rights. We will be specifying such rights in consultation with the RBI.

श्री निशिकान्त दुबे: इसमें बैंक्स के डिफॉल्ट की डैफिनेशन को थोड़ा ब्रॉडन करने के बारे में भी था। क्या हमने उसे ऐक्सैप्ट किया है? बैंक कह रहा था कि–diversion or

siphoning of funds on unauthorised transfer/alienation of secured assets in violation of any terms and conditions of sanction, etc. may also be included in the definition of default. यह सारे बैंक्स का कहना था।

श्रीमती अंजलि चिब दुग्गल: सरफेसी में सिक्युरिटी इंटरस्ट को एनफोर्स करने के लिए जो प्रावधान है, वह उन डैट्स के लिए हैं जो बिगड़ गए हैं और नान-परफार्मिंग ऐसैट्स डिक्लेयर हो चुके हैं। उसके लिए कवरेज पूरी है। If default leads to asset being declared as a NPA, then it would be automatically covered.

श्री निशिकान्त दुबे: वे कह रहे हैं कि मान लीजिए आप किसी का फॉरैंसिक ऑडिट करवाएंगे और उसमें ये सारी चीजें पकड़ में आती हैं, यदि हम उसको डैफिनेशन में इनक्लूड करते हैं तो क्या समस्या है।

श्रीमती अंजलि चिब दुग्गल: व्यावहारिक तौर पर जब तक फॉरैंसिक ऑडिट की नौबत आती है, तब तक नान-परफार्मिंग ऐसैट हो चुका होता है।

श्री निशिकान्त दुबे: आपको तो पैसा रिकवर करना है। हमारा टारगैट यह है। अभी जो, चीजें चल रही हैं, जो कॉरपोरेट का चल रहा है कि डॉयवर्शन ऑफ फंड एक बड़ा विषय है, सैफनिंग ऑफ फंड बहुत बड़ा विषय है। यह डिफॉल्ट के दायरे में है या नहीं। यदि दायरे में नहीं है तो कोई एक लीगल टर्म होगी जो हम इसे दायरे में ला सकते हैं। इसीलिए मुझे लगता है कि बैंक के सजैशन उचित थे क्योंकि उनका प्रैक्टिकल अनुभव हमेशा दिखाई पड़ रहा है।

श्रीमती अंजलि चिब दुग्गल: एक्ट में नान-परफार्मिंग ऐसैट को रिकवर करने के लिए प्रोविजन है। विलफुल डिफॉल्टर्स के लिए और प्रावधान है, और एक्ट्स में अलग से है। जैसे मैंने आपसे कहा कि व्यावहारिक तौर पर आम तौर पर जो केस फॉरैंसिक ऑडिट की स्टेज तक पहुंचता है, वह पहले से ही नान-परफार्मिंग ऐसैट हो चुका होता है। जिस तरह हमने पहले डिसकस किया था कि हम बॉरोअर और लैंडर्स के इंटरस्ट को बैलैंस कर रहे हैं, उनमें एक तरह का समन्वय बिठा रहे हैं कि पे करने के लिए 90 दिन का जो पीरियड दिया हुआ है, उस दौरान पे नहीं कर पाते तो उसके बाद ही एनपीए डिक्लेयर करके ऐनफोर्समैंट हो सकती है।

श्री निशिकान्त दुबे: आप एसएमई सैक्टर के लिए इसे 180 दिन करने वाली हैं। फिर इस एक्ट में संशोधन होगा। मैंने आपके मंत्री जी का भाषण सुना है, नए मंत्री श्री मेघवाल साहब ने कहा है कि एसएमई सैक्टर के लिए एनपीए की डेट 180 दिन होने वाली है।

HON. CHAIRPERSON: That is not for today, Sir.

श्रीमती अंजलि चिब दुग्गल: नान-परफार्मिंग ऐसैट रिजर्व बैंक ऑफ इंडिया की गाइडलाइन्स के तहत होता है।

माननीय सभापति: निशिकान्त जी, उन्होंने कोई पॉलिसी स्टेटमैंट दिया होगा। जब आएगा तब हम देखेंगे।

HON. CHAIRPERSON: I put clause 4(i) as amended moved by Shri B. Mahtab *ji*, that after Company Act, 2013 insert or any other law relating to the companies for the time being in force – is accepted.

That is accepted. The same amendment moved by Shri Subhash Beheria and Dr. Sanjay Jaiswal is adopted.

Then we come to Clause 4(i). The amendment moved by Shri Subhash Beheria and Dr. Sanjay Jaiswal, page 2, line 23, is accepted by the Ministry and it is adopted.

Then, Clause 4 (i), for the insertion of new sub-clause, there is an amendment moved by Shri Bhartruhari Mahtab.

SHRI BHARTRUHARI MAHTAB: I am not pressing it.

HON. CHAIRPERSON: So it is not pressed. Then, in Clause 4 (iii), for new sub-clause, the amendment moved by Shri Bhartruhari Mahtab is not pressed.

Then, in Clause (4) (iv), the amendment moved by Shri Bhartruhari Mahtab is not pressed.

Then, in Clause 4 (viii), the amendment moved by Shri Subhash Beheria and Dr. Sanjay Jaiswal is not pressed.

Then, there is insertion of sub-clause 10 (a), after the word 'of similar nature'. Is it accepted by the Ministry?

SHRIMATI ANJULY CHIB DUGGAL: Our suggestion is that it should be as declared by the Central Government in consultation with Reserve Bank. That ensures that we treat it as subordinate legislation and lay it on the Table of the House.

HON. CHAIRPERSON: You are talking about items which are declared by Reserve Bank, by notification, to be property rights.

SHRIMATI ANJULY CHIB DUGGAL: What we are suggesting is, which are declared by Central Government in consultation with Reserve Bank as property rights.

HON. CHAIRPERSON: Okay.

The Legislative Department may again reframe it and put before the Committee.

DR. MUKULITA VIJAYAWARGIYA: Yes.

श्री निशिकान्त दुबे: सेक्शन 21(सी) का मतलब है कि वह रिएग्जामिन करेगा।

SHRIMATI ANJULY CHIB DUGGAL: What we have suggested is that there is already an enabling provision. वहां पर ऑलरेडी इनेबलिंग प्रोविज़न है और उस इनेबलिंग प्रोविज़न के तहत एग्जामिन होकर आगे चल सकता है। The matter is before the Supreme Court. We do not know all the facts. But it can be examined. There is an enabling provision for inclusion.

HON. CHAIRPERSON: So, Clause 4 may be redrafted again by the Legislative Department.

DR. MUKULITA VIJAYAWARGIYA: Yes.

HON. CHAIRPERSON: Then, in Clause 4, sub-clause 15, for explanation of section (ZF), there is an amendment moved by Shri Subhash Beheria and Dr. Sanjay Jaiswal. Explanation of section (ZF) may be deleted in the original Act. But their amendment is accepted.

DR. P. VENUGOPAL: What about amendment to sub-clause 4 of Clause 4 on page 2, line 39?

SHRIMATI ANJULY CHIB DUGGAL: That has been settled. We discussed that listed securities are better regulated. Therefore, we should regulate the provisions of this Act for listed securities.

SHRI SHIVKUMAR UDASI: Why not unlisted?

SHRIMATI ANJULY CHIB DUGGAL: Sir, we cannot be sure about how explicit or transparently those would have been created. So, it is better, for the moment, while we are accepting SEBI's recommendation for listed securities, we looked at only that portion, as of now.

DR. P. VENUGOPAL: The proposed amendment is to keep unlisted debt securities away from the purview of the SARFAESI Act. So, I see no reason keeping unlisted debt securities, which is a legitimate source of finance and even permitted under the Companies Act, 2013.

SHRIMATI ANJULY CHIB DUGGAL: We do not bar the resolution of unlisted securities. All that we are suggesting that because SARFAESI is a very powerful Act, it should be used only for those securities, which are listed, provenance of which can be established.

HON. CHAIRPERSON: So, with this suggestion, Clause 4 is adopted.

Now, I put Clause 5 before the Committee for consideration. The amendment is moved by Shri Subhash Beheria/Dr. Sanjay Jaiswal.

DR. SANJAY JAISWAL: Sir, I move my amendment.

DR. MUKULITA VIJAYAWARGIYA: It is accepted, Sir.

HON. CHAIRPERSON: So, Clause 5 is accepted. Is there any other amendment in Clause 5?

श्री निशिकान्त दुबे: चेयरमैन साहब, इसमें इन्होंने सजैस्ट किया था की ए.आर.सी. के लिए 2 करोड़ रुपए और क्या सजैस्ट किया था?

SHRIMATI ANJULY CHIB DUGGAL: It was 'or such higher amount'.

SHRI NISHIKANT DUBEY: 'RBI may notify.' यही न?

श्रीमती अंजलि चिब दुग्गल: जी हां सर।

श्री निशिकान्त दुबे: इसके बाद सरफेसी एक्ट का जो 5(2) है, इसमें जो स्पोंसर है, says that 'a sponsor of an ARC is a fit and proper person in accordance with the criteria specified by the Reserve Bank.' तो इसमें बैंक तो नहीं होना चाहिए? इसमें एक एक्सक्लूजन तो आप डालिए।

SHRIMATI ANJULY CHIB DUGGAL: We are leaving to the Reserve Bank to regulate this area.

श्री निशिकान्त दुबे: क्यों? आप कॉन्फ्लिक्ट ऑफ इंटरेस्ट पर क्यों जा रही हैं? इसमें कम से कम बैंक तो नहीं ही हों। आप देखिए, बैंक वालों का क्या इंटरेस्ट है या क्या चीजें हैं। हमने पूरे डेफिनेशन में देखा। वे कह रहे हैं कि डिस्ट्रिक्ट मजिस्ट्रेट को और सी.एम.एम. की पॉवर खत्म करके आप बैंक वालों को ही ये पॉवर दे दीजिए। उनका सजैश्चन यह है। हम मान रहे हैं या नहीं मान रहे हैं, यह अलग बात है। मैं बैंक की मानसिक स्थिति बता रहा हूं। उन्हें लग रहा है कि उन्होंने ही कभी किसी जमाने में गलती की होगी, इसलिए वे अपनी गलती को छुपाने के लिए ऐसा कर रहे हैं। हो सकता है कि गलती नहीं भी हो, लेकिन वे यह सोचते हैं कि सारा अधिकार बैंक को ही मिल जाए। उसी तरह से आप ए.आर.सी. के स्पोंसरर की बात करते हैं, तो बैंक का ही तो इंटरेस्ट है। बैंक का इंटरेस्ट है, तो फिट और प्रॉपर परसन बैंक नहीं हो सकता है। इसलिए उसमें कम से कम एक्सक्लूजन डालिए कि उसका स्पोंसरर कम से कम बैंक नहीं हो।

SHRI SHIVKUMAR UDASI: At least, he should not be the stakeholder in the ARC.

SHRI NISHIKANT DUBEY: Yes.

आप यदि बैंक को एक्सक्लूड नहीं करेंगे, तो फिर यह तो कॉन्फ्लिक्ट ऑफ इंटरेस्ट है।

श्री शिवकुमार उदासि: वही हो रहा है।

श्री भर्तृहरि महताब: इतने सारे ए.आर.सी. आए थे except one.

श्री निशिकान्त दुबे: चेयरमैन साहब, जरा इन बातों को सीरियसली समझिए। जो ए.आर.सी. का स्पोंसरर होगा, उसमें कम से कम बैंक उसका स्पोंसरर नहीं होना चाहिए, क्योंकि उसका कॉन्फ्लिक्ट ऑफ इंटरेस्ट होगा। बैंक की ही सम्पत्ति लगी हुई है और यदि बैंक ही उसका स्पोंसरर हो जाएगा, तो फिर जो एक ए.आर.सी. में चल रहा है, एस.डी.ए. और ए.आर.सी. जो चल रहा है और एक बहुत बड़े घोटाले की तरफ यह देश बढ़ रहा है, हेयरकट हो जा रहा है और चीजें हो रही हैं, किसी को हम दिए जा रहे हैं। इसलिए बैंक को आप इसमें से एक्सक्लूड कीजिए।

SHRIMATI ANJULY CHIB DUGGAL: Sir, I have two appoints to make about this. One is that the regulation of Asset Reconstruction Company is with the RBI under this Act. It is expected that any conflicts of interest and the regulation of arms length work will be taken care of by the RBI.

The second point is that we are in an evolving landscape.

SHRI JAGDAMBIKA PAL: Practically, it is not true. आर.बी.आई. की ये कह रहे हैं, लेकिन स्पोंसर बैंक कर रहा है और बैंक ही ए.आर. सीज कर रहा है।

SHRIMATI ANJULY CHIB DUGGAL: The point I am making is this that we are in a changing and evolving landscape. After the proposed amendments go through, it is possible that there will be larger space for Asset Reconstruction Company in this space, and, therefore, the banks will not need to seed the capital in any ARC and try to get capital from outside to create ARCs. Therefore, as the market matures, regulation also will change as we go along. So far the provisions are to permit RBI to register, to do the cancellation of the registration plus we are proposing strengthening of audit and inspection powers of RBI to ensure that the ARCs' space is very well regulated. When there is a regulation and a regulator which is already in place and a business environment which is changing and evolving, perhaps, it would be appropriate to not put a lot down in black and white. This is my suggestion.

HON. CHAIRPERSON: So, I put clause 5 for adoption, and clause 5 is adopted with the amendment which is moved by Shri Subhash Beheria and Dr. Sanjay Jaiswal.

Now, I put clause 6 before the Committee for adoption. There is amendment moved by Shri Subhash Beheria and Dr. Sanjay Jaiswal.

श्री सुभाष चन्द्र बहेड़िया: जो लोन एनपीए नहीं हुआ है, उसे भी इसमें ले लें, यह पावर दे रहा है।

HON. CHAIRPERSON: It is deletion of 1B. It is accepted. So, I put clause 6 for the adoption. 1B is clear. 1B is omitted now.

SHRI NISHIKANT DUBEY: 1A provides for exemption of stamp duty in accordance with the provisions of Section 8F of the Indian Stamp Act, 1899. आप स्टेट को इन चीजों से अलग कर रहे हैं। जब डाक्युमेंट एक्सक्यूट कर रहा है इन फेवर आफ एनी बैंक तो उसे वहां भी एग्जेप्ट कीजिए। आप अपने लिए पैसा ले रहे हैं और स्टेट को महरूम कर रहे हैं। दोनों तरफ एक ही कानून होना चाहिए।

SHRIMATI ANJULY CHIB DUGGAL: This is with reference to the proposed amendment which is coming up under the Indian Stamp Act. I can discuss it now. I can discuss it at that particular point of time.

HON. CHAIRPERSON: Now it is clear.

SHRIMATI ANJULY CHIB DUGGAL: It is like this. If a bank creates or a financial institution, which is a lender, creates a security interest and the loan goes bad, thereafter that asset is transferred to the Asset Reconstruction Company. The mortgage on that asset is transferred to the Asset Reconstruction Company. It is not a change of hands in terms of creation of a right. It is only that the right to recovery has been transferred. If within our country, we are at this point of time trying to encourage the working of Asset Reconstruction Companies, then we do want to ensure or provide a working environment where they are not being asked to pay stamp duty on the change of the right to recovery. As and when the asset finally changes hands, the stamp duty is to be charged.

SHRI SHIVKUMAR CHANABASAPPA UDASI: Only lien will be transferred, not the right of the property.

SHRIMATI ANJULY CHIB DUGGAL: It is the right to recovery which is transferred from the lender to the ARC.

SHRI SHIVKUMAR CHANABASAPPA UDASI: But the right over the property is not transferred.

श्री निशिकान्त दुबे: आप समझिए जो अभी पास किया है, चर्चा नहीं होने दी, 'any substantial change in its management' वाइड है। आप 10 परसेंट का कैप लगा रहे हैं या 26 परसेंट का कैप लगा रहे हैं। कम्पनी एक्ट के हिसाब से या चीजों के हिसाब से सब्सटेंशियल चेंज का मतलब 26 परसेंट है। आप उसमें 26 परसेंट डाल देते। यदि 10 परसेंट

भी चेंज होगा तो उसके बाद इसके ऊपर प्रभावी हो जायेगा। मेरा यह कहना है कि जो ड्राफ्टिंग होती है, उसे लीगल टर्म में, आप खुद वकील हैं, इसलिए आप जब जायेंगे तो इसे क्या कहेंगे? एनी सब्सटेंशियल चेंज का क्या मतलब है? इस बारे में लॉ डिपार्टमैंट बताये। यदि 26 परसेंट होता है तो आप सब्सटेंशियल चेंज मानेंगे। आपने 26 परसेंट क्यों नहीं माना? यहां तो 10 परसेंट पर भी एक बोर्ड का आदमी हो जाता है। बोर्ड ऑफ डायरेक्टर्स में यदि 10 परसेंट भी किसी का स्टेक होगा तो वह बोर्ड ऑफ डायरेक्टर्स में आने के लिए एलिजिबल हो जाता है। हम हडबडी में यह पास कर रहे हैं, तो इसमें आप एक राइडर तो डालिए कि 10 परसेंट होगा या 26 परसेंट होगा। उसके बाद आप जो सैकिंड प्वाइंट कह रहे हैं तो उसमें समस्या ठीक होगी।

माननीय सभापतिः यह हम रूल्स में भी डाल सकते हैं। हम इसे सजेस्ट कर सकते हैं।

श्री निशिकान्त दुबेः यह जब लॉ में हो गया, तो सब्सटेंशियल चेंज में रूल नहीं हो सकता।

माननीय सभापतिः आप रूल्स में परसेंटेज तो फिक्स कर सकते हैं।

SHRIMATI ANJULY CHIB DUGGAL: But this is an existing provision.

DR. MUKULITA VIJAYAWARGIYA: Sir, already there is a provision. Every securitization company shall obtain prior approval from the Reserve Bank for any substantial change in the management.

माननीय सभापतिः यह सजेशन है। हम कमेटी की रिपोर्ट में यह सजेशन दे सकते हैं।

श्री निशिकान्त दुबेः इसमें आपने अभी जो चेंज किया, 'including appointment of any Director', तो उसमें क्या किया? आपने एग्जीस्टिंग में चेंज किया। अब बोर्ड ऑफ डायरेक्टर बनना है तो आप 10 परसेंट पर बनायेंगे या 26 परसेंट पर बनायेंगे, तो यह सबसे बड़ा सवाल आ गया।

DR. MUKULITA VIJAYAWARGIYA: The word 'including' includes other nature of changes which are substantial in nature.

श्री निशिकान्त दुबेः इसलिए कानून इतने लंबे होते हैं। सब जगह वकील की संख्या बढ़ती जा रही है, तो उसका कारण क्या है? जितने वेग कानून हैं, उनकी व्याख्या रामायण की चौपाई की तरह है।

HON. CHAIRPERSON: Let us now come to Section 6. Is there any suggestion for drafting or redrafting it under Section 6(1A)? Would Legislative Department like to give it more clarity?

DR. MUKULITA VIJAYAWARGIYA: It is clear.

HON. CHAIRPERSON: I put clause 6 before the Committee for adoption. Clause 6 is adopted with the acceptance of amendments moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

Now, I put Clause 7 before the Committee for adoption. There is no amendment suggested in Clause 7. So, Clause 7 is adopted.

Now, I put Clause 8 before the Committee. An amendment has been moved by Shri Bhartruhari Mahtab.

SHRI BHARTRUHARI MAHTAB: I have suggested substitution of new Section for Section 9. After the word 'being in force' insert 'and subject to provisions of Section 14 of Insolvency and Bankruptcy Code, 2016'.

Later on at page 6, after line 4, I suggested another insertion with a new proviso 'provided further that conversion of any debt into equity shares of the borrowing company shall not be bad by reason of any provision of the Companies Act, 2013 or any stipulation in any agreement with the financial creditor or any clause in the Articles of Association of the borrowing company requiring approval of the financial creditor or a specified faction of shareholder of the company'.

DR. MUKULITA VIJAYAWARGIYA: Sir, IBC Code has not been enforced till date.

Secondly, the scheme of this present Act, SARFAESI Act, is different from IBC. Hence, we cannot subject the provisions of this Act to Section 14 of the IBC.

SHRI BHARTRUHARI MAHTAB: I think, we have discussed this matter earlier. It will again come back for amendment.

SHRI SHIVKUMAR UDASI: This Bill is in continuation of IBC. As per my understanding, we are doing these amendments to have concurrence with IBC.

SHRIMATI ANJULY CHIB DUGGAL: Sir, there is a harmonisation. Let me explain that point.

If action has been initiated under SARFAESI and subsequent action is started under IBC, action under SARFAESI will come to a halt. There is a moratorium period. If the action has been started under IBC, then action under SARFAESI is not possible until you reach in the natural conclusion the resolution process up to Section 52 of IBC. At that stage, if the resolution has failed or has worked partially, a secured creditor can be permitted to take away the secured interests or the securities. At that point of time, SARFAESI can be invoked. This is something which is part of Section 52. Section 52 (8) also specifies

that any costs incurred for the resolution process will be segregated out of the proceeds of the sale of securities. It is something along those lines.

That being so, the IBC itself envisages a different action under SARFAESI Act in terms of Section 52. Therefore, to say that action under SARFAESI Act is subject to IBC, it is already there, but there would be any number of other sections of IBC which may get unintentionally invoked if we put this particular clause.

I may draw your attention to Sections 14 and 52 of the IBC. Section 14(1)(c) reads:

> "(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;"

This section, in any case, stops any action under SARFAESI Act. If you take a look at Section 52, it says:

> "(1) A secured creditor in the liquidation proceedings may—
>
> (a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or
>
> (b) realise its security interest in the manner specified in this section."

It further says:

> "(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it."

Therefore, the harmonization of IBC and SARFAESI Act is already there in the IBC. Therefore, we do request that this amendment may not be pressed.

SHRI NISHIKANT DUBEY: There are some more suggestions in this. There was one suggestion in this that: "Provided further that notwithstanding anything in its content in any other law for the time being in force the right of an Asset Construction Company ... similar to that which is provided to Asset Reconstruction Company under Section 9 of the SARFAESI Act.".

SHRIMATI ANJULY CHIB DUGGAL: Sir, the enablement of conversion of debt into equity is permitted and is carried out under RBI's scheme for Strategic Debt Restructuring (SDR). So far, no point has arisen about the need to bar the provisions of the Companies Act as far as this exercise is concerned. As the suggested amendment can have unforeseen consequences, we would suggest that the current system, which is working reasonably well, namely, the SDR should be allowed to continue. This particular proposal can have unforeseen consequences.

SHRI SHIVKUMAR UDASI: The RBI has formulated S4A in which they say sustainable and unsustainable. So, in that context you have to see that also.

SHRIMATI ANJULY CHIB DUGGAL: Sir, eventually, S4A is a variation of SDR and there is no great difference there, but to bar the application of Company Law entirely can have other consequences, which we are not familiar with. For the present, none of the lending institutions has said that this is required in any strong way to us.

श्री निशिकान्त दुबे: सर, इनको एक बार फिर इस एक्ट को रिव्यू करने दीजिए। फिर हम लोग कल-परसों मिलेंगे, एक बार ये रि-असेस करके आ जायें।

SHRI BHARTRUHARI MAHTAB: You have used the word 'and'. I am actually missing Shri P.P. Chaudhary today. Kumari Sushmita Dev, who is here, can help me out.

SHRIMATI ANJULY CHIB DUGGAL: May I also add that in terms of Clause 9 (1) (g), "Conversion of any portion of debt into shares of a borrower company" is enabled. Further, in terms of Clause 9 (2), "The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged". So, there are enabling provisions here for the regulator to undertake and it may not be necessary to hardwire this in the Act itself.

SHRI NISHIKANT DUBEY: It says, "...may be exercised in accordance with the guidelines stipulated by the Reserve Bank of India, whether or not the terms of the debt provide any rights in relation to such conversion and (2) will not be subject to the requirements under the Companies Act, 2013 or any approvals from shareholders or Board of Directors of the borrower company, whether required at the time of raising of the debt or in connection with conversion of such debt into shares, or any agreement which may be binding on the borrowers or

it direct or indirect shareholders, provided that the price at which debt is converted into shares of the borrower company is..."

SHRIMATI ANJULY CHIB DUGGAL: Sir, it is our understanding that the current provisions are adequate to cover the issues that have been raised by the lending institutions.

HON. CHAIRPERSON: Let us hold clause 8. Then, I move to clause 9. There is no amendment moved to clause 9. I will put clause 9 for adoption.

श्री निशिकान्त दुबे: सर, क्लॉज-9 में मैनेजमेंट फी के लिए है। Abuse the system वाले सवाल के बारे में हम ने बार-बार कमेटी में बात की है। उसमें यह है कि उसको पांच प्रतिशत देना है, उसको 15 प्रतिशत करना है या उसको आरबीआई कर रही है। It should ideally be linked to recovery and reduce the time in order to incentivize them to act fast. इसको इसके साथ क्यों नहीं जोड़ देते हैं?

SHRIMATI ANJULY CHIB DUGGAL: Sir, clause 9 refers to Section 12 in the principal Act. Section 12 is about "Power of Reserve Bank to determine policy and issue directions". In line with the greater regulation of the working of asset reconstruction companies, after clause (b), it is proposed to also empower RBI to determine policy and issue directions about the fee and other charges which may be charged or incurred for management of financial assets acquired by the ARC and the transfer of security receipts issued to qualified buyers. So, the powers are actually being added.

श्री निशिकान्त दुबे: सर, इसमें लिंक करने का सजैशन आया था। The next one is, extension or SR redemption debts except at the choice of the SR holder which may be allowed to choose pursuant to due diligence on his behalf. In the event the SR holder chooses, the ARC should be made to redeem the SR and transfer the underlying assets on its own books and bear the risk.

SHRIMATI ANJULY CHIB DUGGAL: Sir, if you permit me, once we have given the regulation of asset reconstruction companies to Reserve Bank of India, these are operational matters which, in terms of policy and the requirements of the market place, RBI should be in a position to administer.

HON. CHAIRPERSON: I put clause 9 before the Committee for adoption. Clause 9 is adopted.

Now, Clause 10 is for adoption. There is one amendment moved by Shri Subhash Chandra Baheria and Dr. Sanjay Jaiswal.

श्री सुभाष चंद्र बहेरिया: ऑलरेडी सेक्शन 28 में पेनल्टी का प्रावधान है, तो एडिशनल लगाने की जरूरत है?

SHRIMATI ANJULY CHIB DUGGAL: We accept this.

माननीय सभापति: यह प्वाइंट पहले भी डिसकशन में आया था। रिजर्व बैंक का भी इस पर सजेशन था।

DR. MUKULITA VIJAYAWARGIYA: We are accepting all except retention of section 28 because section 28 and 30A are similar. One is regarding punishment and the other is regarding non-compliance of the Directions of RBI. So, it is covered under proposed section 30A. Section 28 is to be omitted, as initially proposed.

माननीय सभापति: ये रिटेन करने के लिए कह रहे हैं। उनका कहना है कि जो क्लॉज 30 है, उसमें पेनल्टी और 28 के प्रोवीजन, दोनों को इंसर्ट करके किया जाए।

श्री सुभाष चंद्र बहेरिया: यह 30ए और 30डी है।

HON. CHAIRPERSON: As amendment moved by Shri Subhash Chandra Baheria and Dr. Sanjay Jaiswal where the suggestion is also given by the Ministry of Legal Affairs, section 28 will also be merged in section 30, the suggestion given by the Legislative Department, we adopt this clause 10 and again it will be re-drafted as per the discussion of the Committee. With this, we adopt this.

Now I put clause 11. There is an amendment moved by Shri Subhash Chandra Baheria and Dr. Sanjay Jaiswal.

DR. SANJAY JAISWAL: यदि डेट फिक्स करके पब्लिश नहीं होगा, तो कैसे किया जाएगा?

SHRIMATI ANJULY CHIB DUGGAL: Accepted.

HON. CHAIRPERSON: Clause 11 is adopted.

श्री निशिकान्त दुबे: क्लॉज 11 में एक सजेशन है कि provided that where there are no statutory provisions, regulations, guidelines or direction in relation to classification of such State as a non-performing asset, a secured creditor shall be entitled to issue a written notice to the borrower. Under this sub-section 2, if a borrower makes a default in payment of secured debt or any instalment thereof and which default is continuing for a period of 90 days from the date of default.

SHRIMATI ANJULY CHIB DUGGAL: This is there in Section 13 which clause 11 refers to. "The requirement of classification of secured debt

as non-performing asset under this subsection shall not apply to a borrower who has raised funds to issue of debt securities and the provisions for enforcement of security interest under this chapter shall apply to the borrower". It is there.

HON. CHAIRPERSON: We adopt clause 11 with this amendment suggested by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

Now we take up Clause 12. There is an amendment moved by Shri Bhartruhari Mahtab, Shri Subhash Baheria and Dr. Sanjay Jaiswal.

SHRIMATI ANJULY CHIB DUGGAL: Accepted, Sir.

HON. CHAIRPERSON: So, Clause 12 is adopted with the amendment moved by Shri Bhartruhari Mahtab, Shri Subhash Baheria and Dr. Sanjay Jaiswal regarding omit of new proposed sub-section 2(a) of section 14.

Now I put before the Committee Clause 13 for adoption. There is an amendment moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

DR. SANJAY JAISWAL: We want this to read, "It shall not be necessary for the secured creditors obtaining controlling interest in the borrower company are not required to restore management of the business to such borrowers".

DR. MUKULITA VIJAYAWARGIYA: Accepted, Sir.

HON. CHAIRPERSON: So, Clause 13 is adopted with this amendment moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

Now I put Clause 14 before the Committee for adoption. There is an amendment moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

SHRI SUBHASH BAHERIA: There is a correction here that instead of 'bank of' it should be 'bank or financial institution'.

HON. CHAIRPERSON: That is suggestion of change of language in your amendment. But your amendment is regarding the jurisdiction.

SHRIMATI ANJULY CHIB DUGGAL: Accepted, Sir.

HON. CHAIRPERSON: There is a language error. So, Legislative Department should correct it.

SHRI P. VENUGOPAL: Sir, I want to move an amendment to Clause 14, subclause (ii) of the Bill which inserts a new sub-section 1(b) to Section 17 of the SARFAESI Act.

The amendment seeks to protect the tenancy rights over the property over which security interest has been created. Since some borrowers with an intention to derail the recovery proceedings may create frivolous tendency, the proposed sub-section 1(b) of Section 17 should be amended to provide that only tenancy that is created by registered document and prior to the mortgage of the property would be protected.

DR. MUKULITA VIJAYAWARGIYA: In the context of the suggestions, we have revised it and we will further modify. I will read the revised draft as it is:

> "Notwithstanding anything contained in any other law for the time being in force, when any person in application under sub-section (1) claims any tenancy or other right upon the property or security interest has been created, the Debt Recovery Tribunal may, for the purpose of enforcement of security interest, consider such claims to ascertain whether tenancy or other right was created prior to or after the creation of security interest."

Then, again to supplement this, "whether Debt Recovery Tribunal is satisfied that tenancy right or any other right claimed in secured property has been created subsequent to the creation of security interest upon such property or which security interest has been created, then notwithstanding anything to the contrary contained in any other for the time being in force, the Debt Recovery Tribunal may dispose of the application referred to in section 1(b) in accordance with the provisions of this Act."

So, if the tenancy is created after the creation of security interest, then the DRT will be able to dispose of the applications and it may ascertain whether it has been created 'prior to' or 'subsequent to'. So, it will have the jurisdiction to decide those applications where the tenancy has been created subsequent to the creation of security interest.

SMT. ANJULY CHIB DUGGAL: We went through this in great detail. The parties to the suit should not have to go to the Civil Court and come back to the DRT again after settling that point. Actually, we have been seeing that the tenancy is created subsequent to creation of security interest only to obfuscate or to misuse the process of law. That is where the DRT can decide where the priority security interest lies.

SHRI BHARTRUHARI MAHTAB: This is where practically the priority lies. In the anxiety to decide the matter, we are empowering the DRT to determine civil case that whether the tenant was 'before' or 'after'.

The bank which kept security will definitely claim this tenant has moved in. We were not informed earlier and he has moved in after this has happened. So, that decision will be taken by the DRT. It goes against the fundamentals of our law. I am just talking on common sense. I think lawyers can have a better idea about it.

It is a dispute. It will be a disputed affair by the bank itself and will drive that case to the DRT. If it is created before, then the bank must have known because they have gone there. If it is after that, then it is all right. I am just apprehending a situation where a dispute will arise. Even if the tenant is there earlier, the bank can create a dispute saying that it may be finalized it in the DRT.

SMT. ANJULY CHIB DUGGAL: I would like to submit on one point and request our legal expert to comment on the second point. The first point is that under the SARFAESI, the Central Registry is provided for to record charges that are created. So, a prior charge or a later charge would be known between the charges. As far as tenancy is concerned, it is our experience that a low of borrowers are putting people into the properties and saying that they have tenancy rights and therefore the banks cannot enforce their security interest etc. So, what we have really tried to do out here is to ensure that the lender is not harassed in going back to a Civil Court, not to decide the issue of the existence of right in any way but the priority of the right. This is something which I would like our legal expert to expatiate on.

SHRI INDER KUMAR: When a bank takes a mortgage of any property, if there are already tenants in that property, bank will be taking it subject to tenancy rights and DRT will not have a power to evict those tenants because the mortgage is subject to tenancy rights. There is a Supreme Court judge in which detailed guidelines have been given as to enforcement of mortgage rights in case of tenanted properties.

On the other hand, if the tenancy right is created subsequent to the mortgage, the DRT would just examine the evidence in support of that claim.

SHRI BHARTRUHARI MAHTAB: I understand that. I am not disputing that. What will ultimately happen is, as I understand as a layman, basically to empower to get back the money that has been there. So, in a way, we are empowering banks to recover them but let us not lose sight of the civil law that is in force in this country by empowering the DRT where it will be raised by the banks itself saying, 'Our field officer has not seen any tenant when they went there'.

माननीय सभापतिः बैंक जो हैं, कोई भी एसेट को सिक्यूरिटाइजेशन करने से पहले सेंट्रल रजिस्ट्री में कम्पलसरी रजिस्ट्रेशन क्यों नहीं करते कि टैनेंट्स वहां है या नहीं है?

श्री निशिकान्त दुबेः सर, इसमें सिंडिकेट बैंक ने हम लोगों के सामने जो दिया है, वह बड़ा महत्वपूर्ण है। यह आपके समझ के लिए है। मतलब हम लोग यहां से कानून बनाते हैं। सिंडिकेट बैंक ने कहा कि–"There is no provision under the SARFAESI Act to deal with the tenancy issue raised by any person claiming to be tenant upon the property over which security has been created for secured debt. However, section 17 is now amended and the same power is now given to DRT". बहुत अच्छा है, जिसके लिए आप प्ली कर रही हैं।

"Tribunal can decide upon the tenancy issue and conclude the matter. It may be taken note that in rent control, rent comes under the State list and hence the legality of the said provision may be confirmed as there is a chance that the same may be challenged on the same ground laid down by the Supreme Court". यह खुद कह रहा है कि आप यह जो बिल बना रहे हैं, यह चैलेंज हो जाएगा और खत्म हो जाएगा। यह चैलेंज करने की बात कर रहा है। यह आपको एक प्रैक्टिकल सजेशन दे रहा है। इसीलिए जो महताब जी बता रहे हैं कि इवन जो हम लोगों के सामने डीआरटी के वकीलों को बुलाया था, जो मुंबई में आप लोगों के सामने आए थे, उन्होंने भी यही सजेशन दिया है। उन्होंने कहा है कि–"In this regard, it has been commented that by such amendment the DRT is acting as a civil court determining civil disputes without evidence and same would lead to multiplicity of proceedings. The jurisdiction of the civil court is ousted in entirety with a specific provision under the Act. डीआरटी एसोसिएशन, चेन्नई का खुद का यह है, जो केस कर रहे हैं, वह इनका है। जब ये दो चीजें हमारे सामने हैं, तो इसीलिए इसको पूरा कंटीन्यु करना, कहीं से भी उचित नहीं है। एक बैंक का सजेशन है, एक वकील का सजेशन है और तीसरा मैंबर का अमेंडमेंट है।

SHRI BHARTRUHARI MAHTAB: The amendment is by Dr. Venugopal but very humbly I would just like to mention something here. कहीं कोई बम विस्फोट हो जाता है तो हम लॉ को इंफोर्स करने के लिए और भी स्ट्रेंथन करते हैं। इतने बड़े देश में बैंक की अपनी गलती से इस तरह के कितने केसिज हुए हैं? But we are empowering DRT to take over certain things. We do not have faith in our civil administration and we think that the Collector is manipulated, the Board is manipulated. डीआरटी का फंक्शन क्या है? At least in this Committee we are all aware and we are strengthening it. I agree to the point that let us agree and bring in some type of a provision in this Bill, or the proposed Act, where if some defaulter company or person indulges in such misdemeanour, he should be prosecuted under the Act.

But it should not give that much of right to that court or to the bank to try to throttle the person.

SHRIMATI ANJULY CHIB DUGGAL: Sir, those concerns are very well appreciated and we have actually spent a lot of time discussing those. There are two objectives behind this proposal. One is, once a case is before a DRT, which is a tribunal, there should not really be a need to go back to a civil court and then come back to the tribunal. The case is already before one judicial officer. The second objective was where there is a prior tenancy the presumption can be that the bank should have known about that tenancy and therefore, if it created a security right after that it is a case to be treated differently and that is a case for the civil court. It does not belong in the DRT, if I can put it very-very crudely, Sir.

SHRI BHARTRUHARI MAHTAB: I will tell you, we have little experience. What would a bank ask for? The bank will ask from a person that this building or this apartment is free from tenancy. A lawyer will certify that and that will be given to the bank. The bank will claim that this is the self-certification from such person and that is why we believed in him. But ultimately, when it goes to the DRT he will say, I have some agreement with that tenant two or three years back and this is the record. Ultimately, what will DRT do?

SHRIMATI ANJULY CHIB DUGGAL: That is a valid point, Sir. However, if there is a case where there is a tenancy which has been created after the creation of the security interest then there is a different way of handling that. That is actually the kind of case that we are trying to cover.

SHRI BHARTRUHARI MAHTAB: Let us confine out provision to that Section only. I do not know what Dr. Venugopal will think about it.

SHRIMATI ANJULY CHIB DUGGAL: That has been the intention, Sir.

SHRI BHARTRUHARI MAHTAB: But that does not signify here.

KUMARI SUSHMITA DEV: Is there not a Supreme Court judgement recently on eviction of tenants post creation of Security and Asset? I had mentioned this on the first day. I cannot remember the citation right now but the point is when there is a tenancy you are creating a right. For instance, you are saying that banks ought to know whereas the Transfer of Property Act allows for a month-to-month tenancy. So, a month-to-month tenancy and possession is not practically in law someone living on a property. You know that possession has many

meanings and no answers in law. So, if it is a hard core question of fact, DRT is clearly on a position to decide.

SHRI M.R. UMARJI: The Supreme Court actually also said that such issues should be decided by the District Magistrate because there is no power given to DRT to decide the issue on tenancy rights.

KUMARI SUSHMITA DEV: Mahtab Ji is saying that only.

SHRI M.R. UMARJI: One of the objects of this amendment is to empower the DRT to decide these issues instead of the District Magistrate who is an administrative officer.

KUMARI SUSHMITA DEV: But DRT is not a court of first instance. Can it hear evidence like this on a question of fact?

SHRI M.R. UMARJI: No, because the issue arises before the DRT while deciding whether to give a vacant possession of mortgaged property.

KUMARI SUSHMITA DEV: The law is very well settled. When you are in possession of an immovable property no one can remove you without due process of law. Even if I am a trespasser on a property you cannot remove me. DRT has to go into a full fledged civil trial. That is all we are saying. Is it practical? Will it stand the test of law if someone challenges it? That is the question he is asking.

श्री निशिकान्त दुबे: महोदय, इसमें एक और प्रॉब्लम है कि जो प्रिन्सिपल एक्ट 17 कहता है कि जिस डीआरटी में केस चल रहा है, उसी डीआरटी में ट्रिब्यूनल का फैसला होगा। मान लीजिए कि हमने लोन लिया दिल्ली में और एसेट है चेन्नई में तो उसका क्या है?

माननीय सभापति: उसके लिए ही तो उन्होंने अमेंडमेंट मूव किया है। उसके लिए ही तो सुभाष बहेड़िया जी अमेंडमेंट मूव कर रहे हैं। वह तो स्वीकार किया है। इसमें दो विषय है, पहला विषय जुरिस्डिक्शन का है, वह अमेंडमेंट सुभाष बहेड़िया जी ने मूव किया है। सुभाष बहेड़िया जी, जो आपने अमेंडमेंट मूव किया है, उसे आप एक बार पढ़ दीजिए।

SHRI SUBHASH CHANDRA BAHERIA: Branch or any other cooperative bank or any financial institution functioning and maintaining account in which debt claimed is outstanding for the time being.

माननीय सभापति: वह तो क्लियर है। दूसरा विषय यह है कि टैनैंसी जो है, अगर वह प्रायर टु सिक्यूरिटाइजेशन है। अगर आफ्टर सिक्यूरिटाइजेशन है टैनैंसी, तो उसमें एक सब सेक्शन और जोड़ दिया है। उसको कौन डिसाइड करेगा? भर्तृहरि महताब जी का कहना है कि वह सिविल कोर्ट का विषय है और हमने एक सब सेक्शन जो लेजिस्लेटिव डिपार्टमेंट ने सजेस्ट

किया है कि सब सेक्शन करके डीआरटी ही उसके राइट्स को डिसाइड करेगी। इसको एक बार रीएक्जामिन कर लीजिए। फर्स्ट तो एक्सेप्ट है। इतना तो एक्सेप्टेड है कि अगर सिक्यूरिटाइजेशन के बाद है तो वह वैलिड नहीं होगी, लेकिन उसको डिसाइड कौन करेंगी, भर्तृहरि महताब जी ने जो क्वैश्चन रेज़ किया है, आप एक बार सोचिए और कल फिर इसको हम कंसिडर करेंगे।

SHRI BHARTRUHARI MAHTAB: An amendment has been moved by me giving my opinion on that. Ms. Sushmita Dev also has cited the provision of the law. You should take all these into consideration. The idea is that the borrower should part with that property. We should not be a party to such a decision where he will again get an escape route which has been cited by Syndicate Bank and other DRTs. Relating to civil law they do not have a function as a court here. Here through this provision we are empowering the Tribunals just to circumvent the decision of the Supreme Court. Is it proper? That is the larger question. I think this need to be looked into.

SMT. ANJULY CHIB DUGGAL: Sir, let also accept that no solution is going to be a perfect solution. It is one of those areas. I am giving you a small example.

श्री भर्तृहरि महताब: आप इसको एक बार फिर एक्जामिन कर लीजिए।

MS. SUSHMITA DEV: The point you are repeatedly making is that suppose a tenancy is created post security of a secured creditor, that is not what this is saying.

SHRI NARESH GUJRAL: In this if there were to be registry of tenancy rights when the property is mortgaged, then that will clearly establish what is pre and what is post. A lot of these things then not go to courts because we all know how long the courts take to decide these things.

SMT. ANJULY CHIB DUGGAL: Sir, that is actually the point that is also to be considered. The registry is actually for charges that are created, prior created or later created. I will give you a small example. Many banks will lend money for purchase of flats etc. If the EMIs are to be paid over a period of three years or so, most property purchasers would like to rent it out so that the rental can be used for EMIs etc. The tenancy would be created subsequently to taking possession and raising the loan etc. In such cases it should be, I think, fairly simple thing to do to figure out that the tenancy right has been created subsequent to the creation or hypothecation of the security interest. That is actually the kind of thing that we are trying to cover and not necessarily to bring the civil court's jurisdiction into the Tribunal's area.

MS. SUSHMITA DEV: In that case you just make the two agreements co-terminus. You cannot put it in the Act. Let us say, if I mortgage my property and I take a loan and pay instalments, bank has to say that you cannot create any tenancy unless it is co-terminus with the loan agreement. Either you say it is illegal *ab-initio*, either you make that provision here which the Supreme Court has said about.

HON. CHAIRPERSON: Can I put clause 15 before the Committee for adoption? There is no amendment moved to clause 15. Clause 14 is on hold.

SHRI NISHIKANT DUBEY: There is a suggestion here. Clause 15 of the Bill proposed to introduce Section 20A to the SARFAESI Act. It proposes to integrate all existing registration system established under any law for the time being in force. With the Central Registry under the Act, the information utilities established under the Bankruptcy Code are also likely to record such information. If it is intended to integrate IUs under the Code with the Central Registry or even otherwise, this may lead to dual regulation of the same subject matter. If it is not the intention to integrate IUs into the Central Registry and the two systems will run in parallel, sub-section 2 of section 26(c) introduced by clause 17 of the Bill may also create conflicts where one creditor registers his security interest under the Central Registry and another creditor subsequently registers his security interest within IU. Section 26 says that in such cases, the claim of the former creditor will prevail. One way of resolving this conflict is to recognise the Central Registry as an IU as and when the Code is implemented.

SHRIMATI ANJULY CHIB DUGGAL: Firstly, what we are proposing to put out here is an enabling provision to link various Registries under various Acts with the Central Registry and the enablement requires consultation before any decision is taken. Secondly, the amendment goes ahead to say that once such integration takes place, it will not be necessary to record charges in both the Registries. Then it will be required only in one place.

श्री निशिकान्त दुबे: यदि हम सेंट्रल रजिस्ट्री को आईयू कर दें तो क्या प्रॉब्लम है?

DR. MULULITA VIJAYAWARGIYA: Regarding Clause 21A proposed after section 20, we have provided to empower the Central Government to integrate the data of all the registries and there will be a Central Registry. But the charges registered under the different systems will be there and those charges registered under different systems will be deemed to be registered with Central Registry. We are revising it this way.

श्री निशिकान्त दुबे: इसमें यह है कि अगर इंटेंशन इंटीग्रेट कर रहा है तो उसमें जो 17 का सेक्शन-26 (सी) है, वह इसमें कंफ्लिक्ट कर रहा है। सेक्शन-26(सी) कह रहा है- without prejudice the provision of any other law for the time being in force any registration or transaction, creation, notification, satisfaction shall be deemed to constitute a public notice from the date and time of filing such transaction with the Central Registry for creation and modification. यानी इसको आप पूरी का पूरी पावर दे रही हैं। यदि आपका विचार इसे इंटीग्रेट करने का है तो वह अलग है, जो आप कह रही हैं। लेकिन, यदि हम सेक्शन 26(सी) को देखेंगे तो सेंट्रल रजिस्ट्री को ही आप कर रही हैं। बैंकरप्सी कोड में हमने आई.यू. को पावर दिया हुआ है। इंसॉल्वेंसी और बैंकरप्सी कोड और इसमें डिफरेंस नजर आ रहा है। इसमें कंफ्लिक्ट है। इसको रिव्यू करने की आवश्यकता है।

DR. MUKULITA VIJAYAWARGIYA: We will modify it.

SHRIMATI ANJULY CHIB DUGGAL: Now what is it that we are trying to do? We are trying to creating a 360 degree model throughout the country where it is very clear about when a particular charge has been created. Therefore, a registry under the Motor Vehicles Act or any other similar Act, there is a power under this Act to integrate it with the Central Registry which already exists. Now, under section 26© the only thing that is said is this that any registration of transaction of creation or modification or satisfaction of a security interest, even when a security interest is discharged, the information has to go back into the Central Registry.

It shall be deemed to constitute a public notice from the date and time of filing of particulars of such transaction with the Central Registry for creation, modification or satisfaction. What does this mean? It means that once a charge is created or modified and it is there in the public domain, everybody is supposed to know about it. So, the date on which it is created, which determines whether it is a prior charge or a later charge is something is already known. What is it that we are really trying to do with these amendments? We are really trying to ensure that the priority of the charge is not obfuscated by any kind of documentation because the charge is required to be registered. Once the integration takes place, once the charge is registered with a particular registry, it does not have to be registered with the other one.

HON. CHAIRPERSON: So, clause 15 is adopted. Now, I put clause 16 before the Committee for consideration. There is no amendment with regard to clause 16.

SHRI NISHIKANT DUBEY: In this, about the secured creditor, "in order to safeguard the interest of the secured creditor who has

mortgaged prior to the subsequent events of attachment, etc. it is suggested to prescribe a reasonable time frame for registration. If 30 days is too short a period a provision for extending the period for further 30 days may be made. These were the suggestions made by the banks when we interacted with the banks.

SHRIMATI ANJULY CHIB DUGGAL: The point is when we are trying to transparency about registration of security interests, the idea is that as early as possible everybody should know that a security interest has been created. If you elongate the period too much, you lose the advantage of transparency.

SHRI NISHIKANT DUBEY: All right.

HON. CHAIRPERSON: So, clause 16 is adopted.

There is one suggestion to clause 12. The Legislative Department will think over it. In clause 12, sub-section 1, there is a proviso that the DM will dispose the application within 30 days. Suppose there is flood or some such emergencies, he will not be able to dispose it of within 30 days. Then, he must be given some more time. The Legislative Department will take care of it. You can come out with your suggestions.

DR. MUKULITA VIJAYAWARGIYA: We can extend the time provided some cap is there.

HON. CHAIRPERSON: You can re-draft it.

(THE COMMITTEE THEN ADJOURNED.)

PROCEEDINGS OF THE SIXTH SITTING OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016 HELD ON TUESDAY, THE 19TH JULY, 2016

The Committee sat from 1600 hrs. to 1800 hrs. in Committee Room "C", Parliament Library Building, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Gopal Chinayya Shetty
3. Shri Subhash Baheria
4. Shri Nishikant Dubey
5. Shri Shivkumar C. Udasi
6. Shri Abhishek Singh
7. Dr. Sanjay Jaiswal
8. Shri Jayadev Galla
9. Ms. Sushmita Dev
10. Shri Kalyan Banerjee
11. Shri Bhartruhari Mahtab
12. Shri Jitendra Chaudhury
13. Dr. Kirit Somaiya

Rajya Sabha

14. Shri Anand Sharma
15. Shri Bhubaneswar Kalita

SECRETARIAT

1. Smt. Sudesh Luthra	—	*Joint Secretary*
2. Shri J.V.G. Reddy	—	*Director*
3. Smt. Jagriti Tewatia	—	*Deputy Secretary*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

DEPARTMENT OF FINANCIAL SERVICES

1. Smt. Anjuly Chib Duggal — Secretary
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JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAW AND MISCELLANEOUS PROVISIONS

Verbatim Proceedings

Date : 19th July, 2016

Time : 1600 hours

Venue : Committee Room 'C'
Parliament House Annexe
New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Anand Sharma — Member

WITNESSES EXAMINED

1. Smt. Anjuly Chib Duggal
   Secretary (FS), Department of Financial Services
2. Dr. Mukulita Vijayawargiya
   Additional Secretary, Ministry of Law and Justice (Legislative Department)

HON. CHAIRPERSON: Hon. Members, representatives of Department of Financial Services, Legislative Department and Department of Legal Affairs, I welcome you all to the sitting of the Joint Committee.

Today, we welcome specially to Dr. Kirit Somaiya Ji as a new Member who has joined our Committee today. In continuation of the sitting of the Committee on 18th July, 2016, the sitting of the Committee today has been convened to take up further clause-by-clause consideration of the Bill. As you are aware, the Committee has already taken a decision on clauses 2-7, 9-13, 15 & 16. Decision on clauses 8 & 14 was deferred and the representatives of Departments were requested to give further clarifications with regard to these two clauses. Today, first of all, we hear the views of the representatives of the Department and take decision accordingly followed by the consideration of the Bill from clause 17 onwards.

As you are aware, whatever deliberations we may have at the sitting are treated as confidential till the report of the Bill is presented to the House.

Let us now take up clause by clause consideration of the Bill.

First, the Ministry will clarify the thing which we have discussed yesterday. First on clause 8.

SMT. ANJULY CHIB DUGGAL: Sir, the point that we discussed yesterday was regarding the harmonization between SARFAESI and the Insolvency and Bankruptcy code or the IVC. The points that come out are these:—

Under Section 14 of IVC, there is a moratorium on the exercise of any security interest or enforcement of any security interest under SARFAESI for the period for which the resolution process is going on.

In terms of Section 52 of the IVC, at the time of liquidation process, either a secured creditor will relinquish the securities to the adjudicating authority to be taken care of in the waterfall mechanism or will be permitted to take them away and in terms of sub-section 4 of Section 52 of the IVC, a secured creditor may enforce secured assets in accordance with such law as is applicable to the security interest being realized and to the secured creditor and apply the proceeds to recover the debts due to it. So, therefore, it is in the process which is prescribed under the IVC that SARFAESI can be invoked under a very specific and specified circumstance.

Further down, in terms of Section 52(8), the amount of the Insolvency Resolution Costs due from secured creditors who realized the security interests in the manner provided shall be deducted from the proceeds of any realization by such secured creditors and the secured creditors shall transfer such amount to the liquidator to be included in the liquidation estate. So, therefore, at point in the SARFAESI Act, is it required to say that the Act has to be subject to any other Act. It stands on its own. IVC already provides for the processing of cases under the two different Acts.

HON. CHAIRPERSON: So, I put clause 8 for adoption. Clause 8 is adopted.

Now, we will come on Clause 12. Yesterday, it was discussed that there is a 30 days time to the DM. But suppose if some situation arises, that some floods or any other circumstances happens, if he is not able to give the order in 30 days, what will be remedy?

SMT. ANJULY CHIB DUGGAL: We have arrived at a formulation which I will ask our colleague from legal affairs to read out.

DR. MUKULITA VIJAYAWARGIYA: In that case, there is one proviso, which says, "provided further that the DM or CM, for reasons to be recorded in writing, is not able to pass the order under that sub-section, he may, after recording reasons, pass the order within such further period which shall not exceed in aggregate 60 days, that means, 30 more days would be given to pass orders.

HON. CHAIRPERSON: The reasons to be recorded.

SHRI ANAND SHARMA: That is the only way.

HON. CHAIRPERSON: Yes.

DR. KIRIT SOMAIYA: I think within 30 days the reasons will be given.

HON. CHAIRPERSON: No, he will pass the order in 30 days. If he failed, then further 30 days will be given with reason.

DR. MUKULITA VIJAYAWARGIYA: If the order is not passed within 30 days time as provided under the existing section, then in further 30 days period he may pass the order after recording the reasons for the same.

HON. CHAIRPERSON: This is reasonable. We accept it. So, with this amendment, shall we adopt it?

DR. KIRIT SOMAIYA: The point is that the next 30 days will be binding on him. He should complete it within 60 days.

SHRI KALYAN BANERJEE: You are coming with a proviso.

HON. CHAIRPERSON: It is to the original Section 14.

SHRIMATI ANJULY CHIB DUGGAL: Sir, if I may explain, if you recall, Section 14 is to get possession of assets.

HON. CHAIRPERSON: Section 14 says, "Provided further that the receipt of the affidavit from authorised officer..." Then, they want to act on.

SHRI KALYAN BANERJEE: Section 14 sub-section (1) has given the power. Then, where will you take the proviso? Where will you add? Where is the proposal? Where is the amendment from the Government? This is Section 14 sub-section (1).

HON. CHAIRPERSON: Actually, in Section 14 sub-section (1), there is a proviso. In that proviso, the words, "....the case, maybe shall, satisfying the content of the affidavit, pass suitable order for the proposed taken/possession of the secured asset." It is in the proviso. Earlier, there was within a period of 30 days from the date of application. That is the amendment in the original Bill. But now what is suggested by the Legislative Department is that we add another proviso in that and then you will read the language.

You read the full paragraph after that.

SHRI KALYAN BANERJEE: Formal amendment has to be brought. We are not amending the Securitisation of Reconstruction of Financial Assets and Enforcement of Security Interest Act.

HON. CHAIRPERSON: We are not amending.

SHRI KALYAN BANERJEE: Therefore, this amendment has to be by a different Bill.

HON. CHAIRPERSON: What is the language? The language is "within a period of 30 days from the date of application".

DR. MUKULITA VIJAYAWARGIYA: Initially, it was there. Now, we are adding another proviso after the first proviso.

SHRI ANAND SHARMA: Within 30 days, suppose there is an emergency or there is a natural calamity, what will happen? It should not be left like that.

SHRI KALYAN BANERJEE: Naturally, I agree with that. I have no difficulty with the contention.

SHRIMATI ANJULY CHIB DUGGAL: He is agreeable to the contention. He is talking about the process.

SHRI KALYAN BANERJEE: It is all right. Time must be given.

SHRI ANAND SHARMA: The aggregate time will be 60 days. It is only 30 days more. The proviso starts with, for reasons to be recorded.

HON. CHAIRPERSON: So, clause 12 is adopted with this amendment.

Now, I put Clause 14. There are two things. First is the jurisdiction point where the suit will be filed. Second point is about tenancy issue. As per the Supreme Court law some tenancy issue will be there. We had suggested the Ministry that they would come with clarification. There is an amendment moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal in respect of jurisdiction. Yesterday this clause was adopted. But Shri Kalyan Banerjee was not present yesterday, I request you to clear both - what we have adopted and what clarification is required.

DR. MUKULITA VIJAYAWARGIYA: We have adopted Clause 14. This is regarding jurisdiction. Sir, I read the whole thing: An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction — the cause of action, wholly or in part, arises; or where the secured asset is located or the branch or any other office of a bank or financial institution is maintaining an account in which the debt claimed is outstanding for the time being. Same jurisdiction we are providing as per DRT amendment.

HON. CHAIRPERSON: What about tenancy?

DR. MUKULITA VIJAYAWARGIYA: There is a very good Supreme Court judgement - Harshad Govardhan Sondagar v. International Assets Reconstruction Company Ltd. A good observation has been made which has helped me to include Section 17 of this Act. Sir, first I read observations so that it makes very clear about our amendments.

The court has observed that: Any person including borrower in sub-section (1) of Section 17, refer to in sub-section (4) of Section 13 taken by the secured creditors as authorised officer under the chapter, may apply to debt recovery tribunal having jurisdiction for the measures which are required to be taken.' We agree with it that the words 'any person' is wide enough to include a lessee also. 'A lessee may file an

application before the debts recovery tribunal having jurisdiction in the matter for restoration of possession in the case he is dispossessed of the secured asset. But when we read sub-section (3), we find that the Debuts Recovery Tribunal has powers to restore possession to the borrower only and not to any person such as a lessee'. It is because there is no mention of word 'any other person'.

In consonance with these decisions as well as in consequence of drafting improvement, as per sub-section (1) of Section 17, we have improved upon and revised Section 17 as a whole. There we have added after the word 'borrow or any other person who has made an application under sub-section 1'. So, a lessee will be included.

In respect of tenancy, the intention is to again insert one other sub-section in Section 17 (4A). I read it: 'where any person in an application under sub-section (1) claims any tenancy or lease hold rights upon the secured asset, the Debts Recovery Tribunal after examining facts and circumstances of the case and evidence produced by the parties in relation to such claims may for the purpose of enforcement of security interest, examine whether lease or tenancy has expired or stood determine, or is contrary to Section 65A of the Transfer of Property Act, or is contrary to the terms of mortgage, or is created after the issuance of notice of default on demand of bank under sub-section (2) of Section 13, where Debts Recovery Tribunal is satisfied, the tenancy right or any other right claimed in secured asset falls under sub-clause (a), (b), (c), (d) and all those conditions which I have mentioned earlier, then notwithstanding anything contrary contained in any other law for the time being in force, the Debts Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

This provision is also as per or in view of the judgement of the Supreme Court only, where these conditions were mentioned especially in the judgement and we borrowed those conditions so that the examination by the DRT of tenancy issues are limited only to these.

So, this is what we have put in.

SHRI KALYAN BANERJEE: Regarding expiration of tenancy, there is only one thing to be clarified. There are two different things. One is lease. Whenever you are giving it on lease, the practice in Delhi is to give it for 11 months or 22 months. Then, you are not covered. In the case of our State, there is a Rent Act. When a person is covered as a tenant, his tenancy is not limited to any year. How can the DRT go into that question? It is a question for the civil courts to decide. You

are giving the power to the DRT to determine whether the term of tenancy has expired or not. It comes under the jurisdiction of the civil courts to decide whether a person is still a tenant or not. How can DRT interpret whether the tenancy has expired? Tenancy is governed by a tenancy law itself.

I appreciate your stand regarding the restoration of possession, or whatever you say, to the tenant. This is very good and I appreciate this. Are you not giving an excess power to the DRT to decide the question whether a particular person still remains as a tenant or not.

So far as tenancy law is concerned, it comes within the Second List of the Seventh Schedule. Therefore, are we not interfering with that power of the State Legislature, in that way?

श्री गोपाल शेट्टी: सर, कल भी यही बात हुई थी कि डीआरटी को पावर क्यों देना चाहिए? एक टेक्निकल है, इन दिनों प्रैक्टिकल चल रहा है। किसी भी प्रॉपर्टी में जो टेनन्ट्स होते हैं, लास्ट मोमन्ट बौरोअर्स थर्ड पार्टी क्रिएट कर लेते हैं। कई लोग खुद कर लेते हैं और कई लोग बैंग के सहयोग से भी कर लेते हैं, गुड इंटेनशन में भी करते हैं या आगे जा कर बैंक मैनेजर को कहते हैं कि मुझे थोड़ा समय दे दीजिए। एक बार डीआरटी को पावर दे कर प्रॉपर्टी ले लेना चाहिए। अगर, टेनन्सी एक्ट का एग्रीमेंट कन्टीन्यू होता है तो टेनन्स वह ले रहा है तो एग्रीमेंट एक्सपायर होने के बाद एटोमैटिकली उसकी प्रॉपर्टी आ ही जाएगी। बौरोअर के पास वह रहेगा तो लिंगरिंग सालों-साल चलता रहेगा। यह मैकेनिज्म सही है, ऐसा मुझे लगता है।

दूसरा, प्रॉपर्टी में ओनरशीप भी होना। मान लीजिए कि बौरोअर ने थर्ड पार्टी क्रिएट किया है, वह बोगस होगा तो चला जाएगा, वह राइटफुल होगा, पैसा चेक से पेमेंट किया होगा, एग्रीमेंट किया होगा तो अगेन वह चीटिंग केस में आ जाएगा, उसने बैंक से फ्रॉड किया है तो डी.आर.टी. के पास आने से सेकेण्ड ऑप्शन स्टार्ट हो जाएगा। अदरवाइज, बैंक और बौरोअर के बीच में लंबे समय तक मामला चलता रहेगा, जिन 17,000 केसेज के बारे में आप लोग बात कर रहे हैं।

श्री निशिकान्त दुबे: सभापति महोदय, कल भी इसके ऊपर काफी लंबी बातचीत हुई थी। टेनन्सी एक्ट स्टेट का एक्ट है। कल हमने बताया था कि बैंक वाले और जो डी.आर.टी. के वकील हैं, जब वे हमारे सामने पेश हुए थे, उन दोनों ने लिखित रूप में यह कहा था कि लॉ के अनुसार ये चीजें कहीं सस्टेन नहीं करेंगी और यह खत्म हो जाएंगी। यह बैंक का भी एप्रिहेन्शन था, जिसके लिए हम करने का प्रयास कर रहे हैं और जो वकील यह केस लड़ रहे हैं, वह वकील भी कह रहे हैं कि यह नहीं है। कल जो मिस्टर महताब का कहना था और आपका भी सजैशन था कि जो बाद में हुआ है।

जो सिक्योरटाइजेशन के बाद में हुआ है, आप उसे तो इन्क्लूड कर सकते हैं क्योंकि वह बचने के लिए किया है या उस ऐक्ट का सहारा लेने के लिए किया है लेकिन उसके पहले किया

और उसे पकड़ने का बहुत आसान तरीका है क्योंकि किसी ने चैक दिया होगा। अगर वह किरायेदार है तो उसने किराया तो दिया होगा। यदि किराया दिया होगा तो वह किराया बैक डेट में नहीं दिया जा सकता है और यदि बैक डेट में दिया जाएगा तो वह फ्रॉड होगा। कल भी हमने कहा था और आज भी कह रहे हैं कि जब बैंक इस बात से एग्री नहीं करते हैं, जब वकील यह कहते हैं कि लॉ में यह सस्टेन नहीं करेगा, तो मुझे लगता है कि ठीक नहीं होगा।

SHRI KALYAN BANERJEE : Sir, there are cases that as how it is being mis-utilized by the owners of the property. Some illustrations are there that without going for eviction in the appropriate Civil Court they are borrowing money and not paying. Therefore, naturally this Act would be applicable and the tenant will be evicted. This is a natural consequence and the Supreme Court has also said this. Therefore, what I want to say is that some protection should be given to the tenant itself from the borrower who is having a *mala fide* intention to take money and not pay back the money to the bank.

HON. CHAIRPERSON: Kindly read the language regarding Clause 14, Section 17 in section 1(b). What is the language in it? Otherwise, please do one thing. You circulate it. We will go to another Section. If it is not available, then somebody will come with the copies of the same.

Are you having 20 or 30 copies with you? Otherwise, you can get the photocopies of it and then circulate it to the Members.

DR. MUKULITA VIJAYAWARGIYA: We have sufficient copies with us, Sir.

SHRI KALYAN BANERJEE: Madam, the earlier provision says that the Tribunal *shall* have the jurisdiction to examine such claims. But now you are trying to replace the word 'shall' with 'may'. This is a mandatory provision. The word 'may', sometimes, may read as 'mandatory' and, sometimes, it may be read as a 'direction'. Here, it has been very clearly done. It has put an obligation on the part of the Debt Recovery Tribunal by saying that the Tribunal *shall* have the jurisdiction to examine such claims.

HON. CHAIRPERSON: We will discuss this Clause 14 once again. We have completed the discussion on Clauses 15 and 16 and, therefore, we will now go to clause 17. Shri Bhartruhari Mahtab and Shri Subhash Baheria have moved amendments to Clause 17. So, I give the floor to Shri Bhartruhari Mahtab.

SHRI BHARTRUHARI MAHTAB: It is just an insertion after line 30. It says, "provided that *inter se* priority among secured creditors shall be determined in order of creation of security interest".

SHRIMATI ANJULY CHIB DUGGAL: Sir, we have a concern about this. Many times, when there is consortium lending, the banks come to different agreements. There could be a *pari passu* arrangement. Therefore, in the resolution, to hardwire it in the Act would work contrary to the flexibility that the banks already enjoy. Normally, the legal documents which are signed among the banks in consortium arrangements will specify whether the amounts, when they are recovered, will be given in order of priority of creation; or, if the securities have been created practically simultaneously, then there will be different arrangements. So, we would prefer to leave that flexibility for the banks' lending processes.

SHRI BHARTRUHARI MAHTAB: This point was raised by the bigger banks. This suggestion had come from their side that if it is factored into the Act, it will help them. Once they go in for an agreement, they will prepare the priority and accordingly do it. Now, what you are suggesting is that we need not factor it into the Act and let them do it on their own.

SHRIMATI ANJULY CHIB DUGGAL: Let them do it on their own in their own agreement.

SHRI BHARTRUHARI MAHTAB: It was their suggestion. Rather it was more convincing during that time when they put forth this point of view.

SHRIMATI ANJULY CHIB DUGGAL: We are taking into account two kinds of lending arrangements, Sir. One is the consortium lending and the other one is the multiple bank lending. So, in the multiple bank lending, it would be more relevant. But there are consortium arrangements as well. Once we put it into the Act, it would then apply across.

SHRI BHARTRUHARI MAHTAB: So, if it is multiple bank lending...

SHRIMATI ANJULY CHIB DUGGAL: Then, there could be a question of priority.

SHRI BHARTRUHARI MAHTAB: Do you think it is necessary or that we need to do it in some other way?

SHRIMATI ANJULY CHIB DUGGAL: I would also draw your attention, Sir, to Section 13(9), which is the existing Section in the SARFAESI Act. It says that unless exercise of such right is agreed upon by the secured creditors representing not less than 60 per cent in value of the amount outstanding...

No secured creditor shall be entitled to exercise any of the rights. That is an arrangement which is already there.

SHRI BHARTRUHARI MAHTAB: What she referred to was from the SARFAESI Act.

SHRI SUBHASH CHANDRA BAHERIA: Page 10, after Line 30

"Provided that in the case of borrower against whom any insolvency or bankruptcy proceedings are pending the sale proceeds of secured assets shall be distributed in accordance with the applicable insolvency law."

"Provided further that such priority shall not extend to any dues of the secured creditor before the creation of security interest and for such revenues, taxes, cesses and rates for which recovery proceedings are initiated after due notice to the borrower, prior to creation of security interest."

SHRIMATI ANJULY CHIB DUGGAL: On the first point, we would request that it may not be pressed for the simple reason, as I pointed out earlier, reading of Section 14 and Section 52 of the Insolvency and Bankruptcy Code already clarifies the position and harmonizes with the provisions of the SARFAESI Act. This would be actually unnecessary because it is already taken care of. On the second point, there is some concern about whether we should be consistent with the provisions of the IBC in saying that if secured creditors' dues are to be protected above the States' cesses and the Government cesses and duties should prevail. That is what is there in the Insolvency and Bankruptcy Code. Priority to workers is already there in SARFAESI Act and IBC Act and it draws its strength from the Companies Act. But that is something that comes into the picture when we are looking at liquidation. In SARFAESI we could be looking at enforcement of security interests without the company going into liquidation. It will not create any conflict because in terms of Section 13(9) of the SARFAESI Act, the workmen dues are protected in liquidation proceedings. Now I would ask my colleague from the Legal Department to explain it.

DR. MUKULITA VIJAYAWARGIYA: I could not understand the point. What is your point?

DR. KIRIT SOMAIYA: Who will get priority? An agency which has extended loan and created security or the Government taxes? Secondly, what the hon. Member is saying is of a case when Income Tax Department might have raised some demand but simultaneously after

that if that person has created some security against loan or something. These are the two points.

DR. MUKULITA VIJAYAWARGIYA: Sir, because we are amending this SARFAESI Act, first I will draw your attention to the existing provisions of this very Act which are similar to even IPC. I draw your attention to the provisions of Subsection 7 of Section 13. In the latter part of that Subsection regarding payment it says, "to be applied, firstly, in payment of such costs, charges and expenses". It is on the lines of IPC also. There also there is insolvency cost. It further says, "secondly, in discharge of the dues of the secured creditor". There also we are having secured creditor *pari passu* with a workman. It goes on to say, "discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests".

Then I draw your attention to subsection (9). The first proviso deals with a company in liquidation under the Companies Act and says that the secured assets shall be distributed in accordance with the provisions of the Companies Act. The second proviso says, "who opts to realise his security instead of relinquishing his security and proving his debt under the provisions of the Companies Act, he may retain the sale proceeds of the secured assets after depositing the workmen's dues with the liquidator". So, liquidator's rights are of prime concern there in the IPC as also here in the workmen's dues.

Similarly you will find in the existing Act we have given priority to workmen and the secured creditors. As per this amendment to the Bill, secured creditor and thereafter taxes. In the IPC also we have given taxes after the secured creditor. Secondly, the scheme of both these Acts is different. It is for securitisation and there we have insolvency and bankruptcy provisions. There in the beginning the application is filed before the NCLT or DRT as the case may be. Here we have Section 13 where first there is arrangement, both the parties can invoke for securitisation and thereafter if the balance is due, then the parties can approach DRT. Difference is there, Sir.

श्री सुभाष बहेड़िया: इसमें मेरा कहना यह है कि मैं एक सिम्पल उदाहरण बताता हूं। किसी की कोई डिमांड क्रिएट हुई, बायर करीब-करीब लेने के लिए कंफर्म है, उससे पहले वह अपनी प्रोपर्टी गिरवी रखकर पैसे उठा लेता है और पैसे इधर-उधर कर देता है। फिर वह इसमें जायेगा तो वह उसे उस हिसाब से कर लेगा, वह उसके हक में हैं और इसमें कुछ नहीं है। क्योंकि इंकम टैक्स की इतनी बड़ी डिमांड है, उससे बचने के लिए उसने ऐसा किया।

माननीय सभापतिः आपका कहना है कि वह डबल फायदा लेगा, सरकार को पैसे नहीं दे रहा है और इधर उसने ऐसा कर लिया।

SHRIMATI ANJULY CHIB DUGGAL: With your permission, Sir, we will add a few more legal points to this discussion.

SHRI M.R. UMARJI: Sir, the issue is that there is a tax due for which recovery proceedings of taxation have already started and security interest is created over that property after that. The question is, in that case who gets the priority. One point in this is that the Insolvency Code is not making a distinction between an existing tax claim and a subsequent tax claim. What we are trying to do here by this proviso. If we provide it in the SARFAESI Act to that effect, that provision will become inconsistent with the provisions of IPC. That is because IPC does not make any distinction about existing dues at the point of time at which security is created. All those issues are not relevant at all. Tax dues will rank below workmen's dues and secured creditors dues. That is the proviso.

SHRI SHIV KUMAR UDASI: So, to avoid that tax, you go for this.

SHRI M.R. UMARJI: There is a tax recovery provision in Income Tax Act and other laws.

SHRI SHIVKUMAR UDASI: That provision of Income Tax Act has been subdued in IBC Act.

SHRI M.R. UMARJI: But it may happen that pursuant to the recovery powers which a tax recovery officer has, he might have attached some property belonging to the assessee and attachment order is issued. In case such attached property is given in a mortgage, it will become subject to attachment.

SHRI KIRIT SOMAIYA: Then the property is not attached, just tax demand is created.

SHRI M.R. UMARJI: In that case, IBC does not give the priority...

HON. CHAIRPERSON: He is not pressing it.

श्री निशिकान्त दुबेः सर, यह जो सैक्शन 26(इ) है इसको यदि क्लैरिफाई नहीं करेंगे तो जो सैक्शन 52(8) है, इसमें कंफ्लिक्ट है। 26(इ) और जो आपका ऑरिजनल सैक्शन 52(8) है और यदि सैक्शन 26(इ) को और क्लैरिफाई नहीं करेंगे तो जो बात अभी सुभाष जी कह रहे थे कि जो सैक्शन 53 है, आईबीसी कोड का, और जो नया सैक्शन आप 20ए, 20बी और

31(बी) प्रपोज़ किए हुए हैं, आरडीडीएफआई एक्ट में, बाय क्लाज़ 29(14) इन सभी के बीच में कंफ्लिक्ट है। जो बातें अभी चर्चा में आप कह रहे हैं कि ये सारी चीजें हैं, 26(इ) इसमें जो मेरा मानना है कि to the extent the cost of proceedings includes interim finance/debt. Section 26 will be in conflict with Section 52(viii). Further, Section 26(E) should clarify that its application is limited to debt enforcement action only and does not affect the liquidation waterfall under the Bankruptcy Code. Other this provision could be in conflict with Section 53 of the Code as well. The same conflict arises in relation the new Section 20(AB), 31(B) proposed to be introduced in the RDDBFI Act by clause 29, 14 and 38 respectively.

SMT. ANJULY CHIB DUGGAL: Section 52 of IBC Act says that a secured creditor in the liquidation proceedings may either relinquish its security interest to the liquidation state and receive proceeds from the sale of assets in terms of Section 53 or realize a security interest in the manner specified in this Section. In terms of Section 52(iv), after a secured creditor has decided to realize its security interest outside the waterfall mechanism which is provided for in Section 53, it is absolutely permitted under IBC Act to proceed under SARFAESI. In terms of Section 52(viii), the amount of insolvency resolution process cost due from the secured creditors who realize their security interest under SARFAESI shall be deducted from the proceeds of any realization by any such secured creditors and the secured creditor shall transfer such amounts to the liquidator to be included in the liquidation state. There is no conflict.

SHRI KALYAN BANERJEE: It says 'Notwithstanding anything contained in any other law for the time being in force.' Therefore, if I read 'notwithstanding' clause, I will have to ignore it first. Whatever clarifications you are making have no value because of the 'notwithstanding' clause. After the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government and State Government.

Therefore, the secured creditor has been secured first and in the later part you are coming to government's interest, workers' interest, etc. That is contrary to the basic concept. The clarification you are giving by reason of this 'notwithstanding' clause has no value. Therefore, you are promoting the secured creditors' interests. First you want to secure them and then you will secure the government's revenue and then you will secure the workmen's dues and then other things are there. That is contrary to the concept. My submission would be first it should be to secure government's interests like taxes etc. and, then

workers' interests and then secured creditors' interests. What is the fault on the part of the government and on the part of the workers? After taking care of them you take care of the secured creditors. Kindly think about that.

SHRIMATI ANJULY CHIB DUGGAL: Under section 14 of the IBC if any action has been initiated under the SARFAESI Act and then a case is filed under IBC, the SARFAESI action stops right there. There is a moratorium. If the creditor goes to the NCLT in the first place, in that case SARFAESI comes under moratorium and no rights could be exercised by orders under SARFAESI. When the liquidation process starts, there are two options which could be followed by the secured creditor: either he relinquishes his securities to the adjudicating authority to be handled in terms of section 53 – the mechanism is mentioned under section 53 – or he is permitted to withdraw those securities to be used as I read earlier in terms of section 52(4) of IBC in accordance with such law as applicable to the security interest being realized. So, it is only if the secured creditor relinquishes the security interest that the mechanism which is mentioned in section 53 of IBC comes into play.

Suppose the other option is to move under SARFAESI, if action is to be taken under SARFAESI, it is in any case action permitted under section 52 of IBC. Therefore the action under SARFAESI to enforce security is independent and it comes only after that option has been exercised in terms of section 52 of IBC.

SHRI KALYAN BANERJEE: If I understand what you are saying, keeping in view the provisions of section 14 of IDB Act, the adjudicating authority can stay or operate any proceeding under SARFAESI.

Therefore, whenever a case has been filed under this Act and the IDB Bank then the entire proceedings would be stayed. That is a different part altogether. Then Section 52 will come in. This is the case where cases have been filed but if cases have not been filed under the IDB Act, independently SARFAESI Act would apply.

HON. CHAIRPERSON: I would like to say to the Department also that questions raised by hon. Members are very much right. We are on the same line but if with Section 26(e) one proviso is also provided for clarification, subject to Section 14 or Section 52, it will have more clarity.

DR. MUKULITA VIJAYAWARGIYA: Sir, to address this problem we can provide one sub-section here, "on and after the commencement of the

insolvency and bankruptcy code if any proceeding has been initiated under that Code the sale proceeds of such secret asset shall be distributed in accordance with the Code".

श्री निशिकान्त दुबे: इसमें मेरा सजैशन था कि application is limited to debt enforcement action only and does not affect the liquidation waterfall under the Bankruptcy Code.

SHRIMATI ANJULY CHIB DUGGAL: If you permit, Sir, in terms of Section 14 of IBC, there are two possibilities. If action was started under SARFAESI it would be stopped. If action has not been started under SARFAESI it cannot be started.

माननीय सभापति: कमेटी का इंटैंशन इतना ही है कि इस प्रोविजो के साथ एक क्लैरिफिकेशन भी आ जाएगा तो ठीक है।

SHRIMATI ANJULY CHIB DUGGAL: I have a small issue out there. If Section 52 of IBC says कि आप सिक्यूरिटी इंटरस्ट को दो तरह से ट्रीट कर सकते हैं। या तो आप उनको रिलिंक्विश कर दें कि वाटरफॉल मैकेनिज्म में मैकेनिज्म में मुझे पेमेंट हो जाए अगर मैं लैंडर हूं या कहें कि मुझे उसे यहां से विदड्रा करने दीजिए। Section 52 itself permits the lender to proceed under SARFAESI. This is the point I am making, Sir. यदि 52(4) को पढ़ा जाए तो उसमें अपने आप ही it permits action under SARFAESI.

HON. CHAIRPERSON: Nothing is wrong if explanation is there.

SHRI KALYAN BANERJEE: You are referring to Section 52(4). You may read sub section 4, "A secured creditor may enforce, realise, settle, compromise or deal with secured assets in accordance with laws as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it".

You are saying that under Section 52(iv) he can also make an application under this amendment of the SARFAESI. That is what you wanted to say. Am I right?

SMT. ANJULY CHIB DUGGAL: Sir, the point that I was making was this, just to be sure that both of us are saying the same thing. In terms of 52 (i) there are two ways in which secured interest can be dealt with, either it is relinquished or it is taken away to be realised in the manner specified further ahead and that is where 52 (iv) comes in.

SHRI KALYAN BANERJEE: That is all right. Then the contradictory things are coming up. So long a proceeding is pending under this Act

before the adjudicating authority that secured creditor cannot take any steps under this Act itself. He has to go before that Authority. In view of your Section 14, 52(iv) becomes redundant. Section 52(iv) becomes redundant in view of Section 14 of the IBC Act itself.

SMT. ANJULY CHIB DUGGAL: Sir, Section 14 applies up to the resolution process that is 180 days and possibly with an addition of another 90 days.

HON. CHAIRPERSON: What we are saying is that if you put an explanatory clause, then it will not be harmful.

SMT. ANJULY CHIB DUGGAL: Sir, there are two concerns that I have. I will share that and then we will be guided by the wisdom of the Committee. One is this that IBC is not yet operational. The second part is this. If IBC itself permits the invocation of SARFAESI under certain circumstances, it seems inappropriate to make SARFAESI, in any way, subject to the provisions of IBC. There could be unintended consequences which we have not examined through on this.

HON. CHAIRPERSON: There are two things. If IBC is not implemented today, then it will be in force tomorrow or after five years or ten years. The second thing is that if there are things that existed in IBC, if explanation is here, then there will be clarity. There is nothing harm in that. It is just an explanation and not a provision.

SMT. ANJULY CHIB DUGGAL: Sir, we will be guided by the superior wisdom of the Committee but permit me to make this point again. A secured creditor can take action under SARFAESI after IBC has been invoked only if the security interest has been relinquished in terms of Section 52(i)(b) and Section 53 of the Waterfall mechanism comes in to play only if the secured creditor relinquishes the security interest for the purpose of the liquidation process. Therefore, to make this particular Section subject to the provisions of IBC is actually irrelevant because IBC is already a complete code which takes into account the need for harmonisation and it harmonises it to begin with.

श्री निशिकान्त दुबे: चेयरमैन सर, जो सेक्रेटरी साहिबा कह रही हैं, वे भी आई.डी.सी. को ही कोट कर रही हैं। जब आई.डी.सी. के आधार पर ही ये सारी चीजें हैं तो फिर उसमें एक लाइन एक्सप्लानेशन डाल देने में क्या हर्ज है?

HON. CHAIRPERSON: Whatever you are saying you may put in the explanation.

So, Section 17 is adopted with this clarification that an explanatory note will be put in Section 26 (e). So, with this amendment Clause 17 is adopted.

Now, I put clause 18 before the Committee. There is no amendment in clause 18. Clause 18 is adopted.

Now, I put clause 19 before the Committee. There is no amendment in clause 19.

SHRI NISHIKANT DUBEY: What about Section 28.

SMT. ANJULY CHIB DUGGAL: Sir, Section 28 is being omitted because that is covered subsequently.

HON. CHAIRPERSON: So, clause 19 is adopted.

Clause 19 is adopted. I put clause 20 before the Committee. There is no amendment to clause 20. Clause 20 is adopted.

SHRI NISHIKANT DUBEY: This clause proposes to insert new sections 30A, 30B, 30C and 30D empowering a regulator to issue direction to individual regulator. It is all right fundamentally but there is Section 12(c) is repetitious with section 30A.

HON. CHAIRPERSON: Section 12(c) has already been deleted. Kindly correct the language. So, clause 20 is adopted with legal redrafting. With this, clause 20 is adopted. Now, I put clause 21 before the Committee. There is no amendment to clause 21. Clause 21 is adopted.

SHRIMATI ANJULY CHIB DUGGAL: Sir, in clause 21, we are deleting clause (e) of section 31 which is about any conditional sale/hire purchase, lease or any other contract in which no security interest has been created. Earlier, the provisions of SARFAESI were not applicable to this kind of transaction. We are now proposing to make them applicable for this also considering banks are adopting this process.

SHRI NISHIKANT DUBEY: You are talking of omitting of section 31(e). When the concerned officials were before us, it was said that section 31(e) may not be omitted as it will enlarge the scope of adjudication of tribunal and will put extra burden on presiding officer of DRT. In case the same is allowed to be omitted, extra staff is required to be provided to the tribunal. It is said that it will be extra pressure on DRT.

HON. CHAIRPERSON: Now, I put clause 22 before the Committee. There is no amendment to clause 22. Clause 22 is adopted. I put clause 23 before the Committee. There is no amendment to clause 23. Clause 23 is adopted. I put clause 24 before the Committee. There is no amendment to clause 24. Clause 24 is adopted. Now, I put

clause 25 before the Committee. There is an amendment moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

SHRI SUBHASH BAHERIA: "25A In the principal Act, for section 4(2) substitute the following:—

"4(2) Notwithstanding anything contained in sub-section(1), Central Government may:

(a) authorise the Presiding Officer of one Tribunal to discharge also the function of the Presiding Officer of another Tribunal; or

(b) authorise the Judicial Member holding post as such in any other Tribunal, established under any other law for the time being in force, in addition to his being the Judicial Member of that Tribunal, may be appointed as the Presiding Officer of the Debt Recovery Tribunal under this Act."

SHRIMATI ANJULY CHIB DUGGAL: Accepted, Sir.

HON. CHAIRPERSON: The Legislative Department also suggested the definition of property and debt. So, you may change the consequential amendment also. The definition should be the same in both, the RDDBFI Act and SARFAESI Act. So, the Legislative Department must take care of it. With this amendment, the insertion of new clause 25A and with the consequential amendment in the definition of property, clause 25 is adopted.

Now, I put clause 26 before the Committee. There is an amendment moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

श्री निशिकान्त दुबे: 26 क्या है।

माननीय सभापति: 26 सेम है।

श्री निशिकान्त दुबे: क्या इसमें हमने एज बढ़ाने के लिए कहा है? आपने कितनी एज बढ़ाने के लिए कहा है।

माननीय सभापति: कई बार डीआरटी की ऐपेलेट में पोस्ट खाली रहती है तो सेम चेयरपर्सन दूसरी जगह काम देख लेगा ताकि काम न रुके।

श्री निशिकान्त दुबे: इसमें 62 साल से 65 साल है।

माननीय सभापति: वह क्लॉज 27 में आएगा, पहले क्लॉज 26 कर लें।

श्री निशिकान्त दुबे: क्लॉज 26 में भी 62 साल से 65 साल है। आपके पास और आनंद शर्मा साहब के पास अलग बिल है, हमारे पास अलग है।

श्री भर्तृहरि महताब: दोनों अमेंडमेंट 25 में हैं।

SHRIMATI ANJULY CHIB DUGGAL: We are seeking to increase the upper age limit for presiding officers of Debt Recovery Tribunals from 62 to 65 to attract more people and of the Debt Recovery Appellate Tribunal's Chairman to 70 years.

HON. CHAIRPERSON: It is very clear. So, clause 26 is adopted.

श्री निशिकान्त दुबे: हम उनका सजैशन नहीं मान रहे हैं, 70 साल नहीं मान रहे हैं।

श्री सुभाष बहेरिया: वह ऐपेलेट ट्रिब्यूनल के चेयरमैन के लिए है।

SHRI ANAND SHARMA: Today also in our House this issue came up and I had asked the Finance Minister on the DRTs after the submissions made before this Committee and the vacancies which are there. So many DRTs are headless and members are not there. The proposal of the Government which he informed the House today is to increase the number of DRTs. He also explained one problem, that the qualified candidates are not there and he also gave an instance where a judge has withdrawn the name because he has got another Tribunal. So, I think some times looking at other areas, for example, though it is not connected with this, where you do not have people available and this is an issue which has been considered for other areas. Some times say for medical institutes you do not have the qualified faculty. So, this proposal was made to increase the age. There is no harm.

SHRI BHARTRUHARI MAHTAB: But not to 70.

SHRI ANAND SHARMA: In today's time 70 is not much. Look at other countries.

श्री निशिकान्त दुबे: सुप्रीम कोर्ट जब दूसरे को एज लिमिटेशन में डालने का प्रयास करती है, तो आप समझिए कि जज जब खुद ही एज लिमिट में जा रहे हैं, 70 में बीसीसीआई का चेयरमैन करते हैं।

SHRI ANAND SHARMA: See you have 470 vacancies in the high courts. That is another issue.

SHRI BHARTRUHARI MAHTAB: We are always looking at some retired person or someone who is above 50 because we are kept the experience criterion. We are not encouraging younger people to come in here. If

it is 30 or 35 years, then they will come. That is how the DRT number will increase. More efficient people will come and they will deliver better. Why should we rely on old people? I think 65 should be the maximum.

SHRIMATI ANJULY CHIB DUGGAL: If I can share a couple of points with you. There is no minimum age limit that we are prescribing under this Act. We have made a provision for reappointment. So, people can come back and get reappointed. It was not there earlier in terms of a Supreme Court judgement that specific provision has to be there.

SHRI ANAND SHARMA: Is there anything which prevents appointment of a person who is younger?

SHRIMATI ANJULY CHIB DUGGAL: Nothing prevents appointment of a person who is younger.

SHRI ANAND SHARMA: You have to have for any position a qualifying criteria and if a younger person meets the qualifying criteria, nothing forbids his or her appointment.

डॉ. किरीट सोमैया: ये सब बात करते हुए डिपार्टमेंट में लोग मिल नहीं रहे हैं।

SHRIMATI ANJULY CHIB DUGGAL: That is the problem.

डॉ. किरीट सोमैया: सीटें खाली रह रही हैं, इनको फ्लैक्सबिलिटी क्लोज दो।

माननीय सभापति: प्रैक्टिकल में चेन्नई डीआरटी ने कहा कि उस ट्रिब्यूनल में मिलेगा तो मैं देखूंगा नहीं मिलेगा तो नहीं देखूंगा।

डॉ. किरीट सोमैया: यह पोस्ट इतनी अट्रैक्टिव नहीं रहा, इसमें यंगर लोग नहीं आएंगे।

श्री आनंद शर्मा: आप अच्छा एक्ट बना दो लेकिन डीआरटी खाली रहेगा तो क्या फायदा होगा?

SHRI ANAND SHARMA: That is the problem we have to address one day.

डॉ. किरीट सोमैया: अभी आप जो चाहते हैं कर दें, क्या हमने क्वालिफिकेशन को लिमिटेड रखा है इसके कारण शार्टेज है, क्वालिफिकेशन रिव्यू होना चाहिए। Is it the problem? आपने जो क्वालिफिकेशन रखा है उसके कारण प्रोबल्म है। I think, it is due to that.

SHRI ANAND SHARMA: Some times qualifying criteria over a period of time is tailor-made only for the retired Judges.

HON. CHAIRPERSON: That is the problem.

HON. CHAIRPERSON: What is the qualification of Appellate Tribunal Chairman?

SHRIMATI ANJULY CHIB DUGGAL: The qualifications for appointment as Chairperson of an Appellate Tribunal are – the person has to be qualified to be or he should have been a Judge of a High Court, a member of the Indian Legal Service, who has held the post in Grade I of that Service for at least three years or has held the office of the presiding officer of a Tribunal for at least three years. From experience, I can share this with you, it has been extremely difficult to find people to serve in these bodies. This is why we are trying to ensure – that reappointment is possible so that if people come at a younger age, they do have attraction of another term in case they are so inclined; to increase the age. In comparison to other Tribunals, we are not worse of.

DR. KIRIT SOMAIYA: What is the remuneration?

HON. CHAIRPERSON: It is like a High Court Judge.

SHRIMATI ANJULY CHIB DUGGAL: Like the Secretary to the Government of India, I am told.

HON. CHAIRPERSON: In the National Green Tribunal also, 70 year age is there.

So it is not the first time. Clause 26 is adopted.

Clause 27 is adopted with the amendment moved by Shri Subhash Baheria where the age of 67 years is substituted with 70 years.

SHRIMATI ANJULY CHIB DUGGAL: It is accepted.

HON. CHAIRPERSON: So, Clause 27 is adopted.

Now I put Clause 28 before the Committee. There is no amendment in Clause 28. Clause 28 is adopted.

Now I put Clause 29 before the Committee.

श्री निशिकान्त दुबे: चेयरमैन साहब, क्लॉज 29 का सैक्शन 20(एबी) है, उसमें चेंजेज करने पड़ेंगे। अभी आपने जो चेंजेज 26(ई) में किए हैं, एग्जैक्टली वही चेंजेज इस सैक्शन 29(एबी) में करने होंगे। जो एक्सप्लेनेशन आप 26(ई) में डाल रहे हैं, वही 29 (एबी) में

डालना होगा। तभी यह बराबर का बैठेगा। मेरा कहने का मतलब यह है कि 26 (ई) के आधार पर ही 29 (एबी) को लिखना पड़ेगा।

HON. CHAIRPERSON: You will go through it. It is a consequential amendment. So, with this amendment we adopt Clause 29.

Now I put Clause 30 before the Committee. There is no amendment in Clause 30. So, Clause 30 is adopted.

Now I put Clause 31 before the Committee. There is no amendment in Clause 31. So, Clause 31 is adopted.

Now I put Clause 32 before the Committee. There is no amendment in Clause 32.

SHRI NISHIKANT DUBEY: The proposed amendment is in the discretion of the DRAT, only it reduces the deposit amount and to not below 25 per cent. The language should be made tighter so that such reduction of deposit is allowed only in exceptional circumstances.

SHRIMATI ANJULY CHIB DUGGAL: It already says that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited.

श्री निशिकान्त दुबे: चेयरमैन साहब, इसमें बैंक्स के भी सजैश्चन्स थे कि प्रिंसीपल एक्ट सैक्शन 21 में जो वर्ड 75 परसेंट था, वे कह रहे थे कि इसे 50 परसेंट के आधार पर सब्सीट्यूट करना चाहिए। इसमें सारे बैंक्स का भी यह आग्रह था। मैं पूछना चाहता हूं कि इस बारे में डिपार्टमेंट क्या कहना चाहता है?

SHRIMATI ANJULY CHIB DUGGAL: That does not sound logical because the bank has gone to the DRT to recover its loan. The DRT has given an order. After that, there is an appeal being made against the order. The amount is to be deposited only by the person from whom the recovery is to be made, not by the bank.

HON. CHAIRPERSON: So, I put Clause 32 before the Committee for consideration. There is no amendment in Clause 32. Clause 32 is adopted.

I put Clause 33 before the Committee for consideration. There is no amendment in Clause 33. Clause 33 is adopted.

Now I put Clause 34 before the Committee for consideration. There is no amendment in Clause 34. Clause 34 is adopted.

I put Clause 35 before the Committee. There is one suggestion by the Legislative Department for drafting.

SHRIMATI ANJULY CHIB DUGGAL: Sir, if you recall, we had discussed this earlier. We want to add 'any other mode of recovery as may be prescribed'. And, that is to take care of the intangible assets, which now can be used as securities.

HON. CHAIRPERSON: So, the Legislative Department again redrafted it. With this, we adopt clause 35 as redrafted.

Now, I put clause 36 before the Committee. There is no amendment moved in clause 36. So, clause 36 is adopted.

Now, I put clause 37 before the Committee. There is no amendment moved in clause 37. So, clause 37 is adopted.

Now, I put clause 38 before the Committee. There is an amendment moved by Shri Subhash Baheria and Dr. Sanjay Jaiswal.

SHRIMATI ANJULY CHIB DUGGAL: Sir, we have the same concerns but we bow to the wisdom of the Committee.

HON. CHAIRPERSON: As Shri Subhash Baheria is not pressing the amendment, clause 38 is adopted as it is.

Now, I put clause 39 before the Committee. There is no amendment moved in clause 39. So, clause 39 is adopted.

Now, I put clause 40 before the Committee. There is no amendment moved in clause 40. So, clause 40 is adopted.

Now, I put clause 41 before the Committee. There is no amendment moved in clause 41. So, clause 41 is adopted.

Now, I put 1st Schedule. There is an amendment moved by Shri Bhartruhari Mahtabji.

SHRI BHARTRUHARI MAHTAB: It is just to add 'banks or financial institutions'.

The word written is Asset Reconstruction Company. Before that I want to put 'banks or financial institutions'.

SHRIMATI ANJULY CHIB DUGGAL: Sir, I would like to make a couple of points about this. If you remember, in the earlier discussion that we

have had on the exemption under the Stamp Act for work to be undertaken by the ARC, we noted two points. One, that through the ARC it is a pass through. The ARCs are acquiring the rights of recovery but not property rights over the assets. Second, the ARCs are highly regulated and we are increasing the regulatory control over the ARCs. So, the work that is done by the ARCs will continue to be regulated strongly to ensure that the pass through is maintained. But the banks and financial institutions, that kind of regulatory control and oversight is not there. So, I would leave only this.

SHRI ANAND SHARMA: It is 'banks and financial institutions'. What we are saying is the assets, which they have. When we are talking of reconstruction, that is when they go to the ARCs. There is already an existing regulatory procedure for the ARCs. This is an evolving thing. At this stage, it should not be made more complex because we also heard what the ARCs had to say.

SHRI BHARTRUHARI MAHTAB: Actually it is relating to the Stamp Act. Regulatory mechanism actually for Asset Reconstruction Companies is done by RBI.

SHRIMATI ANJULY CHIB DUGGAL: That is correct. Sir, there are two points again. One is that banks and financial institutions are not regulated for asset reconstruction. They are regulated for compliance, for capital adequacy etc. and various matters of that kind.

SHRI BHARTRUHARI MAHTAB: Any agreement document for transfer, assignment of rights or interest of financial assets; as such, I would be happy if stamp duty is totally exempted because you are shifting only asset reconstruction and adding banks and financial institutions.

SHRIMATI ANJULY CHIB DUGGAL: Sir, if I understand correctly, your concern is about where banks buy the loans from other banks and after that take them up for resolution etc. Firstly, the number of transactions is extremely small as compared to the number of transactions that the ARCs would be doing after we open up this particular environment. Secondly, the ARCs, I repeat, would be under the regulatory oversight of RBI for the purpose of asset reconstruction. Other banks and financial institutions would be under the oversight only for their other regular work, not for asset reconstruction. So, if the intention has been to ensure that any assets taken over for asset reconstruction because it is done on a pass-through basis, should not be subjected to stamp duty once again because it is only the right of recovery which is passing through. Then this proposed amendment covers that case fully. But for banks and financial institutions, it opens up a number of other areas which we have not yet examined or stepped into fully.

SHRI BHARTRUHARI MAHTAB: Again an amendment will come. If not in 2016, in 2018 you will see.

HON. CHAIRPERSON: We are bringing the language correction that it is not for the own purpose if any transfer in favour of this asset reconstruction company by their own purpose.

DR. MUKULITA VIJAYAWARGIYA: We have drafted a provision regarding exemption shall not apply. Now the documents are executed for the purpose of other than sub-section (1). That kind of proviso we have drafted.

HON. CHAIRPERSON: There are two things:- Clause 17 and the proviso in this Stamp Act also. With these two things, we adopted all the sections. We will sit tomorrow. I will tell the place later.

SMT. ANJULY CHIB DUGGAL: We are going to leave one small suggestion that has come from the Reserve Bank of India. It is a consequential amendment. That is Section 3 of the SARFAESI Act 3(3)(d) is a consequential omission.

HON. CHAIRPERSON: We will accept it and the legislative department, please check it again. If any consequential amendment is required, please inform the Committee tomorrow. The Committee will accept that amendment tomorrow. Whatever the amendment is consequential, please give that list. So, we will accept it tomorrow.

With this, tomorrow, we will sit at 6 p.m. for consideration and adoption of the Report.

SMT. ANJULY CHIB DUGGAL: Thank you Sir for your interventions and your patience.

(THE COMMITTEE THEN ADJOURNED)

PROCEEDINGS OF THE SEVENTH SITTING OF THE JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 2016 HELD ON WEDNESDAY, THE 20TH JULY, 2016

The Committee sat from 1800 hrs. to 1910 hrs. in Committee Room "62", Parliament House, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

MEMBERS

Lok Sabha

2. Shri Gopal Chinayya Shetty
3. Shri Subhash Baheria
4. Shri Nishikant Dubey
5. Shri Shivkumar C. Udasi
6. Shri Anil Shirole
7. Shri Abhishek Singh
8. Shri Gajendra Singh Shekhawat
9. Dr. Sanjay Jaiswal
10. Shri Jayadev Galla
11. Shri Chandrakant Khaire
12. Ms. Sushmita Dev
13. Shri Bhartruhari Mahtab
14. Shri B. Vinod Kumar
15. Dr. Kirit Somaiya

Rajya Sabha

16. Shri Anand Sharma
17. Shri Praful Patel

SECRETARIAT

1. Smt. Sudesh Luthra	—	*Joint Secretary*
2. Shri J.V.G. Reddy	—	*Director*
3. Smt. Jagriti Tewatia	—	*Deputy Secretary*

REPRESENTATIVES OF THE MINISTRY OF FINANCE

DEPARTMENT OF FINANCIAL SERVICES

1. Smt. Anjuly Chib Duggal — Secretary
2. Shri Girish Chandra Murmu — Additional Secretary
3. Shri Anandrao Vishnu Patil — Joint Secretary

REPRESENTATIVES OF THE MINISTRY OF LAW AND JUSTICE

LEGISLATIVE DEPARTMENT

1. Dr. Mukulita Vijayawargiya — Additional Secretary
2. Mrs. Veena Kothavale — Additional Legislative Counsel
3. Dr. Sanjeev Kumar Srivastava — Additional Legislative Counsel

JOINT COMMITTEE ON THE ENFORCEMENT OF SECURITY INTEREST AND RECOVERY OF DEBTS LAWS AND MISCELLANEOUS PROVISION (AMENDMENT) BILL, 2016

Verbatim Proceedings

Date : 20th July, 2016

Time : 1800 hours

Venue : Committee Room '62'
Parliament House
New Delhi.

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Nishikant Dubey — Member

WITNESSES EXAMINED

1. Shrimati Anjuly Chib Duggal
   Secretary (FS), Department of Financial Services (Debt Recovery Tribunal Section)
2. Dr. M. Vijayawargiya
   Additional Secretary, Ministry of Law and Justice (Legislative Department)

HON. CHAIRPERSON: Hon. Members, representatives of Department of Financial Services, Legislative Department and Department of Legal Affairs, I welcome you all to the sitting of the Joint Committee. As you are aware, the Committee today will consider and adopt the draft Report on the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provision (Amendment) Bill, 2016 and the modified Bill.

Before we adopt this Report, yesterday there were issues relating to tenancy, explanation and stamp duty. Some drafting requirement is there. Now, the Secretary (Financial Services) may clear that draft. If it is mentioned in the draft, you may read out the relevant paragraphs.

SHRIMATI ANJULY CHIB DUGGAL: Sir, there was also a question of a consequential amendment, which was pointed out by RBI, in Section 3. It is about deletion of Section 3(d) of the Securitisation Act. It is a consequential amendment. We only ask that it may be taken on record.

HON. CHAIRPERSON: Okay.

SHRIMATI ANJULY CHIB DUGGAL: Sir, this is in consequence of having amended Section 3 (f), which has already been approved by this hon. Committee.

Yesterday, we finished by saying that for ARCs as far as the Stamp Act is concerned, we will put in a proviso where the pass through of any financial asset is exempted from stamp duty. I am reading out the proviso, which states that : "Provided that the provisions of this sub-Section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitization."

HON. CHAIRPERSON: Kindly read the particular Section only from the final Draft Report.

DR. M. VIJAYAWARGIYA: Sir, it is on page 30 of the Report, Clause 6, Amendment of Section 5, which states that : "After sub-Section (1), the following ... asset reconstruction or securitization.". So, for any other person this will not apply.

HON. CHAIRPERSON: Okay. Then?

SHRI NISHIKANT DUBEY: Are you deleting (1) also?

DR. M. VIJAYAWARGIYA: Yes, Sir. This has been the suggestion from the Members also and we have accepted it.

Then, regarding extension of time, please see page No. 37 of the report.

SHRI NISHIKANT DUBEY: You have used the words, "institutional buyers" here.

DR. M. VIJAYAWARGIYA: Sir, we have amended Section 7 of the Act whereby we have included non-institutional buyers also. Consequentially, we have deleted the word 'institutional' to have the expression 'qualified buyers including both institutional as well as non-institutional'.

Sir, regarding Section 14 of the Act and Clause 12 of the Bill, at page 37, we are providing a second proviso which says,—

> "Provided further that where the Chief Metropolitan Magistrate or District Magistrate is of the opinion that an order under this sub-section cannot be passed within thirty days, he may after recording reasons pass the order within such further period not exceeding in aggregate sixty days."

Then, we have amendments in Section 17, at page 39. It is more of a drafting or of a consequential nature, which is a correction in the light of Section (1). At page 39, we are substituting Section 17 (3) so as to include along with the borrower any other person who has made an application under sub-section (1). Sub-section (1) empowers other persons other than the borrower to make an application. That effect has not come into sub-section (3) in the existing Act. So, we are improving the text of sub-section (3).

Sir, on the issue of tenancy, we have attempted to insert sub-section (4A) in Section 17. After sub-section (4), the following sub-section shall be inserted, namely:—

> "(4A) (i) Where any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims may, for the purpose of enforcement of security interest, examine whether lease or tenancy,—
>
> (a) has expired or stood determined; or
>
> (b) is contrary to Section 65A of the Transfer of Property Act, 1882; or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act.

(ii) Where the Debt Recovery Tribunal is satisfied that tenancy right or any other right claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act."

SHRI BHARTRUHARI MAHTAB: Sir, the basic question that we have been discussing on this clause is the ownership right and the tenancy right. If before securitization or after securitization, for non-payment of dues by the borrower, who is at fault, then the owner of that property and the lender will be taking over the ownership of that property. At that level, I do not see any dispute. When we are talking about tenancy rights, tenancy can continue; ownership can change. So, why should we mix the ownership right and also bring in the tenancy right to be determined by the DRT? That was my question since the beginning. With these amendments which have come in, we are again factoring in the tenancy part into this. I have strong objection to it. At one point of time, I was`still considering what the Department has done.

But if tenancy has come after securitisation, then it can be. But today I am putting forth this view that tenancy rights should be protected as per the civil law, as per the Tenancy Act. Ownership can change from A to B and from B to C. But for tenancy, we have a separate jurisdictional system in place. That should be taken care of in that manner. If you do that, it does not impinge on the interest of the lender to a great extent.

HON. CHAIRPERSON: What I understand is, suppose after the securitisation application, a person claims his tenancy, so the DRT Court only satisfy a, b,c and d clause. We are not giving powers to DRT to decide on merit. It is only subject to the satisfaction. The tenancy right is decided by the civil court. Suppose, a person claims that he is a tenant, then it is the power of the DRT to examine the document. If they are satisfied, then it is right. If they are not satisfied, we are not hiding the civil rights or rights of a person that he cannot go in the civil court. By this power, the DRT is not empowered to declare. That power is not with the DRT. Nobody can file an application with

prayer for declaration. Prayer for declaration is a subject matter of civil court. Here, only they have to satisfy whether the document or the tenancy right which is produced here is correct or not.

श्री निशिकान्त दुबे: चेयरमैन सर, महताब जी दो चीजें कह रहे हैं। पहली बात यह कि डीआरटी और यह एक्ट ओनरशिप को डिसाइड करे क्योंकि ओनर कोई भी हो सकता है। जो टेनेंट है, यदि वह सिविल कोर्ट से बाहर निकल जाएगा, मान लीजिए किसी ओनर ने किसी टेनेंट को प्रॉपर्टी के लिए 30 साल की लीज दी है और टेनेंट ने उस पर कुछ इनवेस्टमेंट कर लिया, जैसे एनडीएमसी का ताज होटल है और उसमें ताज ग्रुप ने इनवेस्ट कर रखा है। मान लीजिए, एनडीएमसी उसे पांच साल, सात साल या आठ साल बाद उसे बेच दे तो उसकी जो इनवेस्टमेंट है, वह खत्म हो जाएगी। यही बात वह कहना चाहते हैं कि ओनरशिप किसी की भी हो सकती है, लेकिन जो टेनेंट के राइट्स हैं, यदि वह मामला सिविल कोर्ट से हट जाएगा, डीआरटी उसे भी देखने लगेगा तो एक बहुत बड़ा बखेड़ा खड़ा हो जाएगा और इनवेस्टमेंट पर इसका बड़ा असर होगा। आप अगर वर्ल्डवाइड भी देखें, जैसे सहारा का ग्रोवनर हाउस, वह मैरिएट चला रहा है। पिछले 15 साल में उसके चार मालिक बदल चुके हैं। यहां तक लंदन का जो हेरॉड्स है, पिछले 20 साल में उसके मालिक तीन बार बदल चुके हैं।

माननीय सभापति: अगर वह सिक्योरिटाइजेशन से पहले का है तो फिर डीआरटी उसमें इंटरफेयर नहीं कर सकती।

श्री निशिकान्त दुबे: यही प्रोविसो उसमें पहले ही डालना चाहिए।

माननीय सभापति: डीआरटी उसमें इंटरफेयर नहीं कर सकती, परन्तु मैं आप लोगों से आग्रह करूंगा कि इसे और अधिक स्पष्ट कर दें।

SHRI BHARTRUHARI MAHTAB: During our deliberations, I think, day before yesterday, I was told that we are more concerned because lot of apartments that are being purchased - that is a genuine issue - by the buyer he would always be willing to give it on rent so that he or she can pay the EMI in time. That idea struck me that yes, here is a necessity where the lender should take possession of that property. While deliberating on that issue, it came to my mind that here is the ownership of that property that is in question.

So, the ownership will change hands. I have given out a property on rent and I sell that property to somebody else. So, it is for the person who is purchasing that property to decide whether he will be interested to continue with that or not. That will be determined by the Tenancy Act and not determined by this ownership thing.

SHRIMATI ANJULY CHIB DUGGAL: Those points are very well taken, Sir. Let us take a look at what is really happening on the ground. There

could be any number of genuine cases but there are also any number of cases where a bank has a mortgage over a particular apartment let us say, repayments to the bank are not going, the bank has taken a decision to foreclose, and a tenancy is created only for the purpose of invoking the tenancy laws and obstructing the rights of the bank to enforce the security interest. Therefore, the second point I would mention out here is that if to determine the issue of tenancy whether it was created prior to the creation of the security interest, or it was created afterwards, or if it was created in contravention of the agreement between the bank and the borrower, or if the tenancy rights had already been extinguished before the security interest was created, those are matters of fact about a tenancy only to determine whether there is an actual tenancy or not. And those are the four points that we are trying to cover out here.

The point here is this, Sir. No litigant before a DRT should have to remove his case and go to a civil court and come back again if four specific points are reasonably clear. I read out these points. In case the lease or tenancy has expired or so determined before, that is what we have done. In Section 65A of Transfer of Property Act, the points are absolutely clear, very easy to determine. Every such lease shall be such as would be made in the ordinary course of management of the property and in accordance with any local law, custom or usage; every such lease shall reserve the best rent that can be reasonably obtained; no such lease shall contain a component for renewal; every such lease shall take effect from a date not later than six months from the date on which it is made, etc.

So, the point is this, Sir. If the tenancy right is being claimed in contravention of the law on the subject, or is created after the issuance of notice of default, it is only in those cases that we are saying that the DRT may decide that this is an action taken to obfuscate the course of law.

SHRI BHARTRUHARI MAHTAB: I agree. Read this 4(8)(ii). Where the Debt Recovery Tribunal is satisfied that tenancy right or any other right, etc., the tribunal may pass such order as it deems fit - those are the last two lines - in accordance with the provision of this Act. So, what are we expecting the DRT to pass order on?

SHRIMATI ANJULY CHIB DUGGAL: Basically on whether the security right can be enforced or not enforced.

SHRI BHARTRUHARI MAHTAB: But you have mentioned the tenancy right — "satisfied that tenancy right or any other right claimed". So, my apprehension is that this gives scope to determine the tenancy right.

SHRIMATI ANJULY CHIB DUGGAL: Let me get into the practical aspects of this, Sir. We are asking the DRT to give an order for enforcement of a security right where (1) it is clear that the tenancy had actually already expired earlier; (2) transfer of property is contrary to law, (3) is contrary to the terms of mortgage; and (4) has been created subsequent to the creation of the security interest. Only in these four conditions, and these conditions have been taken from a Supreme Court judgement on the matter.

KUMARI SUSHMITA DEV (SILCHAR): Mehtabji, this is Supreme Court judgement of 2013 whereby DRT has already been given this power. What they are doing is making a distinction between types of tenancies. So, if it was before the mortgage was created, those won't come under this. Therefore, with this whole argument, we are stepping into the jurisdiction of civil courts and may be depriving the tenant of his right. I think yesterday or the day before that, Shri Nishikant Dubey said that banks have said that a court may challenge it and it may not stand the test of time. Supreme Court has already given DRT this power. So, I think the wisdom of the judgement is that it is legal and nobody can challenge it in the court of law in future. What the court in that judgement did is that there is a loophole in the law which defeated the very purpose of SARFAESI. So, I don't think anybody can legally challenge it and if they did, they would go to our courts and our apex court has already held it as proper and legal.

SHRI ABHISHEK SINGH (RAJNANDGAON): I just want one clarification on point (c) which says that it is contrary to terms of mortgage. This inclusion may affect in future the financial institutions or a bank to devise the mortgage terms in a way that pre-emt the borrowers to rent the properties that they are buying from the loans from financial institutions.

SMT. ANJULY CHIB DUGGAL: That is a valid point. Banks need to lend and lending against property is one of the easiest loans to get because the collateral is right there. Therefore the intent normally is to make the terms of the mortgage attractive both for the banks as well as for the borrowers. Normally, what would happen is that it would be said that the tenancy could be to-terminus with the last EMI to be paid for the collateral or something along those lines. If it would be not so much, it would contain a clause like 'in the event of a default or the loan being declared as NPA, tenancy would conclude or something along those lines'. Normally, it should not create any problem as the ordinary course of business is concerned.

SHRI ABHISHEK SINGH (RAJNANDGAON): Will those changes not go against the spirit of the Tenancy Act?

SMT. ANJULY CHIB DUGGAL: They should not.

SHRI BHARTRUHARI MAHTAB (CUTTACK): First, the Supreme Court decided against the NEET being introduced. Later, it decided that NEET must be introduced. Now, the word doing the round is that NEET would do away with all the private medical colleges in another two years' time. No private college will survive because of NEET. Sushmitaji, in another three or four years' time, you will again find that Supreme Court will review this judgement and will come with certain other things. But anyway, I go with the collective wisdom of this Committee. But I still hold this view that let this amendment not become an instrument to deal with the tenancy right because that is something different.

KUMARI SUSHMITA DEV (SILCHAR): Let us look at it differently. I completely agree with Mehtabji that civil courts have the jurisdiction to go into questions of fact when it comes to legal right of a tenant. I understand the vision of what he is saying. I hope he does not get the feeling that I was saying Supreme Court is supreme.

I believe that the thrust of the Supreme Court judgement is why we should allow a tenant when a tenancy is created; clearly it is the owner of the property who creates it. He knows that he has given that property to a bank against which he has taken money from a public sector bank or otherwise. So, where is the common sense or logic or morality of bringing a tenant which means you have created the tenancy after knowing that your property is in mortgage?

SHRI PRAFUL PATEL: But the bank also at the time of advancing the loan will have to determine what is the tenancy and right of the tenancy at the time giving loan.

KUMARI SUSHMITA DEV: This is the case of tenancy after you secure it.

SHRI PRAFUL PATEL: It is already clarified that it does not apply to it. That is a different thing altogether.

श्री निशिकान्त दुबे: सभापति जी, सुप्रीम कोर्ट का 20 जनवरी, 2016 की जजमेंट है कि सरफेइसी एक्ट रेंट कंट्रोल एक्ट और टेनेंट एक्ट को ओवर राइट नहीं कर सकता है। In a significant ruling, the Supreme Court of India has held that the provisions of the SARFAESI Act cannot override the provisions of the Rent Control Act.

SHRI PRAFUL PATEL: The point here is that if you are protected under the Rent Control Act, your rights are secured. This does not override that.

KUMARI SUSHMITA DEB: These are two mutually exclusive things we are talking about.

SHRI PRAFUL PATEL: Why do you not make a proviso where the tenant's rights are protected under local laws whenever property is mortgaged?

SHRIMATI ANJULY CHIB DUGGAL: Let me submit that that is the law of the land. All that we have done is to carve this out which is consistent with the law of the land.

SHRI PRAFUL PATEL: If you can get the sense, why do you not make the change?

HON. CHAIRPERSON: Here the wording is, 'tenancy or any other right claimed' subject only to the satisfaction of the DRT whether it is prior to or after the mortgage.

SHRI SHIVKUMAR UDASI: What Shri Mahtab wanted is, in the last line, it may be said, 'The debt recovery tribunal may pass the order which it may deem fit in accordance with this Act'. That is what he says. So, it should not create more confusion; it should not create one more point to litigate.

SHRI BHARTRUHARI MAHTAB: If the lawyers are satisfied in this Committee, I am satisfied. Ultimately, it will be determined by the lawyers.

SHRI JAYADEV GALLA: I find only one weakness. It says, (a) or (b) or (c) or (d). If (a) or something expires and in a genuine case also gets renewed or gets given to a different party, this will not be correct. Maybe, it should be 'and' instead or 'or'.

SHRIMATI ANJULY CHIB DUGGAL: Different situations would require different treatments. All four may not occur in a particular case.

SHRI JAYADEV GALLA: Any lease may expire at any time. My question is, let us say, there is a lease and somewhere in the mid-term of the recovery of loan, it expires and they give it to another party, that can also be determined by the DRT now. That should not be the case.

So, that should not be the case. If it is issued after the issuance of notice of default it is very clear.

SHRIMATI ANJULY CHIB DUGGAL: If it is not contrary to the terms of the mortgage it would be protected.

SHRI JAYADEV GALLA: But it says 'a', 'c' or 'd'.

SHRIMATI ANJULY CHIB DUGGAL: There could be different situations for different cases.

SHRI JAYADEV GALLA: But the way it is worded, even 'a' alone would be....

SHRIMATI ANJULY CHIB DUGGAL: It is worded by the Supreme Court's judgement and we have actually remained in conformity with that.

श्री निशिकान्त दुबे: क्या ये वर्ष 2014 के जजमेंट के बारे में कह रहे हैं?

माननीय सभापति: जब आप मीटिंग में नहीं आये थे, तो सभी ने बार-बार उसी जजमेंट को रेफर किया था।

SHRI BHARTRUHARI MAHTAB: I would like to have just one clarification on tenancy. In part-2 what has been explained is relating to tenancy. "That the DRT is satisfied that tenancy right or any other right.." What do we think other right would be?

SHRIMATI ANJULY CHIB DUGGAL: Right of lease. If you look at 4(a)(1) it says, "Where any person in an application under sub-section 1 claims any tenancy or lease hold rights".

SHRI BHARTRUHARI MAHTAB: So, you can write lease hold right, why write 'any other'?

SHRIMATI ANJULY CHIB DUGGAL: We will write. We will improve it.

DR. M. VIJAYAWARGIYA: Insertion of Section 26(E), Clause 17 of the Bill, Page 45 of the Report. As per the decision of the Committee and with the permission of the Chairperson we have added one Explanation in Section 26(E).

"Priority to secured creditors: Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

Explanation: For the purpose of this section, it is hereby clarified that on or after the enforcement of the Insolvency and Bankruptcy

Code, 2016, where insolvency and bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

SHRI ANAND SHARMA: We discussed it yesterday.

DR. M. VIJAYAWARGIYA: Then Sir, on page 46, there is clause 20. We have added sub-section 3 and sub-section 4 in section 30 just merging the provisions of section 12C which was initially proposed in the amendment Bill.

SHRI ANAND SHARMA: You kindly read all that again for the benefit of the Committee.

DR. M. VIJAYAWARGIYA: Sir, I will read the new provisions added in Section 30A. It says that where any asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act the adjudicating authority may, by an order, impose on such company or person in default, a penalty not exceeding one crore rupees or twice the amount involved in such failure where such amount is quantifiable, whichever is more, and where such failure is a continuing one, a further penalty which may extend to one lakh rupees for every day, after the first, during which such failure continues.

(2) For the purpose of imposing penalty under sub-section (1), the adjudicating authority shall serve a notice on the asset reconstruction company or the person in default requiring such company or person to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall be given to such person.

(3) Any penalty imposed under this section shall be payable within a period of thirty days from the date of issue of notice under sub-section (2).

(4) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section (3), the adjudicating authority may by order cancel its registration: Provided that an opportunity of being heard shall be given to such asset reconstruction company before cancellation of registration.

(5) No complaint shall be filed against any person in default in any court pertaining to any failure under sub-section (1) in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.

(6) Where any complaint has been filed against a person in default in a court having jurisdiction, no proceeding for imposition of penalty against that person shall be taken under this section.

Then there is explanation regarding adjudicating authority. The "adjudicating authority" means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank.

Then there is explanation regarding person in default. The "person in default" means the asset reconstruction company or any person which has committed any failure, contravention or default under this Act and any person in charge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person.

श्री निशिकान्त दुबे: सर, आरबीआई रेगुलेट भी करेगी और एडजुडिकेट भी करेगी।

माननीय सभापति: नहीं, एडजुडिकेटिंग अथॉरिटी बनाएंगे जो रिज़र्व बैंक बनाएगा। पहले तो 12सी और 12डी था, उसको खत्म किया, सेक्शन 28 को खत्म किया और फिर इसमें एक ही एडजुडिकेटिंग अथॉरिटी कर दी।

श्री निशिकान्त दुबे: लेकिन एक ही आदमी को आप सारी पावर दे रहे हैं। एक ही आदमी लाइसेंस भी देगा, बोर्ड ऑफ डायरेक्टर बनाएगा और एडजुडिकेट भी करेगा।

SHRIMATI ANJULY CHIB DUGGAL: Sir, the provision is this that the adjudicating authority means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank. On the Central Board of the Reserve Bank, there are many people including Secretary (Finance Services) and Secretary (Economic Affairs).

श्री निशिकान्त दुबे: लेकिन वहां तो पावर गवर्नर के पास है।

SHRI ANAND SHARMA: RBI does not deal with every subject. There are a large number of Deputy-Governors and below them there are senior executives. We must not be under this impression that RBI deals with everything pertaining to the RBI. It is impossible. It is the Central Bank of India. Each Deputy-Governor has designated portfolio of which they are in-charge. I am sorry to say that it is not like Governments are run that head of the Executive will control everything. That is not how the banks are run, not the Reserve Bank. Reserve Bank cannot be run by one individual.

माननीय सभापतिः निशिकान्त जी, यह रिजर्व बैंक का ही सजेशन था, इसलिए 12सी और 12डी को हमने पहले ही करा था, इसलिए इसमें कोई अमैंडमैन्ट भी नहीं आया।

DR. M. VIJAYAWARGIYA: Sir, we were directed to carry out consequential amendments in the DRT Act. Definitions have been harmonised with the SARFAESI Act also.

SHRI ANAND SHARMA: The amendment proposed on the age, you may read that out once.

DR. M. VIJAYAWARGIYA: We have drafted it today and brought it for circulation also.

HON. CHAIRPERSON: That has not been circulated.

DR. M. VIJAYAWARGIYA: Sir, at page no. 57, clause no. 27 (xi)—for Section 11 the following Section shall be substituted, namely, the Chairperson of an Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment, provided that no person shall hold office as the Chairperson of the Appellate Tribunal after he has attained the age of 70 years.

SHRI ANAND SHARMA: So, 65 years has been raised to 70 years as we discussed yesterday.

श्री निशिकान्त दुबेः लेकिन आप लोगों ने एडजुकेटिंग अॅथारिटी तो बना दी है, मैं आप लोगों को केवल जानकारी देना चाहता हूं। सैक्रेटरी (बैंकिंग) यहां बैठी हुई हैं कि जितने बैंक्स हैं, उनमें आरबीआई के जो नोमिनी आते हैं, अब हम सारे लोग इसमें मोर और लैस एग्री कर रहे हैं कि उनके नोमिनी बैंक के बोर्ड में नहीं होंगे, क्योंकि रेगुलेटर का रोल अलग है और वहां जब बोर्ड में बैठकर आप कोई फैसला करते हैं तो आप कैसे रेगुलेट करते हैं, यह कांफ्लिक्ट ऑफ इंटरैस्ट है। इसलिए यह बनाने को तो आपने आरबीआई के सजेशन से मान लिया। लेकिन मेरा यह मानना है कि यह कांफ्लिक्ट ऑफ इंटरैस्ट है और इसे एक बार देखना चाहिए। क्योंकि अभी जितने बैंक के बोर्ड में आरबीआई के नोमिनी होते हैं, अब यह तय हो रहा है कि चूंकि आरबीआई रेगुलेटर है और वह बैंक के बोर्ड में सारा फैसला करता है।

फिर वह रैग्युलेट नहीं कर सकता है, इसीलिए उसके सारे नॉमिनी वापस हो जाएंगे।

श्री भर्तृहरि महताबः इसीलिए वे भी खुद विदड्रा कर रहे हैं।

श्री निशिकान्त दुबेः वे खुद विदड्रॉ कर रहे हैं, यह आरबीआई ने खुद का अपना फैसला किया है।

माननीय सभापतिः एडजुडिकेटिंग अथॉरिटी आरबीआई का कोई अपना नहीं है, उनके द्वारा अपाइंटिड एडजुडिकेटिंग अथॉरिटी है। पहले जो यह पैनल्टी के प्रोविजन थे, ये सीधे-सीधे

आरबीआई के पास थे, सैक्शन 12(सी) और 12(डी) में थे। हमने सैक्शन 12(सी) और 12(डी) को डिलीट करके सैक्शन 30 में एक अलग से एडजुडिकेटिंग अथॉरिटी बनाई है। यह ठीक है कि आरबीआई के अंडर में है, परंतु वह उतना इंडिपेंडेंट डिसीजन लेने के लिए स्वतंत्र है। यह व्यवस्था है। आगे देखेंगे, अभी तो निशिकान्त जी इसको स्वीकार कर लें।

श्री निशिकान्त दुबे: ठीक है सर, कम से कम मेरी बातें रिकॉर्ड हो गईं हैं। जब कभी भविष्य में होगा तो मैं कहूंगा कि मैंने ये बातें कही थीं।

माननीय सभापति: जी, बिल्कुल आपकी सारी बातें रिकॉर्ड में आ गई हैं।

पेज 70 को रिप्लेस किया है। जो रिप्लेस पेपर है, वह मैंने आप सबको सर्क्युलेट कर दिया है। अब यह रिपोर्ट आप सबके सामने एडॉप्शन के लिए है।

श्री निशिकान्त दुबे: आपने स्टॉम्प एक्ट वाला देख लिया था न?

श्री भर्तृहरि महताब: सर, आपका फाइनल ड्राफ्ट कब सर्क्युलेट होगा?

श्री निशिकान्त दुबे: नहीं, नहीं यह आपका चेंज जो है, वह उन्होंने बता दिया था। वह मैं आपको बता दूं। स्टॉम्प एक्ट वाला कितने नंबर पेज पर था?

DR. M. VIJAYAWARGIYA: Sir, it is given in page 30 of the report under clause 6. It says:

"(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899:

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation."

SHRI ANAND SHARMA: That proviso makes it very clear. That is what we asked for yesterday.

HON. CHAIRPERSON: Now I put clause 1 alongwith the title of this Bill before the Committee for adoption. Clause 1 and title are adopted.

Clause 2 to Clause 41 including the amendments suggested by Shri Bhartruhari Mahtab in Clause 14 in Section 17, sub-section 4 (a), sub-section 2, along with the correction suggested by Shri Bhartruhari Mahtab, I put all the clauses before the Committee again for adoption.

So, all clauses are adopted.

Then I put First Schedule and Second Schedule for adoption. It is adopted.

It has been my endeavour that the Committee make a unanimous Report with the cooperation of all the Members. If you all agree we may consider and adopt the draft Report and the modified Bill. Members desirous of submitting dissent note may do so by 1200 hours tomorrow, *i.e.* 21st July, 2016 so that we are in a position to present the Report to Parliament on 22nd July, 2016. In this context, I invite your attention to Direction 87 which provides as under:—

> "A Member who has been absent from the sitting or sittings of a Committee at which the draft Report of the Committee was considered and adopted with or without amendments, as the case may be, may give a minute of dissent if that member certifies in writing of having read the report."

Let us now consider and adopt the Report and the modified Bill.

Hon. Members, I may inform you that as per the established practice, the Committee has to take following decisions:

(i) To lay the records of evidence tendered before the Committee on the Table of both the Houses of Parliament.

(ii) To place two sets of memoranda containing comments and suggestions of stakeholders on the provisions of the Bill, as circulated to the Members of the Committee in Parliament Library, after the Report has been presented, for reference of the Members of Parliament.

SHRI BHARTRUHARI MAHTAB: Earlier the Library was here, inside the Parliament House. Now, Parliament Library means you have to move to the Library Building.

SHRI ANAND SHARMA: I think we must get it clarified. They must be keeping digitised records of evidence. Otherwise, it would be voluminous.

माननीय सभापतिः इस कमेटी की रिपोर्ट को एडॉप्ट करने के बाद मैं कमेटी का चेयरमैन होने के नाते कहना चाहता हूं कि हमारे सभी सदस्यगण ने मिलकर के इस कमेटी को बहुत कान्ट्रिब्यूट किया है और मुझे सबसे बड़ी खुशी यह है कि हमारे 21 पैराज में टोटल कमेटी ने 21 ड्राफ्टिंग एरर्स को ठीक किया, उसके अलावा 36 लैंग्वेज के और बाकी के जो करेक्शंस

थे, कान्सिक्वेन्शल अमेंडमेंट थे, टोटल 57 अमेंडमेंट्स इस कमेटी ने किए हैं। कमेटी की जितनी भी हमारी मीटिंग्स हुई हैं, उनमें मैम्बर्स की 80 से 90 परसेंट हाजिरी रही है और विशेष रूप से जब हम तीन दिन बाहर एग्जामिन करने के लिए गए तो केवल दो मेंबर, वे देश में नहीं थे और उन्होंने बता करके अदरवाइज 30 में से 28 मैम्बर्स पूरी मीटिंग में उपस्थित रहे। यह मैं बहुत बड़ी बात मानता हूं। हमने लगभग 72 विटनेसेज को एग्जामिन किया। मैं विशेष रूप से अपने तहेदिल से कहना चाहता हूं कि हमारे सभी वरिष्ठ मैंम्बर्स ने इतना अच्छा पार्टिसिपेशन करके इस कमेटी को सहयोग किया है कि उससे मुझे कमेटी की मीटिंग चलाने का बहुत अच्छा अहसास प्राप्त हुआ है।

मैं विशेष रूप से दो यह उल्लेख करना चाहूंगा कि लगातार दो मीटिंग्ज में, कल भी रात को काम पूरा करने के लिए हमारा स्टाफ रुका क्योंकि हमारा एक टाइम बाउंड प्रोग्राम था, हमारे सचिवालय के लोग, फाइनैंशियल सर्विसेज और लैजिस्लेटिव डिपार्टमैंट के लोग सुबह 6 बजे अपने घर गए हैं। कभी-कभी सरकार और संसद के बारे में जो बातें बाहर कही जाती हैं, उस पर सोचना चाहिए कि कितना कमिटमैंट के साथ काम करते हैं और सुबह 6 बजे तक लगातार काम करते हैं। मैंने भी 12.01 बजे रात को पूछा कि काम चल रहा है तो मुझे कहा कि काम करके निकलेंगे। बाद में सुबह मुझे जानकारी हुई जब मैंने 8 बजे फोन किया कि घर ही 7.30 बजे पहुंचे हैं। एक एप्रिसियेशन हमें भी करना चाहिए कि इतना कमिटमैंट और डैडिकेशन से सब लोगों ने काम किया है।

श्री आनन्द शर्मा: हमारा तो इनफ्लुएंस कम है लेकिन अर्नब गोस्वामी वगैरह को समझा दें कि हम लोग काम करते हैं। वह हर समेय नैगेटिव बात करते हैं।

माननीय सभापति: कमेटी ने बहुत अच्छे माहौल में काम किया, इसलिए मैं तहेदिल से सभी मैम्बर्स का व्यक्तिगत रूप से प्रत्येक सदस्य का धन्यवाद करना चाहूंगा। हमारी जो नोडल एजेन्सी रही है डिपार्टमैंट ऑफ फाइनैंशियल सर्विसेज, डिपार्टमैंट ऑफ लैजिस्लेटिव अफेयर्स, और अदर सैक्रेटरीज और जितने विटनैसेज आए और विशेष रूप से जो पार्लियामैंट सैक्रेटेरियेट के लोगों ने हमारे साथ दिन-रात जुटकर काम किया, वह एक बहुत अच्छा लॉ बनाने में सहायक सिद्ध हुए हैं। मैं पुन: सभी लोगों को अपनी तरफ से बहुत-बहुत धन्यवाद देता हूं।

SHRI PRAFUL PATEL: On behalf of all the Members of this Committee, let me first place our deepest appreciation and gratitude to our Chairman, Shri Bhupender Yadav *ji*, for having conducted this Committee's meetings with the fullest democratic traditions; not only traditions of democracy but also of friendliness of understanding and supporting and encouraging Members to be part and parcel of this Committee. As you have rightly said, we had very good attendance; we have great deal of support; we also wish you continue to be the Chairman of many more Committees. Unfortunately, your good work is coming in the way of your moving a little higher in the pedestal. That is all right. For the time being, we will be happy with the fact that

you are part of us, and continue to lead because I am a Member of many other Committees where you are chairing proceedings. I give my fullest support, and I am sure all my colleagues join equally in congratulating our Chairman for his excellent conduct of this Committee.

Along with that, our deepest appreciation also to the Secretariat, the Joint Secretary, the Director and all other officials of the Committee who have worked, as the Chairman said, tirelessly, and have also been providing us with all the data, information and lots of other things which Members have been demanding - Members have been quite demanding, I would say – at least, in this Committee I have seen that Members have been particularly very demanding. Considering that, it has been a great effort. Also to the Legislative Department, the Department of Financial Affairs and the Banking Department for all your support, guidance and helping the Committee to arrive at the right draft to be able to present to Parliament. Thank you very much.

SHRIMATI ANJULY CHIB DUGGAL: Thank you very much, on behalf of all the officers who have been associated with this exercise, and I am going to include Officers associated with the Committee as well, we do want to place on record the heartfelt appreciation for the kind of interaction that we have been privileged to have with this Committee. It is a very technical set of subjects that we have dealt with, and a lot of extremely practical suggestions which have come have helped us to take the act to further level of refinement. We deeply appreciate all of those inputs; as well as the practical aspects which have been appreciated and accepted by the Committee Members. We do thank you very much for all this. It has been an exceptionally enriching experience for all of us. In the spirit of a number of Indians cutting across various sectors working together, it has been really a remarkable experience. Thank you.

DR. M. VIJAYAWARGIYA: Sir, I thank you very much. It has been a knowledge gaining experience for me and for all the officers of the Department. Thank you.

SHRI ANAND SHARMA: Mr. Chairman, Sir, if we go by the record, with the support of the Officers of Parliament, the Department of Financial Services and the Legislative Department, in this condensed period of time, when we started this exercise on IBC and now on this Bill, back to back, two such important Bills have been cleared in back to back Sessions of Parliament. To the best of my recall, perhaps it could be first of its kind. I do not think it has ever happened in the past, because I have been in Parliament for too long, as long as Praful has been here and I have not seen this.

SHRI PRAFUL PATEL: Yes, I agree.

SHRI ANAND SHARMA: I have not seen anything like this with the pace with which it has been taken forward. I think it has been a collective effort, team effort and understanding of all the Members and particularly with the support and cooperation that we got from the Secretariat. But it also displays the enormous commitment of the Secretariat officials, Secretary and other officials of the Ministry, the Members and other staff.

माननीय सभापतिः मैं पुनः आप सब को बहुत-बहुत धन्यवाद देता हूं, एक अच्छी टीम के रूप में काम करने के लिए और एक अच्छे लेजिस्लेशन में सभी लोगों को सहभागी बनने के लिए।

(THE COMMITTEE THEN ADJOURNED.)